The Realities of Withholding Tax in Nigerian Real Estate Transactions

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Abstract- Withholding tax is an important aspect of Nigeria's tax regime, particularly in real estate transactions. This paper deals on the realities of withholding tax (WHT) in Nigeria's real estate sector, exploration of its impact on stakeholders, compliance levels and generation of revenue. The work reveals that WHT has become a crucial cost component in real estate transactions thus, affecting property prices and rental income. However, in spite of its potential to boosting government revenue, its compliance level remained low due to issues such as complexities, ambiguities and challenges in its enforcement. The study discusses the need for reforms, capacity building, monitoring and evaluation, clear polices and stakeholder engagement in order to enhance WHT administration and compliance in Nigeria's real estate market. Through the examination of the practical implications of WHT, this research was dedicated to informed policy decisions, promotion of transparency and fostering a more efficient real estate sector in Nigeria.

Indexed Terms- Property, Real Estate, Realities, Taxation and Withholding Tax

I. INTRODUCTION

The Nigerian real estate sector appears to have emerged as a key driver of economic growth and development; this in turn has resulted in the attraction of both local and international investors. The investors are believed to seek opportunities in the country's emerging property market. In line with any financial transaction, taxes are a critical component of real estate deals and the particular tax that influences significantly the dynamics of transactions is said to be withholding tax, Hicks & Martin, (2008). This research work delves into the requirements and implications and or the realities of withholding tax in Nigerian real estate transactions thus, providing more clarification on its definition, its framework for regulation in addition to its impact on market participants.

Withholding tax could be said to be a form of taxation where a percentage of payments made is deducted at the source while remittance is done to the government, Simeon, Simeon & Robert (2017). In the context of Nigerian real estate transactions, withholding tax is levied on specified payments which includes; rent, fees or commissions that affects both buyers and sellers in property deals, Simeon, Simeon & Robert, (2017). A thorough definition and implications of withholding tax is crucial for navigating the complexities of the Nigerian real estate market while ensuring compliance with tax regulations.

Within the wider landscape of Nigerian real estate transactions, the sector appears to have witnessed an appreciable growth courtesy of factors such as rapid urbanization, growth in population as well as increased demand for commercial and residential properties, Ngong & Thaddeus, (2020). The real estate market in Nigeria features diverse property types, which ranges from luxury apartments in urban centers to commercial properties such as office spaces and industrial facilities, Akinbogun et al. (2014). The transactions that takes place in the real estate sector features various stakeholders, which includes buyers, sellers, developers, real estate agents as well as government agencies, Patterson, (2013). These are impacted by withholding tax obligations.

Through the appraisal of the regulatory framework that governs the withholding tax in Nigerian real estate transactions and by provision of an overview of the country's real estate market, this research aims to broaden the understanding of the tax implications for market participants. Also, a thorough analysis of existing literature, legal provisions as well as case studies, this study will provide detailed insights into the requirements and implications of withholding tax while offering recommendations for improvement on transparency, compliance and efficiency in Nigeria's real estate sector.

In an effort aimed at addressing the matters relating to withholding tax in Nigerian real estate transactions, this work contributes to the existing body of knowledge in the field while it seeks to foster a more robust and sustainable real estate market in the country. In the long run, a clearer and broader understanding of tax compliance in real estate transactions can help stakeholders making informed decisions, promoting a level playing field as well as the support of the growth in addition to the Nigeria's real estate sector development.

The work aims at contributing to the already existing body of knowledge on the transactions in Nigerian real estate sector, a more encompassing and sustainable real estate market in the economy with a view to encouraging transparency, compliance and efficiency in the sector. Through the shedding of light on the challenges and opportunities that are related to withholding tax in real estate transactions, this work aims to provide practical insights while putting up recommendations that can facilitate better decision-making, improve tax compliance and ultimately, plays a crucial role to the growth and development of the real estate market in Nigeria.

II. THEORETICAL FRAMEWORK

Withholding tax plays an essential role in real estate transactions, while serving as an important mechanism for revenue generation, compliance in taxation as well as regulation in the Nigerian real estate sector, Olawande &Ayodele, (2011). The clear knowledge of the importance of withholding tax in real estate deals is crucial for stakeholders in navigating tax obligations, ensuring transparency and facilitating smooth transactions. This section explores the importance of withholding tax in Nigerian real estate transactions, looks at the legal framework which governs its application and enforcement in the country.

A. The importance of withholding tax in real estate transactions:

1. Revenue Generation: Withholding tax acts as a significant source of revenue for the Nigerian government while contributing to public funds that is needed for infrastructure development, social services and other essential activities, Bello, (2017). In real estate transactions, withholding tax on payments for instance; rent, agency fees and service charges produces tax revenue which supports government initiatives and welfare of the populace, Rao, (2013).
2. Tax Compliance: Withholding tax promotes tax compliance and accountability this it does by requiring parties involved in real estate transactions to withhold and remit a percentage of payments to the tax authorities concerned, Hicks & Martin, (2008). It aids in the prevention of tax evasion, encouraging transparency in financial dealings as well as ensures that taxes are collected efficiently from property transactions, Schlenther, (2013).
3. Regulatory Mechanism: Withholding tax serves as a regulatory mechanism within the real estate sector thus enabling the government in monitoring and controlling financial transactions, Rao, (2013). By the imposition of a tax obligation on certain payments, withholding tax aids in the regulation of the flow of funds in real estate deals, discouraging non-compliance with tax laws and fostering a culture of fiscal responsibility among market participants, Asher and Nandy, (2003).
4. Level the Playing Field: The implementation of the withholding tax in real estate transactions aids in providing the level playing field for all stakeholders, regardless of their status or influence in the market. Through standardization of tax obligations and enforcement of compliance requirements, withholding tax promotes fair competition, helps in the prevention of tax evasion, promotion of a more equitable real estate environment for buyers, sellers and other stakeholders involved.

B. The legal framework of withholding tax in Nigeria:

1. Statutory Provisions: The legal framework that governs the withholding tax in Nigeria are; the Companies Income Tax Act (CITA), Cap. 60 LFN 1990, Personal Income Tax Act (PITA) Cap 104, 1990 (The personal income Tax Act as amended 2011) and the Value Added Tax Act (VATA), Value Added Tax (Amendment) Act of 2007. These statutes provide the legal basis for determination of is applicability, rates as well as exemptions of withholding tax in various transactions with real estate inclusive.
2. The tax rates and obligations: The tax rate which is applicable to withholding tax in Nigerian real estate transactions differs which depends on the nature of the payment and the status of the person making the payment, Ebiringa & Yadirichukwu, (2012). For instance, income derived from rent on a real estate is subject to a withholding tax rate of 10% for individuals and 10% for companies, Owuru & Olabisi, (2020).
3. Compliance and Enforcement: The legal framework for withholding tax in Nigeria clearly shows the requirements for compliance, reporting as well as remittance of deductions made from the tax to the appropriate tax authorities. Non-compliance with obligations may result in penalties, fines or even legal consequences for parties that are involved in real estate transactions, Jemberie, (2020).
4. Reforms and Developments: The legal framework for withholding tax in Nigerian real estate transactions is dependent on twin issues such as periodic reforms and development that must align with changing economic conditions, tax policies and regulatory requirements, Simeon, (2017). Being informed of latest legislative changes, court decisions and tax authorities' guidelines is important for stakeholders so as to ensure compliance with withholding tax laws and regulations in the real estate sector.

III. REQUIREMENTS OF WITHHOLDING TAX IN NIGERIAN REAL ESTATE TRANSACTIONS

Withholding tax is a crucial component of Nigerian real estate transactions that imposes obligations on parties involved in property transactions to deduct as well as remit a specific percentage of payments to the tax authorities. This section explores how withholding tax rate are determined, obligations of parties involved including the procedures for withholding tax compliance on transactions in the Nigerian real estate sector.

A. Determination of withholding tax rate:

The determination of the tax rate in Nigerian real estate transactions is diligently guided by the provisions of the Companies Income Tax Act (CITA) and the Personal Income Tax Act (PITA), Onyekwelu & Ugwuanyi, (2014). The tax rates applicable to specific payments, such as rent and agency fees, are well captured in these tax laws and may vary, Owuru & Olabisi, (2020). These may all depend on the transaction nature and the parties involved.

In real estate transactions, Hicks and Martin, (2008), noted that the withholding tax rate is calculated as a percentage (%) of the gross payment made by the person making the payment to the payee. The rate may also vary for different types of payments; this is subject to revisions periodically by the tax authorities. It is essential for actors in real estate transactions to accurately determine the withholding tax rate applicable to ensure compliance with tax laws and avoid penalties that may arise as a result of underpayment or non-compliance, Lassar and Sonnier, (2009).

B. Obligations of the parties involved:

In Nigerian real estate transactions, the obligations for the payment of the withholding tax is imposed on both the person making the payment and the payee. Though the incidence of the tax is borne by the real estate owner or the lessor, but the payer is responsible for deductions i.e. the appropriate withholding tax amount from the payment and he is expected to remit same to the tax authorities within the specified timeframe, Nieto & Morgan (2021). The payer is required to issue a withholding tax credit note to the payee, this serves as a proof of tax deduction.

In contrast, the payee, who receives the payment, is bound by the law to provide the necessary documentation and information to the payer that will aid in the correct calculation of withholding tax. The payee must ensure that correct tax identification details are provided as this will help to facilitate tax compliance and in effect avoid discrepancies in tax deductions. Compliance with withholding tax obligations is critical for both parties in order to avoid penalties, increased interest charges and/or legal consequences for non-compliance, Hicks and Martin, (2008).

C. Procedures for withholding tax compliance:

The procedures for withholding tax compliance in Nigerian real estate transactions features some steps, this is necessary to ensure accurate deduction, remittance and reporting of withholding tax amounts. The following are the procedures that actors in real estate deals must adhere to:

1. Identification of applicable rate: Parties must as a matter of concern and necessity identify the withholding tax rate applicable, based on the type of payment and the provisions of the relevant tax laws.
2. Calculation of tax amount: The withholding tax amount can be calculated by applying the appropriate rate to the gross payment made.
3. Deduction and remittance: The withholding tax amount can be deducted from the payment which in turn can be remitted to the tax authorities within the stipulated time, together with the required tax returns including documentation.
4. Issuance of credit note: The person making the payment issues a withholding tax credit note to the payee, this serves as an evidence of tax deduction which the payee can use to offset tax liabilities in their tax filings.
5. Record-keeping and reporting: Parties involved must maintain an accurate record of their transactions, which includes; receipts, credit notes and tax remittance evidence. This is needed to demonstrate compliance with tax laws in times of audits or inspections.

IV. IMPLICATIONS OF WITHHOLDING TAX IN NIGERIAN REAL ESTATE TRANSACTIONS

Withholding tax in Nigerian real estate transactions has implications for both property buyers and sellers as well as broad economic consequences for the real estate market. This section explores the impact of withholding tax on property buyers and sellers, its economic implications especially for the real estate market and the mechanisms for enforcement in case of non-compliance.

A. Impact on property buyers and sellers:

1. Property Buyers/ Lessees: For property buyers in Nigerian real estate transactions, withholding tax could be likened or seen as an additional cost that can impact the overall affordability of the property, Simeon (2017). Since the tax is deducted at the source especially from payments made to sellers or service providers, buyers may need to consider the withholding tax obligation when making budgets for property acquisition. Failing to account for withholding tax could lead to additional costs or financial challenges for buyers.
2. Property sellers/ Lessors: Sellers in real estate transactions appears to be affected by withholding tax, as the liability on tax reduces the net proceeds receivable from property sales, Parry-Wingfield, (1987). Sellers must consider the implications of the withholding tax when they are negotiating property prices and terms with buyers. This is because the tax may affect the final amount they receive. Compliance with withholding tax obligations is necessary for sellers to avoid penalties as well as to ensure the smooth completion of property transactions.

B. Economic implications for the real estate market:

1. Market Efficiency: Withholding tax acts as a part in promoting market efficiency in the Nigerian real estate sector by ensuring compliance in taxation and transparency in transactions, Olawande & Ayodele, (2011). The revenue from the payment of withholding tax contributes to government funds, supports public infrastructure development and social services that benefit the real estate market and the general economy.
2. Investor Confidence: Withholding tax regulations enforcement in real estate transactions boosts investor confidence in the Nigerian property market, Adewunmi & Olaleye, (2011). Through the demonstration of a commitment to tax compliance and regulation, the government instills trust in domestic and international investors. This in turn encourages capital inflows and investment in the real estate sector.

C. Enforcement mechanisms for non-compliance:
The resultant effect of non-compliance with withholding tax obligations in Nigerian real estate transactions comes in form of penalties, fines or legal action against the defaulting parties, Simeon, (2017). The tax authorities have enforcement mechanisms that are put in place to ensure compliance with withholding tax regulations. This includes; audits, inspections and penalties for non-compliant parties. Enforcement actions serve as deterrent for tax evasion. It promotes transparency in property transactions and helps uphold the integrity of the real estate market in Nigeria.

V. SIMILARITIES AND COMPARISON WITH GLOBAL PRACTICES

Withholding tax is a general and common practice in real estate transactions globally. It serves as a mechanism for tax compliance, generation of revenue and regulatory control. While the basic concept of withholding tax appears to be similar across countries, there seems to be variations in the rates, regulations as well as enforcement mechanisms that apply. This comparison looks at the similarities and differences between Nigeria's withholding tax system in real estate transactions and global practices. More so, it looks at the best practices that are deployed for the efficient administration of withholding tax in the real estate sector.

A. Similarities and differences with other countries:

Similarities:
Globally, withholding tax is a prevalent practice in real estate transactions which is aimed at ensuring tax compliance and collection of revenue, Anyaduba & Oboh, (2019). It is a common tax mechanism in real estate transactions in Nigeria and many other countries; such as the United States, the United Kingdom, Germany, South Africa etc.

Just like in Nigeria, many countries introduced withholding tax on specific payments in real estate deals which includes; rent, agency fees, and sale of property. The concept of withholding tax as a mechanism for tax deduction from the source is same across jurisdictions thus, promoting transparency and compliance, Brauner & Moreno, (2015). Withholding tax rates may vary based on; the type of payment and the nature of the transaction that is similar to the Nigerian tax system.

Differences:
Withholding tax rates and regulations in Nigeria may differ from those in other countries. This will depend on the tax laws and economic conditions. It could also vary widely among countries with some jurisdictions applying flat rates, whereas others have progressive tax structures based on income levels and/or transaction types.

The scope of withholding tax in real estate transactions appears to differ, with some countries having specified provisions for property-related payments, Brauner & Moreno, (2015). Others may have more generalized withholding tax regulations.

There could be variations in case of enforcement mechanisms and penalties for non-compliance with withholding tax obligations. This can depend on the legal framework and administrative practices of each country. In order words, tax obligations may vary across countries, impacting the degree of effectiveness in ensuring tax compliance in real estate transactions, Anyaduba & Oboh, (2019).

B. *Best practices for efficient withholding tax administration in real estate transactions:*

1. Clear Regulations/Transparent Guidelines: Establishing clear and comprehensive regulations governing withholding tax in real estate transactions is paramount in ensuring transparency, consistency and compliance, Prakash, (2017). Clarifications on applicable tax rates, payment types and thresholds can facilitate compliance and help avoid disputes. More so, establishing a clear and transparent guideline on withholding tax rates, exemptions and procedures can help enhance compliance and reduce ambiguity in real estate transactions, Quinday et al., (2020). For instance, Singapore has a well-defined withholding tax regime with specific guidelines on the rates, exemptions as well as procedures for efficient tax administration in property transactions.
2. Electronic Filing Systems: Implementation of electronic filing systems and online platforms with the intention of streaming the withholding tax

process can reduce administrative burden and enhance efficiency in tax compliance, Eboibi & Richards, (2019). Australia's Integrated Client Accounts (ICA) system allows for online filing and payment of withholding taxes in real estate transactions, improving accuracy and timeliness in tax reporting, Pope, (1993).

3. Simplified Procedures: Streamlining the withholding tax procedures for real estate transactions, such as online filing systems, automated calculations, and timely issuance of tax certificates, can enhance efficiency and reduce administrative burdens on stakeholders, Singh and Singh, (2013).
4. Education and Communication: Providing guidance and education to real estate professionals, property owners and buyers on their withholding tax obligations can promote awareness, compliance, and collaboration with tax authorities, Awasthi et al., (2021).
5. Monitoring and Enforcement: Implementing robust monitoring mechanisms and enforcement measures, such as audits, penalties for non-compliance and regular assessments, can deter tax evasion and ensure adherence to withholding tax regulations, Devos, (2013).
6. International Cooperation: Promoting international cooperation and alignment of withholding tax practices with global standards can enhance transparency, facilitate cross-border transactions and reduce tax-related risks for foreign investors in the real estate sector, Hines, (2004).
7. Training and Awareness Programs: Conduct training and awareness programs for stakeholders in the real estate sector to educate them on withholding tax obligations, compliance requirements and best practices, Kingji & Dumi, (2016).

CONCLUSION

Comparing Nigeria's withholding tax system and its implications in real estate transactions with global practices highlights the importance of aligning tax regulations with international standards, promoting efficient administration as well as ensuring compliance to foster a conducive environment for real estate investments. Adopting best practices, such as clear regulations, simplified procedures, education, monitoring and international cooperation can enhance the effectiveness of withholding tax systems in real estate transactions and contribute to sustainable growth in the sector. Withholding tax in Nigeria's real estate transactions is a complex one and usually a contentious issue. While the intention of the policy behind same is geared towards ensuring tax compliance and generation of revenue for the government, the reality on ground is that it poses significant challenges for stakeholders involved. For instance the lack of clarity and inconsistent application of the tax can result in disputes and litigation and further complicates the process. It is essential to review and refine the withholding tax policy to ensure it is fair, transparent and aligned with international best practices. A balanced approach that considers the needs of both the government and stakeholders in the real estate sector is very important to creating a more efficient and effective withholding tax regime in Nigeria.

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