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PAYROLL BENEFITS Q&A (Kenya)

Employment benefits refer to perks or any additional considerations offered to employees over and above the basic salary to create a competitive package for a particular job position. All benefits are taxable at the higher of cost to the employer of providing the benefit and the fair market value.

In this week's Q & A session, we have gathered frequently asked questions on employment/payroll benefits:

1. Our organization has commenced a graduate recruitment program that intends to offer employment placements to fresh graduates from various varsities in Kenya. We contemplate providing a stipend, transport allowance, telephone allowance, commissions and bonuses to the graduates upon meeting certain performance standards. Kindly confirm if such benefits are subject to employment tax.

The graduate recruits qualify as employees for the purpose of employment tax.

As per the Income Tax Act of Kenya (ITA), the cash and non-cash benefits considered to be gains or profits from employment services include any wages, salary, leave pay, sick pay, payment in lieu of leave, fees, commission, bonus, gratuity, subsistence, travelling, entertainment, housing benefit, motor vehicle benefit, pension and other allowances received in respect of employment or services rendered,

In that regard, the benefits provided to the graduate recruits will be subjected to employment tax.

2. As a company in the brewing industry, we contemplate rewarding high-performing teams in the company with a crate of beer to each team member every month. What is the tax implication of such a contemplated reward from an employment tax perspective?

The Income Tax Act provides that a benefit, advantage, or facility of whatsoever nature with an aggregate value of more than KShs 36,000 per year or KShs 3,000 per month shall be taxable where granted in respect of employment or services rendered.

Therefore, the company should evaluate whether the aggregate value of the contemplated monthly reward of a crate of beer given to the team members exceeds KShs 3,000 per month. Where the aggregate value has surpassed the threshold, then this will be treated as a taxable employment benefit.

Additionally, in line with Section 15 of the VAT Act, 2013 the company will be deemed to have made a taxable supply in respect of the crates of beer given to the staff and hence output VAT will be applicable.



3. Our company has recently promoted certain high performing individuals to senior management level. As part of incentivising their new roles, the company's management has consented in availing residential premises for their use. Should we subject such benefit to employment tax?

The Income Tax Act provides for the taxation of housing benefit where an employee is provided with premises for residential purposes by the employer.

The value of the housing benefit is determined as follows for the various cadres of employees:

- Whole-time service director is the higher of; 15% of his employment income (excluding the value of those premises and capital gains), the market rental value and the actual rent paid by the employer.
- A director who is not a whole-time service director is the higher of; 15% of his total income (excluding the value of those premises and capital gains), the market rental value and the actual rent paid by the employer.
- Any other employee is the higher of 15% of his employment income excluding the value of those premises and the rent paid by the employer.
- Agricultural employee (including a whole-time service director) is 10% of his employment income.

If the total employment income exceeds KShs 600,000 p.a., the rental benefit is the higher of rent paid and the fair market value.

Notably, if the rental agreement with the third party is not at arm's length, the housing benefit will be the higher of fair market rental value or rent paid by the employer. Where the premises are owned by the employer, the housing benefit will be the fair market rental value of the premises.

Where an employee has been provided with furnished premises by the employer, the furniture benefit for purpose of computing employment income is 1% p.m. of the furniture cost.

4. Our organization has recently agreed on employment terms with a specific expatriate in the field of accounting and finance. The said terms include among other items the payment of requisite employment tax on behalf of that expatriate and payment of passages. Does the same qualify as an employment benefit?

Tax-free remuneration, i.e. payment of employment tax by an employer on behalf of the employee, gives rise to a taxable benefit.

Where an employer pays passages for an expatriate employee or reimbursement of tickets cost for passages to any place outside Kenya, this is not treated as a taxable benefit. However, as per the Income Tax Act, there are notable conditions to be considered, which are:

- The employee must have been recruited outside Kenya and is in Kenya solely for the purpose of serving the employer and is not a citizen of Kenya; and
- The cost should be strictly on payment of passages. Where the employee is given cash and is at liberty to spend for any other purpose, the amount will be a taxable cash allowance.

5. We have sent some of our employees to work on an ongoing project in a different county and we are currently giving them a daily allowance while out of town. How will this be treated?

Cash allowances are ordinarily taxable employment benefits. However, the Income Tax Act provides that the first KShs 2,000 per day expended by an employee for subsistence, travelling or entertainment in a period spent outside the usual place of work while on official duty will be deemed to be reimbursement and hence not taxable.

Noteworthy, where the amount is higher than KShs 2,000 per day, you will be required to provide the relevant supporting documents e.g., payment receipts, to adequately substantiate that the allowances are solely a reimbursement of amounts expended by the employee. Where supporting documents are not provided, any amount above the KShs 2,000 threshold shall be treated as a taxable employment benefit.

6. Our organization is a learning institution and we offer discounted school fees rates to our staffs' children who are students at the school and also pay school fees for their children who are in other learning institutions. Is this a taxable benefit?

School fees paid for the staffs' children shall not be treated as a taxable benefit to the employee, provided that this has been taxed on the employer.

However, in the event this has not been taxed in the hands of the employer, an employment benefit will then accrue and be taxed on the employee.

7. Is motor vehicle benefit provided to an employee subject to tax?

If an employer provides a motor vehicle that is available for the private use of an employee, such benefit shall be included in calculating gains or profits from that employee's employment income.

The motor vehicle benefit is computed at the higher of 2% p.m. of the initial cost of the vehicle and the prescribed scale rates by the Commissioner.

Where the vehicle is leased or hired, the benefit will be computed on the cost of hiring or leasing the vehicle.

In instances where there is proof of restricted use of a motor vehicle by an employee, the Commissioner may determine a lower rate based on usage. The taxpayer is required to make an application in writing to KRA on this.

Caveat

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