

Decision of the Assessment Review Committee

In the matter of:

Jean Noel Steeve Julien
("Applicant" or "Mr Julien")

v/s

The Director General
Mauritius Revenue Authority
("Respondent" or "MRA")

On 30 May 2024, the Assessment Review Committee (“ARC”) ruled in favour of Mr Julien by allowing the interest relief claimed by Mr Julien in his tax return on a loan contracted by him for the settlement of a previous loan contracted by him and his spouse for the purchase of an apartment jointly owned by them. The interest relief was granted in accordance with the provisions of section 27A of Income Tax Act 1995 (“ITA”), provided that the interest relief is not also being claimed by the spouse.

Detailed Discussions

Mr Julien and his wife, Mrs Beatice Julien (“Mrs Julien”) have been married under the regime of legal and separation of goods and property since 27 August 2005. They were residing in an apartment in Quatre Bornes, which was acquired by Mrs Julien before marriage. Mr Julien contracted a loan from Bank One of Rs 2,350,000 in September 2017 for refunding a previous loan of Rs 2,450,000 contracted from Banque des Mascareignes in March 2016 for the purchase of a second apartment at Flic-en-Flac. The MRA disallowed the interest relief claimed by Mr Julien in his income tax return for the Year of Assessment 2019/2020, under Section 27A of the ITA, on the basis that Mrs Julien was already the owner of a residential building.

Pursuant to paragraph 4 of section 27A of the ITA:

No relief under subsection (1) shall be allowed –

- a. unless the person is resident in Mauritius in the income year in which the income is derived.*
- b. where the person or the spouse of the person -*
 - i. is, at the time the loan is raised, the owner of a residential building; or*
 - ii. benefits from any new housing scheme set up on or after 1 January 2011 by such competent authorities as may be prescribed;*
- c. where the income of the person, or the spouse of the person, as the case may be, exceeds 4 million rupees in an income year.*

Mr Julien argued on the following grounds:

1. At the time of the Quatre Bornes apartment, it was Mrs Julien who purchased the apartment and who borrowed a loan and claimed interest relief thereon. The couple was not married at that time.
2. Mr and Mrs Julien were married under the regime of legal separation of goods and property.
3. The interest relief was claimed by Mr Julien with regards to the loan contracted solely by him from Bank One.
4. Mr Julien personally continued to repay the loan together with interest and Mrs Julien had nothing to do with the present matter.

The MRA did not allow the interest relief claimed by Mr Julien as the Flic-en-Flac apartment was co-owned by Mr and Mrs Julien and that Mrs Julien had already claimed interest on housing loan on the Quatre Bornes apartment in her income tax return for the year of assessment under review. The MRA also made mention that no condition regarding the civil marriage regime is made under section 27A of the ITA.

Section 27A of the ITA indeed does not make specific reference to the matrimonial regime under which a person is married.

However, the ARC pointed out that the purpose of the legislator for adding the phrase “property belong to the spouse”, which the authors believe the ARC is referring to the words “owner of a residential building” under paragraph 4(b)(i) of section 27A of the ITA, is that a distinction must be made between:

- ‘les biens propres’ which are properties acquired before marriage;
- ‘les biens récus par donation or succession par un époux Durant le mariage’; and
- ‘les biens communs’ which are properties acquired during the marriage and which belongs to the Communauté.

As the apartment located at Quatre Bornes was purchased before marriage by Mrs Julien and the spouses are married under the regime of 'séparation des biens', the apartment located at Quatre Bornes does not belong to the 'Communauté', unless duly agreed between the spouses.

In light of the above, the ARC ruled in favour of Mr Julien, by allowing the interest relief claimed in respect of the loan borrowed from Bank One to acquire the Flic-en-Flac apartment, as:

- the loan was solely contracted by Mr Julien and the interest relief is not being claimed by Mrs Julien; and
- the loan from Bank One was taken for the purpose of refunding the previous housing loan which was not used for a different purpose other than acquiring the apartment at Flic-en-Flac.

The fact the Mr Julien was the co-owner of the matrimonial house did not deny Mr Julien from claiming the interest relief, the more so Mr Julien remains the contracting party of the loan.

Concluding remarks

It is true that section 27A of the ITA is silent about the matrimonial regime under which spouses are married. However, when interpreting the words "owner of a residential building", the intent of the legislator cannot be ignored. As under the 'séparation des biens' regime, the ownership of the matrimonial house remains solely with the spouse who is the owner of the property, Mr Julien cannot be the owner of the matrimonial house which is the apartment at Quatre Bornes. In this respect, Mr Julien cannot be denied of the interest relief on the loan personally contracted by him, for the acquisition of the apartment at Flic-en-Flac.

Whenever legal issues arise in relation to properties held by one or both spouses, it is paramount important to determine the ownership of a property before proceeding any further.

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