

# GUIDELINE FOR NON RESIDENT SUPPLIERS ON WITHHOLDING TAX



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# 1. INTRODUCTION



This booklet provides guidance to non resident suppliers who provide services to the Royal Eswatini Sugar Corporation Limited (RES). Its purpose is to explain:

- When withholding tax (WHT) applies,
- How RES deducts and remits WHT,
- How suppliers can claim relief in their home country,
- How Double Taxation Avoidance Agreements (DTAs) affect WHT, and
- The difference between withholding tax and business profits taxation, specifically in a DTA context.

The aim is to help suppliers understand their tax position and avoid paying tax twice on the same income, while recognising that it remains the supplier's responsibility to ensure they utilise available relief.



# 2. IMPORTANT DISCLAIMER



This document is provided for **general informational purposes** only and does not constitute tax, legal, or professional advice.

- Tax treatment depends on **specific facts and circumstances** of each transaction
- The interpretation of tax laws and DTAs may vary by jurisdiction
- Legislative provisions may change over time

Suppliers are strongly advised to consult their own tax advisors and/or the relevant revenue authorities (e.g., Eswatini Revenue Service or their local tax authority) to confirm the correct tax treatment.

RES accepts no liability for any loss, tax exposure, or penalties arising from reliance on this guide.



## 3. UNDERSTANDING WITHHOLDING TAX



### 3.1 What is Withholding Tax?

Withholding Tax (WHT) is a tax deducted at source on certain types of payments in accordance with the Income Tax Order, 1975 (as amended). RES is required to:

1. Deduct WHT from payments made to non resident suppliers;
2. Remit the tax to the Eswatini Revenue Service (ERS); and
3. Pay the supplier the net amount after tax deduction.

A WHT certificate is then issued to the supplier as proof of tax paid.

### 3.2 When Does Withholding Tax Apply?

Whether withholding tax applies to a payment made to a non-resident supplier depends on a combination of factors, most importantly:

- Whether a Double Taxation Avoidance Agreement (DTA) exists between Eswatini and the supplier's country of residence
- Whether the supplier has a Permanent Establishment (PE) in Eswatini
- The nature of the payment (e.g., services, royalties, interest)

To properly understand this, it is important to first clarify two key concepts: DTAs and Permanent Establishments.

#### **What is a Double Taxation Avoidance Agreement (DTA)?**

A Double Taxation Avoidance Agreement (DTA), also known as a tax treaty, is a formal agreement between two countries that determines:

- Which country has the right to tax certain types of income, and
- How double taxation is avoided by providing credits, rebates and deductions on taxes paid in another country.



## IMPORTANT:

A DTA does not automatically eliminate or reduce tax. To access any available treaty benefits, suppliers must comply with all relevant administrative and documentation requirements as may be prescribed by the applicable tax authorities.

Without a DTA, each State has unlimited taxing rights, i.e the same income could be taxed:

- In the country where the income arises (Eswatini), and
- In the supplier's home country

A DTA helps to:

- Reduce withholding tax rates, and/or
- Allocate taxing rights exclusively to one country, by restricting overlapping tax claims.

### What is a Permanent Establishment (PE)?

A Permanent Establishment (PE) refers to a fixed or ongoing business presence of a non-resident supplier in Eswatini.

Typical examples of a PE include:

- A place of management, branch, or office in Eswatini
- A factory, workshop, or other fixed place of business (excluding facilities used only for storage or display of goods)
- A construction, installation, or assembly project in Eswatini lasting more than six months

If a non-resident supplier has a PE in Eswatini, it means they are considered to be a resident of Eswatini for tax purposes, and therefore:

- They are taxed on their business profits in Eswatini, and
- Withholding tax generally does not apply to those profits

### How These Concepts Affect Withholding Tax

The interaction between DTAs and Permanent Establishments determines the applicable tax treatment:

Scenario	Tax Treatment
Supplier has <b>NO</b> Permanent Establishment in Eswatini	WHT applies on specific payments (e.g., services, interest, royalties) as per domestic law and DTA rates where applicable.
Supplier <b>HAS</b> a Permanent Establishment (PE)	WHT does not apply. Supplier must file an income tax return in Eswatini and be taxed on business profits.
Payment type covered by a DTA with reduced rate	Reduced DTA rate applies if supplier provides proof of residence and the DTA provision exists in domestic law.
No DTA between Eswatini and supplier's country	The full domestic withholding tax rate applies.

### Key principle:

- Non-resident WHT applies where a person who is not ordinarily resident in Eswatini earns income in Eswatini.
- Withholding tax shifts to normal tax on business profits once the non-resident supplier forms a permanent establishment (PE) in Eswatini.



## 4. TYPES OF WITHHOLDING TAX APPLICABLE TO NON-RESIDENT SUPPLIERS



The following WHT types apply between RES and its non resident suppliers under the Income Tax Order, 1975 (as amended):

Tax Type	Relevant Section	Rate
Non-Resident Shareholders Tax	Sections 21–26	15%
Non-Resident Tax on Interest	Sections 27–32	15%
Royalties & Management Fees Paid to Non-Residents	Section 32B	15%
Non-Resident Contractors – Construction Contracts	Section 59	15%
Payments to Non-Residents – Service Contracts	Section 59A	15%





## 5. DOUBLE TAXATION AVOIDANCE AGREEMENT (DTAs)



Eswatini currently has DTAs with the following countries:

- South Africa
- Mauritius
- Lesotho
- Botswana
- United Kingdom
- Republic of China (Taiwan)
- Seychelles

Where to access DTAs:

Suppliers can download copies of all DTAs from the Eswatini Revenue Service website: [www.ers.co.sz](http://www.ers.co.sz)

Note that a DTA does not automatically eliminate or reduce tax. Additionally, a DTA cannot impose tax where income is not subject to tax under domestic law. To access any available treaty benefits, suppliers must comply with all relevant administrative and documentation requirements as may be prescribed by the applicable tax authorities.

Failure to provide adequate documentation may result in full domestic withholding tax being applied.





## 6. MECHANISM FOR RELIEF IN THE COUNTRY OF RESIDENCE



To mitigate double taxation, suppliers may claim relief in their home jurisdiction through:

- Foreign tax credits (most commonly applied)
- Deductions against taxable income
- Full or partial exemptions

The applicable relief mechanism depends on domestic tax legislation and treaty provisions.

The Withholding Tax Certificate issued by RES serves as critical supporting documentation for such claims.

### 5.1 Relief Process for South African Suppliers

In South Africa, WHT relief is governed by:

- Section 6quat of Income Tax Act 58 of 1962 (foreign tax rebates/credits), and
- Section 10B (foreign dividend exemptions).

Steps to follow when completing annual income tax declaration:

1. Include the Eswatini-sourced income in gross income
2. Assess whether any exemption provisions apply
3. Apply the relevant DTA provisions
4. Calculate and claim a foreign tax credit under Section 6quat
5. Retain and submit the WHT certificate as substantiation

### 5.2 Relief Process for Mauritian Suppliers

In Mauritius, relief is governed by Section 77 of the Income Tax Act 1995 through a Foreign Tax Credit (FTC) mechanism.

Steps to follow:

1. Include the Eswatini-sourced income in gross income.
2. Refer to the Eswatini–Mauritius DTA to determine the credit available.
3. Claim a credit for WHT paid and attach the RES WHT certificate to your return.



## 7. PRACTICAL EXAMPLE



### Scenario:

A South African service provider invoices RES E100,000 for commissioning of plant on site. The service falls under Section 59A (15% WHT).

Supplier submits the necessary documentation to reduce WHT rate to the DTA rate of 10%



### RES ACTION:

- Withholds 10% = E10 000
- Pays supplier E90 000
- Issues a WHT certificate for E10 000 paid to ERS



### SUPPLIER ACTION IN SOUTH AFRICA:

- Declare E100 000 as foreign income.
- Apply any applicable exemptions/treaty rules.
- Claim Section 6quat credit of E10 000 using the RES WHT certificate.



## 8. CONCLUSION AND KEY CONSIDERATIONS FOR SUPPLIERS



Suppliers are strongly encouraged to take a proactive and informed approach to their tax obligations. In particular, suppliers should:

- Carefully assess whether their business activities give rise to a Permanent Establishment in Eswatini
- Where applicable, ensure the timely submission of valid tax residency certificates to support any DTA relief
- Accurately determine the nature and classification of income, as this directly impacts the applicable tax treatment
- Maintain complete and reliable supporting documentation for all transactions
- Seek guidance from qualified tax advisors where uncertainty exists

### Responsibility for Tax Compliance

While RES is committed to providing clear, practical, and transparent guidance, it is important to emphasise that:

- The ultimate responsibility for tax compliance rests with the supplier
- Suppliers are required to independently assess and confirm their tax position

This should be done in consultation with:

- Their professional tax advisors, and/or
- The relevant revenue authorities in both Eswatini and their country of residence

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