

## VAT News 6 - May/June 1996

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#### **OBJECTION AND APPEAL**

Your reaction to the Receiver of Revenue's treatment of any VAT matter is always important. Should you feel dissatisfied for some reason or another, your input is of even greater importance. Sound and prompt communication is vital. Many a difference has been resolved by a frank and open approach and by information freely furnished. In any event, never hesitate to put pen to paper.

Should the matter not be resolved and –

- a notice be given that the Receiver refuses in terms of the Act to register a person for VAT purposes; or
- a notice be given of the decision of the Receiver to cancel the registration of a person or refusal to cancel such registration; or
- a notice be given of the refusal of the Receiver to make a refund, or
- an assessment is issued;

you may lodge an objection.

To "lodge an objection" you should write to the Receiver, stating the decision/assessment you are objecting against. If an objection does not reach the Receiver within 30 days of the date of the decision/assessment, barring exceptional circumstances, the decision/assessment becomes final and conclusive.

In your letter the grounds of objection (the reasons therefore) should be set out in detail. Bear in mind that fresh grounds may not be submitted at a later stage if the matter should develop into an appeal.

The Receiver is responsible to see to it that your objection is thoroughly considered by senior members of his staff in the light of the grounds furnished. In some cases the matter will be referred to the Commissioner of Inland Revenue in Pretoria for consideration, in which case you may be approached by the latter for further information.

Once it has been decided to –

- alter the previous decision; or
- alter or reduce the assessment; or
- disallow the objection;

a letter will be directed to you, informing you of the decision and the reasons for it.

If the objection has been disallowed and you find it unacceptable, you may lodge an appeal. This must be in writing (there is no prescribed format) and must reach the Receiver within 30 days of the date of the notice/assessment appealed against.

At this stage, before the appeal is set down for hearing by a court instituted for hearing tax appeals in your area, all aspects of the matter will be considered by the Commissioner for Inland Revenue in Pretoria. If it is decided to go ahead with the appeal, you will be informed of the date and place of the hearing.

You may attend the hearing in person, present testimony or call other witnesses, should you choose. You are also free to obtain legal representation.

In certain cases, for instance assessments for tax less than R20 000, where both you and the Commissioner agree thereto, the appeal may be heard by a specially constituted Board. Hearings by the Board are less formal than Special Court hearings. All correspondence, including your letters of objection and appeal, will form part of the papers (dossier) before the Special Court or Special Board.

**Because a vendor's tax affairs are treated in strict confidence, these hearings are not open to the public or the media.**

The Court or the Board may confirm, overrule or vary the decision of the Commissioner or make another decision. In the case of an assessment, it may be ordered that the assessment be altered, reduced, confirmed or referred back to the Commissioner for further investigation and reconsideration in accordance with the principles laid down by the Court or Board. Whatever the outcome, provided your appeal was not frivolous, no order for costs will be made. (You will of course be liable for fees payable to your legal representative).

Costs will, however, be involved if you should decide on further appeal. If the case was before the Special Board, appeal to the Special Court may be noted. If the case was heard by the latter, appeal to the provisional division of the Supreme Court may be lodged or, with leave granted by the President of the Special Court, to the Appellate Division direct.

Finally, one should be sure to keep copies of all letters, notices and other documents which may have a bearing on the matter, until such time as it has been finally laid to rest.

### *PRE-COOKED MAIZE MEAL*

It is important to note that, although the supply of maize meal, special maize meal, sifted maize meal or unsifted maize meal qualifies as a zero-rated supply, the supply of pre-cooked maize meal will be subject to the standard rate. Maize meal which is pre-cooked is in terms of section 89 of the Marketing Act, 1968, not considered as a maize product and is for this reason subject to VAT at the standard rate.

### *DEREGISTRATION OF A VENDOR*

A vendor who is no longer liable to be registered in terms of the Value-Added Tax Act, 1991, may, by means of a form VAT 123 or by letter, request the Commissioner to cancel his registration.

The following information with regard to the enterprise must be furnished to the Commissioner:

- the date on which the enterprise ceased or will cease or is to be disposed of;
- confirmation of whether the enterprise will be sold as going concern (the supply to a registered vendor of an enterprise or a part of an enterprise which can be operated separately) and whether the business assets are to be sold to the purchaser as part of the transaction;
- the name and address of the person to whom the enterprise will be sold;
- a copy of the sales agreement where applicable;
- if the enterprise is not sold as a going concern or merely ceases its activities:
  - a list of all the assets on hand at the date on which the enterprise was or is to be sold or ceased must be furnished;
  - proof must be furnished of the manner in which the assets were disposed of;
  - where any assets are retained by the vendor, VAT must be accounted for on the lower of cost or market value;
- the consideration received in respect of the sale or in respect of assets retained, must be accounted for and the tax paid within 25 days after the end of the tax period in which the assets are sold or the business ceased. A return (VAT 201) must be obtained from the Receiver.

The discretion to either cancel the registration or to refuse deregistration rests with the Commissioner.

A person registered as a vendor only ceases to be a vendor upon receiving written notice to that effect from the Commissioner.