

# VAT Alert

10 February 2010

## Waiver of interest on late VAT payments

From 1 April 2010, it is likely to become extremely difficult to have interest levied on late VAT payments waived.

This as a result of an amendment, effective as of 1 April 2010 (i.e. interest imposed on or after this date), in terms of which the Commissioner may remit interest imposed\* only where he is satisfied that the failure to make payment in time was due to circumstances beyond the vendor's control.

According to SARS, an example of the circumstances where interest may be remitted is when a vendor's payment instruction could not be carried out by the vendor's bank, because of a failure in the banking system.

This newly introduced narrow approach to the remittance of interest will demand adequate internal control measures, resulting in increased pressure on VAT risk management.

The following entities may be especially hard hit by this change in approach:

- Group companies, which omitted to charge and account for VAT on inter-group transactions. Over the years these entities could have interest charged waived on the basis that the one company's output tax would merely be offset by the other's input tax claim, with no



benefit or loss for the vendor or SARS. Under the proposed changes this would no longer be possible.

- Similar relief has often been sought where VAT was not correctly accounted for and paid on transactions between a company and its separately registered branches or divisions. Again, the proposed changes would prohibit such relief.

In addition, any extraordinary transactions, such as the sale of fixed property, goodwill or other business

assets, as well as some cross-border transactions, create a VAT compliance risk, as the capturing of the data and VAT consequences are not systems driven, but require manual intervention, and therefore may result in incorrect or late VAT payments.

The need for adequate VAT accounting controls is now more important than ever so that unnecessary VAT costs are avoided. Contact our team of indirect tax specialists for assistance in reviewing your VAT accounting control environment to reduce the risk of incorrect or late VAT accounting.

*\*Interest is levied at the prescribed rate when a VAT payment is not made to SARS within the period allowed for payment. Currently, the Commissioner has a discretion to remit (in whole or in part) interest imposed on the underpayment or late payment of VAT where –*

- *the failure to make payment did not result in a financial loss (including an interest loss) to the State, taking into account output tax and input tax relating to the relevant supply; or*
- *the vendor did not benefit financially (taking interest into account) by not making the payment in time.*

*These two options for the exercising of the Commissioner's discretion will be removed shortly. SARS has advised that an interpretation note is currently being drafted to provide further guidance in this regard (see VAT NEWS 35, February 2010).*

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