

WHAT AM I ALLOWED TO CLAIM AS AN EXPENSE?

For every organization and individual person carrying on business, it is inevitable that expenses will be incurred in order to derive revenue. The expenses so incurred should reflect the true state of affairs of a business person in the sense that not all revenue generated is simply subject to tax but rather revenue that is net of expenses.

Taking the above into consideration and putting this matter into context, revenue authorities around the world will usually prescribe certain provisions to govern what can be claimed as an expense and what is not allowed to be claimed as an expense. In Kenya, the provision for allowable expenses is provided for under Section 15 of the Income Tax Act Cap.470 (ITA).

The governing principle under this provision is that all expenses incurred by a business should be wholly and exclusively incurred for the production/generation of income. This means that, one cannot haphazardly claim expenses in the name of his/her business with an intention of reducing the taxable revenue. Wholly and exclusively means that one should be able to demonstrate that an expense has been incurred in its completeness and only with regard to the business for the purposes of ensuring that the business is able to generate income. The matching concept of accounting should be observed, ensuring that revenue earned is matched to the expenses accrued.

Delving further into Section 15 of the ITA, various expenses have been provided as being allowable for tax purposes. Key among these include: -

- i. Bad debts which the Commissioner of Income Tax (the Commissioner) considers to have become bad and doubtful. The decision of the Commissioner is pegged on the guidelines provided under Legal Notice 37 of 2011,

- ii. Capital allowances provided under the ITA, which are allowable as deductible expenses. The capital allowances include wear and tear deductions, industrial building allowances, investment deduction, farmworks deduction and mining deduction,
- iii. An entrance fee or annual subscription paid during an year of income to a trade association which has made an election under Section 21(2) of the ITA,
- iv. Just and reasonable expenses as may be considered by the Commissioner for the purposes advertising and promotion,
- v. A deficit arising from the determination of taxable income which is allowable for that year of income and the next nine succeeding years of income. An extension to carry forward the deficit can be sought by making an application to the Minister of Finance upon recommendation by the Commissioner,
- vi. Cash donations to charitable organizations which are exempt from tax and subject to the conditions of Legal Notice 101 of 2007.

The expenses mentioned above represent only a few examples of the expenses that can be claimed under Kenya's current tax legislation. However, the important questions to keep in mind before claiming expenses is their nature i.e.

- i. Are they revenue in nature or capital in nature?, and
- ii. Have they been incurred wholly and exclusively for furtherance of business?

It is worth noting that the onus to demonstrate that an expense has been incurred wholly and exclusively to generate income is placed on the person looking to claim the expense. As such, it is important for taxpayers to always ensure that they have proper records to support the items they claim as expenses in their books.





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