



Interest on project finance loans from foreign lenders now exempt from tax

Interest on loans from foreign lenders financing projects in certain sectors in Kenya are now exempt from withholding tax. The Cabinet Secretary for the National Treasury on 22 May 2015 published a legal notice (Legal Notice No. 91 of Kenya Gazette Supplement No. 67) exempting interest on loans provided by foreign sources for investing in energy, water, roads, ports, railways or aerodromes projects, from tax.

Prior to this Legal Notice, unless a specific exemption had been granted to a particular lender, interest on loans from foreign lenders was subject to withholding tax at the rate of 15%. In contrast, interest on loans from banks or financial institutions that are resident or have branches in Kenya are exempt from withholding tax on interest. This puts foreign lenders at a disadvantage compared to Kenyan lenders. Foreign lenders would typically in turn pass the tax on to the Kenyan borrowers by requiring a gross-up of the withholding tax, and this would result in their loans being much more expensive, as compared to loans from their Kenyan counterparts.

This exemption levels the field for foreign lenders financing projects in the specified sectors. Most infrastructure development projects in Kenya are financed by foreign development finance institutions (DFIs) and foreign lenders.

The exemption demonstrates the Government's focus on infrastructure development in Kenya, and particularly road, port, railway and aerodrome projects and projects in the energy and water sectors.

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