



WITHHOLDING TAX ON RENTAL INCOME

Rental Payments to a Resident Landlord

The Finance Act 2016 introduced the provision of levying withholding tax (WHT) on rental income whereby a tenant or an agent, appointed in writing by the Commissioner, is required to withhold 10% WHT on all rental payments (including premium or similar consideration) made to a resident landlord for the use or occupation of immovable property. This is an advance tax, and the landlord will be able to offset the amount deducted against the final tax liability. The Act also gives powers to the Commissioner to appoint tenants as withholding tax agents in respect of rental payments.

Rental Payments to a Non-Resident Landlord

Where a rental payment is made to a non-resident landlord not having a permanent establishment in Kenya for the use of immovable property, the tenant or agent is required to withhold tax at 30% on the payment. This provision has always been in existence, and the WHT deducted is the final tax on the non-resident landlord.

General Provisions in Relation to WHT on Rental Income

The Commissioner shall appoint withholding agents and notify them in writing of the requirement to withhold tax on rental payments, which notices can also be sent through electronic means. In our view, the target will be large tenants and property agents. A Public Notice on the operation of this was issued by the Kenya Revenue Authority (KRA) in November 2016.

WHT is deductible at the time of payment and must be remitted to KRA by the 20th day of the subsequent month using the iTax portal.

Failure by an appointed agent to deduct and remit WHT will result in a penalty of 10% of the tax due and interest at the rate of 1% of per month until the tax is paid. The interest is capped at the value of the principal tax, while the withholding tax penalty is limited to Shs 1 million

Currently, there is no clarity on how the 10% tax on residential rental income will be paid, where the annual rental income is less than Shs 10 million and the landlord has opted to pay the 10% rate, and WHT is deducted at source. Our view is that an application will have to be made to the Commissioner to off-set the tax deducted at source i.e. WHT against the 10% residential rental income payable monthly.

Where properties are highly leveraged and the interest and other property costs exceed the rental income, there will be an overpayment of tax, for which a refund application will have to be made to the Commissioner for the refund of the overpaid tax.



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For tax queries please contact:
Ashif Kassam
akassam@ke.rsm-ea.com

info@ke.rsm-ea.com
www.rsm.global/kenya

