



The Conundrum of interest remission on late payment of VAT

Since the inception of VAT in 1991, there has been some argument regarding whether or not interest is payable to the South African Revenue Service (SARS) on transactions where a vendor did not charge output VAT on a connected party transaction.

Vendors argue that these transactions should be seen as 'in and out in the group', and do not result in 'loss to SARS' as the input tax was never claimed by the other company receiving the supply. Typical examples are:

- the on-charge of salaries, where part of a person's salary cost is recovered from another company in the group without any reference to VAT
- management fees, where these are being recovered from companies in the group without VAT.

SARS amended the remission of interest section in the VAT Act, effective April 2010. KPMG's interpretation at the date of the amendment was that, going forward, the amendment would impact severely on SARS' ability to remit interest. This includes connected party transactions. On 29 March 2011 SARS published Interpretation Note 61: Remission of interest in terms of section 39(7)(a) (IN 61) to clarify the application of the law for the remittance of interest.

In terms of IN 61, where an amount is due to SARS as a result of non-compliance:

- before 1 April 2010, a VAT vendor will be entitled to request that SARS consider the remission of interest, should it be able to argue that there was no financial loss to the State, and that the person concerned did not benefit financially
- from 1 April 2010, a VAT vendor will only be entitled to request that SARS consider the remission of interest where it can argue that the VAT liability resulted from circumstances beyond its control.

Historically, it was possible to argue that there was no loss to the State, and that the person concerned did not benefit financially, on a connected party transaction. However, a successful remission of interest argument from 1 April 2010 should provide evidence that the non-compliance resulted from circumstances beyond the vendor's control. These circumstances are described in IN 61 as being:

- Unavailability of key personnel
- Failure of a banking system resulting in a vendor's electronic fund transfer (EFT) payment not being made.

Vendors should consider their VAT treatment of connected party transactions as soon as possible. We believe this is necessary because a 'split' argument may be used for the remission of interest for the period prior and post 1 April 2010, where a vendor identifies an area of non-compliance.

From 1 April 2015, the remission of interest will only take place where the vendor can argue that the non-compliance resulted from circumstances beyond its control.

Author: Tanette Neill – Source: NMBBC Infocom

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