

# Did you know that Withholding Tax is not a Cost?

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Withholding Tax is the amount of money a taxpayer withholds from gross payments for relevant services/goods to his/her supplier. It is the amount of money short-paid to the supplier.

This amount so withheld is then required to be paid to Tanzania Revenue Authority (TRA) on behalf of the supplier.

Once paid, the supplier should be provided with a Withholding Tax certificate, which can be digitally downloaded from TRA's portal.

The person/entity withholding the tax and remitting it to TRA on behalf of supplier is termed as "withholder" or "withholding agent" and the supplier who suffers the short payment is termed as "withholdee".

This act of withholding is a requirement of the law: Income Tax Act, which clearly stipulates the processes and procedures for doing so.

The amount so withheld from payments to relevant suppliers is then used by these suppliers to offset against their Corporate Tax/Income Tax liabilities towards Tanzania Revenue Authority at the end of the related financial year.

We often see taxpayers who are audited by Tanzania Revenue Authority being assessed for Withholding Taxes because they did not withhold the relevant amount from relevant payments to suppliers.

Did you know that by virtue of Section 84(6) of the Income Tax Act (R.E. 2019), the principal tax stated in these assessments are actually recoverable by law from the suppliers directly thereby reducing the tax burden for the assessed party (the withholder)?

*(6) A withholding agent who fails to withhold income tax under Subdivision A but pays the tax that should have been withheld to the Commissioner in accordance with subsection (3) shall be entitled to recover an equal amount from the withholdee.*

To ensure smooth recovery procedure through a legal representative or via mutual understanding, the withholder should ensure that TRA's audit report (or Notes of Discussion) clearly state the breakdown of assessed Withholding Tax withholdee-wise.

For avoidance of doubt, tax interest imposed by TRA on the withholding agent for failure to withhold tax cannot

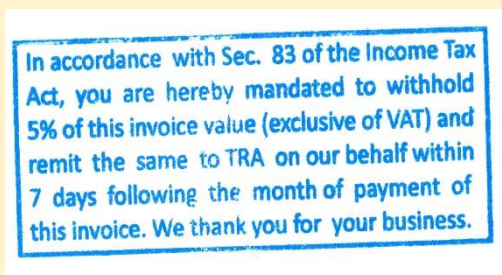
be recovered from the withholdee. Only the principal tax can be recovered.

Most importantly, this tax to be recovered from the withholdee will again not be a cost burden for the withholdee.

It can be used to offset any outstanding Corporate Tax/Income Tax of the withholdee towards TRA. Therefore, withholdees should ideally not object to refund this tax to the withholder.

To avoid this confusion and unnecessary inconvenience of Withholding Tax recoveries, all withholdees when raising invoices for payments to their customers must expressly remind their customers to withhold the relevant tax from the payments.

This can be mentioned explicitly on the face of the tax invoice. An example of the same is re-produced hereunder:



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#### *About the author:*

*Hanif Fattahali Habib has an extensive auditing, tax and accounting career with experience in various roles spanning over 18 years. Prior to establishing his audit and tax consultancy firm M/S Hanif Habib & Cco., he served in leading audit firms in Tanzania. Hanif's solid experience, across various functions, is a testament to his diverse background within Audit, Tax and Finance.*