

NON-RESIDENT ENTERTAINERS AND SPORTSPERSONS WITHHOLDING TAX

EXTERNAL GUIDE - NON-RESIDENT ENTERTAINERS
AND SPORTSPERSONS WITHHOLDING TAX IT-AE-02-G01

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DISCLAIMER

The information contained in this guide is intended as guidance only and is not considered to be a legal reference, nor is it a binding ruling. The information does not take the place of legislation and readers who are in doubt regarding any aspect of the information displayed in the guide should refer to the relevant legislation, or seek a formal opinion from a suitably qualified individual.

For more information about the contents of this publication you may:

- Visit the SARS website at www.sars.gov.za
- Visit your nearest SARS branch
- Contact your own tax advisor/tax practitioner
- If calling from within South Africa, contact the SARS Contact Centre on 0800 00 SARS (7277)
- If calling from outside South Africa, contact the SARS Contact Centre on +27 11 602 2093 (only between 8am and 4pm South African time).

1 PURPOSE

- This document describes the process and legal responsibilities used to determine withholding tax on income generated by non-resident entertainers and sportspersons and how this needs to be paid in South Africa.

2 SCOPE

- This procedure only applies to withholding tax on non-resident entertainers and sportspersons personal activities exercised in South Africa.

3 POLICY STATEMENT

- Section 47B of the Income Tax Act No. 58 of 1962 (the Act) imposes a final tax at 15% on amounts received by or accrued to a non-resident entertainer or sportsperson in respect of his / her performance in South Africa.
- Amounts that are subject to this final withholding tax are:
 - Specifically exempted from normal tax in terms of Section 10(1)(IA) of the Act (avoids double taxation and aggregation with taxable income); and
 - Not subject to any allowable deductions on the gross amounts on which the withholding tax is levied.
- The non-resident must register for income tax purposes as all of the provisions set out in the Tax Administration Act are applicable e.g. the provisions relating to returns, assessments, objections and appeals.
- In terms of Section 47C of the Act, this tax must be paid by the non-resident entertainer or sportsperson within 30 days after the receipt or accrual of the amount for the performance.
- The payment must be accompanied by a return (NR01) that is prescribed by the Commissioner.
- However, the liability of the non-resident entertainer or sportsperson is discharged where:
 - The tax payable was withheld by a resident in terms of Section 47D for payment to the Commissioner on behalf of the non-resident entertainer or sportsperson; or
 - The tax was recovered from a resident who failed to withhold the tax and pay it over to the Commissioner.
- In terms of Section 47D, any resident who pays an amount in respect of a performance by a non-resident entertainer or sportsperson in South Africa must withhold tax at a rate of 15% of the gross amount and pay this tax to the Commissioner on behalf of the non-resident entertainer or sportsperson.
- According to the provisions of Section 47G, a resident who fails to withhold the tax and / or pay it over on behalf of the non-resident entertainer or sportsperson will be held personally liable for the tax that should have been paid to the Commissioner. The resident may recover this tax from the non-resident entertainer or sportsperson.
- However, the liability on the resident is discharged where the non-resident entertainer or sportsperson has personally settled the tax that is due to the Commissioner.
- Section 47E stipulates that the resident who withheld the tax must pay the tax over to the Commissioner by the end of the month following the month in which the tax was withheld.

- Section 47J states that where the withheld amount is denominated in a foreign currency, it must be converted to Rand, by using the spot rate on the date it was withheld, before it is paid over to the Commissioner.
- In terms of Section 47K, any resident who is primarily responsible for founding, organising or facilitating a performance by a non-resident entertainer or sportsperson in South Africa must notify the Commissioner of the performance within 14 days after the associated agreement has been concluded with the entertainer or sportsperson.
- Normal tax rates will apply instead of the withholding tax rate where the non-resident entertainer or sportsperson is:
 - An employee of a resident; and
 - Physically present in the Republic for a period exceeding 183 full days in aggregate during any 12 month period commencing or ending in the year of assessment in which the performance in South Africa takes place.
- Section 234 of the Tax Administration Act states that a resident who fails to adhere to any of the following shall be guilty of an offence and will be liable on conviction to a fine or to imprisonment for a period not exceeding two years:
 - Inform the Commissioner of any specified activity as contemplated in Section 47K;
 - Withhold any amount of tax on non-resident entertainers and sportspersons;
 - Pay the withheld tax over in terms of Sections 47D and 47E.

4 REFERENCES

4.1 LEGISLATION

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	Income tax Act No. 58 of 1962: Section 47A to 47K Tax Administration Act No. 28 of 2011
Other Legislation:	None
International Instruments:	None

4.2 CROSS REFERENCES

DOCUMENT #	DOCUMENT TITLE	APPLICABILITY
PAYE-AE-06-G02	Guide for completion and submission of reconciliation declarations - External	All
PAYE-AE-06-G03	Guide for validation rules for fields applicable to reconciliation documents - External	All

5 DEFINITIONS AND ACRONYMS

IT	Income Tax
LBC	Large Business Centre
NR01	Notification of performance of foreign entertainer or sportsperson
PAYE	Pay-As-You-Earn
Performance	Any personal activity exercised as an entertainer or sportsperson, whether alone, or with any other person.
SARS	South African Revenue Service
Taxpayer	Non-resident entertainer or sportsperson
The Act	Income Tax Act No. 58 of 1962, as amended

6 BACKGROUND

- Any amounts paid to non-resident entertainers and sportspersons, for specific activities taking place within South Africa, are subject to a withholding tax of 15% as set out in the provisions of sections 47A to 47K of the Act.
- The Act requires that any resident who is responsible to pay a foreign sportsperson or entertainer, must withhold the tax from that payment and pay it over to SARS. Failure to comply with this requirement could result in the resident being held personally liable for the payment of the withholding tax.

7 GOVERNING LEGISLATION

- Section 47A to 47K of the Act
- The Tax Administration Act.

8 PROCEDURE

8.1 Notification

- The person who is primarily responsible for founding, organising or facilitating a performance by a non-resident entertainer or sportsperson in South Africa, must complete a Notification of performance of foreign entertainer or sportsperson (NR01). This form must be submitted to the Megawatt Park Visiting Artist Team within the prescribed days:
 - Mail it to Private Bag X187, Rivonia, 2128 and must be clearly marked Megawatt Park Visiting Artist Team; or
 - Email the documents to nres@sars.gov.za.
- The NR01 form is available on SARS website www.sars.gov.za.

8.2 Register the taxpayer and issue a return

- The non-resident entertainer or sportsperson (taxpayer) will be registered for Income tax purposes and a reference number will be allocated.

8.3 Assessment

- The income indicated on the tax calculation submitted with the notification NR01 will be used to issue an assessment. Foreign amounts must be converted to SA rand at the spot rate of the date the amount was withheld.
- These spot rates are available in the daily newspapers or on the SARS website.

8.4 Objections and appeals

- If the taxpayer would like to, he or she may object to the assessment.
- The taxpayer or promoter must complete a Notice of Objection (NOO) and email it to the person indicated in the letter of assessment within 30 days of the assessment.
- The assessor / auditor will consider the objection and deal with it accordingly.

8.5 Residents liability to withhold tax

- The taxpayer / promoter must pay the tax over to SARS using the non-resident entertainer or sportspersons income tax reference number which will be indicated on the assessment.

- Where the resident withholds the tax, the tax must be paid over to SARS on the non-resident entertainer or sportspersons income tax reference number before the end of the month following the month during which the tax was deducted or withheld.
- Where the resident fails to pay over the tax withheld, SARS will determine if the resident is registered for PAYE purposes
- Where it is found that the resident is not registered for PAYE, SARS will register the resident for PAYE purposes.
- If the resident is registered for PAYE an additional PAYE assessment will be raised for the amount payable for the month in which the tax was due.
- The resident must issue an IRP 5/IT3(a) certificate to the non-resident entertainer or sportsperson and submit EMP501 reconciliation to SARS at the end of the year of assessment.
- The non-resident entertainer or sportsperson is no longer liable for the income tax assessment raised and therefore a nil assessment will be issued to the non-resident taxpayer to indicate this.

8.6 Tax clearance and tax credit certificate

- A tax clearance certificate and / or tax credit certificate will only be issued:
 - Once the tax is paid;
 - Only on request from the taxpayer / promoter / agent.

9 QUALITY RECORDS

Number	Title
NR01	Notification of performance of foreign entertainer or sportsperson
NOO	Notice of Objection
EMP 501	Reconciliation of tax deductions and certificates
IRP5/IT3(a)	Employees Tax Certificates
ITA34	Notice of assessment
IT-AE-01-A01	Letter of Assessment
IT-AE-01-A02	Withholding Tax Clearance Certificate
IT-AE-01-A03	Withholding Tax Credit Certificate

10 DOCUMENT MANAGEMENT

Designation	Name/Division
Business Owner:	Group Executive: Audit
Policy Owner:	Executive : Enterprise Business Enablement
Author:	Daleen Pietersen
Detail of change from previous revision:	Update document with TAA and copy content into the correct template.
Template number and revision	POL-TM-07 - Rev 4