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The National Credit Act

Discount transaction vs incidental credit agreement

The National Credit Act generally defines a credit transaction on the basis of two elements. Firstly, there should be a deferral of payment, and secondly, a charge, fee or interest should be charged on the deferred amount. Where payment is deferred, but no charge, fee or interest is levied, the Act generally does not regard such a transaction as a credit transaction.

It may, however, occur that in lieu of a charge, fee or interest, a credit provider offers clients a lower price (or cash price) for early settlement. The National Credit Act provides for such instances as discount transactions. However, the National Credit Act also provides for instances where the provision of a lower price (or settlement discount) may be classified as incidental credit. As the Act applies differently to each of the two instances (in cases of incidental credit, the National Credit Act has limited application, for example incidental credit providers need not register with the National Credit Regulator, or comply with the reckless credit provisions), it is necessary to consider the exact nature of the transaction in order to determine its precise classification.

The National Credit Act defines a **discount transaction** to mean an agreement, irrespective of its form, in terms of which

(a) goods or services are to be provided to a consumer over a period of time; and

(b) more than one price is quoted for the goods or service, the lower price being applicable if the account is paid on or before a determined date, and a higher price or prices being applicable if the price is paid after that date, or is paid periodically during the period.

In turn, the National Credit Act defines an **incidental credit agreement** as an agreement, irrespective of its form, in terms of which *an account was tendered* for goods or services that have been provided to the consumer, or goods or services that are to be provided to a consumer over a period of time and either or both of the following conditions apply:

(a) a fee, charge or interest became payable when payment of an amount charged in terms of that account was not made on or before a determined period or date; or

(b) two prices were quoted for settlement of the account, the lower price being applicable if the account is paid on or before a determined date, and the higher price being applicable due to the account not having been paid by that date.

At first glance these definitions may seem very similar. However, the distinction is to be found in the nature of the transaction. In the case of a normal discount transaction, two prices are quoted upfront, and the client may choose whether to pay the lower price on or before a determined date (also referred to as the cash price), or the higher price which is payable at a later date, or is paid periodically during the period of the agreement (this would be the cash price plus the equivalent of interest). This amounts to a normal financing arrangement in terms of which the credit provider recovers its cost plus interest if payment is deferred. The latter scenario constitutes a credit transaction, since payment is deferred and a charge, fee or interest is levied on the deferred amount.

In the case of an incidental credit agreement, the parties do not intend to enter into a credit agreement. The client is afforded the convenience to pay at a later date, but no interest is charged. However, should the client fail to settle the account on the predetermined date, the credit provider may charge interest for late payment. A typical example of an incidental credit agreement is a cell phone or doctor's account – clients or patients usually have 30 days to pay, and interest is charged on overdue amounts. The same logic applies to an agreement where the client is provided with a discount where an account is settled on or before a predetermined date.

In essence, where a discount is applicable as part of the normal settlement terms and under normal trading conditions, the transaction in question will be regarded as an incidental credit transaction where, in accordance with the definition above:

- *an account is tendered* for goods or services that have been, or will be provided to the consumer, and
- two prices are quoted for *settlement of the account*, the lower price being applicable if the account is paid on or before a determined date, and the higher price being applicable where the account is not paid by that date.

According to the National Credit Act the incidental credit agreement is deemed to have been concluded on the date that is 20 business days after the higher price (i.e. the price without the discount) becomes applicable.

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