

## CHAPTER 8.3 : WITHHOLDING TAX ON WINDFALL GAIN

### Definition of Windfall Gain (Sec. 2-Ja1)

“Windfall Gain” means lottery, gifts, prizes, baksis, winning (jitaury) or any benefits/gain received suddenly.

### Requirement of Withholding of Tax (Sec. 88A-1)

A person making payment of windfall gain shall withhold tax at 25% of such payment.

### Exemption of Windfall gain (Sec. 88A-2)

A person is exempted from windfall gain tax on prizes of national or international level up to Rs. 500,000 awarded in recognition of his/her contribution in the field of literature, arts, culture, sports, journalism, science, technology and public administration.

### Power of GON to exempt Windfall gain tax on Prizes up to any amount

#### (Restrictive Clause to Sec. 88A)

Government of Nepal can waive windfall gain tax on prizes of national or international level up to any amount awarded to a person in recognition of his/her contribution in the field of literature, arts, culture, sports, journalism, science, technology and public administration.

The waiver is the exemption from Windfall Gain tax itself instead of requirement of withholding of tax, means, and the amount does not attract any tax as per Income Tax Act.

## CHAPTER 8.4 : WITHHOLDING TAX ON CONTRACT PAYMENT

### Conditions to be satisfied (Sec. 89-1)

If all the following two conditions are satisfied, there must be the withholding of taxes u/s 89 of the Act:

- a. The payer shall be a resident person and
- b. The payment shall be made for contract defined by the clarification clause of Section 89

### Definition of Contract or Agreement- Clarification Clause to Sec. 89

Contract for the purpose of Sec. 89 means the following contracts:

- a. Contract related to the supply of goods or human resources, or
- b. Contract related to the construction, installation, or establishment of tangible asset or structure,
- c. Other works prescribed as contract by the department, and
- d. If the Contract related to the construction, installation, or establishment of tangible asset or structure includes the *Service element, the payment related to such service element shall also be considered as part of Contract payment.*

### WHT on Contract payments

In case the conditions as above are satisfied, a person shall withhold tax at the rate 1.5% in case the contract payments exceed Rs. 50,000.

That means, a resident person is required to withhold tax on contract payments above Rs. 50,000 at 1.5%.

### Calculation of Threshold of Rs. 50,000

The payment of more than Rs. 50,000 is calculated by including all the payments made within last ten days for the same contract to the same person or his associated person, *which means payment made in moving 11 days period in total including the date of payment.* But computation of Rs. 50,000 excludes duties and taxes associated with the payment. For example, if any contract payments constituting of Rs. 90,400 in a contract having 100% excise and 13% VAT; the contract payment is Rs. 40,000 only, which is not more than Rs. 50,000. So, no withholding is required for the payment.

The provision is applicable where the payment for the contract is higher than Rs. 50,000 irrespective of the volume of total contract price of a single contract.

Suppose a contract price is Rs. 200,000 but the part payments are made in five monthly installments of Rs. Rs. 40,000 each. In this case the provision of withholding tax is not applicable on payment of the contract price. But suppose the monthly installments are fixed as Rs. 60,000, Rs. 50,000, Rs. 40,000 and Rs. 50,000; in the case the withholding tax is applicable *in whole payment except the payment of Rs. 40,000.*

### WHT Tax Rate while making Contract payment to Nonresident person (Sec. 89-2)

In case of contract related following payments to a nonresident, the WHT rate is different than as specified above and is as follows:

- |   |                      |
|---|----------------------|
| a. Repair and Other Contract or Agreement of Aircraft -                   | 5%                   |
| b. Insurance Premium paid to Nonresident Insurance Company                | 1.5%                 |
| c. In other cases except for above TWO, in case the department prescribes | As prescribed by IRD |

### Author's Comment

Relevance of Section 89 for withholding of tax on such payments to non-resident; Payment not having source in Nepal:

If we recall the tax inclusions for assessable Income (u/s 6 of the Act), non-resident persons are required to pay tax on such payments that have source in Nepal, and in no other incomes derived by such non-resident during the income year.

If we recall Sec. 89 (3), the contract related to repair of aircraft attracts WHT at 5% even if the repair service is delivered outside Nepal as the Section requires withholding of Tax on payment made by resident person and the conditions of payments being Nepal-sourced not required.

In this case, if a non-resident delivers service outside Nepal (i.e. the Income of non-resident will not be having source in Nepal) is required to pay tax at 5% (Since all the payments attracting WHT are Final for Non-resident) even when the income is not taxable at all as per Sec. 6, which is the charging Section of Income Tax. Such anomalies in the Act shall be addressed.

But if we move towards the WHT requirement in case of insurance premium, the provisions require WHT no matter where the risk of such insured located. In case of insurance premium, the payment would have source in Nepal only when risk associated to such insurance policy is situated within the state of Nepal, that means withholding of tax for insurance of transportation of goods outside Nepal attracts TDS, though the payment is not having source in Nepal, but if the risk is situated in Nepal, then the provision addresses the possible chance of tax avoidance. The Act shall be amended in this regard to address such anomalies.