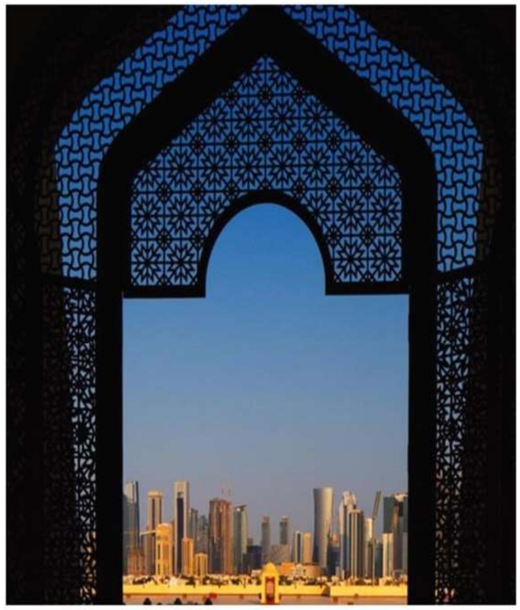


WITHHOLDING TAX IN QATAR

LAW OF DEDUCTION

PAYMENT OF WHT

PROCEDURE FOR REFUND

A Partnership Firm | CR Number : 48122
Al Rufaa Tower, Building No.54, First Floor, Office No.1,2&3, Old Salata, PO Box 30653, Doha - Qatar.
Tel 4417 2674. Mob 6603 9427. Email : naresh@aksaa.qa Website : www.aksaa.qa

Table of Contents

1. Introduction

On 11 December 2019, Qatar's General Tax Authority (GTA) published the Executive Regulations ("the New ERs") to the Income Tax Law No 24 of 2018 ("the New Tax Law") in the official Gazette. The previous executive regulations are now revoked. The new ERs have not only provided clarifications on the applications of the New Tax Law in various areas but also provided more clarity on the applicability of withholding tax (WHT) as well as the WHT refund process. The new regulations regarding WHT are discussed hereunder.

2. Basic Provisions & definitions

- As per Article (9/2) of the new ERs, following **payments made to the non-residents** in respect of their **activities not connected with a permanent establishment (PE)** in the State of Qatar shall be subject to a **WHT of 5%** on their gross amount, as determined by new ERs:
  - Royalties,
  - Interests,
  - Commissions and
  - Payments for **services carried out wholly or partly in the State of Qatar** (without deducting any costs)

WHT will also be applied on the **amounts paid to non-resident companies** which are **wholly or partially owned by Qatari citizens** and **citizens of the Cooperative Council for the Arab States**

- However, the above provisions are **subject to the tax agreements**. Therefore, tax rate provided for in agreements to which the government, ministries or other government bodies or public authorities or enterprises are a party and which are executed before the entry into force of this Law will prevail over the aforesaid rate of 5%. **Where such agreements fail to specify a tax rate, tax will be charged at the rate of 35%**. This is provided in Article (9/3) of the new ERs.
- As stated above, withholding tax is **"subject to the tax agreements"**. This is significant as Qatar has over 40 treaties with other countries. The **supremacy of the double taxation avoidance agreements** (DTAA) is recognised by making the withholding tax "subject to the tax agreement" & the same is implemented by providing for **first deduction of withholding tax and then refunding the same.** This will continue to pose **difficulties for non-residents**. Worldwide, such procedure has been found to be **cumbersome and there are difficulties in claiming tax refunds**. The procedure of **certification by independent accountants** to bankers is one of the ways adopted to ease procedures and allow remittances freely wherein the treaty provides for taxability in the source country.

- As stated above, payments made only to the "**non-residents"** are subject to the withholding tax and therefore, the term "**non-residents"** assumes significance. The ERs have defined the term **"Residents"** in Article (1). The term **"Non-Resident" although not defined separately** would include **natural persons or legal persons who do not fulfil all of the three requirements of residency** as mentioned below -
- A **natural person**, namely individual, is considered as a resident, if he satisfies any one of the following requirements:
  - Has a **permanent home** in the State of Qatar or
  - Has **been in the State** of Qatar for **more than 183 consecutive or separate days** during **any 12 month period** or
  - Has his **center of vital interests** in the State of Qatar

  In case **all three conditions above are not fulfilled**, the individual is **considered as a non-resident**.
- A **legal person**, will be considered as a resident, if it satisfies any one of the following requirements:
  - It is **incorporated** under Qatari legislations or
  - Its **head office** is situated in the State of Qatar or
  - Its **place of effective management** is situated in the State of Qatar

  In case **all three conditions above are not fulfilled**, the legal person is **considered as a non-resident.**
- In case of **branches of foreign companies**, the test of residence would fail as the **effective management** would be situated outside the state of Qatar. Such entities would be considered as non-residents.
- PE has been defined under Article (1) as a **fixed place of business** through which the business of a taxpayer is **wholly or partly executed**.
- The term PE also includes
  - a branch,
  - an office,
  - a factory,
  - a workshop,
  - a mine, an oil or gas well, a quarry, a building site, an assembly project or a **place of exploration and extraction or exploitation of natural resources**.
- PE also includes **an activity carried on** by the taxpayer **through a person acting on behalf** of the taxpayer **or in his interest** other than an **agent of an independent status.**
- The term "**Royalty**" means Payments of any kind made as a **consideration for the use of, or the right to use**, any copyright of literary, artistic or scientific work including cinematograph films, films or discs used for radio or television broadcasting, any patent, trademark, drawing, design or model, plan, secret formula or process, or for the use of or the right to use, industrial,

commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

3. Payments exempted from WHT

- The **following services will not be subject to WHT**:
  - Reinsurance.
  - Freight and sale of tickets
  - Sea transport of petroleum, its components and manufactured sub-products.
- The **following interests will also not be subject to WHT**:
  - Interests on **deposits at any bank** in the State of Qatar
  - Interests on **bonds and securities** issued by the **State of Qatar, public corporations, institutions and corporations wholly or partially owned by the State of Qatar**.
  - Interests on **transactions, facilities and loans** with **banks and financial institutions**.
  - Interests paid by a **PE** in the State of Qatar to its **HO or an entity related to the HO** outside the State of Qatar.

Administrative and general expenses paid by a PE in Qatar to its head office will **also notbe subject to withholding tax**.

No tax is to be withheld on amounts paid to-

⇒ persons to whom a **Tax Card** has been issued under Article (26) of the New ERs or

⇒ persons **registered with Qatar Financial Center (QFC)**.

This will particularly apply to amounts paid to a **PE owned by a person not resident in the State of Qatar**

4. Persons responsible for withholding the tax

- Article (21) has cast the responsibility of withholding the tax as mentioned above on the following persons:
  - **natural persons** who carry on activities in the State of Qatar, and
  - **legal persons resident** in the State of Qatar, **including** the following persons:
    - ministries,
    - other government agencies,
    - public corporations and institutions, and
    - **permanent establishments** in the State of Qatar related to **persons not resident in the State of Qatar.**

5. Deemed payment of outstanding amounts

- The outstanding amounts will be **deemed to be actually paid after the expiry of a maximum period of 12 months from the due date of their payments**. Therefore, the WHT will be required to be paid even if the above outstanding amounts are not paid to the Non-resident for 12 months. Earlier WHT was due only upon actual settlement.

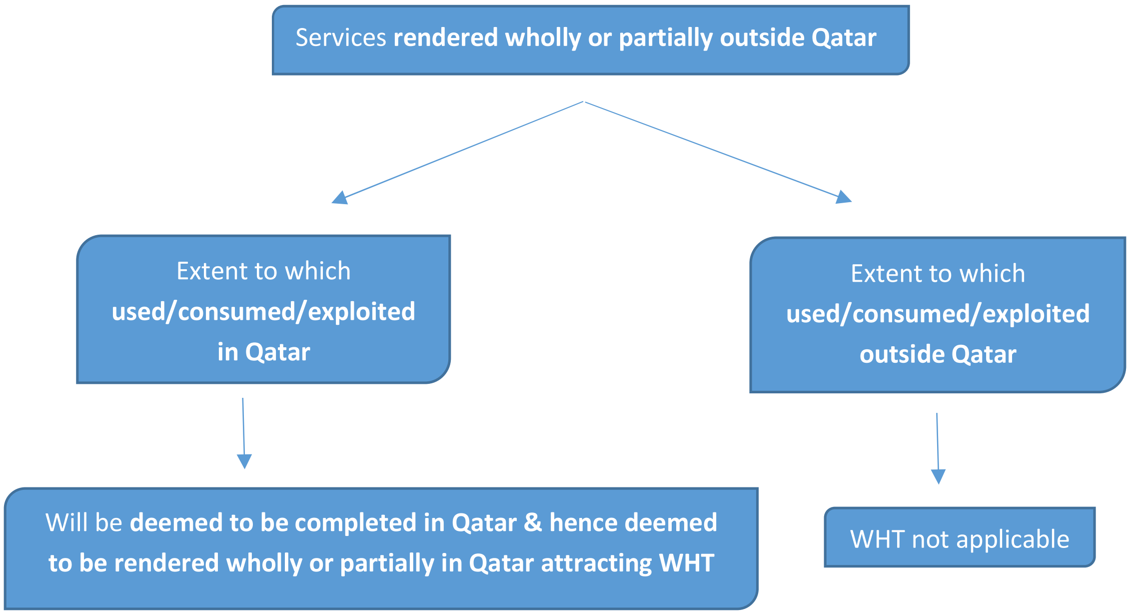
The above **deeming fiction does not apply** to the amounts owed to:

⇒ ministries,
⇒ other government agencies and
⇒ public institutions and corporations

Therefore, withholding tax in respect of amounts payable to above entities can be **delayed till the actual payment** beyond 12 months.

6. Deemed completion of Service based on Place of Consumption Test

- A service will be **deemed rendered wholly or partially in the State of Qatar** if **any work necessary for its completion** is done in the State of Qatar, including **in particular all data, site inspection and service completion**, even if done by a person **other than the taxpayer**. The delivery of the service will not be deemed as work necessary for completion. More importantly, the **services will be deemed to be completed** in the State of Qatar to the extent that they are **used, consumed or exploited** in the State of Qatar**, even if rendered wholly or partially outside the State of Qatar**.



7. Compliances to be done by the person withholding the tax

- As per Article (24) of the new ERs, tax will have to be **withheld and remitted to the GTA using the form prepared by the GTA** to this effect before **16th of the month following the month in which the tax was withheld**.
- The **person who withheld** the tax will have to **deliver to the beneficiary of the amounts** a **certificate proving the deduction at source** using the **form prepared by the GTA** to this effect.
- A **statement of the amounts subject to withholding tax** for the taxable year will also be required to be submitted **along with final accounts** while filing the tax return.

The **GTA will register** the ministries, government agencies, public institutions and corporations, private associations and institutions, charitable institutions and privately-owned public welfare institutions that are subject to WHT, as per the Law and the new ERs. They will be assigned registration numbers upon **submission of the first statement of amounts subject to WHT and payment** of such amounts to the GTA

- Any natural or legal person who **fails to remit the withholding tax** within the set periods, will be liable to pay a **penalty of 2%** of the amount of tax due **per month of delay or part thereof**, up to the amount of the tax due.

8. WHT on reimbursement of expenses

- The general principle of the Income Tax is that an income can be taxed and not the cost element for earning such an income. Therefore, the taxability of the re-imbursement is an important issue.
- The term "re-imbursement" is not defined in the Income Tax Law of Qatar and hence its meaning needs to be understood in the common parlance. As per concise oxford dictionary the term "reimburse" means repay (a person who has expended money) or repay (a person's expenses). The tax withholding on expenses/costs reimbursed to a non-resident **do not give rise to any chargeable income** in the hands of a non-resident and going literally by the principle of Tax Law, the reimbursement **may not be subject to tax withholding, if supported by the adequate bills, invoices and supporting evidences** of expenses made by the recipient. Moreover, if the recipient of reimbursement has **merely acted as an 'agent'** for recovery of the expenses incurred by it, such reimbursement may not be subject to tax withholdings.
- The following types of reimbursement/costs may not be taxable:
  - Re-imbursement of incidental expenses.
  - Re-imbursement of allocated cost (cost sharing).
  - Payment of services rendered at cost.
  - Re-imbursement of living allowance, travelling expenses of the engineers depute for carrying out design etc. under a royalty agreement, etc.

9. WHT refund Process

- As per Article (22/1) of the new ERs, if there exists a **valid double taxation treaty**, the **non-resident person or his representative** who has been subject to WHT under Article (21), needs to submit a refund **application** to the GTA **for the implementation of the provisions of that DTAA through the form prepared by the GTA** for this purpose. If the application is accepted, the GTA will refund the WHT as per the **procedure laid down under Article (47)**.
- However, the **instructions**, if any, **issued by the GTA** from time to time **on the application of some DTAAs** will prevail over the provisions of such DTAAs. The Minister will issue a **decision determining the mechanisms for applying the provisions of WHT and DTAA**. Such decision will also contain the **conditions/procedures/guarantees** etc. for the application of such mechanisms.
- As per **Article (47)**, the WHT refund application needs be made along with **<u>all the supporting documents evidencing the entitlement to such refund</u>** and **in particular the following documents**:
  - **Tax residency certificate in the country of residence** for the year in respect of which such withholding tax has taken place and refund is requested.

  - Any **document that evidences the appointment of a tax agent or representative** to complete the refund procedures, **if the refund application is filed by a non-beneficiary of the refund**.
  - **Withholding certificates** issued by the party who deducted tax at source.
  - **Contract or agreement** concluded with the party who deducted tax at source.
  - **List of the shareholders** of the company requesting such refund and **the real beneficiary of the amounts paid.**
  - **Bank certificate** indicating the applicant's **bank account and ID.**
  - **Terms of the agreement** whereby **unduly withholding** took place.
- The GTA will consider the application and notify the taxpayer of its decision **within 60 days** from the filing date of such application through any of the following modes:
  - **Delivery by hand** against acknowledgement of receipt
  - **Registered mail**
  - **Electronic means** capable of providing acknowledgment of receipt, e.g. email
  - **Electronic systems, software and applications** used by the GTA
- Failure by the GTA to respond within 60 days will be **deemed as rejection**, in which case, the taxpayer will be entitled to **appeal before the Tax Appeal Committee** as per Article (43).
- The GTA may, while considering and verifying the application, can **request for further information or clarifications** which the taxpayer will be required to **submit within a maximum of 30 days** from the date of receipt of GTA's request, and this period is not counted within the aforesaid period of 60 days.
- The **correspondence** will be required to be addressed **by the taxpayer or any legal addressee** to the GTA **through any of the following modes**:
  - **Registered mail** to the GTA's postal address
  - **Delivery by hand** to the GTA, as per **GTA's applicable procedures** in this respect.
  - **Electronic systems, software and applications** used by the Authority.
- **Failure** by the taxpayer to provide the additional information or clarifications **will result in the rejection of the refund application by the GTA**.

10. Impact & implications

- The new ERs have provided **more clarity on the applicability of WHT** as well as the WHT refund process. The earlier **"Place of performance test" has now been replaced** by the "**Place of consumption test"**. However, the **definition of "consumption" is not clearly provided** by the new ERs. Generally, a service is considered to be "consumed" in Qatar if it **benefits for the Qatari entity.** Therefore, **majority of the services** availed by the Qatari entities from Non Residents are **now likely to become subject to WHT**. Therefore, the taxpayers will need to **review which contracts/transactions could be caught under the new ERs** and also assess **the commercial and financial impact** of these changes.

- Taxpayers might also be required to **identify the complex contracts & transactions** where it is **difficult to apply the consumption test** & also explore the **possibility of requesting a ruling from the GTA to obtain certainty**.
- Further the withholding tax **"pay & reclaim"** mechanism has been retained in the new ERs which means, the taxpayers will have to **continue paying WHT on their otherwise exempt incomes** & go through the **lengthy procedure to claim the refund** of the same.
- WHT refund claims (particularly based on the application of a DTAA) are likely to be **subject to greater scrutiny** given the new requirements to be met. The focus is likely to be on **'beneficial ownership' and 'substance'** aspects in such cases.
- Tax payers need to **review long standing balances** due to related or unrelated parties which remain unpaid, but where however a deduction was claimed in the tax return, as **significant liabilities could crystallise** given the newly introduced **"12 month" rule**.
- Taxpayers will be required to not only identify **the invoices raised before the issuance of ER remaining unpaid** but also the **services partially performed before & after issuance of the new ERs**.
- The **tax audit activity** is also expected to increase in the near future given the new guidance and requirements as a result of the issuance of these new regulations.