

STATEMENT OF PRACTICE (SP 16/18)
TAX DEDUCTION AT SOURCE ON COMMISSION

Section 111 of the Income Tax Act

1. Introduction

Following amendment brought to Section 111 of the Income Tax Act by Finance Act 2018, Tax Deduction at Source (TDS) is applicable on Commission payable by any person other than an individual, with effect from 9 August 2018. This Statement of Practice is intended to address administrative and operational challenges that may arise from the interpretation and scope of the TDS on commission.

2. What is commission?

“Commission” is defined in Section 111A (1) of the Act as including any sum paid or payable to an agent in relation to a commercial transaction. This definition is inclusive and must therefore be interpreted as having a rather wide meaning.

Commission thus involves any payment, received or receivable, directly or indirectly by a person acting on behalf of another person or as intermediary between the supplier and the recipient in a commercial transaction. TDS in relation to commission would therefore include the following:

- Services rendered, provided it is not professional services already subjected to tax deduction at source or services rendered by an individual whose income is from employment or office which is subject to tax deduction under the PAYE system.
- Services rendered in the course of buying and selling of goods.
- Transactions relating to any asset, valuable article or thing, other than securities.

However, TDS is not applicable in a case where sales are performed directly without the involvement of a third party.

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Also tax deduction at source on commission under Section 111 does not apply to bulk discounts, incentives offered to distributors and the likes.

3. Obligation to deduct tax

Tax has to be deducted by any person, other than an individual, who is responsible for paying any income by way of commission to a resident or a non-resident performing agency services in Mauritius.

4. Timing of deduction

Deduction is to be effected at the time any amount or sum by way of commission is made available to the payee by payment of such income in cash or cheque or draft or by any other mode, or by crediting the account of the payee or otherwise dealing with the amount in his interest or on his behalf.

5. Rate of TDS

The rate applicable is 3% and shall be computed on the gross amount exclusive of any VAT.

6. Circumstances where TDS is not applicable

TDS is not applicable in the following circumstances:

- Where the amount of tax to be deducted is less than 500 rupees.
- Where payments of commission are made to persons specifically exempted from income tax.
- Where a payee proves to the satisfaction of the Director-General that he is not chargeable to income tax for a particular income year and the Director-General thereafter issues a direction to the payer under Section 111H not to deduct tax for that income year.

7. TDS where commission is retained

Deduction of tax is also applicable where commission is retained by the consignee / agent as such retention amounts to constructive payment of the same to the latter by the consignor or principal. In such a case, TDS is required to be made from the amount of commission. Similarly, TDS applies on the gross commission and not on the net commission (i.e net off between payer and payee if both are engaged in a

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service of transactions). Therefore, the consignor/principal has to remit the tax deductible on the amount of commission income to the Director-General within the prescribed time.

8. Payments not subject to TDS

The following payments are not subject to TDS:

- Commission payable to a non-resident for agency business performed outside Mauritius.
- Bank guarantee commission.
- Credit card or debit card commission for transactions between the merchant establishment and acquirer bank.
- Commission on mobile financial banking services.
- Commission on other banking services.
- Payments to retailers/distributors on sale of prepaid cards and e-vouchers.
- Commission on electronic wallet payments.

9. Statement of tax deduction to payee

Every payer has to give a statement to the payee not later than 15 August every year in respect of commission made available to him during the preceding income year, as per the Eight Schedule to the Income Tax Regulations.

10. Statement in respect of commission to be submitted to Director General.

Every payer has to submit to the Director General not later than 15 August every year, a statement in respect of commission made available during the previous income year in the same format as mentioned in Paragraph 9 above.

It is to be noted that the statement has to cover all commission made available irrespective of whether tax was deducted or not.

Mauritius Revenue Authority

12 February 2019

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