

Ghana's High Court decision allows monthly upfront mortgage concession for employees

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Background of the case

In *Kwasi Nyantakyi Owiredu Vs. Commissioner-General Ghana Revenue Authority*, the appellant, dissatisfied with the decision of Ghana's Commissioner-General (CG) to disallow him a monthly deduction of mortgage interest incurred on his residential property appealed the decision of the CG at the High Court.

In the opinion of the appellant, the decision of the CG to allow a deduction of mortgage interest only at the end of the year when the individual filed an annual personal return was not consistent with the relevant provisions of the *Income Tax Act, 2015, Act 896 (as amended)*.

This Alert summarizes the High Court's decision issued on 20 December 2019 and its implications.

The Court's decision

The High Court addressed whether it is permissible under the tax laws of Ghana for an employee who pays mortgage interest on his only residential premises on monthly basis to claim or deduct the mortgage interest paid in determining his monthly chargeable income.

The Court held in favor of the appellant and held:

- ▶ The cash accounting principle is applied in Pay As You Earn computations and it requires a deduction of mortgage interest on a monthly basis when the mortgage interest is paid monthly.
- ▶ Regulation 4 of L.I.2244 requires the deduction of mortgage interest in determining the chargeable income of an employee for the year of assessment albeit estimated.
- ▶ Mortgage interest is not a tax relief but a tax concession granted on a temporary basis to enable an employee to acquire a residential premise.
- ▶ Mortgage interest is a deduction permitted by law upon proof by the employee of the payment and not under the discretion of the CG unlike personal relief provisions.

Implications

Based on the Court's decision, employees must provide sufficient and appropriate evidence of their mortgage arrangement to their employers.

Based on such evidence, employers are to treat mortgage interest paid on a monthly basis on an individual's only residential accommodation as a deduction in determining the individual's monthly tax liability.

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