VERŻJONI ELETTRONIKA

L. N. 185 of 2012

ADMINISTRATIVE JUSTICE ACT
(CAP. 490)

Extension of Jurisdiction of the Administrative Review Tribunal (Fiscal Matters) (Amendment No. 2) Regulations, 2012

IN exercise of the powers conferred by article 21 of the Administrative Justice Act, the Minister for Justice, Dialogue and the Family has made the following regulations:-

Title and commencement.

1. The title of these regulations is the Extension of Jurisdiction of the Administrative Review Tribunal (Fiscal Matters) (Amendment No. 2) Regulations, 2012.

Amendment of law in the Schedule.

2. The law specified in the First Column of the Schedule to these regulations shall have effect subject to the amendments specified in the Second Column thereof.

SCHEDULE
Amendment of Law

First Column	Second Column
Enactment	*Extent of Amendment*
Value Added Tax Act, Cap. 406.	**1.** The Ninth Schedule shall be substituted by the following: "NINTH SCHEDULE [Article 46] Appeals to the Tribunal *Competence of the Tribunal* **1.** (1) The Tribunal shall be competent to hear any appeal against an assessment and to confirm, reduce or increase any taxable value or credit or tax assessed by the Commissioner, or cancel the assessment or make such other declaration or order as it deems fit. (2) The Tribunal shall be competent to determine any matter referred to it in accordance with article 44. (3) The Tribunal may, in any decision, make such order on the costs of the case as it may deem appropriate.

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Appeals against assessments

2. (1) An appeal against an assessment shall not be valid unless:

(a) a return for the tax period to which the assessment refers has been delivered to the Commissioner before the appeal is entered;

(b) all tax payable by the appellant which is not in dispute has been paid;

(c) it is made within thirty days from the date of the service of the notice against which the appeal is made;

(d) it is made in such form and in such manner as may be prescribed under the Administrative Justice Act;

(e) a payment of such fees for lodging an appeal as may be prescribed under the Administrative Justice Act has been made.

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(2) The onus of proving that any taxable value assessed by the Commissioner is excessive or that any credit assessed by the Commissioner is insufficient shall lie on the appellant.

(3) The Tribunal may refuse to consider any evidence as sufficient for the purpose of paragraph (2) if the appellant has failed to keep the records and documents required to be kept by this Act or fails to produce such records or documents.

(4) The Tribunal shall deliver its decision in writing and shall cause a copy of the decision to be given to the appellant.

Evidence and proof

3. For the purpose of -

(a) the examination of evidence and enforcing the attendance of witnesses;

(b) the production of books and other documentary evidence,

in any appeal to the Tribunal, the Tribunal shall also have all such powers as are vested by the Code of Organization and Civil Procedure in the Civil Court, First Hall and it shall, *mutatis mutandis*, be regulated by the appropriate rules set out:

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Provided that -

(i) the clerk, agent, employee or other person confidentially employed in the affairs of the appellant, and the parents, spouse or children of such appellant, shall not be called to give evidence or to be examined except on the request of the appellant;

(ii) any person, other than the Commissioner, who has or has had any official duty, or is or has been employed, in the administration of the Act, shall not be called to give evidence or to be examined in connection with any official matter concerning the assessment under appeal except on the request of the Commissioner.

Payment of the tax

4. (1) When a valid appeal has been made against an assessment, the payment of so much of the tax assessed which is in dispute may be kept in abeyance until the appeal is finally determined, provided that the running of interest on the said tax shall not be meanwhile suspended.

(2) The running of the period referred to in article 58(2) shall be suspended in respect of any tax or administrative penalty for any time during which the payment thereof may be kept in abeyance in terms of this item.

(3) Where the tax payable as a result of a decision of the Tribunal on an appeal against an assessment exceeds the tax shown to be payable in the said assessment, the excess shall be payable by not later than the end of the month during which the said decision is served on the appellant and interest at the rate specified in article 21(4) shall be due on such excess from the said date for any period during which such excess remains unpaid.

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References to the Tribunal

5. (1) A reference to the Tribunal of any matter referred to in article 44 may not be made unless it has first been raised in correspondence with the Commissioner and shall be made by means of an application in writing which shall state clearly all the facts relevant to that matter and the manner in which, in the opinion of the applicant, that matter should be determined.

(2) A reference to the Tribunal on a question referred to in article 44(k) (the imposition of an administrative penalty) shall not be valid unless it is made by not later than two years from the date on which a notice of the imposition of the administrative penalty in question was given to the person on whom it was imposed.

(3) The Tribunal shall, after hearing all parties having an interest in the matter, and obtaining all relevant information, decide the matter and cause its decision to be served on the parties.

Appeals against Assessments

6. (1) An appeal against an assessment shall be made by an application which shall be signed by the appellant or by his agent.

(2) An application to the Tribunal under paragraph (1) shall be drawn up and filed with the Secretary in duplicate, and the Secretary shall cause one copy to be delivered to the Commissioner within five working days from the date it is so filed.

(3) The Tribunal may, at any time, allow any amendment to be made in any application for the purpose of making it clearer.

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Reply by the Commissioner.

7. When a copy of an application of an appeal against an assessment has been delivered to the Commissioner in accordance with paragraph (2) of item 5 above, the Commissioner shall, within twenty days from the expiration of the time limit laid down in the said paragraph, file with the Secretary a reply in duplicate stating his reasons for contesting the appeal, and the Secretary shall cause one copy of the reply to be served on the appellant.

Reference to the Tribunal.

8. (1) An appeal to the Tribunal consisting of a reference of a question to the Tribunal made by a person other than the Commissioner shall be made by application which shall be signed by the appellant or by his agent.

(2) An application to the Tribunal under paragraph (1) shall be drawn up and filed with the Secretary in duplicate, and the Secretary shall cause one copy to be delivered to the Commissioner within five working days from the date it is so filed.

(3) When a copy of an application under paragraph (1) has been delivered to the Commissioner in accordance with paragraph (2), the Commissioner shall within twenty days from the expiration of the time limit laid down in the said paragraph, file with the Secretary a reply in duplicate stating his reasons for contesting the appeal and the Secretary shall cause one copy of the reply to be served on the appellant.

(4) The Tribunal shall refrain from deciding on an appeal referred to in paragraph (1) unless the appellant shows that he had, before making his application, referred the matter to the Commissioner in writing and that:

(a) the Commissioner agreed that the question should be referred to the Tribunal,

(b) the Commissioner did not give a reply, or

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(c) the appellant feels aggrieved by the Commissioner's reply.

(5) An appeal to the Tribunal consisting of a reference of a question to the Tribunal made by the Commissioner shall be made by an application which shall indicate the name of a person or the names of persons who, in his opinion, has or have a direct interest in the matter.

Parties to a reference.

9. (1) The parties to an appeal consisting of a reference of a question to the Tribunal shall be:

(a) the Commissioner;

(b) where the appellant is not the Commissioner, the appellant, provided that the Tribunal may at any time, and at the request of the Commissioner, require the appellant to prove his direct interest in the matter;

(c) any person indicated in an application made by the Commissioner in accordance with paragraph (3) of item 7.

(2) A decision of the Tribunal shall be binding, with respect to the specific matter referred to it, on the parties to the appeal but not on any other person:

Provided that the decision shall be binding as aforesaid only if the relevant facts have been correctly stated in the application or otherwise recorded in the records of the case and shall remain binding only as long as there have been no material changes to the said facts or to the relevant provisions of the law.

Appointment of date for hearing of reference to the Board.

10. (1) After an application has been made in accordance with item 7, the Tribunal shall appoint a day for the hearing of the appeal.

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(2) The Secretary shall cause a notice of the day and time appointed for the hearing of the appeal to be served on all parties to the appeal. He shall, moreover, cause a copy of the application to be served on the parties to the appeal, except for the appellant himself.

11. The provisions of article 15 of the Administrative Justice Act shall apply to any appeal or reference made to the Tribunal.".

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2. The Value Added Tax (Fees) (Appeals to the Administrative Review Tribunal) Regulations, 2012 are hereby repealed.

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