



NIGERIAN CONTENT DEVELOPMENT & MONITORING BOARD (NCDMB)
GUIDELINE ON DEDUCTION OF 1% NIGERIAN CONTENT DEVELOPMENT FUND
(NCDF) LEVY

What is the Legal Basis for the Deduction of 1% NCDF Levy?

The basis is section 104 of the Nigerian Oil & Gas Industry Content Development (NOGICD) Act 2010, which provides *inter alia*:

(1) A Fund to be known as the Nigerian Content Development Fund (the "Fund") is established for purposes of funding the implementation of Nigerian content development in the Nigeria oil and gas industry.

(2) The sum of one per cent of every contract awarded to any operator, contractor, subcontractor, alliance partner or any other entity involved in any project, operation, activity or transaction in the upstream sector of the Nigeria oil and gas industry shall be deducted at source and paid into the Fund.

(3) The Fund shall be managed by the Nigerian Content Development Board and employed for projects, programmes, and activities directed at increasing Nigerian content in the oil and gas industry

Who is the Responsible Party with obligation to deduct and remit the statutory 1% NCDF levy?

Every company/entity awarding an upstream contract or sub-contract emanating from an upstream Oil or Gas contract is obligated to deduct the applicable 1% levy and remit to the Fund

What is the effective commencement date of the 1% NCDF levy deduction and remittance?

22 April 2010

What is the effect of non-receipt of response from NCDMB on any question raised by an awarding entity on the application of the deduction?

There is no effect whatsoever. However, NCDMB always strive to respond to all legitimate issues/questions posed on the NCDF and indeed any other matter.



How does the mandatory deduction of the NCDF levy apply to any contractual arrangements executed prior to April 2010?

Not applicable. However, any roll-over, renewal or extension of the contract on a date from the effective date (April 22, 2010) or contract amendments/revisions from that date shall apply

Please clarify the deduction of 1% levy from ongoing upstream contracts/projects which were awarded to contractors before the effective date of the Act (22 April 2010)

Deductions are not applicable in this regard.

Should the Contractor in turn deduct 1% from subcontractors on such projects awarded before the Act?

No

What value of sub-contracts should the 1% NCDF levy apply to?

It applies to all contract value without any minimum limit. It is worthy of note that whereas the Board participates in Tenders with minimum value of US\$1 million, deductions and remittances into the NCDF is tenable to all contracts without minimum threshold

Does the NCDF deduction apply to all transactions emanating from an upstream contract, project or activity, regardless of the nature?

Yes, it applies to all contracts and sub-contracts of any nature emanating from the upstream sector

Should the 1% deduction apply to contracts and sub-contracts awarded to community suppliers?

Yes, all contracts and contractors irrespective of size of contractor or value of contract are tenable but Corporate Social Responsibility (CSR) projects/contracts or any remedial projects/contracts awarded on the basis of Agreement(s) with NCDMB to augment infractions or shortcomings may be exempt as determined by NCDMB



In the event that the employer (that is the contract-awarding entity) has directly paid the tenable 1% levy into the NCD Fund, will there be a further deduction of 1% from the contractor's invoices from the same employer?

Deduction should only be made once by an awarding entity on behalf of its contractor. It is pertinent to mention that deductions and remittances are made on the invoicing model as at now, which implies that deductions and remittances are made on the basis of payments made on invoices and as they fall due

Should the Contractor's sub-contractor and suppliers be deducting the 1% from their lower-tier sub-contractors and suppliers, some of which may well be supplying non-petroleum industries under the same contract?

Yes, provided the deductions and remittance emanate from the initial upstream project/contract being sub-contracted down the line. The deductions and remittances shall continue to apply to infinity (that is the end of the contracting chain)

Which of the following variation types should be affected by NCDF deductions?

- i. **Additional work to original scope of work**
- ii. **Extension of time for any reason whatsoever**
- iii. **Claims due to work stoppage**

All variations that escalate contract price are applicable to deduction and remittance to the NCDF

Should the employer (that is the contract-awarding entity) make 1% deduction on variation orders on projects awarded to contractor before the Act but approved after the Act bearing in mind that such variation orders are also governed by the same conditions of the main projects awarded before the Act?

Yes, to the extent of variation

Is the mandatory deduction and remittance applicable to extensions and variations made after 22 April 2010 to contracts entered into before 22 April 2010, where these extensions are the result of normal and foreseen growth in work within the scope of work (and falling within the contract ceiling) originally envisaged to be covered by the contract signed?

Yes, to the extent of the financial value of the contract variation. The extension or variation has an effective date that is post-Act and so is tenable and qualifying.



Who will bear the burden of the 1% levy deduction on sub-contracts on projects awarded to contractor post-Act for which contractor submitted commercial tender pre-Act, bearing in mind that the contractor did not consider the 1% NCDF levy in its commercials, and that sub-contractor may request for refund of the 1% deduction from its payment or factor it into its bid?

The sub-contractor has the primary obligation to pay the 1% levy while the awarding-contractor has the obligation to deduct and remit to the Board.

At what stage should the deduction be made – at the contract award stage or invoice-payment stage?

The Board granted concession to the Industry to apply the invoicing model for deductions and remittances. Hence, as long as the concession prevails, deductions and remittances shall be made at the invoice-payment stage.

In computing the levy, is it the product of the contract sum before taxes or after taxes?

It is the value of the Contract sum before taxes

How will the Board treat the issue of overpayment?

Reconciliation procedure is already in place by the Board to address the issue of claims for refund arising from excess remittances. It is important to stress that NCDMB is a reputable and responsible regulatory agency, which also focuses on development of the Industry. Refund can also be recoverable from future NCDF obligations of the entity to the Fund

Will remittance receipts be issued by NCDMB (similar to the treatment of VAT and WHT transaction) in a manner that such receipts could be on-transferred to vendors on whose behalf the deduction were made?

All deductions to NCDMB will be receipted by NCDMB. The new platform deployed by NCDMB has capacity to issue receipts to down-lines if the Schedules are properly populated and submitted to the Board and indicates the contractors/sub-contractors for which the remittances are made and the value thereof



Should the 1% levy deduction apply to Purchase Orders issued to foreign/overseas vendors?

Yes, deductions will apply to foreign/overseas vendors, provided the contract emanated from an Nigerian Oil & Gas industry upstream contract/project/activity. It is imperative to highlight that the objective of the Act is the growth of Nigerian content and domestication of Oil & Gas activities in-country.

Will the deductions apply to transactions taking place in the Free Trade Zone considering that such transactions are technically taking place outside Nigeria?

Deductions shall apply to all upstream contracts awarded within the territory of the Federal Republic of Nigeria including its territorial waters. The Board recognizes the legal framework of Free trade Zones and Exclusive Economic Zones. However, in the event that the transaction emanates from a Nigerian territory (including land, sea or air) or the good or service is eventually moved from the EEZ or FTZ into Nigerian territory (including offshore location, office of the contract-awarding or benefiting entity or land, sea or air location under Nigerian jurisdiction, the NCDF levy shall apply fully

Is manpower contract and manpower cost applicable to the 1% NCDF levy?

The levy is not applicable to salaries and allowances of contracted staff but to the margin charged or provided in the manpower contract on an upstream Nigerian Oil or Gas project/activity/contract. However, where the levy is deducted and remitted on the full contract value by the contract-awarding entity or deducted on full contract value but not remitted for the period prior to this Guideline, the tenable levy shall be the full levy so deducted. Hence, no back-claims or recovery is allowed for deductions and/or remittances already made on full manpower contract value for prior periods.

Does NCDF levy apply to contracts for goods and/or services with Government-regulated prices such as petrol?

NCDF levy does not apply to contracts for goods and/or services tied to Government-regulated prices, provided the value of the contract corresponds to the actual value of the regulated prices. However, where there is margin on such contracts, the levy shall apply on the margin or administrative charge(s), whichever is higher. However, items with deregulated prices, such as diesel, are deductible at



full contract value. It is important to also emphasize that NCDF levy is applicable on contracts for air charter on full contract value whilst air fares are deductible only on the margins charged by the contractor if a consultant or agent is engaged to provide the service

Is NCDF levy applicable to sundry office expenses and maintenance, salaries and emoluments of companies in the Nigerian Oil & Gas upstream sector?

The levy does not apply to sundry office operations and salaries and emoluments of permanent staff of Nigerian Oil Service Providers, which are all exempt from deductions by the Board. Staff training and medicals are also exempt. However, this exemption does not apply to International Oil Companies on their upstream projects and activities.

What is the applicable rule on goods and services procured over the counter?

Transactions conducted over the Counter (OTC) represent direct purchases made by the company, with payment usually executed directly with cash or other liquid means by a staff of the company, and so are exempt from NCDF levy. They are deemed direct purchases which are not contract-based and do not involve a third party.

What is the Board's definition of Reimbursable transactions and clarify if reimbursable transactions qualify for deduction of NCDF levy?

Reimbursable transactions have become an omnibus terminology used by Covered Entities to basket several transactions of unrelated nature. Consequently, there is no basic treatment for reimbursable transactions and the Board treats any item so designated by a Covered Entity on its own merit and peculiarities.

What treatment is applicable to transactions involving payments to Government and/or its agencies?

All payments made to Government or any ministry, department or agency of Government is exempt from NCDF levy. The payments comprise Custom Duties, NDDC levy, Education Trust Fund levy, Stamp Duty, NPA Anchorage, Value Added Tax (VAT) and Corporate Tax, among others, provided the VAT is not an integral part of the contract value. Where VAT is quoted as an integral part of the contract value, as specified in the contract document, it is not exempt since section 104 defines





applicable levy as 1% of contract value. Consequently, With-holding Tax which is also an integral part of a contract sum is not exempt from NCDF levy. It is also important to highlight that NCDF levy is applicable on all such payments to Government or any of its MDAs through a third party, but the applicable levy shall be on the commission or margin paid to the third party to execute the transaction.

What is the status of transactions with subsidiaries and intra-company Treasury operations?

Transactions involving companies within the same Group are treated as inter-company transactions are exempted from NCDF levy deduction. However, please note that the applicable term here is transaction BUT exemption is not tenable if the mode of transaction is by means of a valid contract. Transfers made within the company from one bank account to another bank account are also exempted from NCDF levy. Treasury operations involving funds transfer from one company to another company within the Group are treated as Treasury Operations and are likewise exempted from NCDF levy. However, payments made by one company to a third party for contracts or transactions on a project/activity of another company within the Group are fully tenable for NCDF levy deduction and remittance, given that refunds for such transfers/payments will be settled within the inter-company rules already established above and have been exempted.

Do advance payments made to contractors qualify for NCDF levy deduction and remittance?

Advance payments made to contractors represent a milestone payment and are 100% liable for deduction, with due recognition of the nature of the transaction and the basket the transaction falls under, as defined in this Guideline. Hence, advance payments are not exempt from the levy, except where the transaction at play is not qualifying.

What is the status of payments made on lease transactions?

Lease payment on qualifying transactions are eligible for NCDF levy deduction and remittance.

Do payments made to contractors for exploration activities on Oil and/or Gas projects qualify for deduction and remittance?



Exploration and production activities are hard-core upstream transactions and are covered by the provisions of section 104 of the Act. Hence, they are fully qualifying for NCDF levy deductions and remittance. However, the Board may, at its own discretion, enter into specific Scheme of Arrangement or Accommodation with a Covered Entity which requests for deferred remittance of the obligations to assure successful outcome of the exploration activity and development into producing fields, provided the Scheme will further develop Nigerian content and help the growth of the Nigerian Oil and Gas.

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