

## **Twenty Percent (20%) Withholding of Taxes on Sitting Allowances across Board in the University of Cape Coast: A Matter of Convenience or Legality?**

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### **Introduction**

There is the need to raise revenue for national development. Revenue for national development are often raised from taxes. One of such taxes is withholding tax which is often applied to income obtained in the formal setting. Example of such income is sitting allowance. Sitting allowance is the remuneration given to certain office holders after they have participated in a statutory meeting.

Until 26<sup>th</sup> November, 2020, sitting allowances in the University of Cape Coast had been subject to withholding tax at a flat rate of ten percent (10%) across board. The narrative, however, changed when management on the above date issued a letter referenced vc/F/9, directing that with immediate effect, all sitting allowances in the University should be taxed at twenty percent (20%) instead of ten percent (10%). According to the letter, the management directive was in reference to an Audit Observation Memorandum issued by External Auditors on the 2019 Financial Statement of the University in which the Auditors observed that the University had withheld and paid 10% tax on allowances paid to the University Council and its Sub-Committees, Members of Committees at Central Administration, Colleges, Faculties, Units and Departments instead of 20% as stipulated in the Income Tax Act, 2015 (Act 896).

The External Auditors, according to the letter, cited Section 116(1)(a)(i) of the Income Tax Act, 2015 (Act 896) which stipulates that a resident person shall withhold tax at the rate provided for in paragraph 8 of the First Schedule where that person pays a service fee with a source in the country to a resident individual as fees or allowances to a resident director, manager, trustee or board member of a company or trust. Paragraph 8 (c) (i) of the First Schedule of the Income Tax Act, 2015 (Act 896) further demands that in the case of fees or allowances paid to a resident director, manager, trustee or board member of a company or trust, the applicable withholding tax rate shall be twenty percent (20%), according to the Memorandum. Thus, the said Audit Observation Memorandum raised questions about the legitimacy and appropriateness of withholding taxes on allowances, particularly, sitting allowances in the University at ten percent (10%) rather than twenty percent (20%).

While it is true that the University erred in subjecting all sitting allowances in the University to 10% across board, it begs to ask if the University is not erring once again, this time on the side of caution, by taxing all sitting allowances at 20%. Was it a matter of convenience or legality that Management of the University directed the use of twenty percent or it was meant to be a penance for hitherto wrongly applying ten percent across board in the University? Again, while the External Auditors were right that the University should not have taxed allowances paid to the University Council and its Sub-Committees at 10%, were they right to have included Members of Committees at Central Administration, Colleges, Faculties, Units and Departments?

The objective of this article is to analyze the Auditors' interpretation of Section 116(1)(a)(i) of the Income Tax Act, 2015 (Act 896) as contained in the Audit Observation Memorandum issued by External Auditors on the 2019 Financial Statement of the University which precipitated the directive by management for the application of twenty percent withholding tax rate on sitting allowances payable in the University, with the view to presenting a contrary view of the provision in a bid to convince management to discontinue the widespread withholding of taxes on sitting allowances in the University at twenty percent.

### **Levels of Management**

There are universally three levels of management, namely, top level, middle level and lower level. The top level management generally represents the highest level of management in an organization, immediately below the board of directors, having the ultimate source of authority in the organization. The top level management is often the level making senior management decisions since it usually consists of the Managing Director or Chief Executive Officer (CEO), Deputy Managing Director, the Chief Operating Officer (COO), managers from various operational levels, marketing, finance, etc. Some of the functions performed at this level include the laying down of policies and objectives for the organization, strategizing the plans of the organization and aligning competent managers at the middle level to carry them out.

The middle-level managers are semi-executives and are made up of branch managers. They could be divided into senior and junior middle-level management if the organization is big. They coordinate the responsibilities of the sub-units of the firm and assess the efficiency of lower-level managers. Their principal task is to bring out the plans formed by the top management to the lower management and feedback to the top management.

The lower level of management is also referred to as the supervisory or the operative level of managers. They oversee and direct the operative employees, spending most of their time addressing the functions of the firm, as instructed by the managers above them.

### **Discussion**

The basis for the application of twenty percent rate of withholding tax on all sitting allowances in the University of Cape Coast is Section 116(1)(a)(i) of the Income Tax Act, 2015 (Act 896).

Suffice it to say that in construing Section 116(1)(a)(i) of the Act, reference needs also to be made to Section 133, which interprets a “manager”, in relation to an entity, to mean a councillor, director, manager, member, officer or other person who participates or may participate, whether alone or jointly with other persons, in making senior management decisions on behalf of the entity. Clearly, sections 116(1)(a)(i) and 133 combined do not just refer to persons who make management decisions but on the caliber of management decision making by persons for which allowances paid are subject to 20% withholding tax. These are persons in the capacity to make senior management decisions for the entity. Thus, the current practice of 20% withholding on all sitting allowances poses legal challenges, particularly, in relation to students’ allowances, and members of Committees at Central Administration, Colleges, Faculties, Units and Departments when those committees are not in the capacity to make senior management decisions.

#### **Withholding Taxes on Students’ Sitting Allowances**

Statute 12 of the Statutes of University of Cape Coast, 2016 recognizes that the University shall have Junior Members, comprising the students for the time being enrolled in the University. These Junior Members are given full scope to manage their own affairs and participate as fully as possible as is consistent with the good order and discipline in the governance and running of their affairs. However, the Statutes provide that they shall be governed by the Statutes and all policies, rules and regulations as may be issued from time to time by Council, Academic Board or any of its Committees, the Vice Chancellor, the Dean of Students, the Hall Master/Warden or such other authority as may govern any aspect of their stay in the University. The Junior Members pay sitting allowances to themselves for meetings held as members of various committees they have established to allow them run their affairs smoothly, and these allowances are withheld at twenty percent tax as though they were directors, managers, members, officers or other persons making senior management decisions on behalf of the University. Except the representatives of undergraduate and postgraduate students of the University who participate on the University Council (the highest decision making body), hence qualify as council members to have their sitting allowances withheld at twenty percent at that level, all student committees cannot be said to be making senior management decisions. In others words, in the context of the Income Tax Act, the student representatives on council qualify to have their sitting allowances subject to twenty percent when Council is paid sitting allowances for its meetings. However, if they are on any student committee and paid sitting allowances for meetings held, arguably, those allowances should not be subject to twenty percent withholding tax, but ten percent (10%) as stipulated under Paragraph 8 (c) (ii) of the First Schedule of the Act, else this would mean unfair and inequitable application of the Act.

### **Withholding Taxes on Sitting Allowances of Non-Senior Management Committees and Boards**

Notwithstanding that the University's Statutes do not define senior management, Statute 37 provides that the Directorate of Information Technology Services (DICT), in providing and maintaining the ICT infrastructure of the University, shall advise senior management on strategic systems conversions and integration in support of institutional goals and objectives.

Clearly, Statute 37 recognizes that there is a certain body referred to as senior management, beyond the Directorate's level which has to make senior managerial decisions. Thus, undoubtedly, the Director, including all other staff members of the Directorate, is neither senior management nor making senior management decisions but is only providing advice for that senior management decision.

Statute 4 stipulates that the governing body of the University shall be the Council of the University of Cape Coast whilst statute 4.6 states that "Council may enact statutes to prescribe or regulate as the case may be:

- (a) Any matter which is required by the Law to be prescribed by statutes
- (b) The power and functions, constitution and terms of membership of such bodies as Council or the Academic Board may think appropriate to establish..."

Furthermore, the Statute provides that the Academic Board may recommend to Council amendments to the Statutes and/or Schedule(s) to the Statutes. Any such proposals for amendments to the Statutes and/or Schedules shall be made at a meeting of the Academic Board. It is without doubt that the University Council being the governing body, is synonymous with Board of Directors in the case of a Company while the Academic Board (including its statutory committees) is akin to senior management, being next or a step below the Council.

Statute 16.1 spells out that the University shall have such academic and administrative divisions as Council may establish. Whereas 16.3 empowers Council to establish on its own the administrative divisions of the University such as the Office of the Registrar, Directorates, Sections, Units; Statute 16.2 allows Council to establish the academic divisions of the University such as Colleges, Faculties and Schools, Library, Directorates, Institutes, Departments and Centres and Units on the recommendation of the Academic Board. These College Boards are mandated to determine, subject to the approval of the Academic Board, all matters relating to the progress of students following schemes of instruction, study and research within the College and to keep appropriate records on them. The Statutes further provide that the Statutory Committees and Faculty/School Boards may, subject in each case to review by the Academic Board, make rules for their own procedures and for the exercise of the powers assigned or delegated to them by or under any regulations of the Academic Board. Undoubtedly, these divisions cannot be said to be making senior management decisions other than the Academic Board and Council themselves. Accordingly, withholding taxes on the sitting allowances paid to such committees at twenty percent would not be appropriate.

### **Implications of the Withholding Taxes on Sitting Allowances at Twenty Percent (20%)**

The withholding of taxes on students' sitting allowances and persons not making senior management decisions at twenty percent amounts to unfair and inequitable application of the Income Tax Act at the detriment of the students and the non-senior management members. Thus, these persons are over taxed. The wrong application of Section 116(1) (a) (i) of the Income Tax Act, 2015 (Act 896) may in future be the subject of another audit query.

### **Recommendations**

1. The University should consider issuing a directive to exclude the withholding of sitting allowances payable to students on their committee meetings from the twenty percent (20%) tax rate, but rather apply ten percent (10%).
2. Council and its standing committee as well as the Academic Board and its statutory committees should continue to be taxed at twenty percent (20%) withholding tax on their sitting allowances.
3. The University may consider an application to the Commissioner-General for a class ruling on the matter.

### **Conclusion**

Whist it may be convenient for the University to withhold taxes on all sitting allowances at twenty percent, it is definitely not legitimate to do so as doing so is at variance with the Income Tax Act which seeks to ensure fair and equitable taxation of persons, taking into cognizance the concept of progressive taxation.

### **References**

- Letter from the Office of the Vice-Chancellor, referenced vc/F/9.  
Income Tax Act 2015, Act 896 Section 116(1)(a)(i) and Section 133  
Paragraph 8 (c) (i) of the First Schedule of the Income Tax Act, 2015 (Act 896)  
Paragraph 8 (c) (ii) of the First Schedule of the Income Tax Act, 2015 (Act 896)  
University of Cape Coast Statutes 2016 Statute 4, Statute 12, Statute 37 and Statute 16.