



Remission of Interest and Penalties Regulations, 2020

TANZANIA TAX LAWS AND PRACTICE

Introduction

Section 70(1) of the Tax Administration Act, 2015 (TAA, 2015), empowers the Commissioner-General (CG), where he is satisfied that there is good cause to remit interest and/or penalty imposed under any tax law, to remit the whole or part of the interest and/or penalty payable by that person.

However, based on the recent correspondences from the Revenue Authority on applications for remission of interest and penalties, there was a confusion as to whether the powers conferred to the CG under 70(1) above can be exercised without the regulations or order issued by the Minister for Finance and Planning (the Minister) under Section 70(2) prescribing the eligibility, duration and procedures of accessing the remission provided.

In accordance with the provision of Section 70(2) of the TAA, 2015, the Minister issued the Tax Administration (Remission of Interest and Penalties) Regulations, 2020 (GN 351) on 8 May 2020 which is a good initiative from the Government to encourage voluntary compliance.

The Regulations provide for the manner of application of waiver of interest and penalties, persons and types of interest and penalties eligible for remission, manner of payment of principal tax whose interest and/or penalty is remitted and interest and penalties which do not qualify for applications of waiver.

Eligibility for remission of interest and penalties

A person shall be eligible for the application of remission of interest and penalties where the following criteria are met:

- a person voluntarily discloses his tax liability;
- there are no pending objections or appeals in relation to the tax debt whose interest or penalty is sought to be remitted;
- the person has taken all initiatives to declare all of his previous outstanding tax liabilities if any;
- the person agrees to pay the whole of his principal tax liability on the due date to be prescribed by the CG in his decision granting the remission; and
- an application to the CG is made in accordance with these Regulations.

It should be noted that one among the good cause for the CG to remit the interest and penalty is financial hardship a taxpayer is facing. However, financial hardship will not be deemed to be a good cause unless such financial hardship:

- existed when the tax liability, the subject of the application, was due and payable under a tax law;
- was the sole reason for the applicant's failure to pay such tax on the due date prescribed under a tax law;
- was communicated to the CG at the time when the relevant tax was due and payable; and
- will persist to unforeseeable time in future. i.e. not less than one year

Procedure for remission of interest and penalties

The application should be made to the CG, by the eligible person who has been assessed with interest or penalty under the TAA, 2015 or other tax law administered under the TAA, 2015 by filing an application in the format prescribed in the Schedule to these Regulations.

Where a person who has been granted remission of interest or penalty fails to pay the principal tax on the due date specified by the CG or extension thereof, the CG shall rescind his decision granting the remission and recover the principal tax and interest or penalty in full as if no remission was granted.

Limitation of the CG's powers to remit interest and penalties

According to Regulation 8(1), the CG cannot remit interest or penalties resulting from the following circumstances:

- penalty or interest emanating from an order of compounding an offence under the TAA, 2015 or any other tax law administered under the TAA, 2015;
- interest or penalty arising out of breaches related to acquisition or use of electronic fiscal devices;
- penalty or interest arising from fraudulent evasion of tax;
- interest or penalty arising from tax liability established as a result of tax audit or investigation;
- interest or penalty arising from failure to pay income tax payable by way of withholding tax mechanism under the ITA, 2004, value-added tax payable under the VAT Act, 2014 excise duty payable under the Excise Tariff Management Act, airport service charge payable under the Airport Service Charge Act, port service Charge payable under the Port Service Charge Act, or any other tax liability which the applicant has a statutory obligation to pay, as an agent of the Tax Revenue Authority to collect such tax from third parties and pay the same to the CG;
- penalty for failure to file tax return imposed under section 78 of the TAA, 2015; or
- penalty for failure to maintain documents imposed under section 77 of the TAA, 2015.

Eligible interest and penalties include interest assessed and penalties as a result of self-assessments or voluntary declaration on corporate income tax, skills and development levy, stamp duty, excluding interest and penalties mentioned under Regulation 8(1) above.

Our observations

The Regulations have been issued in good faith to enable voluntary declaration of tax liabilities by the taxpayers and application for remission of interest and penalties thereon, which could increase the revenue base for the Government and promote voluntary compliance by providing relief to those who have significant tax liabilities to start afresh.

Unlike the previous Regulations which were issued in July 2018, the new Regulations have limited scope in terms of the types of taxes a taxpayer can apply for remission of interest and penalties. For example, no remission of interest and penalty shall be granted if such interest or penalty emanates from value-added tax, withholding tax, excise duty, any tax liability resulting from tax audits or examination, late filing of tax returns, even where there was a genuine reason for such failure or non-compliance.

Where the failure to pay tax is due to financial hardship, the taxpayer will not qualify to apply for remission of interest and penalty unless the taxpayer communicates the same with the CG and the financial hardship will persist for a period of not less than twelve months. That is to say, this requirement may not apply for prior years' taxes but for the current year especially if the taxpayer is unable to meet its statutory obligations amid the COVID-19 crisis, in terms of the settlement of the final corporate tax due, since all other types of taxes are excluded from remission.

It is also vital to note that the Regulation does not define the term "financial hardship" which has to persist for a period of not less than 12 months from the due date of payment of the tax. Thereby, this may result to subjective decisions when the CG assesses the amnesty application.

It would have a great relief to the taxpayers if the remission would have covered the penalties imposed as a result of late or non-filing of returns which actually occurs not as a result of intentional non-compliance but due to ambiguity of the laws and lack of awareness. A good example is where a taxpayer pays the tax timely, however, for genuine reason fails to file the monthly or semi-annual returns. The penalty continues to accrue on a monthly basis as the failure continues which leads to significant tax liabilities, demotivating the taxpayer who is willing to comply with the tax laws. In most cases it is clear that the taxpayer does not intentionally omit the filing of returns.

Since the Regulation further limits the scope by excluding taxes which are collected as agents such as VAT, Withholding tax, Excise Duty, etc., i.e. the most common categories of taxes, it further discourages voluntary declaration of exposures identified by the taxpayers on such taxes.

Further, the remission excludes any interest as a result of tax audits and investigation. However, a number of times the tax audits cover up to 5 years simultaneously and the taxpayers are liable for interest on a compounded basis for any exposures identified, which could be significant.

Even where the eligible person makes the application, the outcome of the same is uncertain since the CG reserves the right to reject the application. Further, Regulation 10 states that the decision by the Commissioner-General on an application for remission of interest or penalty shall not be subject to administrative review or appeal. This implies that the taxpayer cannot challenge the CG's decision for not granting the remission, contrary to Section 53(1) of the TAA, 2015, which states that "a person who is aggrieved by an objection decision or **other decision** or omission of the Commissioner-General under this Part VII of the Act, 2015, may appeal to the Board in accordance with the provisions of the Tax Revenue Appeals Act."

It is also important to take note of the eligibility criteria under S.5 (c) that "the person has taken all initiatives to declare all of his previous outstanding tax liabilities, if any". Given that the taxpayer declares all the outstanding tax liabilities to the "best of its knowledge". It is possible that further liability could be identified from comprehensive tax audits carried out by the TRA subsequently. Accordingly, it is unclear as to whether in such situations, the CG would refer to S.9 of the Regulation on cancellation of the amnesty and rescind the remission granted.

Given the shortcomings above, taxpayers may face significant challenges in deciding whether to resort to the process of application in line with the regulations and how to go about voluntarily declaring the exposures excluded in the amnesty.

Way forward

In the current environment where taxpayers are facing uncertain times, we recommend strict adherence to timely payment and filing of tax returns. Where the taxpayer wants additional comfort in terms of compliance, the taxpayer could consider getting a tax health check done for the years not yet audited by TRA.

For taxpayers suffering from financial hardship amid the current COVID-19 crisis, notification to the CG requesting for remission of interest and extension for payment of the final corporate tax could be made. However, the tax return still needs to be filed to avoid payment of penalty for late filing

The taxpayer could establish the interest and penalty that qualify for remission and apply for the amnesty.



Caveat

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