



FIRS reverses the practice of granting 7.5% WHT rate to treaty partners on passive income

May 2022

www.pwc.com/ng

For a deeper discussion, please contact any member of our team below or your usual contact with PwC Nigeria:

Kenneth Erikume

+234 1 271 1700 Ext 50006
kenneth.y.erikume@pwc.com

Emeka Chime

+234 (1) 271 1700 Ext 54045
chukwuemeka.x.chime@pwc.com



SN	Country	Dividend		Interest	Royalty	
		Coys with ≥ 10% voting power	Others		Companies	Individuals
1	Italy	10%	10%	10%	10%	5%
2	United Kingdom	10%	10%	10%	10%	5%
3	Belgium	10%	10%	10%	10%	5%
4	Pakistan	10%	10%	10%	10%	5%
5	Czech Republic	10%	10%	10%	10%	5%
6	Slovak Republic	10%	10%	10%	10%	5%
7	France	10%	10%	10%	10%	5%
8	Netherlands	10%	10%	10%	10%	5%
9	Romania	10%	10%	10%	10%	5%
10	Canada	10%	10%	10%	10%	5%
11	South Africa	7.5%	10%	7.5%	7.5%	5%
12	China	7.5%	7.5%	7.5%	7.5%	5%
13	Philippines	10%	10%	10%	10%	5%
14	Singapore	7.5%	7.5%	7.5%	7.5%	5%
15	Sweden	7.5%	10%	7.5%	7.5%	5%
16	Spain	7.5%	10%	7.5%	7.5%	5%

In May 2022, the FIRS issued a public notice reversing the long established practice of granting a reduced WHT rate of 7.5% on dividends, interest, rent and royalties (passive income) payable to companies resident in treaty countries.

Background

Nigeria has double taxation agreements (“DTAs” or “tax treaties”) with about 16 countries. The DTAs include certain tax benefits to investors resident in the treaty countries, such as reduced withholding tax (WHT) on dividends, interest and royalty earned from a treaty country.

When Nigeria signed its old treaties, the domestic WHT rate on most passive income earned from Nigeria was 15%. The DTAs agreed at the time reduced the rate by 2.5% to 12.5% for treaty partners. Many years later, the domestic WHT rate was reduced to 10%, rendering the WHT incentives in the DTAs redundant.

In view of this, Head of State Abdulsalami Abubakar in 1999 announced a unilateral reduction of the WHT rate for treaty partners of 7.5% on passive income. The budget speech was never formalised through a legal instrument. However, it was adopted by the FIRS in practice.

The FIRS’ Public Notice

With the recent Public Notice, most

investors in treaty countries would no longer enjoy the reduced WHT rate of 7.5%, effective from 1 July 2022.

The reduced rate will only apply on passive income payments to investors resident in treaty countries, where the DTAs specify WHT at 7.5%. This applies to some of the newer treaties which were negotiated and signed after the budget speech in 1999. In all other cases, similar payments to companies in treaty countries will be subject to the domestic WHT rate of 10%, as included in the Companies Income Tax Act (CITA).

Based on the Notice, the FIRS obtained approval from the Minister of Finance to reverse the 1999 unilateral concession since it had no legal backing.

Some considerations

As stated earlier, the recent DTAs signed with some countries actually include a WHT rate of 7.5% on dividend, interest and royalty. This is most likely in line with the unilateral concession, and the general intention and policy of the government since 1999 to encourage trade and investment relations with treaty partners. Reversing the practice means that investors in affected treaty countries would need to evaluate the potential impact on their investment.

For the DTAs that specify a 7.5% WHT rate, the FIRS Public Notice highlights

that the reduced rate would only apply on dividend payments to treaty-parent companies that have 10% or more voting power. However, this condition is not included in some of these treaties (e.g DTAs with China and Sweden). Investors can therefore challenge the FIRS in this regard.

Takeaway

Companies that plan to distribute dividends to shareholders in treaty countries and that have obtained relevant administrative clearance, should consider paying the dividends before 1 July 2022, to benefit from the existing practice.

The FIRS ruling signifies that taxpayers can also challenge other unfavourable practices by the tax authorities which are not based on the law. An example is the practice of sometimes requesting taxpayers to submit government-issued credit notes before they are able to obtain benefits for WHT deducted. In this case, CITA allows the taxpayer to utilise tax deduction receipts issued by the customer.



About PwC

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 157 countries with more than 276,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more by visiting us at www.pwc.com/ng
© 2022 PricewaterhouseCoopers Nigeria. All rights reserved. In this document, "PwC" refers to the Nigeria member firm, and may sometimes refer to the PwC network. Each member firm is a separate legal entity. Please see www.pwc.com/structure for further details.