



**CARPUS TAX**  
deliver with passion

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PRESENTS

Managing withholding taxes on cross border transactions in Africa

Module 1: The general rules around withholding tax mechanism



# Agenda

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- What is “Withholding Tax” and how does it operate?
- Special classes of income chargeable to tax
- Obligation to withholding tax: when does that arise?
- Reimbursements and disbursements
- Deposits and advance payments
- Country analysis

# What is “withholding tax” and how does it operate?

- Income tax collection mechanism on income derived by non-residents in/from a source jurisdiction

- Distinguish between income-based approach vs payment approach

- Parties involved: The recipient of income, the payor and the tax administration

- Processes involved: Identification of class of income and recipient collection, remittance

- Payable on the gross amount excluding deduction for expenses

- Generally WHT is a final tax

Recurring  
One-off  
Capital

Source  
jurisdiction

Can  
Apply  
on goods  
and services

Uganda for on  
import goods

Risk

Documentation



# Special classes of income chargeable to tax

- **Not All payments are subject to withholding taxes**
  - Nature of payments can be excluded
  - Beneficiaries can also be exempt
  - Payers can also be excluded from withholding taxes

Payees

- Payments commonly subject to withholding taxes:
  - Rent
  - Royalties
  - Technical and management fees
  - Interest and dividend
  - Insurance premiums
  - Payments to sportsmen and entertainers
  - Telecommunication and digital services

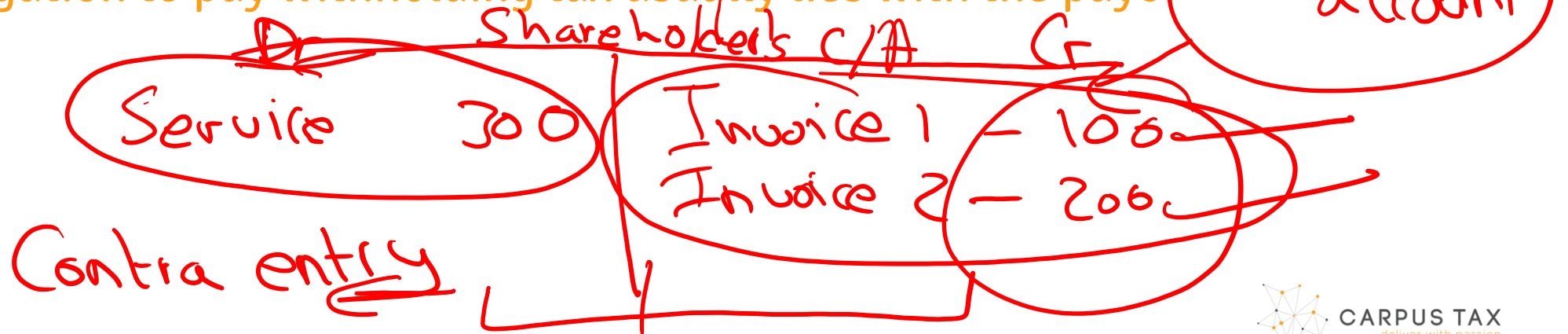


# Obligation to withholding tax: when does that arise?

- Accrual or payment?
- KRA vs Republic Of Kenya (Ex-Parte Fintel Limited), 2019
- TAT decision in ATC Uganda ltd vs URA [TAT no.17 of 2019]

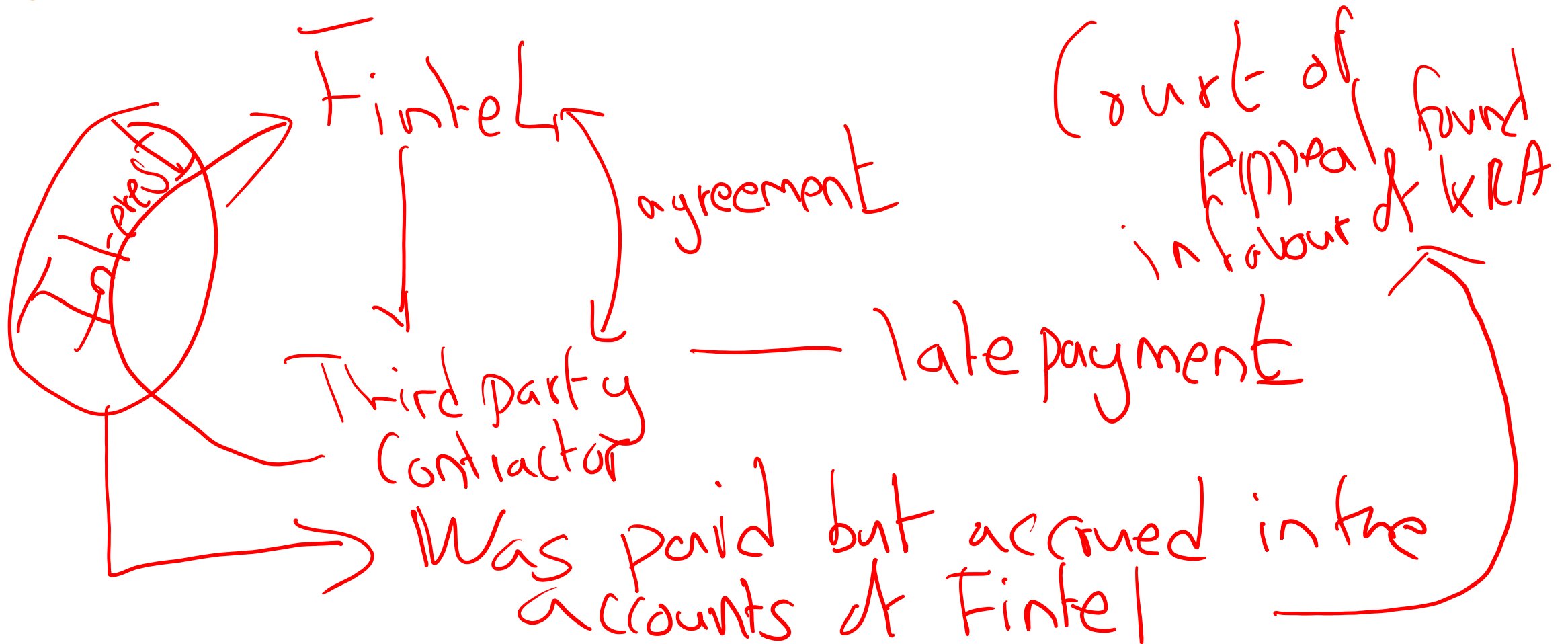
- Accounting treatment can be a key factor in determining when liability for withholding tax arises

- Obligation to pay withholding tax usually lies with the payor





# KRA v Republic Kenya (Fintel case)

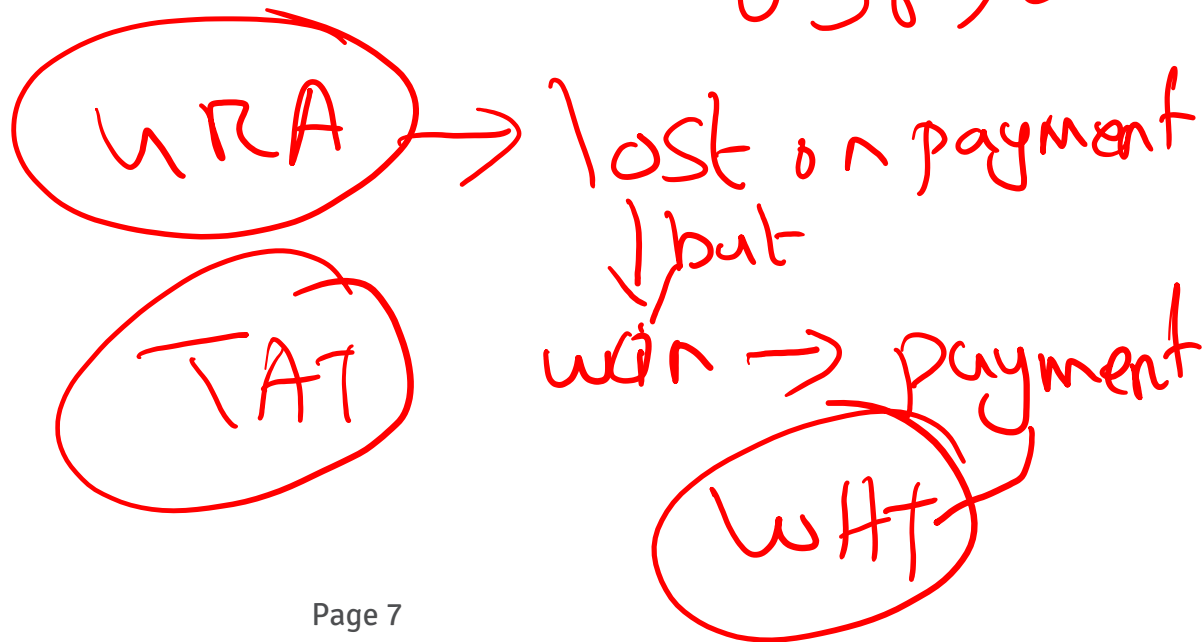




# ATC - Case

Payment — paid/payable in cash

UTI  $\xrightarrow[7 \text{ years } 6.56\%]{\text{N.R}}$  ATC (Uganda)



If cash flow distress  
Interest can be added  
as part of the loan  
 $\rightarrow$  Continues payment  $\rightarrow$  UTI will receive more interest



# Reimbursements and disbursements

- The subtle difference between reimbursements and disbursements

- Reimbursements: forms part of gross income and therefore can be subject to withholding tax

- Disbursements can be a different ball game

- An indepth analysis will be required and documentation will be key

Incurred by the payer and paid to a third party on

costs incurred in the course of rendering a service

behalf of the payee





# Reimbursements and disbursements

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- What are the generally accepted conditions for an expense to be treated as a reimbursement will depend on all of the following conditions being fulfilled?
  - a) The provider of service paid the expenses on the client's behalf and acted as the agent of the client;
  - b) The client received, used or had the benefit of the goods or services paid for on their behalf;
  - c) It was the client's responsibility to pay for the expenses, not the provider of service;



# Reimbursements and disbursements

- d) The provider of service had permission from the client to make the payment;
- e) The client knew that the expenses were from another supplier, not from the provider of service;
- f) The provider of service showed the costs separately on its invoice;
- g) The provider of service pass on the exact amount of each cost to the client when he invoices them; and
- h) The costs paid for are in addition to the provider of service own costs/fees.

Professional fees  
South Africa

Payor key na Invoice Payee Disbursements  
Mauritius



# Case study 1

AB is a hardware and software provider in Kenya. The company had entered into an agreement with PC Software, a Mauritian company. PC Software would provide personnel to work with AB to supply and implement an integrated cash management system in a Kenyan bar. It was agreed that AB will pay monthly fee and included reimbursements such as air tickets, food and other related expenses.

You are required to advise on the withholding tax implications of the monthly fee payable by AB to PC Software.

Ques 1 – Is the expense incurred on behalf of client? yes → disbursement  
or

Ques 2 – Is expense required to provide the service? yes → WHT → reimbursement

Here → expense = reimbursement = WHT

even if disclosed separately in the book → WHT still applies

when? On accrual.



# Deposits and advance payments

- Deposits and advance payments are generally subject to WHT but....
- Refundable deposits should not be considered as income and therefore outside the scope of WHT
- <sup>(documentation)</sup> Agreements and <sup>(documentation)</sup> invoicing arrangement is key

Refundable deposit  $\neq$  income  $\therefore$  outside scope WHT

↓  
documentation!

— correspondences

→ A/c treatment key !!! → if for a/c purposes treated as non-refundable → WHT applies

payee = b/sheet  
payer = creditor



## Case study 2

Drillers Co, a Zambian company, had signed a technical service agreement with MP Pte Ltd of Netherlands, valued at USD 1,000,000, whereby MP Pte Ltd will perform the services in Zambia.

According to the agreement, Drillers Co is required to pay a deposit of 10% which amounts to USD 100,000 upon signing the agreement and the balance upon issuance of the invoice, which will be paid after the services are performed.

Drillers paid the deposit to MP Pte Ltd accordingly.

You are required to advise on the withholding tax implications of the deposit.

USD 100,000 = advance payment for services to be provided

∴ WHT applies

! **BUT** → look at → agreement  
→ correspondences  
→ accounting entries/records

# Country analysis: Kenya

## Meaning of paid *wide*

**“paid”** includes distributed, credited, dealt with or deemed to have been paid in the interest or on behalf of a person and **“pay”**, **“payment”** and **“payable”** have corresponding meanings;

→ WHT  
= accruals

*(Special classes of income subject to WHT)*

## Payments subject to withholding tax

*outside* (1) Every person shall, upon payment of any amount to any non-resident person not having a permanent establishment in Kenya in respect of—

- ✓ (a) a management or professional fee or training fee except—
  - (i) a commission paid to a non-resident agent in respect of flowers, fruits or vegetables exported from Kenya and auctioned in any market outside Kenya and audit fees for analysis of maximum residue limits paid to a non-resident laboratory or auditor; or
  - (ii) a commission paid by a resident air transport operator to a non-resident agent in order to secure tickets for international travel;
- (b) a royalty or natural resource income;
- (c) a rent, premium or similar consideration for the use or occupation of property except aircraft or aircraft engines, locomotives or rolling stock:
  - *imm*
  - *movable*

- (d) a dividend;
- (e) interest and deemed interest; ✓
- (f) a pension or retirement annuity;

Provided that for the purposes of this paragraph, contractual fee within the meaning of **“management or professional fee”** shall mean payment for work done in respect of building, civil or engineering works;

- (g) any appearance at, or performance in, a place (whether public or private) for the purpose of entertaining, instructing, taking part in any sporting event or otherwise diverting an audience; or
- (h) any activity by way of supporting, assisting or arranging any appearance or performance referred to in paragraph (g) of this subsection, which is chargeable to tax, deduct therefrom tax at the appropriate non-resident rate;
- (i) winnings;
- (j) *deleted by Act No. 38 of 2016, s. 9(a);*
- (k) *deleted by Act No. 16 of 2014, s. 11;*
- (l) gains or profits from the business of transmitting messages which is chargeable to tax under section 9(2);
- (m) demurrage charges;

*(n) insurance premiums*

# Country analysis: Kenya

## ■ Meaning of paid

*administration*

**“management or professional fee”** means any payment made to any person, other than a payment made to an employee by his employer, as consideration for any managerial, technical, agency, contractual, professional or consultancy services however calculated; → *%, fixed fee, variable fee*

**“royalty”** means a payment made as a consideration for the use of or the right to use

- (a) any copyright of a literary, artistic or scientific work; or
- (b) any cinematograph film, including film or tape for radio or television broadcasting; or
- (c) any patent, trade mark, design or model, plan, formula or process; or
- (d) any industrial, commercial or scientific equipment,

*Knowledge*

or for information concerning industrial, commercial or scientific equipment or experience, and any gains derived from the sale or exchange of any right or property giving rise to that royalty;

*Rent asset*

**SA** → *Kenya*

*Trade debt*

**“interest”** (other than interest charged on tax) means interest payable in any manner in respect of a loan, deposit, debt, claim or other right or obligation.

and includes any premium or discount by way of interest and any commitment or service fee paid in respect of any loan or credit or an Islamic finance return; *guarantee*

**“deemed interest”** means an amount of interest equal to the average ninety-one day Treasury Bill rate, deemed to be payable by a resident person in respect of any outstanding loan provided or secured by the non-resident, where such loan is provided free of interest;

◦ *interest free loans*

↓  
*WHT ✓*



# Country analysis: Kenya

## ■ Tax rates

Payments	Non-resident WHT rate (%)
Dividend > 12.5% voting power	15
✓ Dividend < 12.5% voting power	15
✓ Interest:	
Bearer instruments	25
Government bearer bonds (maturity $\geq$ 2 years)	15
✓ Other	15
✓ Royalty	20
Winnings from gaming and betting	20
✓ Management or professional fees	20
✓ Consultancy fees - Citizen of EAC member states	15
Training (including incidental costs)	20
✓ Rent/leasing:	
Immovable property	30
✓ Others (other than immovable)	15
Sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services)	20
✓ Insurance or reinsurance premiums	5
✓ Contractual fees	20



## Case study 3

AB is a hardware and software provider in Kenya.

The company had entered into an agreement with PC Software, a Mauritian company.

PC Software would provide personnel to work with AB to supply and implement an integrated cash management system in a Kenyan bank.

It was agreed that AB will pay monthly fee of USD 10,000.

PC Software invoiced the following in June:

- Air tickets for personnel sent amounting to USD 2,000.
- Purchase of hardware amounting to USD 5,000. The supplier invoice was issued in the name of AB.
- Interest for late payment of one month invoice amounting to USD 500;
- A commitment fee of USD 2,000 which acts a guarantee for full payment the contract;
- Monthly fee of USD 10,000.

AB software paid USD 5,000 representing part payment of the June invoice in August.

You are required to advise on the withholding tax implications of the June invoice and payment made by AB in August

Airticket ✓

hardware x

Interest ✓ (if accrued)

commitment x (refundable)  
fee ✓

June payment in Aug ✓

A → cost to render service

→ WHT ✓

→ Rate 20%

→  $20\% \cdot 2000 = 400$

B → look at conditions for disbursement

→ Import of goods

→ Ques → Is it part of the service?

conclusion → disbursement

→ WHT x



D Committee → includes service fee  
→ Rate 15%.  
→  $15\% \times 2000$

E. Monthly : WHT 20%  $\times 10000$

C. Interest for late payment → all types of debts  
→ WHT 15%  $\times 500$

Timing of payment = accruals  
= Time at the time invoice issued!  
= irrelevant when payment made

# Country analysis: Nigeria

TP + stat account file audited  
of + for op in + accounts  
accounts in Nigeria (mu) ← deemed Nigerian Co  
if sig. economic presence  
mu ← provides services  
Nig

## 80. Deduction of tax from dividend

Timing  
10%

- (1) Where any dividend or such other distribution becomes due from or payable by a Nigerian company to any other company or to any person to whom the provisions of the Personal Income Tax Act apply, the company paying such dividend or making such distribution shall, at the date when the amount is paid or credited, whichever first occurs, deduct therefrom tax at the rate prescribed under subsection (2) of this section and shall forthwith pay over to the Service the amount so deducted.

[Cap. P8.]

- (2) The rate at which tax is to be deducted under this section shall be ten per cent.

## 78. Deduction of tax from interest, etc.

Timing  
10%

- (1) Where any interest other than interest on inter-bank deposits or royalty becomes due from one company to another company or to any person to whom the provisions of the Personal Income Tax Act apply, the company making such payment shall at the date when payment is made or credited, whichever first occurs, deduct therefrom tax at the rate prescribed in subsection (2) of this section and shall forthwith pay over to the Service the amount so deducted.

[Cap. P8.]

- (2) The rate at which tax is to be deducted in this section shall be ten per cent.

- (2) For the purposes of this section, interest shall be deemed to be derived from Nigeria if—
- (a) there is a liability to payment of the interest by a Nigerian company or a company in Nigeria regardless of where or in what form the payment is made; or
  - (b) the interest accrues to a foreign company or person from a Nigerian company or company in Nigeria regardless of whichever way the interest may have accrued.

## 13. Nigerian companies

- (e) if the trade or business comprises the furnishing of technical, management, consultancy or professional services outside of Nigeria to a person resident in Nigeria to the extent that the company has significant economic presence in Nigeria:

Significant economic presence of a Company in Nigeria under Section 13(2)(e) of CITA.

defn

2.—(1) For the purpose of Section 13(2)(e) of CITA, a company, other than a Nigerian company, carrying on a trade or business comprising the furnishing of services of technical, professional, management or consultancy in nature, shall have a significant economic presence in Nigeria in any accounting year, where it earns any income or receives any payment from—

- (a) a person resident in Nigeria; or
- (b) a fixed base or agent of a company, other than a Nigerian company in Nigeria.

(2) For the purposes of section 13(2)(e) and sub-paragraph (1) of this paragraph, services of a technical nature means any services of a specialised nature (including advertising services, training, or the provision of personnel) that are not professional, management, or consultancy services.

payee will have obligation  
in Nigeria

non-compliance = penalties

deemed interest → not yet in the accounts



# Country analysis: Nigeria

## ■ Tax rates

Types of payment	WHT for companies (%)	WHT for individuals (%)
✓ Dividends, interest, and rents	10	10
Directors fees	N/A	10
Hire of equipment	10	10
Royalties	10	5
✓ Commission, consultancy, technical, service fees	10	5
✓ Management fees	10	5
✓ Construction (roads, buildings, and bridges)	2.5	5
✓ <u>Contracts other than sales in the ordinary course of business</u>	5	5



## Case study 4

MC is a software developer based in Mauritius.

MC has entered into an agreement with DM, a company based in Nigeria whereby DM will be using the software for its business.

MC will receive a fee computed as a % of the turnover of DM.

Under the terms of the agreement, DM will also provide management and technical services to MC.

You are required to advise MC and DM  
on the tax implications of the  
agreement they both entered into.



# Country analysis: Mauritius

## Scope

- Borrower does not include individual
- Lender “any person” but excludes companies' resident in Mauritius
- Interest exempt from tax is excluded
- Exclusion: peer to peer lending

~~WHT~~ → deduction of tax at source

## Section 111B of ITA 1995

### 111B. Application of Sub-Part BA

This Sub-Part shall apply to any amount or sum made available by way of –

- (a) interest, other than – <sup>421\*</sup>
- (i) interest falling under Sub-part B of Part II of the Second Schedule payable by any person, other than an individual, to any person, other than a company resident in Mauritius; and
  - (ii) interest payable to a person in respect of money lent by that person through a Peer-to-Peer Lending platform operated under a licence issued by the Financial Services Commission under the Financial Services Act;



# Interest payments

## Interest payments as a final tax

- No compliance obligations required by the payee
- Expenses incurred in generating interest income will not be allowed as a deduction

↑ N.R

on gross amount

### Section 111C of ITA 1995

- (5) Where income tax is deducted from the interest, payments to an entertainer or sportsperson, or from rent or royalties in an income year under subsection (4), the amount of tax so deducted shall be deemed to be the final amount of tax payable in respect of the interest payments to the entertainer or sportsperson, or from rent or royalties for that income year.<sup>432\*</sup>



# Interest payments

## Rate

✓ 15%

- Excludes bank and non-deposit taking institution

## Sixth Schedule to the ITA 1995

		(%)
1	<u>Interest payable by any person, other than by a bank or non-bank deposit taking institution, under the Banking Act, to any person, other than a company resident in Mauritius</u> <sup>826*</sup>	15





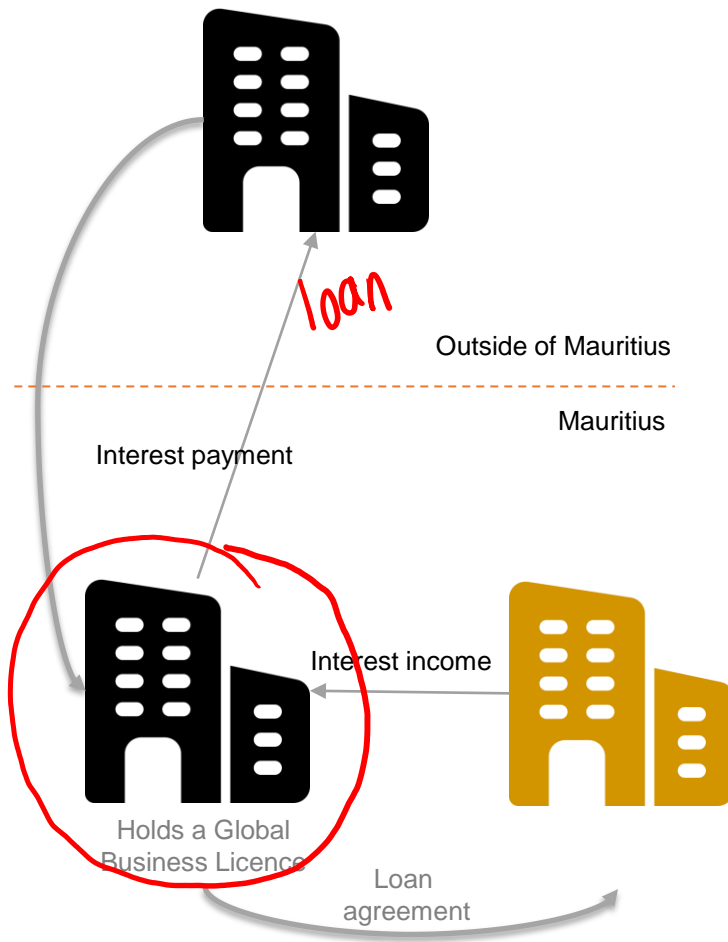
## Case study 5

A Ltd is a Mauritian company engaged in the retailing business. A Ltd borrowed funds from CDE Bank amounting to MUR 30,000,000 to finance the purchase of high precision equipment. CDE Bank does not have presence in Mauritius. You are given the following:

- a. A Ltd paid CDE disbursement fees to CDE amounting to MUR 1,500,000 as loan arrangement cost.
- b. Interest for the year amounted to MUR 2,200,000 and A Ltd is required to pay CDE without any tax withheld.
- c. A Ltd paid Mauritian legal advisors amounting to MUR 200,000.

You are required to advise A Ltd on its DTS obligations. You can ignore tax treaty implications.

## Case study 6



Discuss the implication of interest income derived and interest payment made by the company holding a GBL



# Royalty payments

## Scope

- Payee – “any person” but excludes citizen engaged in artistic or literary work
- Payor excludes individual and a company holding a GBL

## Rate

- ✓ ▪ 15% for non-residents

## Payment as a final tax

- No compliance obligations required by the payee
- Expenses incurred in generating income will not be allowed as a deduction

### Section 111B of ITA 1995

- (b) royalties payable to any person, other than a citizen in respect of royalties for artistic or literary work, by any person, other than an individual or a corporation holding a Global Business Licence under the Financial Services Act 2007;<sup>422\*</sup>

### Sixth Schedule to the ITA 1995

2	Royalties payable to -	
	(a) a resident	10
	(b) a non-resident	15

### Section 111C of ITA 1995

- (5) Where income tax is deducted from the interest, payments to an entertainer or sportsperson, or from rent or royalties in an income year under subsection (4), the amount of tax so deducted shall be deemed to be the final amount of tax payable in respect of the interest payments to the entertainer or sportsperson, or from rent or royalties for that income year.<sup>432\*</sup>



# Royalty payments

## Exemption

- Payment out of foreign source income by any company

Royalty payment → made out of f.s.i.  
→ WHT X

### Second Schedule ITA 1995

5. Royalty payable to a non-resident by a company out of its foreign source income.<sup>758\*</sup>

## Case study 7

A Ltd is a Mauritian company engaged in the sport wear retailing business. A Ltd imported goods for resale from China.

The following information has been provided.

- a. Value of goods imported on 15 January 2020: USD 400,000
- b. Royalty payable by A Ltd for trademark logo on goods imported: USD 15,000

You are required to advise A Ltd on the fiscal implications of the import of goods in Mauritius. You can ignore tax treaty in your answer.

(1) Customs Duty [Corporate Tax]

(2) VAT - No reverse charge

(3) DTS - 15%   
 But import

Royalty Deduction



# Rent payments

## Scope

- Tenant excludes individuals
- Landlord excludes exempt persons

## Rate

- 10%

## Payment as a final tax

- Tax return should be filed in Mauritius
- Expenses incurred in generating income will not be allowed as a deduction

### Section 111B of ITA 1995

- (c) rent payable by any person, other than an individual, to any person, except a body of persons specified in Part I of the Second Schedule or a person exempt from income tax by virtue of any other enactment;<sup>423\*</sup>

### Sixth Schedule to the ITA 1995

3	Rent payable to – <sup>827*</sup>	
	(a) a resident	5
	(b) a non-resident	10



# Services rendered by non-residents

## Scope

- Payor – any person other than an individual
- Payee – only “non-residents” unless exempt
- Services should be rendered in Mauritius

## Rate

- 10%

### Section 111B of ITA 1995

- (h) payments made by any person, other than an individual, to a non-resident for any services rendered in Mauritius, except where the payments are made to a body of persons specified in Part I of the Second Schedule or a person exempt from income tax by virtue of any other enactment or any arrangement for relief from double taxation;

### Sixth Schedule to the ITA 1995

8	Payment made to a non-resident for any services rendered in Mauritius pursuant to section 111B(h)	10
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## Case study 8

F Ltd wishes to undertake a forensic audit on its affairs and availed the services of a foreign auditor.

Part of the work of the forensic auditing will be conducted in Mauritius.

The director of F Ltd wishes to obtain confirmation whether the payment to the auditor will be subject to DTS or not?

You are required to advise F Ltd on the tax implications of the payment to the forensic auditor. You can ignore tax treaties.





# Management fees

## Scope

- Payor – any person other than an individual

## Rate

- 10%

### Section 111B of ITA 1995

- (i) management fees payable to an individual by any person, other than an individual,<sup>426\*</sup>

### Sixth Schedule to the ITA 1995

9	Payment of management fees pursuant to 111B(i) to –	
	(a) a resident	5
	(b) a non-resident	10



# Commissions

## Scope

- Service in scope - agency
- Payor – Any persons other than an individual

## Rate

- 3%

## Guiding principles

- Included on SP 16/18

### Section 111A of ITA 1995

- (a) “commission” includes any sum paid or payable to an agent in relation to a commercial transaction;<sup>412</sup> \*

### Section 111B of ITA 1995

- (k) commissions payable by any person other than an individual.

### Sixth Schedule to the ITA 1995

11	Commission <sup>828</sup> *	3
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# Commissions – SP 16/18

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## Scope

- Tax has to be deducted by any person, other than an individual, who is responsible for paying any income by way of commission to a resident or a non-resident **performing agency services in Mauritius**
- “TDS is not applicable in a case where sales are performed directly without the involvement of a third party”



## Case study 9

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A Ltd is a Mauritian company engaged in the retailing business. A Ltd borrowed funds from CDE Bank amounting to MUR 30,000,000 to finance the purchase of high precision equipment. CDE Bank does not have presence in Mauritius. You are given the following:

- a. Payment for referral fees of MUR 75,000 to B Ltd. B Ltd introduced the supplier of equipment to A Ltd.
- b. Payment of a capital raising fee to Corporate Finance Ltd which has assisted A Ltd in looking for and finalizing capital raising.

You are required to list the possible implications of the payment made by A Ltd

# Comparative analysis: Botswana, Mauritius, South Africa

Payer	Payee			
	Botswana	Mauritius	South Africa	Zambia
Botswana				
Dividend		(a) 5%/10%	(e) 10%/15%	5%/7%
Interest		12%	10%	10%
Rental of immovable property		Subject to tax in Mauritius also	Subject to tax in South Africa also	Subject to tax in Zambia also
Mauritius				
Dividend	(b) Exempt		(b) Exempt	Exempt
Interest	Exempt/12%		Exempt/10%	15%
Rental of immovable property	Subject to tax in Botswana also		Not taxed in South Africa	Subject to tax in Mauritius also
South Africa				
Dividend	(e) 10%/15%	(c)5%/10%		15%
Interest	10%	10%		Exempt
Rental of immovable property	Subject to tax in Botswana also	Not taxed in Mauritius		Exempt in Zambia
Zambia				
Dividend	(d) 5%/7%	20%	20%	
Interest	10%	20%	Exempt	
Rental of immovable property	Subject to tax in Botswana also	Subject to tax in Mauritius also	Exempt in South Africa	

- (a) 10% rate applies if the shareholding is less than 25%  
 (b) Exempt if paid by a company out of its foreign source income  
 (c) 10% rate applies if the shareholding is less than 10%  
 (d) 7% rate applies if the shareholding is less than 25%  
 (e) 15% rate applies if the shareholding is less than 25%

## Contact us

 2nd Floor, Noah Wealth Centre,  
Jinfei Smart City, Silk Road, Riche Terre,  
Terre Rouge Mauritius

 +230 5 9355591

 training@carpustax.com

Visit our website at  
 [www.carpustax.com](http://www.carpustax.com)



**CARPUS TAX**  
deliver with passion

## THE 'CARPUS' WAY

Connecting the forearm to the hand, the carpus is a set of bones that lets us execute crucial tasks with a flick of our wrist. It is from this connection that we derive our mission, vision and corporate culture. Much like a set of bones, our diverse and talented team works together, providing innovative solutions in the field of taxation.

As an independent tax advisory firm, we move away from restrictive environments of accounting/audit/fiduciary firms and provide bespoke tax services to our clients.

## THE 'CARPUS' DIFFERENCE

Our team looks at excellence not as an achievement but as a habit. Every member aims to consistently add value to the businesses and states we work with. Our holistic approach to taxation helps clients execute faster and take measured decisions whether it be at an organisational or macroeconomic level.

We extend our ability to deliver in a seamless manner over Africa by working with tax advisers and lawyers carefully selected to meet the needs of our clients.

## THE 'CARPUS' PHILOSOPHY

The backbone of Carpus is its people. Our work culture attracts the best and promotes an ecosystem conducive to the growth and wellbeing of our people. Together, Carpus strives to be the most trusted, competent and innovative tax advisory firm in Africa.

We share the values of honesty, integrity, mutual respect, diversity, balance, reliability, adaptability and open-mindedness.