

Disbursement v Reimbursement – A Case Study

The following practical scenario was posed to me by an esteemed colleague who asked me to give my view on VAT impact:

Case: Company A, B and C are registered with separate TRN with Company A being the parent entity of B and C (not registered as a Tax Group and Companies B and C are not branches of A. These can be considered as Subsidiaries of A).

Group medical insurance for all employees of all three companies are billed by the insurance company in the name of A. Company A receives the Tax invoice which covers insurance premium of employees of A, B and C.

Question:

1. Can Company A claim the input VAT pertaining to employees of B and C if it raises Tax invoices to both B and C for recovery of the insurance premium of their respective employees?
2. What is the impact if Company A merely raises a Debit note for the premium value (inclusive of VAT) to Companies B and C for their respective employee share of the premium?

My Analysis:

The questions posed above may take the nature of reimbursement or a disbursement depending on the recovery method adopted by Company A.

a. Disbursement

The clarification issued by the FTA on the topic lays down guidelines to distinguish between a disbursement and a reimbursement. The principles for disbursement include criteria such as *“the other party should have received an invoice or tax invoice in its own name as the supplier”* along with others. One may take a narrow view solely based on the above criteria that any recovery made by Company would not qualify as a disbursement.

However it is pertinent to note that:

- The principles laid down in the clarification are merely guidelines to assist in determining whether a transaction can be considered as a disbursement or not. These are not strict conditions to be adhered to.
- The clarification itself states in its concluding remarks that principles stated therein are mere indicators for analysis and the taxpayer should consider all facts and circumstances of the transaction holistically to make a decision.

It has been observed that there is a common practice among companies that are part of a group (not a tax group) to have group insurance policies taken in the name of and invoiced to one entity rather than each individual entities to receive financial benefit from the insurer in the form of reduced premium or other benefits.

Considering the above, a view may be taken that a recovery of such insurance premium cost by Company from Companies B and C would still take the nature of only a disbursement even though one or two principles given in the clarification are not met with. An argument can be made that even though invoice is received in the name of Company the services provided by the supplier are received only by Company B/C and same is not a cost for Company A.

Hence Company A should be eligible to issue debit notes to Companies B and C to recover the value of the respective employee premium (inclusive of VAT) and such a recovery can be considered as outside the scope of UAE VAT.

The pertinent point to note here is that, in the event such a view is adopted, the input VAT claim on the premium can neither be claimed by Company A (as it is not a cost for the Company) nor by Company B and C (as they do not possess valid Tax invoice as required by Article 55 of the Decree Law).

b. Reimbursement

An alternate treatment for the given transaction is to consider the recovery by Company A as reimbursement rather than a disbursement. The following reasons may be cited for treating this as a reimbursement:

- Company A is acting as the head of the group for Companies B and C to facilitate payment of costs of the latter.
- The act of receiving the insurance invoices, honouring payment to the supplier can be regarded as provision of services (making available a facility or an advantage – Article 3 of Executive Regulations) by Company A to Companies B and C. Any recoveries (recovery of premium amount) can be regarded as consideration against such services.

Considering the above, Company A should be entitled to issue Tax invoices to Company B and C for the respective employee premium (consideration) and charge VAT @ 5% on the same.

In the above scenario a question would arise whether Company A can take credit for the input VAT on the supplier invoice pertaining to employees of Company B and C. To evaluate this, one may consider the below points:

- Article 53 (1c) of Executive Regulations should not ideally be applied here since the input **does not pertain to goods or services purchased for use by employees of Company A.**
- Article 54 (1) of the Decree Law can be applied since it pertains to input tax paid for goods or services which are used or intended to be used for making taxable supplies (recovery of insurance charge from Companies B and C)
- The public clarification “VATP005 Non-recoverable input tax – entertainment services” permits Companies to claim input VAT on entertainment services provided there is an onward charge to employees/customer/attendees of events. So even though entertainment services are prima facie non-recoverable expenses, recovery would be permitted where there is an onward supply of the same to another party.

Considering the above, Company A should be able recover the input tax on such insurance costs, provided, the insurance cost is charged to Companies B and C with VAT.

The above are merely my views/interpretations on the case presented and i have not suggested a definite outcome. Rather, the intention of the above analysis is to initiate a deliberation to understand and arrive at an outcome which could be acceptable to the Tax Authority.

Disclaimer: *Content posted is for informational & knowledge sharing purposes only, and is not intended to be a substitute for professional advice related to tax, finance or accounting. The view/interpretation of the publisher is based on the available Law, guidelines and information. Each reader should take due professional care before you act after reading the contents of that article/post. No warranty whatsoever is made that any of the articles are accurate and is not intended to provide, and should not be relied on for tax or accounting advice.*