

Subsidized school fees to employee is a taxable benefit.

A recent tax case law between Brook House schools limited Vs The commissioner of Domestic taxes ruled that subsidized school fees is an employment benefit taxed on the employee income and therefore the employer should deduct and remit the same to the Kenya Revenue Authority.

Back ground

On December 2015, the appellant was issued with a notice of audit covering the period 2010 to 2015. The audit finding communicated to the appellant were taxes due amongst them PAYEE of 140 Million shilling. The premise of this decision was that the school had subsidised the cost of the school fees to the relatives and dependants of the staff working with the said school.

According to the income Tax (16) (2) (a) (iv) the act states that; No deduction shall be allowed in respect of education fees of employee's dependants or relatives. The taxing statute which the judge premised his decision 5(5) states that the value of the benefit shall be the higher of the cost of the employer or the fair market value of the benefit.

The contentious matter, however, was on the arrival of the amount being claimed by the authority. The school has different categories of students; premium students being those who pay relatively ordinary school fees, those under the scholarship category and those whose parents are also teachers or members of staff in the school. The school felt aggrieved that the commissioner used the rate paid by the premium students to determine that amount of deemed

benefit to the staff who had their children and relative in the institution.

The high court judge ruled in favour of the commissioner and therefore the appellant is obliged to pay the audited amount of 140 Million shilling.

Our take.

In our view, the commissioner was right in using the fees payable by the premium students to determine the amount of benefit accrued by the staff as other categories of the students did not meet the arm's length principal as their fees were subsidized and did not reflect what a uncontrolled transaction in an open market would occur.

Forecast.

This is landmark decision by the high court as it gives that commissioner the power to collect more taxes from similar disputes with similar circumstances and improve compliance amongst the education institution.

In light of this, education institutions should exercise caution when granting such benefits. Firstly, to use the arm's length principal when filling the PAYEE and secondly make a decision whether such benefits are of importance since the burden primarily falls at the employee thus reducing their net income.

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