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IS THE RELIEF PROVIDED FOR UNDER SECTION 15(3)(b) OF THE INCOME TAX ACT MORTGAGE RELIEF?

Section 15(3)(b) of the Income Tax Act (ITA) provides for the deductibility of “...the amount of interest not exceeding three hundred thousand shillings paid by him in respect of that year of income upon money borrowed by a person from one of the first four financial institutions specified in the Fourth Schedule and applied to the purchase or improvement of premises occupied by him during that year of income for residential purposes.

Provided that-

1. if any person occupies any premises for residential purposes for part only of a year of income the deduction under this paragraph shall be reduced accordingly; and
2. no person may claim a deduction under this paragraph in respect of more than one residence.”

From the above, the conditions that should be met include (i) the relief should be taken by the person who occupies the house, (ii) the occupation must be for residential purposes, and (iii) the funds must be applied for purchase or improvement of the said premises.

For the longest time, the Kenya Revenue Authority (KRA) in its guidelines has referred to the relief given under Section 15(3)(b) “mortgage relief”. From what we have observed, this has been interpreted by many to imply that one would only qualify for the relief if the interest in

question is with respect to a mortgage. On the contrary, we believe the correct position to be that this relief is on interest which includes interest on mortgage. In any case, interest on mortgages is no different from the interest on loans.

To further buttress this position, Section 2 of the ITA defines interest as “interest payable in any manner in respect of a loan, deposit, debt, claim or other right or obligation, and includes a premium or discount by way of interest and a commitment or service fee paid in respect of any loan or credit”. Therefore, the ITA gives a relief on interest payable in any manner in respect of a loan, that is utilized as prescribed in Section 15(3)(b) and does not restrict on the nature of interest provided the conditions stipulated are met.

Perhaps the matter highlighted above (regarding the name of the relief) is not contentious as one is likely to arrive at the same conclusion upon reading the ITA.

However, changing times have seen different home ownership purchase schemes emerge. Some of these schemes are not captured in Kenya’s tax laws. One of the common schemes in Kenya is off plan purchase schemes. The critical question therefore is – can an individual who acquires a loan for the sole purpose of purchasing a residential house enjoy the interest relief even when they cannot occupy the house given that it is yet to be completed and the ‘condition for occupation’ cannot be met as it is provided for in the ITA?

In our view, an individual should be able to enjoy the interest relief even in cases where they do not occupy the premises but can demonstrate their intent to occupy the premises after completion. This position may however, be challenged by the KRA due to failure by the individual to meet the condition for occupancy at the onset.

Further, a number of real estate developers are now adopting tenancy purchase schemes i.e. rent to own schemes where an individual pays the developer an agreed amount (“rent”) periodically until the full purchase amount is settled. In such schemes, the interest

component may be unidentifiable and as such the interest relief deemed not applicable. We are of the view that relief should be extended to these kind of purchase schemes.

Based on the foregoing, we are of the view that KRA needs to appropriately name this relief as owner occupier interest relief rather than mortgage relief in its guidelines. This will ensure that the public is not misguided as to the purpose of the relief as envisaged in the ITA. Secondly, the government should consider extending this relief to individuals who obtain financial assistance through other schemes where the interest element is not identifiable e.g. tenancy purchase schemes. Finally, KRA should consider allowing the occupier interest relief on interest arising from arrangements for the purchase of off-plan residential premises which are not ready for occupation.



For more information on this, please write to Mr. Lucas Kihara at LKihara@vivaafriallp.com or write to us at info@vivaafriallp.com

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