

Legal Notice No. _____

THE INCOME TAX ACT
(CAP. 470)

IN EXERCISE of the powers conferred by Section 130 of the Income Tax Act, the Cabinet Secretary for the National Treasury and Economic Planning makes the following Rules –

THE INCOME TAX (WITHHOLDING TAX) RULES, 2024

Citation	1. These Rules may be cited as Income Tax (Withholding Tax) Rules, 2024.
Interpretation	2. In these Rules, unless the context otherwise requires:— "Commissioner" includes an officer authorised in writing by the Commissioner to exercise the powers or to perform functions conferred upon the Commissioner under these Rules; "payee" means a person who receives income from a payer after deduction of withholding tax; "payer" means a person who deducts withholding tax for the purposes of these Rules; "withholding tax" means a tax deducted from the income of a person upon payment in accordance with the provisions of the Act and these Rules; "withholding tax rate" means the respective rate of tax set out in the Third Schedule as applicable to the specified class of income.; "withholding tax deduction return" means a prescribed form on which the information that the Commissioner may direct with respect to tax is recorded.
Deduction of withholding Tax	3. A person who makes a payment of, or on account of, any income which is subject to withholding tax shall deduct tax therefrom in the amount specified - (a) under paragraphs 3 and 5 of Head B of the Third Schedule; and (b) where the Government of Kenya has double taxation agreement with the Government of another country, in the terms of that agreement.
Withholding tax return	4. Upon making a payment and deducting the withholding tax, a person shall file a withholding tax return.

<p>Dispute in calculation of withholding tax</p>	<p>5. (1) If a person to whom payment is made under paragraph 6 is aggrieved by reason of the nature of a payment and the rate of withholding tax applied and is unable to reach an agreement with the payer -</p> <ul style="list-style-type: none"> (a) the payer may inform the payee of their rights under this rule and shall, at the request of the payee, furnish payee with a written statement showing the manner in which the payer calculated the tax deducted; (b) the payee may give a notice of objection in writing to the Commissioner, but that notice shall be valid only if - <ul style="list-style-type: none"> (i) it states precisely the grounds of the objection; (ii) there is enclosed therewith the written statement furnished by the payer; and (iii) it is received by the Commissioner within thirty days of the date on which the statement from the payer under paragraph (a) was received by the payee. <p>(2) On receipt of a notice of objection under this rule, the Commissioner shall consider the objection and, subject to and in accordance with these rules, may amend the calculation or reject the objection.</p> <p>(3) The Commissioner shall notify the payer and the payee within sixty days in writing of the decision on the objection and thereafter, on the occasion of making payment to the payee the calculation of the tax shall be in accordance with that decision.</p> <p>(4) Notwithstanding that a valid objection has been made, on the occasion of making a payment to the payee from which tax is to be deducted in accordance with these rules, the amount of tax to be deducted shall be in accordance with the calculation made by the payer until the payer is notified by the Commissioner of the decision on the objection.</p> <p>(5) Any amount of tax in excess of the amount found to be payable upon calculation by the Commissioner under paragraphs (3) and (4) shall be refunded to the payee.</p>
<p>Payment of withholding tax and issuance of a withholding certificate</p>	<p>6. (1) Within five working days after the deduction is made, a person shall, pay to the Commissioner or to such other person as the Commissioner may direct, all amounts of tax deducted in accordance with the Act and these rules.</p>

	<p>(2) Subject to sub rule (1), a withholding tax certificate shall be issued to the payee.</p>
Failure to declare and/or pay tax	<p>7. (1) If, within five working days in which the deduction was made, a person has paid no tax and the Commissioner has been made aware of the amount, which the person is liable to pay –</p> <p>(a) where no return has been made under rule 4, the Commissioner shall issue an assessment;</p> <p>(b) where a return has been made and no payment has been remitted to the Commissioner under rule 6(1), by notice issue a demand.</p> <p>(2) If the Commissioner is not satisfied that the amount of tax paid in respect of a period is the full amount which the person would have been liable to pay under rule 6 had the person complied with these rules, the Commissioner shall issue an additional assessment.</p>
Recovery of tax	<p>8. For the purpose of the recovery of tax which a person would have been liable to pay under these Rules had the person complied with the provisions of these rules, the provisions of section 39A of the Tax Procedures Act Cap 469B shall apply</p>
Death of an individual	<p>9. If an individual dies, anything which the individual would have been liable to do under these rules shall be done by the individual personal representatives, or, in the case of an individual who made payments on behalf of another person, by the person succeeding the individual, or if no person succeeds the individual, by the person on whose behalf the individual made those payments.</p>
Change in circumstances of a person	<p>10. Where there has been a change in the payer, the payer shall –</p> <p>(a) notify the Commissioner of such change in accordance with provisions of the Tax procedures Act Cap 469B; and</p> <p>(b) be liable to do anything which the payer before the change would have been liable to do under these rules if the change had not taken place.</p>
Failure to deduct, declare and/or remit withholding tax	<p>11. (1) Where a person, fails to make a deduction, declare or remit an amount of tax deducted, the provisions of the Tax Procedures Act, Cap 469B in respect of penalties and interest shall apply.</p> <p>(2) A person who commits an offence under these Rules shall be liable to the penalties specified under the Tax Procedures Act, Cap 469B.</p>

Revocation L. N. 100/2001	12. The Income Tax (Withholding Tax) Rules, 2001 are revoked.
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Dated the _____, 2024.

JOHN MBADI NG'ONGO,
*Cabinet Secretary for the
National Treasury and Economic Planning*

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