

CHAPTER 87

Value Added Tax

VALUE ADDED TAX (APPEAL TRIBUNAL)
REGULATIONS, 2006

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CHAPTER 87

Value Added Tax

Cap. 87.

VALUE ADDED TAX (APPEAL TRIBUNAL)
REGULATIONS, 2006

2006/125.

Authority: These Regulations were made on 6th November, 2006, by the Minister under section 103(f) of the *Value Added Tax Act*.

Commencement: 7th December, 2006.

1. These Regulations may be cited as the *Value Added Tax (Appeal Tribunal) Regulations, 2006*. Citation.

2. In these Regulations,

Interpreta-
tion.

"appeal" includes the hearing by the Value Added Tax Tribunal of any matter which it is authorized under the Act to hear and determine;

"appellant" means a person who brings an appeal under section 87 of the Act;

"document" includes a notice or application;

"Form" means the relevant form set out in the *Schedule* to these Regulations;

"Registry" has the meaning assigned to it by regulation 4(1);

"Tribunal" means the Value Added Tax Appeal Tribunal established by section 87 of the Act;

"Secretary" means the Secretary to the Tribunal.

3. (1) The Comptroller shall assign to the Tribunal a Secretary and such other employees as may be required to carry out the business of the Tribunal. Secretary and staff.

(2) The Secretary shall keep in the Registry suitable books of record, in which the Secretary shall enter a true copy of every order, judgment, directive or other decision of the Tribunal; and each such entry constitutes the original record of each order, judgment, directive or decision.

(3) The Secretary shall

(a) keep a record of all proceedings;

(b) have the custody and care of all records and documents belonging to the Tribunal or filed in the Registry;

(c) have custody of the official seal of the Tribunal, and shall affix it to any documents as may be required by law, or as may be generally or specifically directed by the Tribunal;

(d) have every order or judgment of the Tribunal drawn up pursuant to the directive of the Tribunal and filed in the Registry;

(e) carry out all the directives given to the Secretary by the Tribunal;

(f) perform such other duties and functions as may be imposed by these Regulations or any enactment.

Form A. (4) The Secretary and every other employee attached to the Tribunal shall subscribe to an oath in the Form A.

(5) The Secretary may, by virtue of that office, administer oaths and affidavits in proceedings before the Tribunal.

(6) In the absence of the Secretary, the duties and powers of the Secretary shall, where no person has been assigned to act in place of the Secretary, be performed or exercised by such officer or clerk in the Registry as may be designated by the Comptroller.

Registry. **4.** (1) There shall be a Registry located at the office of the Secretary in the Value Added Tax Division or at any other place authorised by the Comptroller for the purpose of conducting the business of the Tribunal.

(2) The Registry shall be open between the hours of 8.15 a.m and 4.30 p.m on every day of the year except Saturdays, Sundays and public holidays.

5. Any document required or authorized under these Regulations to be filed in the Registry shall be delivered at the Registry to an officer or clerk of the Tribunal during the office hours of the Registry. Filing of documents.

6. The official seal of the Tribunal shall be affixed to any document as may be required by law or as may be generally or specially directed by the Tribunal. Official seal.

7. (1) Subject to these Regulations, where a document is required to be filed in the Registry, that document shall be filed in triplicate. Copies of documents.

(2) Failure on the part of an appellant to comply with regulation (1) shall not invalidate a notice of appeal.

8. (1) A notice of appeal given under section 87(8) of the Act shall be in the Form B. Notice of appeal.
Form B.

(2) Where the notice of appeal is signed by an agent, the authorization for so signing the appeal shall be filed in the Registry, together with the notice of appeal.

(3) A notice of appeal referred to in paragraph (1) shall have attached to it a copy of any order from the Tribunal extending the appellant's time to appeal against the disputed decision.

9. The Secretary shall send

(a) an acknowledgement of the appeal to the appellant and the acknowledgement shall be in the Form C; and Acknowl-
edgement of
service of an
appeal.
Form C.

(b) a copy of the notice of appeal in the Form B and a notice of any accompanying documents to the Comptroller;

and the acknowledgement and the copy of the notice of appeal shall state the date of service of the notice of appeal.

Filing of
statement of
case and
other
documents
by the
Comptroller.

10. (1) The Comptroller shall, within 21 days after the service upon him of a notice of appeal, file in the Registry

- (a) a statement of case setting out
 - (i) the notice of assessment, directive or other decision of the Comptroller;
 - (ii) the reasons in support of the assessment, directive or decision of the Comptroller;
 - (iii) the material facts upon every point specified in the notice of appeal as a ground of appeal; and
- (b) five certified copies of all documents relevant to the decision of the Comptroller giving rise to the appeal, including, where the appeal is against an assessment to value added tax, the
 - (i) value added tax return, if any, of the appellant;
 - (ii) notice of assessment;
 - (iii) objection to the assessment; and
 - (iv) decision on the objection.

(2) The Comptroller shall serve a copy of the statement of case on the appellant within the 21 days referred to in paragraph (1).

(3) The Tribunal may cause the statement of case referred to in paragraphs (1) and (2) to be sent back to the Comptroller for amendment; and the Comptroller shall within the time specified by the Tribunal

- (a) amend the statement of case and file it in the Registry; and
- (b) serve a copy of the amended statement of case on the appellant.

11. (1) Within 14 days after the copy of the statement of case is served on the appellant, the appellant may, if he thinks fit, file in the Registry a reply admitting any of the material facts set out in the statement or setting forth the material facts as alleged by him.

Filing of
reply by
appellant.

(2) Where a reply under paragraph (1) is filed, the appellant shall, within the time specified under that paragraph, serve a copy of the reply on the Comptroller.

12. (1) An application for an extension of the time for appealing under section 87 of the Act

Extension of
time to
appeal.

(a) shall contain the grounds of appeal which *prima facie* show good cause for the appeal; and

(b) shall be filed along with an affidavit that sets out the reasons for the application.

(2) A copy of the affidavit filed shall be attached to every copy of the application served.

(3) A copy of any order of the Tribunal extending the appellant's time to appeal against the disputed decision shall be attached to the notice of appeal.

13. Appeals shall be heard at such places and times as the Tribunal determines.

Place and
time of
hearing
appeal.

14. (1) Where the parties have not agreed to a date for the hearing of an appeal, the Secretary shall give 28 clear days' notice to the appellant, the respondent and any other party of the date fixed for the hearing of the appeal.

Notice of
hearing of
appeal.

(2) A notice under paragraph (1) may be given notwithstanding that the Comptroller has failed to file a statement of case in accordance with regulation 10.

(3) A notice of hearing of an appeal shall be in the Form D.

Form D.

Failure to appear at a hearing.

15. Where an appeal or application is called on for hearing by the Tribunal and none of the parties appear, the Tribunal may dismiss or strike out the appeal or application, but the Tribunal may, on the application of any of the parties within 14 days after the date when the decision of the Tribunal was given in accordance with regulation 31, reinstate the appeal or application on such terms as it thinks just.

Consolidation of appeals.

16. Where 2 or more appeals are pending, if it appears to the Tribunal that

- (a) some common question of law or fact arises in both or all of them;
- (b) the relief claimed therein is in respect of, or arises out of, the same transaction or series of transactions; or
- (c) for some other reason it is desirable to make an order under these Regulations;

the Tribunal may, on the application of any party,

- (i) order the appeals to be consolidated on such terms as it thinks just;
- (ii) order the appeals to be tried one immediately after the other; or
- (iii) order any of the appeals to be stayed after the determination of any one of them.

Procedure at hearing.

17. (1) At the hearing of an appeal the Tribunal shall allow

- (a) the appellant to
 - (i) open his case;
 - (ii) give evidence in support of the appeal and to produce documentary evidence;
 - (iii) call other witnesses to give evidence in support of the appeal or to produce documentary evidence, and to re-examine any of the witnesses following any cross-examination; and

- (iv) make a final address closing his case;
- (b) the respondent to
 - (i) cross-examine any witness called to give evidence in support of the appeal, including the appellant if he gives evidence;
 - (ii) open his case;
 - (iii) give evidence in opposition to the appeal and to produce documentary evidence;
 - (iv) call other witnesses to give evidence in opposition to the appeal or to produce documentary evidence, and to re-examine any of those witnesses following cross-examination;
 - (v) make a second address closing his case; and
 - (vi) make a final address closing his case.

(2) At the hearing of an appeal or application, the Chairman and any other member of the Tribunal may put any question to any witness called to give evidence at the appeal, including the respondent if he gives evidence.

(3) Subject to these Regulations, the Tribunal may regulate its own procedure as it thinks fit, and may

- (a) postpone the hearing of any appeal;
- (b) adjourn the hearing of any appeal on such terms as it thinks just; or
- (c) obtain the assistance of accountants, actuaries or other scientific or expert persons to enable it to determine any matter at issue in any appeal.

18. The Tribunal may at any time direct a party to an appeal to serve further particulars of his case at the Registry, within such period from the date of such direction, not being less than 14 days from the date thereof, as it may specify therein.

Further and better particulars.

- Amendment. **19.** (1) For the purposes of
- (a) determining the issues in dispute; or
 - (b) correcting an error or defect in an appeal or application,
- the Tribunal may at any time,
- (i) on its own motion;
 - (ii) on the application of any party to the appeal or application; or
 - (iii) on the application of any other person interested,
- direct that the notice of appeal, notice of application, statement of case, defence, reply, particulars or other document in the proceedings be amended in such manner as may be specified in such direction on such terms as it may think fit.
- (2) This regulation shall not apply to a decision or direction of the Tribunal.

Partners. **20.** Partners in a firm that is not a legal person distinct from the partners of whom it is composed may appeal against a decision of the Comptroller relating to the firm or its business, or apply to the Tribunal in an appeal or intended appeal, in the name of the firm and, unless the Tribunal shall otherwise direct, the proceedings shall be carried on in the name of the firm, but with the same consequences as would have ensued if the appeal or application had been brought in the names of each partner.

Death or
bankruptcy
of an
appellant. **21.** Where, at any stage in the proceedings in an appeal, the liability or interest of the appellant, by reason of his death or bankruptcy or for any other reason whatsoever, is assigned or transmitted to or devolves upon some other person, the appeal shall not abate or determine, but the Tribunal, on the application of the Comptroller or of that other person, may direct that the other person, where he so consents in writing, be made a party to the appeal and the appeal be carried on by that person as if he had been substituted for the appellant.

22. An appellant may at any time withdraw his appeal by serving at the Registry a notice of withdrawal signed by him or on his behalf in the Form E. Withdrawal of an appeal.
Form E.

(2) The Secretary shall send a copy of the notice of withdrawal of appeal to the Comptroller.

23. Where the parties to an appeal have agreed upon the terms of any decision or directive to be given by the Tribunal, the Tribunal may give a decision or make a direction in accordance with those terms. Appeal allowed by consent.

24. The Tribunal may

- (a) allow an appeal other than one agreed on pursuant to regulation 23;
- (b) strike out an appeal where no appeal against the disputed decision lies to the Tribunal; or
- (c) dismiss an appeal.

Powers of Tribunal to allow, strike out or dismiss an appeal.

25. Service of any notice, application or other document provided for in these Regulations may be effected on Service of documents.

- (a) an appellant, by personal service or by registered mail to the address given in the notice of appeal;
- (b) the respondent, by delivery at, or registered mail addressed to, the office of the respondent; and
- (c) any other party by personal service or by registered mail to that party's last known address.

26. (1) The Tribunal may postpone or adjourn the hearing of an appeal if any interested party for any reasonable cause has been prevented from attending the hearing, or where the Tribunal thinks it expedient in the interests of justice. Postponement or adjournment of a hearing.

(2) Where the postponement or adjournment is not to a definite date, the Tribunal shall, unless the parties agree to a shorter time, give the parties to an appeal at least 14 clear days' notice of the date of the next hearing.

Appearance
before
Tribunal. **27.** Any party to any proceedings before the Tribunal may appear in person or by an attorney-at-law or, in the case of a company, by an officer of the company or by an attorney-at-law.

Evidence. **28.** (1) At the hearing of an appeal, the Tribunal may, if it thinks fit, allow the parties thereto to tender evidence orally or by affidavit and under oath or otherwise, but is not bound by the legal rules of evidence.

(2) The Tribunal may order that written submissions be filed in addition to, or in place of, an oral hearing.

(3) An affidavit containing evidence to be used at the hearing shall be filed in the Registry and a copy thereof served on every interested party not less than 14 days before the date fixed for the hearing of the appeal.

(4) A counter affidavit for the purpose of rebutting evidence contained in a previous affidavit filed by an interested party shall be filed in the Registry and a copy thereof served on the other interested parties not less than 7 days before the date fixed for the hearing of the appeal.

(5) Any party may, by notice in writing, require the attendance of the deponent at the hearing for the purpose of cross-examination, in respect of any affidavit or counter-affidavit intended to be used by another party.

(6) A notice under paragraph (5) shall be filed in the Registry and a copy thereof served on the other interested parties

(a) in the case of an affidavit, 4 days; and

(b) in the case of a counter affidavit, 2 days

before the date fixed for the hearing of the appeal.

(7) Notwithstanding paragraphs (5) and (6), where in the opinion of the Tribunal there is no necessity for a deponent to attend the hearing for cross-examination, the Tribunal may dispense with the presence of the deponent.

(8) On the hearing of an appeal, evidence may be given by affidavit, but the Tribunal may, on the application of either party, order the attendance for cross-examination of the person making the affidavit, and, where after such an order has been made the person does not attend, the affidavit shall not be used as evidence unless by the special leave of the Tribunal.

(9) Notwithstanding any other provision of these Regulations, the Tribunal may, at or before the hearing of an appeal, order or direct that evidence of any particular fact shall be given at the hearing in such manner as may be specified in the order or directions.

(10) The power conferred by paragraph (9) extends in particular to ordering or directing that evidence of any particular fact may be given at the hearing by

- (a) a statement on oath of information or belief;
- (b) the production of documents or entries in books; or
- (c) copies of documents or entries of books.

29. Where pursuant to the provisions of regulation 28(2) the Tribunal has ordered that written submissions be filed in addition to or in place of an oral hearing, Written submissions.

- (a) the facts set out in the submission shall be verified by affidavit;
- (b) the Tribunal may give directions as to the times within which the written arguments of an appellant and of the respondent, and the reply of an appellant, shall be filed in the Registry and copies thereof served on any other party by the party filing those documents; and
- (c) each of the written arguments shall be dated and signed by the person submitting them.

30. Every hearing and determination by the Tribunal must be in accordance with the principles of natural justice. Natural justice.

Reports of
decisions.

31. (1) At the conclusion of the hearing of an appeal, the Chairman may give or announce the decision of the Tribunal or reserve its decision; but in any event, the decision shall be recorded in a written document not later than 90 days from the conclusion of the hearing of the appeal and shall contain

- (a) the findings of the fact by the Tribunal; and
- (b) the reasons for the decision, which shall be signed by the Chairman and the other sitting members of the Tribunal.

(2) Every judgment or order of the Tribunal shall, unless it otherwise directs, be prepared by the Secretary and filed in the Registry.

(3) The Secretary shall forthwith serve on the parties to the appeal a copy of every judgment or order filed under paragraph (2).

(4) The Tribunal may correct any clerical mistake or other error made by the Chairman in expressing his intention in a decision or direction signed by him; but where the Tribunal makes the correction after a copy of the document has been sent to a party, the Secretary shall as soon as practicable send a copy of the corrected document, or the page or pages which have been corrected, to that party.

Amendment
of reply by
appellant.

32. (1) An appeal, a statement of case or reply may be amended and re-filed

- (a) at any time with leave of the Tribunal; and
- (b) without leave at any time before the notice of hearing has been given.

(2) A copy of the statement of case or reply, as amended, shall be served forthwith on every other interested party by the party amending that document

- (a) after the filing of the document;
 - (b) within such time as may be allowed by the Tribunal; or
 - (c) as agreed between the parties,
- as the case may be.

33. (1) Where it is intended to issue a subpoena, a praecipe for that purpose in the Form F shall be filed in the Registry. Subpoenas.
Form F.

(2) The writ of subpoena shall be in the Form G or H, as the case may be. Form G
or H.

34. (1) The Tribunal may issue subpoenas, make orders and give directions to such persons and in such manner as it thinks fit for the purpose of Control of
proceedings.

(a) summoning witnesses;

(b) requiring the disclosure of documents or other evidence;

(c) requiring parties or witnesses to answer questions; and

(d) conducting its proceedings in a proper and orderly manner.

(2) The Tribunal may report to the High Court the conduct of any person who disobeys any subpoena, order or direction properly issued under paragraph (1) or says or does any other thing that would, if the Tribunal were a superior court of law, constitute contempt of court.

(3) Where a report is made under paragraph (2), the High Court shall hear the complaint and defence, and may punish the person concerned in the same manner as if that person had been guilty of contempt of the High Court.

35. (1) Where a witness is required by a party to an appeal to attend the hearing of an appeal to give oral evidence or to produce any document in the possession, custody or power of that witness which is necessary for the purpose of the hearing, the Tribunal shall, upon the application of that party, issue a summons requiring the attendance of the witness at the hearing or the production of the document if the witness is in Barbados. Witness
summonses
and
summonses
to third
parties.

(2) Where a party to an appeal desires to inspect any document necessary for the purposes of the hearing which is in the possession, custody or power of any other person in Barbados, whether or not that other person is a party to that appeal, the Tribunal shall, upon the application of that party, issue a summons requiring either

(a) the attendance of the other person at such date, time and place as the Tribunal may direct and then and there to produce the document for inspection by the party and to allow the party then and there to peruse the document and to take a copy thereof; or

(b) the other person to post the document by ordinary post to an address in Barbados in an envelope duly prepaid and properly addressed to the party requiring to inspect the document.

(3) A summons issued under this regulation shall

(a) be signed by the Chairman and must be served personally upon the witness or third party, by leaving a copy of the summons with the witness or third party and showing the person on whom it is served the original thereof, not less than 4 days before the day on which the attendance of the witness or third party is thereby required; and

(b) contain a statement, to be accompanied by a note, to the effect that the witness or third party may apply, by a notice served on the Tribunal from which the summons was issued, for a direction that the summons be set aside.

(4) A summons issued to a witness under this regulation for the purpose of a hearing and duly served shall have effect until the conclusion of the hearing at which the attendance of the witness is thereby required.

(5) The parties to an application to set aside a summons issued under this regulation shall be the applicant and the party who obtained the summons.

- 36.** All applications to the Tribunal other than an appeal shall be by summons with supporting affidavits and shall be in the Form J. Applica-
tions.
Form J.
- 37.** The Tribunal may, on its own motion or on the application of any party to an appeal, waive any breach or non-observance of any provision of these Regulations or of any decision or direction of the Tribunal upon such terms as it thinks just. Waiver of
breach.
- 38.** Any function, power or duty conferred or imposed by these Regulations on the Comptroller is exercisable by any officer or class of officers authorized by the Comptroller for this purpose. Comptroller
and staff.
- 39.** No fees shall be payable in respect of proceedings under these Regulations. No fees
payable.

SCHEDULE

(Regulation 2)

The Value Added Tax Act
Cap. 87

FORM A

(Regulation 3(4))

Oath

I, being a person engaged in the administration and enforcement of the *Value Added Tax Act* and other laws relating to value added tax do swear/affirm that I will faithfully maintain and assist in maintaining the secrecy of all confidential information that shall come to my knowledge by reason of this engagement, and that I shall not communicate any such information to any person except for the purpose of carrying into effect the provisions of the *Value Added Tax Act* or other Acts relating to the imposition of taxes or duties payable to the Crown or for other purposes permitted by law, and in accordance with the Laws of Barbados.

Sworn by _____ this _____ day of _____
before me

Comptroller of Customs

The Value Added Tax Act
Cap. 87

FORM B

(Regulation 8(1))

Notice of Appeal

BARBADOS

No. of 20

BEFORE THE VALUE ADDED TAX APPEAL TRIBUNAL

BETWEEN

Appellant

and

THE COMPTROLLER OF CUSTOMS

Respondent

NOTICE OF APPEAL to the Value Added Tax Appeal Tribunal is hereby given from the assessment/decision/directive of the Comptroller of Customs dated the day of 20 wherein value added tax in the sum of \$ was levied in respect of output tax of the appellant for the period .

2. The grounds of appeal are as follows:

(a) Statement of allegations of fact;

(b) Statement of the reasons to be advanced in support of appeal.

3. The address for service of the said _____ is

Dated this _____ day of _____ 20

(Signature of Appellant or his Attorney-at-Law or Agent)

To: Secretary of the Value Added Tax Appeal Tribunal

and

To: The Comptroller of Customs

The Value Added Tax Act
Cap. 87

FORM C

(Regulation 9)

Acknowledgement of Appeal

THE VALUE ADDED TAX APPEAL TRIBUNAL

To: (1) Name of Appellant or Applicant

(2) Comptroller of Customs

TAKE NOTICE that an appeal dated the day of 20

was received at the Registry of the Value Added Tax Appeal Tribunal on the
day of 20 on behalf of the appellant.

.....

Signed

Secretary to the Value Added Tax Appeal Tribunal

Date

The Value Added Tax Act
Cap. 87

FORM D

(Regulation 14(3))

Notice of Hearing of Appeal

BARBADOS

No. of 20

BEFORE THE VALUE ADDED TAX APPEAL TRIBUNAL

BETWEEN

Appellant

and

THE COMPTROLLER OF CUSTOMS

Respondent

TAKE NOTICE that the Value Added Tax Appeal Tribunal will convene on the
..... day of20..... at o'clock in the
..... at
to hear the application of the appellant/respondent dated the
day of 20.....

.....
Secretary

To:

of

and

To: The Comptroller of Customs

The Value Added Tax Act
Cap. 87

FORM E

(Regulation 22)

Notice of Withdrawal of Appeal

BARBADOS

No. of 20

THE VALUE ADDED TAX APPEAL TRIBUNAL

To: The Secretary of the Value Added Tax Appeal Tribunal

TAKE NOTICE that the appellant
hereby withdraws the appeal No. which was filed on
the day of 20.....
Dated this day of 20.....

Signed by:
Appellant

The Value Added Tax Act
Cap. 87

FORM F

(Regulation 33(1))

Praecipe of Subpoena

BARBADOS

No. of 20

THE VALUE ADDED TAX APPEAL TRIBUNAL

Seal writ of subpoena on behalf of the

directed to and returnable

Dated this day of 20.....

Secretary

The Value Added Tax Act
Cap. 87

FORM G

(Regulation 33(2))

Subpoena Ad Testificandum

BARBADOS

No. of 20

THE VALUE ADDED TAX APPEAL TRIBUNAL

- 1. To:
- 2.
- 3.

GREETINGS:

We command you that, all excuses ceasing, you and each of you personally be and appear before the Value Added Tax Appeal Tribunal at
 on the day of20....., at
 o'clock in the to testify the
 truth according to your knowledge in an appeal pending before the Value Added Tax
 Appeal Tribunal, wherein is Appellant
 and is
 Respondent, on the part of
 and herein fail not at your peril.

Witness the Chairman of the Value Added Tax Appeal Tribunal, at
 the day of in the year of
 Our Lord

 Secretary

The Value Added Tax Act
Cap. 87

FORM H

(Regulation 33(2))

Subpoena Duces Tecum

BARBADOS

No. of 20

THE VALUE ADDED TAX APPEAL TRIBUNAL

1. To:
- 2.
- 3.

GREETINGS:

We command you that, all excuses ceasing, you and each of you do personally be and appear before the Value Added Tax Appeal Tribunal at on the day of20....., at o'clock in theto testify the truth according to your knowledge in an appeal pending before the Value Added Tax Appeal Tribunal, wherein is Appellant and is Respondent, on the part of and that you bring with you and then and there produce and show all and singular those things which you know, or which the said paper writing doth import of, in or concerning the present appeal now pending in the said Tribunal, and herein fail not at your peril.

Witness the Chairman of the Value Added Tax Appeal Tribunal, on the day of in the year of Our Lord

Secretary

The Value Added Tax Act
Cap. 87

FORM J

(Regulation 36)

Summons

BARBADOS

No. of 20

THE VALUE ADDED TAX APPEAL TRIBUNAL

Let all parties concerned attend before the Value Added Tax Appeal Tribunal at the on the day of 20..... at o'clock in the on the hearing of an application by dated this day of 20 This summons was taken out by

(Agent)

for of attorney-at-law for the applicant whose address is

.....
Secretary

To:
of
and
To: The Comptroller of Customs