

VATR 70

Facts

X is a company which provides telecommunication services to its subscribers and to the subscribers of its foreign roaming partners when they are availing themselves of the services in Mauritius. In April 2000, X entered into a contract with a foreign roaming partner, Y whereby each party will provide roaming services to the other party's subscribers.

Following a drastic reduction in the number of Y subscribers roaming on X's network in November and December 2008, X entered into an Inter Operator Tariff Discount agreement (IOT Discount) with Y in January 2009 in order to continue benefitting from the traffic generated by Y customers. Through this discount agreement, each party agreed to provide each other with some discount (inclusive of all taxes) on the prevailing rates. The main elements of the agreement were as follows:

- Y will commit to send a minimum of Voice Traffic towards X network and X will provide a discount on the prevailing rates. Where Y is unable to meet the traffic commitment, Y shall pay to X the amount of charges which is based on the traffic commitment at the discounted rate.
- There was no traffic commitment imposed on X for its subscribers roaming in Y's network.
- The IOT discount agreement was for an initial period of 2 years (2009 and 2010) and was renewed for a further period of 2 years (2011 and 2012).

X issued VAT invoices to Y for the roaming services provided to Y subscribers while in Mauritius. The VAT amounts on the invoices have been remitted to MRA.

To enforce the discount agreement stipulated in the IOT agreement, the discount is afterwards calculated on the revenues invoiced under the agreement entered into between X and Y during the discount period and a credit note on the invoices issued to Y.

Point at issue

With respect to Section 21(4) of the VAT Act, whether X can adjust the output tax to take into account the VAT on the credit note.

Ruling

On the basis of the facts of the case, it is noted that the discount is computed with reference to the volume of traffic on the network between the parties over a specific period as ascertained after the invoicing of the supply to roaming customers has taken place. The discount is therefore more in the nature of an

incentive discount to Y and does not affect the taxable value of roaming services. In the circumstances, X cannot adjust the output tax to take into account the VAT on the credit note.