



**Supplement No. 1
to Gazette No. 53 of 14th September, 2007**

CONTENTS

No.	Page
LEGAL NOTICE	
133	Revenue Appeals Tribunal Rules 2007 275

**Published by the Authority of His Majesty the King
Price: M10.00**

LEGAL NOTICE NO. 133 OF 2007

Revenue Appeals Tribunal Rules 2007

In exercise of the powers conferred upon me by section 27 of the Revenue Appeals Tribunal Act 2005¹, I,

JUSTICE NTHOMENG JUSTINA MAJARA

President of the Revenue Appeals Tribunal, make the following rules -

Citation and commencement

1. This rules may be cited as the Revenue Appeals Tribunal Rules 2007 and shall come into operation on the date of publication in the Gazette.

Part I: Preliminary**Interpretation**

2. (1) In these rules, unless the context otherwise requires-

“Act” means the Revenue Appeals Tribunal Act 2005;

“assessment” means assessments, decisions, rulings, determinations, and directions of the Commissioner General, as a taxpayer may appeal against within the contemplation of section 3 of the Act;

“Authority” means the Lesotho Revenue Authority as established in terms of the Lesotho Revenue Authority Act 2001²;

“Commissioner General” means the person appointed as Commissioner General in terms of the Lesotho Revenue Authority Act 2001;

“effective date” means 1 October 2007;

“LRA” means the Lesotho Revenue Authority as established in terms of the Lesotho Revenue Authority Act 2001 and may be used interchangeably with the term “Authority” as defined in this rule;

“**member**” means a person appointed as either an ordinary member or associate member of the Revenue Appeals Tribunal in terms of the Act;

“**pending appeal**” means any appeal before the Tribunal and which has not been withdrawn, discontinued or dismissed and in which judgement has not yet been entered or given;

“**President**” means the person appointed as President of the Revenue Appeals Tribunal in terms of the Act;

“**Registrar**” means the Registrar of the Revenue Appeals Tribunal appointed in terms of the Act;

“**service**”, in relation to notices and any other document, means to deliver a notice or other document required or authorised under these rules to be delivered upon a person being an individual other than in a representative capacity, if -

- (a) delivered personally on that person, or at the registered address or principal place of business of the company or partnership or other entity not being an individual;
- (b) left at the person’s usual or last known place of abode, office, registered office, or place of business in Lesotho;
- (c) sent by registered post to such place of office, registered office, or place of business, or to the person’s usual or last known address in Lesotho;
- (d) sent by telefax to the last known telefax number of the person;
- (e) transmitted to the person by electronic means, including email;
or
- (f) sent by any other means authorized by the Tribunal consisting of the President sitting alone:

Provided that in the case of paragraphs (d) and (e), the original, signed notice or document shall be handed to that person or sent by registered post to that person within 14 days of it being so telefaxed or transmitted by electronic

means;

“statement of appeal” means a statement of grounds of appeal, in terms of rule 7, or an opposing statement of grounds of appeal, in terms of rule 7;

“taxpayer” includes any person who is chargeable with, or liable to pay, any tax, levy, duty, charge or other amount imposed in terms of any other legislation administered by the Authority;

“tribunal” means the Revenue Appeals Tribunal as established in terms of the Act.

(2) A Saturday, Sunday or public holiday shall not, unless the contrary appears, be reckoned as a part of any period calculated in terms of these rules or fixed by an order of the Tribunal.

(3) All distances shall be calculated over the shortest route reasonably available in the circumstances.

PART II: Administration and objections

Administration

3. (1) The Registrar shall be the Chief Administrative Officer of the Tribunal and shall be responsible, under the direction of the President, for the effective and efficient provision of such administrative support as may be necessary to enable the Tribunal to carry out its functions.

(2) Without prejudice to the generality of subrule (1), the Registrar shall be responsible for -

- (a) ensuring that notices, summons or other documents are served timely before the date of hearing; and
- (b) receiving relevant documents on behalf of the Tribunal from appellants and Commissioner General.

(3) The location of the office of the Registrar shall be determined by the Commissioner General from time to time and particulars thereof shall be published for general information in the Gazette.

(4) The office of the Registrar will be open every Monday to Friday, excluding public holidays, from 08h00 to 16h00.

Documentation, filing, numbering, access to records

4. (1) The Registrar, working in consultation with the Commissioner General, shall recommend the parties' naming code for approval by the President to be used in place of the names of the taxpayers in order to protect their identity.

(2) The Registrar shall keep a book to be called "the Appeals Record Book" and shall enter therein, forthwith, at each successive stage of the appeal-

- (a) the number of the appeal;
- (b) the names of the parties, in terms of the approved naming code, and their professional representatives, if any;
- (c) the date and hour of the initiating papers;
- (d) any remarks required by these rules or by the special circumstances of the appeal.

(3) The Registrar of the Tribunal shall also keep a book to be called "the Appeals Judgement Book" and shall enter therein -

- (a) the number of the appeal in the Appeals Record Book;
- (b) the date of the judgement;
- (c) the name and address of the judgement debtor;
- (d) the name of the judgement creditor;
- (e) the amount of the judgement; and
- (f) the amount of the judgement creditor's costs when these have been taxed or fixed by the Registrar.

(4) The initiating papers or any other first document filed in an appeal application case not relating to a then pending appeal case shall be numbered by the Registrar with a consecutive number for the year during which it is filed and the appeal case shall be entered by him or her in the Appeals Record Book under that number.

(5) Every document afterwards served or delivered in such appeal case or in any subsequent case in continuation of any such appeal case shall be marked with the same number by the party delivering it and shall not be received by the Registrar until so marked.

(6) All documents delivered to the Registrar to be filed on record and any minutes made by the Tribunal shall be filed on record under the number of the respective appeal case.

(7) Copies of such records shall, upon pre-payment of the prescribed fees, be made and issued by the Registrar to any person applying therefor and entitled thereto, or such copies may be made by such person in the presence of the Registrar.

(8) All process of the Tribunal for service and all documents or copies to be filed of record other than documents or copies filed of record as documentary proof shall be on a paper known as "A4 standard".

(9) Any process sued out or notices or documents issued or delivered shall be endorsed with the name and address of the party issuing or delivering the notices or documents.

(10) All notices, statements and documents delivered or served by one party to the other shall also be filed with the Registrar, unless the context otherwise requires.

Objection

5. A taxpayer who is dissatisfied with an assessment may file an objection to the assessment with the Commissioner General within the period stipulated in the relevant provisions of the Act administered by the Authority out of which the assessment arose, which objection shall -

(a) be in such form as may be prescribed by the

Commissioner General;

- (b) be in writing, specifying in detail the factual or legal grounds upon which it is made;
- (c) specify an address within 5 kilometres of the Authority's Head Office in Maseru or its Regional Offices in Leribe and Mohale's Hoek at which the taxpayer will accept notice and delivery of the Commissioner General's decision in respect of such objection and all documents relevant thereto;
- (d) be signed by the taxpayer:

Provided that where the taxpayer is unable to personally sign the objection, the person signing on behalf of the taxpayer shall -

- (i) state, in an annexure to the objection, the reason why the taxpayer is unable to sign the objection;
 - (ii) file a power of attorney in accordance with Form A of the First Schedule;
- (e) be delivered to the Commissioner General at the address specified in the assessment.

Commissioner General's objection decision

6. (1) Where a taxpayer delivers an objection that does not comply with the requirements of rule 5, the Commissioner General may, by notice within 30 days, inform the taxpayer that he or she does not accept it as a valid objection:

Provided that the taxpayer may, within 7 days of such notice, submit an amended objection.

(2) Where the taxpayer has failed to deliver his or her objection at the address specified in the assessment for this purpose, as required by rule

5(e), the document delivered in terms of rule 5 shall be deemed to be invalid.

(3) Where the Commissioner General is satisfied that the taxpayer has not furnished all the information, documents or things required to decide on the taxpayer's objection, the Commissioner General shall, not later than 30 days after receipt of the objection, notify the taxpayer accordingly and request him or her, in writing, to deliver the information, documents or things as specified in that notice.

(4) The taxpayer shall, within 30 days after the date of the notice contemplated in subrule (3), deliver all information, documents or things requested in that notice and as specified in that notice to the Commissioner General.

(5) The Commissioner General may extend the period in subrule (4) by not more than 30 days, where the Commissioner General is satisfied that reasonable grounds exist on which the taxpayer is not able to deliver the information, documents or things specified by the Commissioner General within that period and the taxpayer has, before expiry of that period, requested the Commissioner General in writing that the period be extended, stating the grounds for the failure to provide such information, documents or things within that period.

(6) The Commissioner General may, on receipt of the objection contemplated in rule 5, or the information contemplated in subrule (5), allow the objection in whole or part and amend the assessment accordingly, or disallow the objection, in accordance with the relevant provisions of the Acts administered by the Authority; and shall notify the taxpayer of his or her decision in writing -

- (a) in the case where the Commissioner General requested information under subrule (5), within 30 days after receipt of that information; or
- (b) in any other case, within 60 days after the date of receipt of the taxpayer's objection in terms of rule 5 or amended objection in terms of the proviso to subrule (1), as the case may be.

(7) Where, in the opinion of the Commissioner General, more time

is required due to exceptional circumstances, the complexity of the matter or the principle or the amount involved, the Commissioner General shall, before expiry of the period prescribed by subrule (6), inform the taxpayer that he or she will decide on the objection within such longer period which-

- (a) in the case of subrule (6)(a), may not exceed 60 days; or
- (b) in the case of subrule (6)(b), may not exceed 90 days.

(8) The objection decision shall, subject to the any legislation administered by the Authority, be in writing and be signed by the Commissioner General or his or her representative and shall be divided into paragraphs-

- (a) setting out a clear and concise statement of the grounds upon which the taxpayer's objection is disallowed; and
- (b) stating the material facts and legal grounds upon which the Commissioner relies for such disallowance.

PART III: Procedures before the Tribunal

Notice of appeal and statement of grounds of appeal

7. (1) A taxpayer who is dissatisfied with the Commissioner General's objection decision shall, if he or she wishes to appeal, within 30 days after receipt of an objection decision disallowing his or her objection, deliver to the Commissioner General a notice of appeal which shall be in such form as may be prescribed by the Commissioner General, and shall be signed by the taxpayer or his or her representative.

- (2) The notice of appeal in subrule (1) shall -
 - (a) set out in full the terms of the order sought from the Tribunal;
 - (b) give an address in Lesotho, and, where convenient and practicable, a telefax number or email address, at which the appellant will accept or receive notice and

service of all documents in such proceedings;

- (c) inform the Commissioner General that, if he or she wishes to oppose the appeal, he or she shall, within 14 days after receipt of the said notice, notify the appellant in writing that he or she intends to oppose the appeal;
- (d) state that if no notification of intention to oppose the appeal is given, the appeal will be set down for hearing on the first available day determined by the Registrar, being the first available day at the Tribunal's next sitting session.

(3) The notice in subrule (1) shall be supported by a statement of grounds of appeal, divided into paragraphs-

- (a) setting out a clear and concise statement of the grounds upon which the appellant appeals;
- (b) stating the material facts and legal grounds upon which the appellant relies for such appeal;
- (c) stating which of the facts and legal grounds alleged in the objection decision by the Commissioner General are admitted and which of those facts and legal grounds are denied;
- (d) annexing any relevant documents in support of the grounds of appeal.

(4) A statement of grounds of appeal in subrule (3) may be submitted after a notice of appeal but not later than 30 days after filing the notice of appeal with the Registrar and delivering the said notice of appeal to the Commissioner General.

(5) Notwithstanding anything stated in this rule, the appellant's statement of grounds of appeal shall be limited to the grounds set out in his or her objection to the Commissioner General, unless the Tribunal grants him or her leave to add new grounds.

Notice of intention to oppose and opposing statement of grounds of appeal

8. (1) If the Commissioner General wishes to oppose the grant of an order sought in the notice of appeal in terms of rule 7(1), he or she shall-
- (a) within the time stated in that notice, give the appellant notice in writing, that he or she intends to oppose the appeal;
 - (b) indicate in that notice an address in Lesotho, and, where convenient and practicable, a telefax number or email address, at which he or she will accept or receive notice and service of all documents in such proceedings;
 - (c) within 30 days of notifying the appellant of his or her intention to oppose the application or after being served with the appellant's statement of grounds of appeal, whichever is the latter, serve the appellant with an opposing statement of grounds of appeal, if any, together with any relevant documents.
- (2) The opposing statement of appeal shall be divided into paragraphs-
- (a) setting out a clear and concise statement of the grounds upon which the Commissioner General opposes the appellant's appeal;
 - (b) stating the material facts and legal grounds upon which the respondent relies for opposing the appeal;
 - (c) stating which of the facts and legal grounds alleged in the appellant's statement of appeal are admitted and which of those facts and legal grounds are denied; and
 - (d) annexing any relevant documents in support of the opposing statement of grounds of appeal.

Issues in appeal

9. The issues in any appeal before the Tribunal will be those defined in the statement of the grounds of appeal read with the opposing statement of grounds of appeal.

Amendment of statements of appeal by appellant or Commissioner General

10. (1) The appellant and the Commissioner General may agree in writing to the amendment of the statement of grounds of appeal, in the case of the appellant, or the opposing statement of grounds of appeal, in the case of the Commissioner General, or both.

(2) The Tribunal, consisting of the President sitting alone, may, on application on notice, grant leave to amend any statement of appeal, subject to such orders as to postponement and costs as the Tribunal deems appropriate.

(3) When a statement of appeal is amended, in terms of this rule, the other party may respond thereto or amend consequentially his or her statement of appeal already filed by him or her within 14 days after receipt of the amendment.

Discovery of documents, information or things

11. (1) The Commissioner General or the appellant may, after the close of pleadings, but not later than 21 days before the date of hearing of an appeal, deliver a notice to the other party requesting him or her to make discovery on oath of all documents, information or things relating to the issues in appeal as canvassed in the pleadings.

(2) Any party to whom a notice to discover has been delivered, shall make discovery on oath of all documents, information or things relating to any matter in the appeal within 14 days after receipt of delivery of that notice, specifying separately -

- (a) the documents, information or things in his or her possession or control, or that of his or her agent;
- (b) the documents, information or things which were previously in his or her possession or control, or that of his

or her agent, but which is no longer so in his or her possession or control or that of his or her agent; and

- (c) the documents, information or things in respect of which he or she has a valid objection to produce.

(3) The production or inspection of the documents, information or things shall take place at a venue and in a manner as may be agreed between the parties:

Provided that either party may, by notice, require the other to produce, at the appeal, any document, information or thing disclosed in terms of this rule and that such notice shall have the effect of a *subpoena* under rule 17.

(4) If either party believes that there are, in addition to the documents, information or things so disclosed, other documents, information or things which may be relevant to any matter in question in possession of the other party, that party may give notice within 14 days of the production or inspection of the documents, information or things in terms or subrule (3) to that other party requiring him or her to make such documents, information or things available for inspection, or to state under oath within ten days that those documents, information or things are not in his or her possession, in which event he or she shall state their whereabouts, if known to him or her.

(5) Any document, information or thing not disclosed may not, save with the leave of the Tribunal granted on such terms as it deems appropriate, be used for any purpose at the appeal by the party who was obliged but failed to disclose it:

Provided that any other party to the appeal may use such document, information or thing.

(6) The Tribunal may, during the course of an appeal, order any party to the appeal to produce, under oath, any document, information or thing in such party's power or control relating to any matter in question in such appeal as the Tribunal may think fit, and the Tribunal may deal with such document, information or thing, when produced, as it considers just.

(7) The same rules and principles that apply to discoverability of documents in the Lesotho High Court shall, *mutatis mutandis*, apply to dis-

coverability of documents intended for use before the Tribunal.

Notice of expert witness

12. Neither party may, save with the leave of the Tribunal or consent of the other party, call any person as a witness to give evidence as an expert upon any matter upon which the evidence of expert witnesses may be received, unless that party has -

- (a) not less than 30 days before the hearing of the appeal delivered notice to the other party and the Registrar of his or her intention to do so; and
- (b) not less than 20 days before the hearing of the appeal delivered to the other party and the Registrar a summary of such expert's options and his or her reasons therefor.

Pre-trial conference

13. (1) Either party may, in writing, request the other for a pre-trial conference to be held-

- (a) where either party was requested to make discovery, within 60 days after parties who were so requested have delivered their discovery notices, but not later than 7 days before the date of hearing of an appeal; or
- (b) where neither party delivered a notice requesting the other party to make discovery, within 60 days after receipt by the Commissioner General of the notice of appeal by the appellant, but not later than 7 days before the date of hearing of an appeal.

(2) During the pre-trial conference the Commissioner General and the appellant shall attempt to reach consensus on -

- (a) the extent to which sufficient discovery has been made by both parties, the exchange of documents, information or things and the preparation of a paginated bundle

of documentation in chronological order;

- (b) the manner in which evidence is to be dealt with, including any agreement on the status of any document, information or thing and whether any document, information or thing or parts thereof, will serve as evidence of what they purport to be;
- (c) whether evidence on affidavit will be admitted with or without the right of any party to cross-examine the deponent;
- (d) the necessity of any inspection *in loco*;
- (e) the resolution of any preliminary points that either party intends to take;
- (f) expert evidence;
- (g) any other means by which the proceedings may be shortened;
- (h) an estimate of the time required for the hearing; and
- (i) any means by which the dispute may be resolved or settled.

(3) The pre-trial conference shall take place at any office of the Authority or any other venue as may be agreed between the parties.

(4) The Commissioner General shall, within 7 days of the conclusion of the pre-trial conference contemplated in subrule (1), prepare, file and deliver to the appellant a minute dealing with the matters set out in subrule (2):

Provided that where the appellant does not agree with the content of the minute, he or she may deliver his or her minute to the Commissioner General within 7 days of the date of delivery of the minute by the Commissioner General.

Date of hearing

14. (1) Either the appellant or the Commissioner General may ask the Registrar to set down the appeal for hearing by the Tribunal at the earliest available date within 30 days after the delivery of the pre-trial conference minute in terms of rule 13(4).

(2) Where no pre-trial conference was held between the appellant and the Commissioner General, either party may, at any time after service of the opposing grounds of appeal by the Commissioner General, request the Registrar to set down the appeal for hearing by the Tribunal at the earliest available date.

(3) The Registrar shall deliver to the appellant and to the Commissioner General a written notice of the time and place appointed for the hearing of the appeal at least 40 days before the hearing of the appeal, or such shortened period as may be agreed between the parties.

Places and times at which Tribunal sits

15. (1) The places and times at which the Tribunal will sit shall be determined by the President, acting in consultation with the Commissioner General.

(2) An appeal may be heard and determined by the Tribunal at any place in Lesotho, due regard being had to convenience and expense of the appellant.

(3) The Tribunal shall sit in such number of sessions as shall be published by notice in the Gazette by the President, acting in consultation with the Commissioner General, regard being had to the volume of appeals that require resolution at any point in time as the President may deem fit.

Procedures not covered by Rules

16. (1) Save as is otherwise provided in the Act or these rules, the Tribunal; may apply such rules as the President may, from time to time, determine, regard being had to fairness and justice to all parties concerned.

(2) In the case of any procedural dispute during any proceedings in

terms of the Act or these rules, only the President shall have the competence to decide on the procedures to be followed.

Subpoenas

17. (1) At the request of either party or by the directions of the Tribunal, a subpoena may be issued by the Registrar requiring any person to attend the hearing of the appeal for the purpose of giving evidence in connection with any appeal, and such subpoena may require the person summoned to produce any book, document, information or thing which may be in his or her possession or under his or her control and which is relevant to the issues in dispute contemplated in rule 9.

(2) The rules issued in terms of section 16 of the High Court Act 1978³ governing the service of subpoenas in civil matters in the High Court shall *mutatis mutandis* apply in respect of subpoenas issued under this rule.

Procedures in the Tribunal

18. (1) At the hearing of an appeal, the proceedings shall be commenced by the appellant, unless the Commissioner General takes a point *in limine*.

(2) The appellant or the person appearing on his or her behalf, shall present all evidence, including any witnesses, as may be necessary, on which his or her appeal may be founded and may not strictly adhere to the rules or evidence, as the Tribunal may determine.

(3) After the case on the part of the appellant has been heard, the Commissioner General may, in like manner, produce all evidence, including any witnesses, as necessary, in support of the assessment or decision appealed against.

(4) At the conclusion of the evidence, the appellant or the person appearing on his or her behalf, and thereafter the Commissioner General, may be heard in argument.

(5) The appellant or the person appearing on his or her behalf may reply to any new points raised in the argument presented by the Commissioner General or to any other points with the leave of the President of the Tribunal.

(6) The Tribunal shall determine the matter in dispute or reserve its decision until a later date.

(7) Where the decision is so reserved, the judgement shall be delivered by the Tribunal in the manner it deems fit.

(8) The hearing of an appeal may be adjourned by the Tribunal from time to time to any time and place that the Tribunal deems convenient.

(9) The Registrar shall, by notice in writing, deliver the written judgement of the Tribunal to the Commissioner General and the appellant or any person nominated by him or her within 14 days of the receipt thereof.

(10) If neither the appellant nor anyone authorised to appear on his or her behalf appears before the Tribunal at the time and place appointed for the hearing of an appeal, the Tribunal may, upon the request of the Commissioner General and upon proof that the prescribed notice of the sitting of the Tribunal has been sent to the appellant or his or her representative, decide the appeal as contemplated in section 13(5) of the Act, unless any question of law arises, in which case the Tribunal may call upon the Commissioner General for argument in support of the assessment before giving its decision.

(11) If neither the Commissioner General nor anyone authorised to appear on his or her behalf appears before the Tribunal at the time and place appointed for the hearing of an appeal, the Tribunal may, upon the request of the appellant and upon proof that the prescribed notice of the sitting of the Tribunal has been sent to the Commissioner General, decide the appeal as contemplated in section 13(5) of the Act, unless any question of law arises, in which case the Tribunal may call upon the appellant for argument in support of the objection before giving its decision.

Withdrawal or concession of appeal

19. (1) The appeal may, at any time before it has been set down for hearing as contemplated in rule 14, be -

- (a) withdrawn by the appellant;
- (b) conceded by the Commissioner General; or

- (c) resolved by an agreement by the appellant and the Commissioner General.

(2) Where an appeal has been set down for hearing as contemplated in rule 14 or is part-heard, it may only be withdrawn by the appellant or conceded by the Commissioner General with the consent of the other party, or with leave of the Tribunal consisting of the President of the Tribunal sitting alone, in which event -

- (a) the party who wishes to withdraw or concede an appeal as contemplated above, shall deliver a notice of withdrawal or concession to the other party and the Registrar and may include in that notice a consent to pay costs, which consent will have the effect of an order of the Tribunal for those costs; or
- (b) if no consent to pay costs is included in the notice referred to in subrule (2) (a), the other party may apply on notice for an order for costs-
 - (i) where the appeal has been set down for hearing as contemplated in rule 14 but not yet heard by the Tribunal, to the Tribunal consisting of the President sitting alone; or
 - (ii) where the matter is part-heard, to the Tribunal consisting of the President sitting alone.

(3) Any agreement or settlement in subrule 1 (c) -

- (a) shall relate to the appeal as a whole, including costs; and
- (b) may, by consent between the parties or by application by any party on notice in the manner contemplated in Part III, be made an order of the Tribunal.

Postponement or removal of case from roll

- 20 (1) Where the Commissioner General and the appellant agree to

postpone the hearing of the appeal which has been set down for hearing as contemplated in rule 14, or to have that appeal removed from such roll, the party initiating the proceedings shall notify the Registrar thereof in writing.

(2) An application by a party to postpone or remove an appeal from the roll, which is opposed by the other party, may be heard and determined by the President sitting alone.

Pagination of documents

21. (1) In all proceedings before the Tribunal, the documents that are filed with the Tribunal shall be paginated by the party who seeks to put them before the Tribunal and, as far as practical, all the documents shall be arranged in chronological order.

(2) All documents shall be accompanied by an index and documents filed with the Tribunal shall be paginated in accordance with this index, which shall contain sufficient information to enable the Tribunal to identify every document without having to refer to the document itself.

(3) Where additional documents are filed after the index has been completed, those additional documents shall be paginated following the original pagination and a supplementary index shall be filed listing the additional documents.

Extension of prescribed periods, condonation and non-compliance with rules

22. (1) Any time limit contemplated in these rules, whether before or after the expiry of any such period, may be extended -

- (a) by agreement between the Commissioner General and the appellant; and
- (b) in the absence of any agreement, the Tribunal may upon application on notice and on good cause shown, make an order extending any period prescribed by these rules or fixed or extended by an order of the Tribunal on such terms as the Tribunal deems appropriate as to costs and otherwise as Tribunal considers

the interest of justice demand.

(2) In exercising its discretion in terms of subrule (1) (b), the Tribunal, may upon application on notice and on good cause shown, condone any non-compliance with these rules.

(3) Where either party fails to comply with any requirement contained in these rules the Tribunal may, upon application on notice by the other party, order the defaulting party to comply with that requirement within such time as the Tribunal deems appropriate.

(4) Where the defaulting party fails to comply with an order made in terms of subrule (1) or (3), the Tribunal may, upon application on notice by the other party -

- (a) where the defaulting party is the taxpayer, make an order that the assessment or decision against which the taxpayer has objected is confirmed, in which case the assessment or decision shall be final and conclusive;
- (b) where the defaulting party is the Commissioner General, make an order that the objection is allowed and that the Commissioner General alters the assessment in accordance with the objection; or
- (c) make such other order as the Tribunal deems appropriate.

(5) For purposes of this rule, any reference to "Tribunal" means the President of the tribunal sitting alone.

Costs

23. (1) Where the Tribunal makes an order as to costs, or pursuant to an agreement as contemplated in these rules, the Registrar may either perform the functions and duties of a taxing master or, at the request of the Tribunal or any party, appoint any person to act as taxing master on such terms and for such period as the Registrar may determine.

(2) The person appointed by the Registrar under subrule (1) shall,

in the Registrar's opinion, be fit to perform the functions and duties which are assigned to, or imposed on, a taxing master by these rules.

(3) The Commissioner General or the appellant may apply to the President sitting alone for reconsideration of any items or portions of items in the bill of costs taxed by the Registrar or the person appointed to act as taxing master, and the President's decision as to whether such items or portions of items shall be allowed, reduced or disallowed shall be final.

(4) The tariff of fees, charges and rates to be allowed by the Tribunal shall be fixed by the President in a schedule to these rules.

Fees payable for transcripts

24. Where any person (other than the Commissioner General) has filed with the Registrar a notice of intention to appeal under section 19(1) of the Act against a decision of the tribunal, and that person requires a transcript of the evidence, or of a portion of the evidence, given at the hearing of the case by the Tribunal, that person shall deposit with the Registrar such sum as in the opinion of the Registrar is sufficient to cover the costs for the transcript, and shall pay upon receipt of such transcript the outstanding portion of the fees as determined by the Registrar.

PART IV: Applications on notice

Definitions

25. (1) For purposes of this Part, any meaning ascribed to any word or expression in the Act or these rules shall, unless the context otherwise indicates, bear the meaning so ascribed.

(2) Rules 15, 19 to 21 and 23 of Part III shall, to the extent applicable, apply *mutatis mutandis* to this Part.

(3) Save as is otherwise provided in the rules of this Part, the general practice and procedure of the Tribunal may approximate that of the High Court to the extent practicable in so far as such practice and procedure and considered helpful by the President.

Application of Part III

26. For purposes of this Part, any application on notice shall be brought in the manner contemplated in these rules.

Notice of motion and founding affidavit

27. Every application shall be brought on notice of motion, which shall conform as near as possible to Form B of the First Schedule, shall set out in full the order sought and shall be supported by a founding affidavit as to the facts upon which the applicant relies for relief.

Delivery of notice of motion and founding affidavit

28. (1) Copies of the notice of motion and founding affidavit, and all annexures thereto, shall be delivered to the Registrar and the party against which the relief is claimed (hereafter referred to as the "respondent") at the address-

- (a) where the respondent is the Commissioner General, specified by him or her for this purpose in the assessment; or
- (b) where the respondent is the taxpayer, specified by him or her for this purpose in his or her objection in terms of rule 5 of Part III of these rules.

(2) The applicant shall, in the notice of motion -

- (a) indicate an address as contemplated in rule 5, in the case of the taxpayer, or rule 6, in the case of Commissioner General, at which he or she will accept notice and delivery of all documents in such proceedings;
- (b) set forth a day, not less than 14 days after delivery thereof to the respondent, on or before which the respondent is required to notify the applicant in writing, whether he or she intends to oppose that application; and

- (c) state that if no such notification is given, the application will be set down for hearing on the first available day determined by the Registrar, being not less than 14 days after service of that notice on the respondent.

Set-down for hearing where no intention to oppose

29. If the respondent does not, on or before the day mentioned for that purpose in the notice in terms of rule 28(2)(b), notify the applicant of his or her intention to oppose, the applicant may request the Registrar to place the matter on the roll on the date determined by the Registrar in terms of rule 28(2)(c).

Notice of intention to oppose and answering affidavit

30. If the respondent wishes to oppose the grant of an order sought in the notice of motion, he or she shall -

- (a) within 14 days, give the applicant notice in writing, that he or she intends to oppose the application;
- (b) indicate in that notice contemplated in paragraph (a) an address, if different from the address contemplated in rule 28(2)(a), at which he or she will accept notice and delivery of all documents in such proceedings; and
- (c) within 17 days of notifying the applicant of his or her intention to oppose the application, deliver his or her answering affidavit, if any, together with any relevant documents.

Replying affidavit

31. (1) Within 14 days of delivery of the affidavit and documents referred to in rule 34, the applicant may deliver a replying affidavit.

(2) The Tribunal may in its discretion permit the filing of further affidavits.

Set-down for hearing where no answering affidavit

32. Where no answering affidavit is delivered within the period referred to in rule 31, the applicant may, within 7 days of the expiry of that period, apply to the Registrar to allocate a date for the hearing of the application.

Application for set down by applicant

33. Where an answering affidavit is delivered the applicant may, within 7 days of receipt of such affidavit deliver his or her replying affidavit or, if no replying affidavit is delivered, within 7 days of the expiry of the period referred to in rule 32, apply to the Registrar to allocate a date for the hearing of the application on the first available date suitable to both parties.

Application for set down by respondent

34. (1) If the applicant fails to apply in terms of rule 33 to the Registrar to allocate a date for the hearing of the application within the periods contemplated therein, the respondent may do so immediately upon the expiry thereof.

(2) Notice in writing of the date allocated by the Registrar shall forthwith be given by the applicant or the respondent, as the case may be, to the other party.

PART V: Transitional Arrangements**Assessment issued before effective date**

35. Where an assessment was issued in terms of any of the legislation in the Second Schedule before the effective date and no objection against that assessment was lodged before that date, rule 5 in Part III of these rules shall apply to an objection against that assessment, where that objection is lodged within the period prescribed in that rule.

Objection lodged before effective date

36. (1) Where an objection against an assessment was lodged before the effective date and no objection decision had been given by the Commissioner General, in terms of the relevant provisions of the Act administered by the LRA before that date, the Commissioner General shall provide the

taxpayer with the objection decision within 40 days from the effective date, within the contemplation of rule 6:

Provided that the objection complies with the requirements of a valid objection as contemplated in the relevant provisions of the relevant Act in the Second Schedule.

(2) Where the objection contemplated in subrule (1) does not meet the requirements of a valid objection in terms of that subrule, the Commissioner General shall, within 40 days, give the taxpayer the notice contemplated in rule 6(1), notwithstanding the notice period stipulated in that rule and the entirety of rule 6 shall then *mutatis mutandis* apply.

Appeal noted before the effective date

37. (1) Where an appeal was noted in terms of the Act before the effective date and that appeal has not been set down for hearing by the Tribunal, the appellant and the Commissioner General may agree in writing that all of the procedures contemplated in rules 10 to 14, to the extent applicable, apply in respect of that appeal.

(2) Where no agreement contemplated in subrule (1) was reached, either party may place the appeal before the Tribunal in the manner contemplated in rule 14 as soon as is reasonably possible and the appeal will be determined by the Tribunal in terms of these rules, to the extent reasonably applicable.

General

39. In any other case not specifically covered under this Part, when a time is prescribed for any purpose in terms of these rules, and such time would otherwise have commenced to run prior to the commencement of these rules, such time shall begin to run only from a day after the effective date.

**JUSTICE NTHOMENG JUSTINA MAJARA
PRESIDENT OF THE REVENUE APPEALS TRIBUNAL**

NOTE

1. Act No. 2 of 2005

- 2. Act No. 14 of 2001
- 3. Act No. 5 of 1978

FIRST SCHEDULE

Form A

SPECIAL POWER OF ATTORNEY

(Rule 5(d))

I, the undersigned, in my capacity as *taxpayer/ vendor / representative taxpayer / vendor / employer / other (*delete whichever is not applicable or complete blank space) with income tax reference number and VAT reference number (if applicable) hereby nominate and appoint in his/her capacity as to be my representative with full power and authority to act on my behalf in respect of lodging and prosecution of an objection to the Commissioner General's assessment of my tax affairs, and in my name and on my behalf, as contemplated by rule 5(d) of the Revenue Appeals Tribunal Rules 2006, to make any enquiries or to prepare or complete or sign the objection or other documents regarding my tax affairs as related to the aforementioned Commissioner General's assessment.

THUS DONE and EXECUTED at on this day of

.....
 (Signature)

AS WITNESSES:

1.

[Full name:]

2.

[Full name:]

FORM B

NOTICE OF MOTION
(to Registrar and Respondent)

IN THE REVENUE APPEALS TRIBUNAL

Case No.

In the matter between:

..... (Applicant)

and

..... (Respondent)

Take notice that (hereinafter called the applicant)
intends to make application to this Tribunal for an order:

- (a)
- (b)
- (c) (here set forth the form of order
prayed) and that the accompanying affidavit of will be
used in support thereof.

Take notice further that the applicant has appointed (here set
forth an address) as the address at which he or she will accept notice and serv-
ice of all process in these proceedings.Take notice further that if you intend opposing this application you are required
(a) to notify applicant or applicant's attorney in writing on or before
(date) and (b) within 14 days after you have so given notice of your intention
to oppose the application to file your answering affidavit, if any; and further
that you are required to appoint in such notification an address within 5 kilo-
metres of the Authority's Head Office in Maseru or its Regional Offices in
Leribe and Mohale's Hoek at which you will accept notice and service of all
documents in these proceedings.If no such notice of intention to oppose is given, the applicant will request the
Registrar to place the matter before the Tribunal to be dealt with in terms of

rule 14(2).

Date at, this day of 20.....

Applicant or attorney

To: (1) (Respondent)

.....
.....
.....

(Address)

(2) The Registrar of the above tribunal

.....

SECOND SCHEDULE**Legislation Administered by the Authority****(Rule 36)**

1. Customs and Excise Act 1982, including any regulations and schedules under this Act
2. Income Tax Act 1993, including any regulations and schedules under this Act
3. Sales Tax Act 1995, including any regulations and schedules under this Act
4. Value Added Tax 2001, including any regulations and schedules under this Act