



Tullow Ghana Ltd

Supplier Tax Update

7th October 2021



Disclaimer



This presentation is provided to Tullow Ghana Limited's (Tullow) Contractors, Sub-Contractors, Consultants and Service Providers (together referred to as "Contractors") as an overview of the applicable WHT regime following withdrawal of the Cascading WHT Ruling (a private ruling) granted to Tullow on 11th December 2020.

Tullow requires all Contractors to review, consider and address the applicable WHT regime when tendering and entering into contracts relating to Tullow's operations. Tullow recommends that Contractors obtain independent taxation advice on their own specific activities in Ghana.

The presentation is provided for informational purposes only and should not be relied on in determining a Contractor's Ghanaian tax position. In providing this presentation, Tullow does not accept any liability in relation to the content therein which does not represent tax or legal advice.

Overview



Topics for discussion

- Stabilised tax regime remains in force at 1st Tier of Contracting (i.e. Tullow Ghana making payments to its Contractors) but the Ghana Revenue Authority (GRA) have expressed conflicting views on how this regime operates to certain Contractors during tax audits.
- Withdrawal of “Cascading WHT Ruling” has resulted in a change to the applicable WHT regime for Subcontracting, i.e. Tullow’s Contractors outsourcing the supply of goods, works and services to 3rd party Subcontractors and Affiliates. Payments by Contractors to Subcontractors may now attract WHT.
- Tullow has updated its tendering guidelines and standard tax clauses to reflect the withdrawal of the Cascading WHT Ruling.

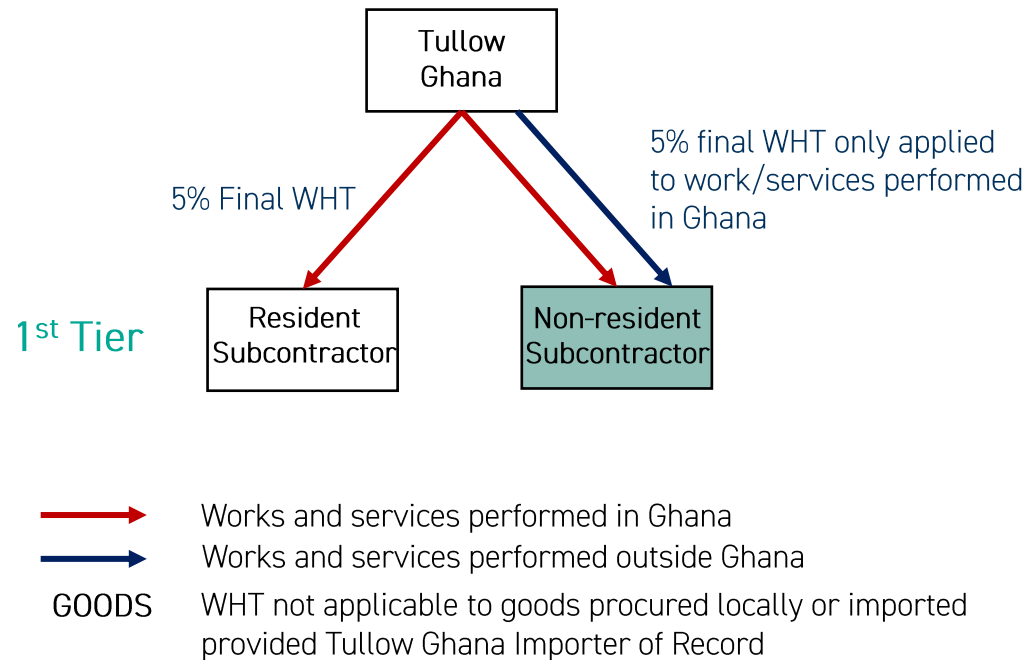


Withholding tax (WHT) update

WHT Regime – Recap on 1st Tier Contracting

Overview

- A 5% “Final WHT” applies to works/services performed in Ghana by a Subcontractor under contract with Tullow Ghana.
- “Final” means that Subcontractor is not also subject to CIT on this income and cannot claim a credit for the 5% WHT deducted by Tullow.
- WHT is not applicable to the procurement of goods locally or goods that are imported by Tullow Ghana.
- Split invoicing arrangements should apply to separate IN and OUT of country works/services with reference to where provided on invoice.
- Resident Contractors providing works/services outside of Ghana subject to CIT at rate of 25% on profit margin. Non-resident Contractors not subject Ghana tax on income related works/services performed outside of Ghana.



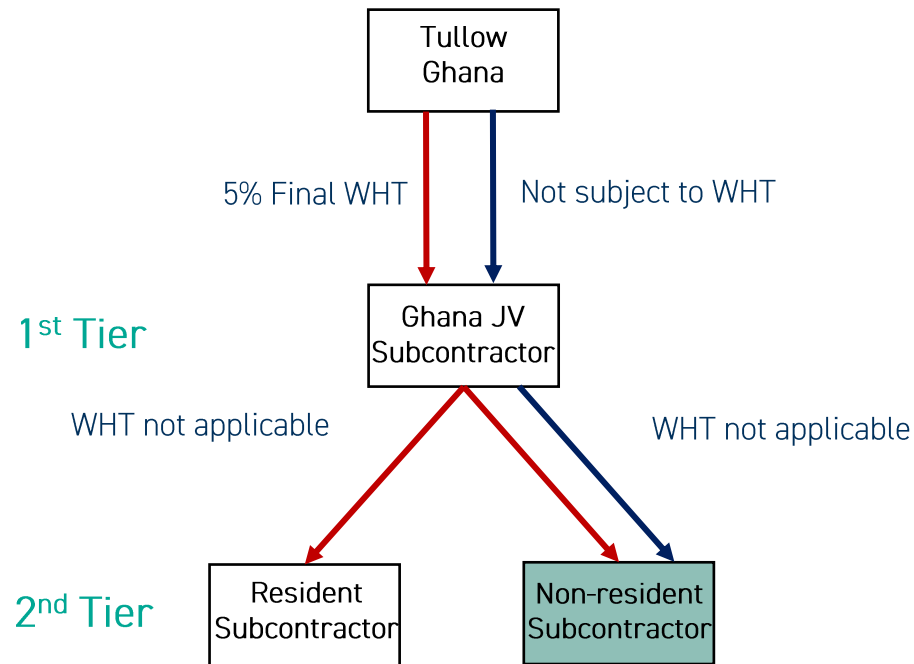
WHT at 1st Tier : GRA challenging Subcontractors

Relevant law	Tullow position	GRA position
<p>S27(1) PITL: <i>"Where under the terms of a contract an amount due to a subcontractor in respect of work or services for or in connection with a petroleum agreement the person liable under that contract to make payment to the subcontractor shall withhold from the aggregate amount due to the subcontractor the percentage of the aggregate amount due that may be specified in petroleum agreement and the amount so withheld shall be paid to the Commissioner-General..."</i></p> <p>S27(3) PITL: <i>When an amount has been withheld from an aggregate amount due to subcontractor pursuant to subsection (1), the subcontractor is not liable, in respect of the aggregate amount, for tax under any other law in force in the Republic</i></p> <p>S38 PITL definition of "subcontractor": <i>"a person who enters into a contract with a contractor for the provision of work or services including rental of plant and equipment, in the Republic for or in connection with the petroleum agreement to which the contractor is a party and where a petroleum agreement so provides includes a "non-resident person" or "non-resident company" as those terms are defined in the Internal Revenue Act (Act 592) who under the terms of a contract provide that work or services"</i></p> <p>Article 12.3 of WCTP and DWT Petroleum Agreements: <i>"Save for withholding tax at a rate of five percent (5%) from the aggregate amount due to any Subcontractor...if and when required by S27(1) PITL, Contractor shall not be obliged to withhold any amount in respect of tax from any sum due from Contractor to any Subcontractor..."</i></p>	<ul style="list-style-type: none"> • No change to longstanding stabilised tax regime applicable at 1st Tier. • Subcontractors supplying works/services inside and outside of Ghana will separately invoice for this work to make clear which amounts are subject to WHT. • Tax regime still applicable where Tullow contracts with a Ghana resident company acting as a lead member of Syndicate. WHT credit to be allocated by lead-Subcontractor between Syndicate members. 	<ul style="list-style-type: none"> • Position unclear regarding this issue. • Conflicting message shared with Subcontractors noting a) 5% WHT applies on IN/OUT country works/services and b) it is in some cases a Final Tax and in other a Non-Final Tax • GRA position resulting in incremental WHT assessments for some Subcontractors : <u>Subcontractors should take all necessary steps to appeal such assessments</u>

Stabilised tax regime under PITL remains in force but not respected by GRA in dealings with Subcontractors

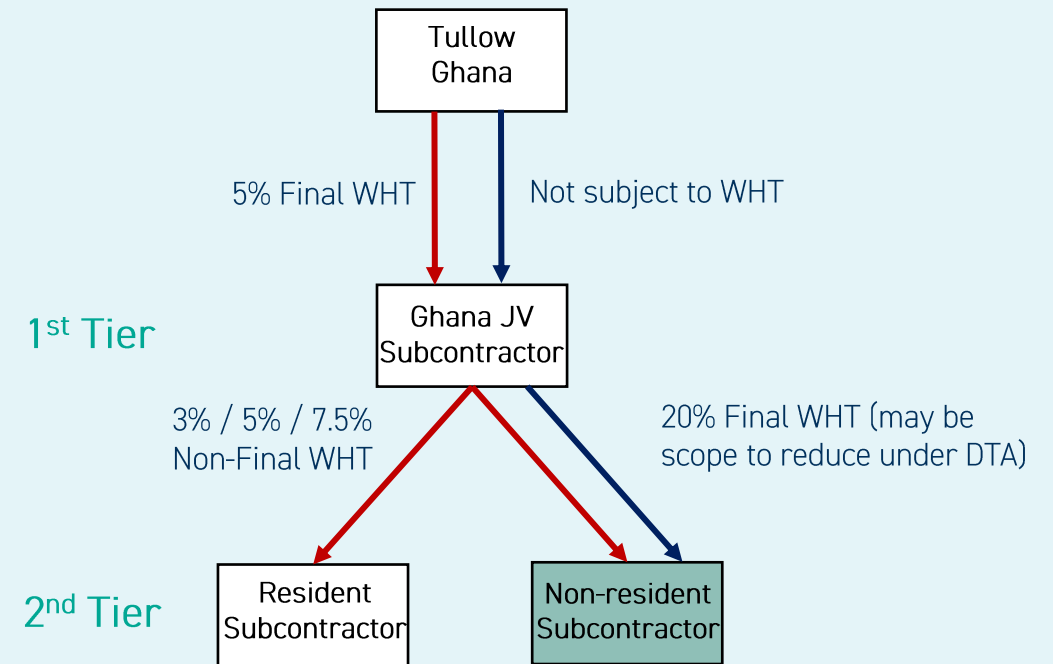
WHT Regime – Recap on Cascading Contracts

Position under Cascading WHT Ruling



- Works and services done in Ghana
- Works and services done outside Ghana
- GOODS WHT not applicable

Position post withdrawal of Cascading WHT Ruling



- Works and services done in Ghana
- Works and services done outside Ghana
- GOODS WHT generally not applicable except payments to 2nd Tier Resident Subcontractor

Cascading Ruling – Timing of Withdrawal

- Tullow Ghana received written correspondence from GRA on **11th December 2020** revoking Cascading Ruling and stating withdrawal “should not take retrospective effect”. **Tullow cannot share this correspondence with Contractors as content commercially sensitive.**
- Contractors informed of position in writing on 28th April 2021.
- GRA has notified some Subcontractors through tax audits that ruling withdrawn on 3rd August 2016 (i.e. on enactment of 2016 Income Tax Regulations). **Tullow cannot directly intervene in resolving this issue for Subcontractors who must take all necessary steps to appeal such assessments.**

Tullow considers the Cascading WHT Ruling to have been withdrawn effective 11th December 2020

Syndicate Arrangement : Overview

What is it?

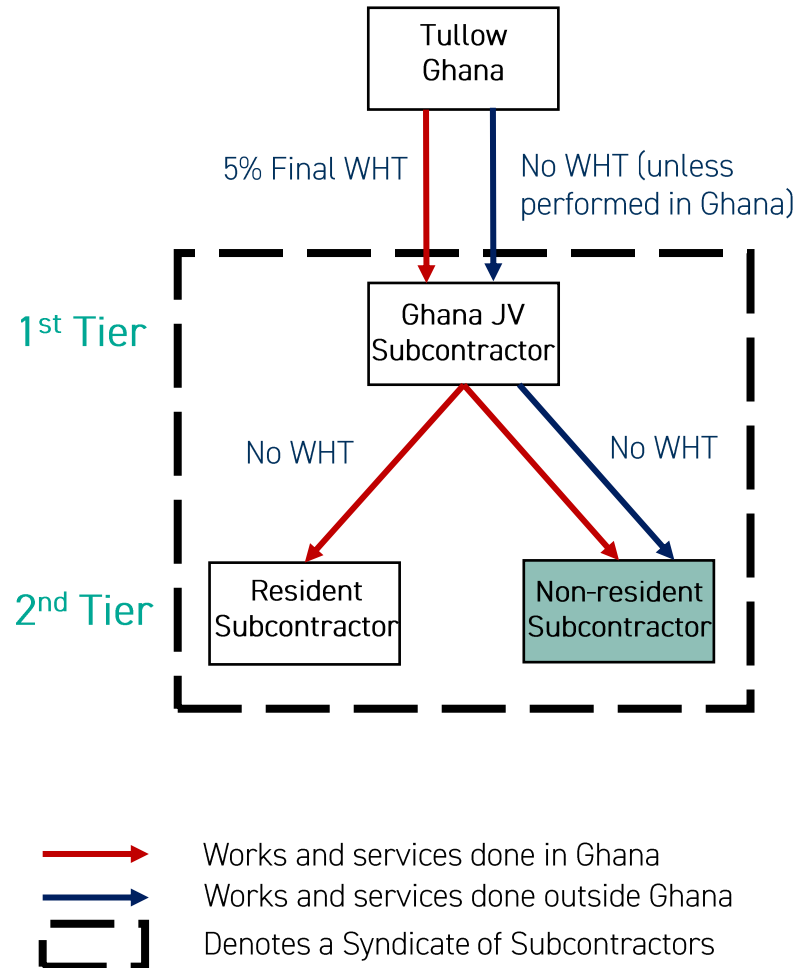
- Introduced in 2016 Income Tax Regulations, intention understood to be to bring provisions of cascading ruling (a private ruling issued to Tullow Ghana) into law.
- Agreement between a group of Subcontractors (Suppliers) to provide works/services in respect of a project for a Contractor (Tullow Ghana) where one Subcontractor serves as lead member of Syndicate.
- Considered suitable for arrangement where Tullow engages a supplier (operating through a Ghana JV) that will be subcontracting procurement of works/services to be delivered under contract with Tullow to other 3rd party suppliers or Affiliated companies.

How does it work?

- Tullow's interpretation of rules is that Lead Subcontractor (i.e. supplier we have a contract with) can form a Syndicate of Subcontractors with its Subcontractors as a separate agreement in addition to direct contracts it has with them. **Contractors should seek independent tax advice if considering forming a Syndicate.**
- WHT should be limited to 5% on payment by Tullow to Lead Subcontractor for supply of works/services performed in Ghana. No further WHT should be deducted on payments by Lead Subcontractor to Syndicate members.

Contractors encouraged to consider forming a Syndicate where feasible to mitigate WHT cost in supply chain

Syndicate Arrangement - Example



Overview

- Tullow Ghana contracts with Ghana JV Contractor as lead member of a Syndicate of Subcontractors
- Ghana JV Contractor forms a Syndicate of Subcontractors with Resident Subcontractor and Non-Resident Subcontractor.

1st Tier

- Works/services split based on performance in or outside Ghana with separate invoicing arrangements.

2nd Tier

- Payments by Ghana JV Subcontractor to members of the Syndicate are not subject to WHT.
- Ghana JV Subcontractor allocates 1st Tier WHT credit to Syndicate members performing works and services in Ghana.

Updated contracting strategy

- Tullow has revised its Tendering guidelines to give preference to suppliers establishing a tax efficient supply chain and mitigating WHT cost at 2nd Tier of contracting.
- Tenderers are encouraged to use best efforts to design and implement tax efficient supply chain considering:
 - Feasibility of forming a Syndicate
 - Assessing any other reliefs (e.g. can WHT credits be offset by Subcontractors against CIT paid in home jurisdiction?)
 - Can Subcontractors be engaged in countries that have a double tax treaty with Ghana to potentially reduce WHT rates?
 - Seeking to maximise work done locally in Ghana (WHT on payments to local companies should not represent cost and such approach good for local content.
- Quoted rates and subsequent prices should be inclusive of all taxes except for VAT + Levy's (NHIL GETFD & CHRL) chargeable on supply of goods/services to Tullow by Contractors. Ghanaian VAT incurred by Contractor and its Subcontractors further down supply chain should also be excluded from rate sand prices.

Withdrawal of ruling exposes Tullow to possible cost escalation : Contractors encouraged to try and mitigate such cost

Q&A



Appendix

WHT regime post Cascading Ruling

- The following analysis represents Tullow's current understanding of the applicable WHT in Ghana following withdrawal of the Cascading Ruling.
- The stabilised tax regime in Petroleum Agreements and PITL should continue to apply to payments made by Tullow Ghana to its Contractors (1st Tier of Contracting).
- Tullow understands the general WHT regime in Income Tax Act 2015 applies to payments made by Contractors to Subcontractors and in respect of subcontracting further down supply chain.
- Tullow proposes to engage GRA to discuss applicable WHT regime. If and when such engagement occurs, Tullow will communicate any relevant updates to Contractors. Contractors must engage directly with GRA in relation to their own tax arrangements.

Analysis of applicable WHT regime post Cascading Ruling

	TYPE OF CONTRACTUAL PAYMENT	WHERE PERFORMED	WHT TREATMENT	LEGISLATIVE BASIS
1st TIER – TULLOW PAYING SUBCONTRACTORS				
A	Works, Services & Rentals specific to Petroleum Operations	INSIDE GHANA		S27(1) PITL & Article 12.3 DWT / WCTP PA
	Resident subcontractor / non-resident subcontractor with Permanent establishment		5% WHT as Final tax	S27(3) PITL
	Non-resident subcontractor		5% WHT as Final tax	S27(3) PITL
B	Works, Services & Rentals specific to Petroleum Operations	OUTSIDE GHANA		S3 ITA 2015 (Law 896) & Article 12.3 DWT / WCTP PA
	Resident subcontractors		No WHT, subject to domestic tax	S3(2)(a) ITA 2015 / Article 12.3 PAs
	Non-resident subcontractor with Permanent establishment		No WHT, subject to domestic tax if receipt of PE	S3(2)(b)(ii) ITA 2015 / Article 12.3 PAs
	Non-resident subcontractor		No WHT or further tax obligations in Ghana	S3(2)(b)(ii) ITA 2015 / Article 12.3 Pas

Analysis of applicable WHT regime post Cascading Ruling

	TYPE OF CONTRACTUAL PAYMENT	WHERE PERFORMED	WHT TREATMENT	LEGISLATIVE BASIS
1st TIER – TULLOW PAYING SUBCONTRACTORS				
C	Provision of Goods	INSIDE & OUTSIDE OF GHANA		S3 ITA 2015 (Law 896) & Article 12.3 DWT / WCTP PA
	Resident subcontractors		No WHT, subject to domestic tax	S3(2)(a) ITA 2015 / Article 12.3 PAs
	Resident subcontractor / non-resident subcontractor with Permanent establishment		No WHT, subject to domestic tax if receipt of PE	S3(2)(b)(ii) ITA 2015 / Article 12.3 PAs
	Non-resident subcontractor		No WHT if Tullow is Importer of Record and no further tax obligations in Ghana	S3(2)(b)(ii) ITA 2015 / Article 12.3 PAs
D	Services not specific to Petroleum Operations	INSIDE & OUTSIDE OF GHANA		S3 ITA 2015 (Law 896) & Article 12.3 DWT / WCTP PA
	Resident subcontractors		7.5% and subject to domestic tax	S3(2)(a) ITA 2015 / Article 12.3 PAs
	Resident subcontractor / non-resident subcontractor with Permanent establishment		7.5% and subject to domestic tax if receipt of PE	S3(2)(b)(ii) ITA 2015 / Article 12.3 PAs
	Non-resident subcontractor		20% if sourced in Ghana, rate subject to DTA	S3(2)(b)(ii) ITA 2015 / Article 12.3 Pas
				NOTE: N/A where TGL procuring goods or services in relation to Exploration, Development or Production activities. Not considered applicable as all 3 rd party spend relates to Petroleum Operations.

Analysis of applicable WHT regime post Cascading Ruling

	TYPE OF CONTRACTUAL PAYMENT	WHERE PERFORMED	WHT TREATMENT	LEGISLATIVE BASIS
	2 nd TIER – SUBCONTRACTORS PAYING SUB-SUBCONTRACTORS			
E	Payment by resident & non-resident subcontractor with PE in Ghana to resident sub-subcontractor	INSIDE GHANA		ITA 2015 (Law 896)
	Supply of goods		3% WHT (subject to exceptions)	First schedule, Para 8(c)(v)
	Supply of works		5% WHT (subject to exceptions)	First schedule, Para 8(c)(vi)
	Supply of services (including rentals)		7.5% WHT (subject to exceptions)	First schedule, Para 8(c)(vii)
			NOTE: WHT not final. Resident subcontractors taxable Non-residents with PE taxable only if income attributed to PE	SYNDICATE ARRANGEMENT: ITR 2016 (L.I. 2244) Reg 27(1)(c) – 27(5) Subcontractor may form a “Syndicate” arrangement with affiliates & sub-subcontractors at 2 nd Tier resulting in no WHT on payments by sub-contractor to members of syndicate for provision of works & services only .

Analysis of applicable WHT regime post Cascading Ruling

	TYPE OF CONTRACTUAL PAYMENT	WHERE PERFORMED	WHT TREATMENT	LEGISLATIVE BASIS
2 nd TIER – SUBCONTRACTORS PAYING SUB-SUBCONTRACTORS				
F	<p>Payment by resident & non-resident subcontractor with PE in Ghana to non-resident sub-subcontractor</p> <p>Management, consulting & technical service fees</p> <p>Goods, works and services</p> <p>Rentals</p>	OUTSIDE GHANA	<p>20% WHT (subject to DTA)</p> <p>20% WHT (if sourced in Ghana and subject to DTA). Exception: Goods not subject to WHT if the importer of record is Tullow.</p> <p>15% (subject to DTA)</p>	<p>ITA 2015 (Law 896) / ITR 2016 (L.I. 2244)</p> <p>First schedule, Para 8(c)(viii)</p> <p>First schedule, Para 8(c)(vii)</p> <p>First schedule, Para 8(b)(vii)</p> <p>SYNDICATE ARRANGEMENT: ITR 2016 (L.I. 2244)</p> <p>See above – same analysis for works and services (including rentals)</p>
SHIPPING SERVICES				
G	Payments in respect of shipping services	INSIDE GHANA	<p>Payment from Tullow subject to 5% final WHT. However, any goods/reimbursement portion will be treated as per the above rows under goods.</p> <p>Payment from the resident/local lessee (i.e. tax resident subcontractor to the non-resident lessor) is subject to 20% WHT or other DTA rate</p>	<p>S3 ITA 2015 (Law 896) & Article 12.3 DWT / WCTP PA</p> <p>Article 12.3 PA</p> <p>S27(3) PITL</p> <p>S27(3) PITL</p>

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