

Regulatory Alert

Newsletter



Ghana's High Court finds in favour of an individual taxpayer in a deductibility of mortgage interest case

On 20 December 2019, the High Court of Ghana (Commercial Division) by His Lordship Samuel K.A. Asiedu, J.A handed down its judgment in respect of a tax appeal in the case of **Kwasi Nyantakyi Owiredu v Commissioner General, Ghana Revenue Authority (Suit No. CM/TAX/0142/2019)** Unreported

Background and Facts

Kwasi Nyantakyi Owiredu (the "Appellant") has a mortgage with the Ghana Home Loans Limited. The Appellant, in a quest to take advantage of a mortgage interest relief under Sections 8 and 9 and Schedule 6 Paragraph 4(4) of the Income Tax Act 2015, Act 896 (as amended), proposed to his employer to deduct upfront, the interest paid on the mortgage on a monthly basis. The Appellant's employer indicated that it will only deduct the interest paid on the mortgage monthly provided the Appellant furnishes it with approval from the Commissioner-General of the Ghana Revenue Authority (the "Respondent").

The Appellant wrote to the Respondent expressing the view that he is entitled to an upfront deduction on interest paid on a mortgage monthly. The Respondent ruled that the Appellant is not entitled to deductions of mortgage interest paid monthly but could claim the deductions of the interest incurred during the year after the Appellant has filed his annual tax return for the tax year.

The Appellant unsatisfied with the ruling, the Appellant mounted an appeal at the High Court challenging the tax decision.



Theophilus Tawiah, MCIT, LL.M (Cardiff), LPC (De Montfort), LL.B (Leicester), B.Com (Cape Coast), is Managing Partner at WTS Nobisfields (WTS Ghana) and Law Lecturer at UPSA Faculty of Law.



Richard Amo-Hene, CIMA Adv Dip MA, ICA (Ghana), BA Economics (Cape Coast), is Tax Partner at WTS Nobisfields (WTS Ghana).

Arguments of the Appellant

- That mortgage interest is paid monthly and therefore should be deducted for each month.
- In view of the fact that the method of accounting for assessing the income from employment being on a cash basis, a person incurs an expense when that expense is paid for.
- Where a person can adduce evidence of mortgage interest paid for in a month, deduction should be allowed in a month.

Arguments of the Respondent

- Income of an individual from employment for a relevant tax year can only be determined after the end of the year when tax returns have been filed.
- Thus, it is filing of tax returns that the mortgage interest incurred during the year may be claimed.

Decision

The Court ruled against the Respondent. The Court held that the Appellant is entitled to an upfront deduction of mortgage interest paid by him at any time that his employer makes a qualifying cash payment to him, be it weekly, monthly or yearly. It further mentioned that the Appellant must not wait till the end of the year to enjoy the mortgage interest paid for tax purposes. Interest from mortgage is a temporal tax concession and not a tax relief.

Takeaway

- A person can only claim for mortgage interest for one residential property during the lifetime of that individual. This does not apply to commercial property or premises.
- A person may be able to claim for tax concession on mortgage interest monthly or quarterly or yearly depending on the terms of the mortgage agreement.
- A person must show proof to his employer in order to qualify for deduction of the mortgage interest.
- There must be a mechanism to check as to whether it is the first residential property of a person. This is not to defeat the policy rationale for the introduction of this tax concession.
- It is our considered position that the GRA must develop practice note for the purpose of regulating the deductibility of mortgage interest under Schedule 6 Paragraph 4(4) of the Income Tax Act 2015, Act 896 (as amended) to avoid the floodgate of inappropriate tax deductions and revenue leakage.
- It will be appropriate to limit mortgage interest on mortgages from approved financial institutions regulated and authorised by the Bank of Ghana.

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WTS Nobisfields
1 Pawpaw Street
East Legon
P. O. Box DT 1210
Accra, Ghana
T: +233 302500107 E: info@nobisfields.com
www.nobisfields.com

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