



Is withholding tax applicable on training fees?

WITHHOLDING TAX ON TRAINING FEES

Under the Provisions of Section 10 of the Income Tax Act CAP 470 Laws of Kenya "The Act", payments made by resident persons or persons having Permanent Establishments in Kenya to any other person in respect of training, is deemed as income accrued or derived in Kenya. Additionally, under Section 35(1) and 35(3), persons making payments to; (i) non-resident persons not having permanent Establishments in Kenya; or (ii) persons' resident in Kenya or having a permanent establishment in Kenya; in respect of training fees, whose aggregate value is twenty-four thousand shillings or more in one month, are required to withhold tax at the appropriate rates defined in the third schedule. The prescribed rates under the third schedule are 20% for non-residents and 5% for residents or persons having permanent establishments in Kenya.

Prior to the enactment of the Finance Act 2015, Section 2 of The Act defined "Training fee" as; a payment made in respect of a business or user training services designed to improve the work practices and efficiency of an organization, and includes any payment in respect of incidental costs associated with provision of such services.

Therefore, based on the above definition of the term training, payments made to both residents and non-residents in respect of training, whose goal was to improve the work practices and efficiency of any organization, and any incidental costs whatsoever were subject to withholding tax at the applicable rates.

Amendments brought forth by the Finance Act 2015

Vide the Finance Act 2015, the definition of the term "Training fee" was amended by adding the proviso;

Training fee shall not include fees paid for educational services provided by –

- a) Pre-primary, primary or secondary school;
- b) A technical college or university; and
- c) An institution established for the promotion of adult education, vocational training or technical education.

While educational services provided by (a) and (b) are clear and concise, we seek to shed more light on proviso (c) which exempts educational services provided by institutions established for the promotion of adult education, vocational training or technical education from the ambit of withholding tax.

So what is an Institution and what is the meaning of Vocational Training?

The Act does not define the two terms hence we sought redress from the Black Laws Dictionary, 9th edition which defines the two terms as;

- Institution – "an established organization, esp. one of a public character."
- Vocation – "a regular persons calling or business, or ones' occupation or profession."

Our Interpretation

Bodies or organizations established to cater for the welfare of its members, enhance growth and impact knowledge do qualify as institutions for the purposes of interpreting Proviso (c). The prerequisite then would be, that these institutions must be impacting knowledge aimed at improving the business, profession or occupation of its members.

Deciphering from above definitions, any institution whose main objective is to develop and promote the skills or craft of its members sharing a vocation or career path is therefore exempt from withholding tax. An example of such an institution would be ICPAK whose main objective is to promote standards of professional competence and practice amongst members of the Institute amongst other roles. ICPAK therefore, is a professional oriented body, whose members are qualified accountants, and whose sole aim is to look out after the welfare of its members.

Conclusion

Training fees deemed to have accrued and derived in Kenya paid to both residents and non-residents who are institutions established for the promotion of adult education, vocational training and technical education are not subject to withholding tax.

CAVEAT

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