

CIVIL- Statutory Interpretation -Value Added Tax Act Chap. 75:06

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REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. CV 2018- 02605

IN THE MATTER OF

IN THE MATTER OF THE VALUE ADDED TAX ACT CHAP. 75:06

IN THE MATTER OF THE LEGAL PROFESSION TAX ACT CHAP. 90:03

**IN THE MATTER OF THE INTERPRETATION OF THE VALUE ADDED TAX ACT CHAP.
75:06**

BETWEEN

The Law Association of Trinidad and Tobago

AND

The Board of Inland Revenue

Claimant

Defendant

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FIXED DATE CLAIM FORM



The Claimant, The Law Association of Trinidad and Tobago ('the LATT') a body corporate established pursuant to section 3 of the Legal Profession Act Chap.90:03 and having its address at 2nd Floor, 95-97 Frederick Street Port-of-Spain, Trinidad claims against the Defendant, The Board of Inland Revenue ('the BIR') established pursuant to Section 3 of The Income Tax Act Chap 75:01 ("the Act"), and with its offices at Trinidad House Treasury Street, Port-of-Spain, Trinidad for—

A. The determination and interpretation of the Supreme Court, by way of Declaration or otherwise, in respect of the following matters:

(1) Whether the Value Added Tax Act Chap 75:06 makes chargeable to Value Added Tax annual subscriptions paid by members to the LATT?

(2) Whether the said annual subscriptions are a commercial supply and thus chargeable to Value Added Tax?

(3) Whether the said subscription fees are paid by members for the supply of services in the course of, or furtherance of, a business within the meaning of the Value Added Tax Act?

B. An order that the BIR do repay to the Law Association all monies remitted purportedly paid in respect of Value Added Tax on subscription fees paid by members.

C. Such necessary and consequential orders, directions and further and/or other reliefs as may be necessary or expedient or as the Court deems fit.

AND TAKE NOTICE that the grounds upon which the claims for relief are based and/or the facts which entitle the Claimant to make the claim are as follows: -

1) The LATT is a body corporate established pursuant to section 3 of the Legal Profession Act Chap.90:03.

2) The LATT's purposes as set out in s. 5 of the Act are as follows:

- a. to maintain and improve the standards of conduct and proficiency of the legal profession in Trinidad and Tobago;
- b. to represent and protect the interests of the legal profession in Trinidad and Tobago;

- c. to protect and assist the public in Trinidad and Tobago in all matters relating to the law;
 - d. to promote good relations within the profession, between the profession and persons concerned in the administration of justice in Trinidad and Tobago and between the profession and the public generally;
 - e. to promote good relations between the profession and professional bodies of the legal profession in other countries and to participate in the activities of any international association of lawyers and to become a member thereof;
 - f. to promote, maintain and support the administration of justice and the rule of law;
 - g. to do such other things as are incidental or conducive to the achievement of the purposes set out at (a) to (f).
- 3) Sections 12 and 27 of the Legal Profession Act Chap.90:03 (the "LPA") provide that members, other than honorary members and law officers, are required to pay an annual subscription. The method of payment laid down by section 12 is that members who are required to pay, make the subscription payments to LATT through the Registrar of the Supreme Court. The LPA does not contemplate the issuance of invoices either by the Registrar or LATT, and indeed no invoices are issued by LATT in this regard.
- 4) The LATT charges annual subscription fees and carries out its general activities, not in return for consideration from the members, but because it is obliged to do so by section 5 of the LPA.
- 5) Further, the LATT carries out a regulatory function that is for the protection of the public and is not done for the economic benefit of the LATT or its members.
- 6) If an Attorney at Law fails to pay the annual subscription then that person is not issued a valid practising certificate and by virtue of section 22 (2) of the LPA is not entitled to practise law. Furthermore, by section 9(2) of the LPA (as interpreted by the Court of Appeal in *Nabie v LATT* CA 72 of 2012 with respect to Law Officers), only members who pay the

annual subscription are eligible to attend and vote at a general meeting or at an election meeting of members of the Council or to be elected to the Council.

- 7) Pursuant to section 5 of the LPA, the LATT's statutory function is a public one that is, directed at the maintenance and support of the administration of justice and the rule of law (sub-clause (f)) by the maintenance and improvement of standards (sub-clause (a)), the representation and protection of the interests of the legal profession at large (sub clause (b)), the protection and assistance of the public in all matters relating to law (sub clause (c)) and the promotion of good relations between the legal profession and the public (sub-clause (d)) and other bodies (sub-clauses (d) and (e)).
- 8) The BIR is a Division of the Ministry of Finance and the Economy. It serves as the principal tax collecting agency in Trinidad and Tobago. The organisation is managed by a Board of five (5) Commissioners, one of whom is appointed Chairman. Board members are charged with the primary responsibility of administering taxes in Trinidad and Tobago, in accordance with Section 3 of the Income Tax Act Chapter 75:01.
- 9) Value Added Tax is an ad valorem regressive tax imposed by section 6 of the Value Added Tax Act Chap 75:06 ('the VAT Act').
- 10) The BIR is responsible for the administration of VAT by Virtue of section 49 of the VAT Act.
- 11) Section 6 of the VAT Act imposes VAT on the importation and commercial supply of goods and the commercial supply of prescribed services.
- 12) Pursuant to section 6(b) of the VAT Act, VAT is charged on the commercial supply within Trinidad and Tobago of prescribed services by a registered person.
- 13) Commercial supply is defined in sections 3(1) and 14 of the VAT Act as a "supply" of "prescribed services" that is made "in the course of, or furtherance of any business".
- 14) On the 15th October 1998 the LATT applied for VAT registration.

15) On the 29th April 1999 the LATT was registered for VAT.

16) The Certificate was returned to the BIR for correction in June 1999 as the BIR had wrongly inserted "Trading as Law Association of T&T Ltd" on the Certificate.

17) At its meeting held on the 2nd July 1999 the Council of the LATT decided to apply to cancel the registration on the advice of Senior Counsel.

18) By letter dated the 10th August 1999 the LATT wrote to the BIR seeking cancellation of its VAT Registration.

19) This letter was acknowledged by the BIR by way of letter dated the 30th August 1999 and on the 14th September 1999 the LATT submitted a VAT 14 form applying for cancellation of VAT registration on the following ground set out at item 2 of the form:

"Application for registration was made in error. Under the provisions of the Legal Profession Act 1986 our activities are not taxable."

20) The BIR cancelled the LATT's registration certificate No. 117104 by notice filed on the 28th November 2002.

21) In its notice of cancellation, the BIR had requested that the LATT file VAT returns up to 2002. In a letter in response dated the 6th January 2003 the LATT wrote to the BIR seeking an exemption from that request.

22) After its VAT registration was cancelled and until 2015, when it re-registered, the LATT was a non-registered entity.

23) In 2014, the LATT, having purchased its own building on Frederick Street, offered a portion of same for rental and considered that the proposed rental income would exceed the VAT threshold and as such there would be a need to apply for VAT registration in respect of this income.

- 24) By letter dated the 15th January 2015 the LATT wrote to the BIR applying for re-registration "in respect of rental income only". It is noteworthy that this letter accompanying the VAT registration form sets out the history of the LATT's previous application and explicitly says "The application for de-registration was accepted which confirms the acceptance of the Inland Revenue Division of the position that membership fees are not a commercial supply and therefore non-vatable."
- 25) LATT was re-registered for VAT on the 10th March 2015 as No. 327105.
- 26) Following re-registration, VAT was paid on the rental income. The LATT continued to treat membership subscriptions as being exempt from VAT.
- 27) In order to take advantage of a tax amnesty which was due to expire on 16 September 2016 the then Council of the LATT sought advice as to whether the LATT would be liable to pay VAT on membership subscriptions.
- 28) There being no clear answer to this issue and out of an abundance of caution, the President, Treasurer and Mr Wade George met with Mr Ramdahin to discuss the LATT's tax position on 15th September 2016.
- 29) Mr Ramdahin confirmed that he had discussed the matter with the Chairman of the BIR, Mrs. Allison Raphael and that they were of the view that LATT's annual members' subscriptions were liable to VAT.
- 30) Mr. Ramdahin was made aware of the previous registration and deregistration and that the LATT had been unable to locate the requisite documentation at the material time. Mr. Ramdahin reported having checked the VAT records and having found no record of the de-registration. He further opined that he could see no legal basis for de-registration. He agreed to accept the LATT's cheque, issued under cover of letter dated the 15th September 2016, in proposed settlement of outstanding VAT and tax liability offering a "high level of

confidence" that the settlement would be accepted by the Chairman of the BIR. He signed the cover letter to signify the receipt of the cheque within the Amnesty period.

31) The letter dated the 15th September 2016 reserved the LATT's position on its liability to VAT based on the information which had been received from former members of Council that the LATT had been deregistered in the past on the basis that membership subscriptions were not subject to VAT.

32) By letter dated the 15th March 2017 the BIR confirmed its opinion that the activities of the LATT are regarded as a business and that subscription fees are subject to VAT.

33) Subsequent to receipt of letter dated the 15th March 2017 and on or around the 9th June 2017 the LATT located the requisite documentation evidencing its first application for VAT registration and its deregistration.

34) By letter dated the 12th January 2018 the LATT set out its position to the BIR and proposed that the BIR reconsider its position on whether VAT should be charged on members' subscriptions. The BIR has not acknowledged or responded to the said letter.

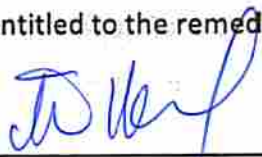
35) The determination of this matter by the High Court is manifestly in the public interest:

- i) It raises live and subsisting issues of law which will likely have to be determined the future;
- ii) There is urgency in obtaining a binding determination as this may affect the future relations between the LATT and the BIR;
- iii) The factual issues raised by these proceedings involve facts which are likely to be matters of formal record and are therefore not contested;
- iv) The issues raised herein have relevance to the annual fees payable by practitioner members of the LATT in the future and it will be useful for this purpose to obtain definitive guidance from the Supreme Court.

Dated this ^{19th} day of July, 2018.

Certificate of truth

I believe that the contents of this Fixed Date Claim Form are true and that the Claimant is entitled to the remedies claimed.

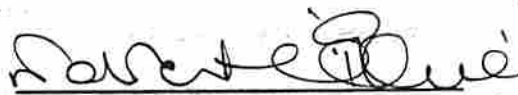


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**Treasurer of the Law Association
of Trinidad and Tobago**

**Authorised for and on behalf of the
Law Association of Trinidad and Tobago**

This Fixed Date Claim Form was issued by Nicole de Verteuil-Milne of de Verteuil-Milne & Associates, Suite 3G, The Normandie Hotel, Nook Avenue St. Anns (and whose address for service is the same), Attorney-at-Law for the Claimant.



**NICOLE DE VERTEUIL-MILNE
de Verteuil-Milne & Associates
Attorney-at-Law for the Claimant**

TO: **The Registrar**
Supreme Court
Hall of Justice, Knox Street
Port of Spain

AND TO: **The Board of Inland Revenue**
Government Campus Plaza
2-4 Ajax Street
PORT OF SPAIN

NOTICE TO THE DEFENDANT-

The First Hearing of this Claim will take place in Courtroom POS at Knox Street, Port of Spain
[] the [] day of [], 2018, at [] a.m.

If you do not attend at that hearing, judgment may be entered against you in accordance with the Claim.

If you do attend, the judge may

- (a) deal with the claim, or
- (b) give directions for the preparation of the case for a further hearing.

A statement of case or an affidavit giving full details of the Claimant's claim should be served on you with this Claim Form. If not and there is no order permitting the claimant not to serve the statement of case or affidavit you should contact the court office immediately.

You should complete the form of appearance served on you with this Claim Form and deliver or send it to the court office (address below) so that they receive it within EIGHT days of service of this Claim Form on you. The form of appearance may be completed by you or an attorney acting for you.

You should consider legal advice with regard to this claim. See notes on the back of this form or on the next page.

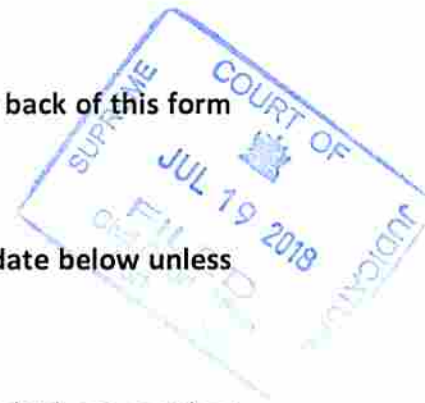
This claim form has no validity if it is not served within four months of the date below unless it is accompanied by an order extending that time.

The Court Office is at the Hall of Justice, Knox Street, Trinidad and Tobago, telephone number 623-2416/7. The Office is open between 8:00 am and 4:00 pm on Mondays to Fridays except Public Holidays and Court Holidays.

NOTES FOR DEFENDANT (FIXED DATE CLAIM)

The claimant is seeking an order from the court as set out in the claim form overleaf on the basis of the facts or evidence set out in the statement of case or affidavit which was served with it. The claimant will not be entitled to enter judgment against you without a hearing.

You may:



A. Admit the claim

If so, you should complete and return the form of appearance to the court office stating this. You may attend the first hearing if you wish to do so.

B. Dispute the claim

If so, you should complete and return the form of appearance as under A. You should also file at the court office and serve on the claimant's attorney-at-law (or the claimant if he has no attorney-at-law):

(a) a defence if the claim form was accompanied by the claimant's statement of case; OR

(b) an affidavit in answer if the claim form is accompanied by an affidavit sworn by or on behalf of the claimant.

Your statement of case or affidavit must set out briefly ALL the facts on which you will rely to dispute the claim made against you.

C. Make a claim against the claimant

If so, you should complete and return the form of appearance as under A. You must file a statement of case (a counterclaim) setting out full details of what you claim against the claimant and the facts on which you will rely. The statement of case should also set out ALL the facts on which you rely in disputing any part of the claimant's claim against you.

You should also attend the first hearing. If you do not the Judge may deal with the claim in your absence.

FORM 3 – APPEARANCE TO CLAIM FORM (Part 9)

Civil:

Filing Attorney: -----

Address-----

TRINIDAD AND TOBAGO

Tel: -----

Fax: -----

E-mail-----

The Republic of Trinidad and Tobago

In the High Court of Justice

Claim No. CV 2014 –

Between

Claimant

And

Defendant

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APPEARANCE

Please enter appearance for

[State name(s) of Defendant(s)]

WARNING: If this form is not fully completed and returned to the court at the address below within **EIGHT** days of service of the Claim Form on you, the Claimant will be entitled to apply to have judgment entered against you. If he does so you will have no right to be heard by the Court except as to costs or the method of paying any judgment unless you apply to set judgment aside.

1. Have you received the Claim Form with the above claim number? YES/NO

2. If so, when? ----/--/--

3. Did you also receive the Claimant's Statement of Case? YES/NO

4. If so, when? ----/--/--

5. Are your names properly stated on the Claim Form?

YES/NO

If not, what are your full names?

6. Do you intend to defend the Claim? YES/NO

If so you must file a Defence within 28 days of the service of the Claim Form on you.

7. Do you admit the whole of the Claim? YES/NO

If you do you should either -

(a) pay the Claim direct to the Claimant or his Attorney-at-Law; or

(b) complete the application form to pay the Claim by instalments.

If you pay the whole debt together with the costs and interest as shown on the Claim Form you will have no further liability for costs.

8. Do you admit any part of the Claim?

YES/NO

If you do you may either -

- (a) pay the money that you admit direct to the Claimant or his Attorney-at-Law; or
- (b) complete the application form to pay the Claim by instalments.

- 9. If so, how much do you admit?
If you dispute the balance of the Claim you must also file a Defence within 28 days of service of the Claim Form on you or judgment may be entered against you for the whole amount claimed.
- 10. What is your own address?
- 11. What is your address for service?
If you are acting in person you must give an address within 3 miles of the court office to which documents may be sent either from other parties or from the court. You should also give your telephone number, FAX number and E-mail address if any.

Signed.....
[Defendant in person] [Defendant's Attorney-at-Law]

Dated

The Court Office is at the Hall of Justice, Knox Street, Port of Spain. Telephone No. 623-6917, Fax No. 624-7968. The office is open between 8.00am and 4.00pm Mondays to Fridays except Public Holidays and Court Holidays.

FORM 5 – DEFENCE AND COUNTERCLAIM[(Part 10) and Rule 18.5(1)]

Civil:

Filing Attorney: -----

Address-----

TRINIDAD AND TOBAGO

Tel: -----

Fax: -----

E-mail-----

The Republic of Trinidad and Tobago

In the High Court of Justice

Claim No. CV 2014 –

Between

Claimant

And

Defendant

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DEFENCE

1. I dispute the claim on the following grounds -

I certify that all facts set out in my defence are true to the best of my knowledge, information and belief.

Telephone no. _____ Fax no. _____ E-mail address _____

Signed _____ Dated _____

Defendant

We are acting for the Defendant, our address for service is:

.....

.....

Signed _____ (Attorneys-at-Law for the Defendant)

The Court office is at [The Hall of Justice, Knox Street, Port-of-Spain] Trinidad and Tobago, telephone number 623-6917, fax 624-2694. The office is open between 8:00 am and 4:00 pm Mondays to Fridays except Public Holidays and Court Holidays.

COUNTERCLAIM

I claim against the Claimant:
(set out details of the remedy or relief sought)
On the following grounds-

I certify that all the facts set out in my Counterclaim are true to the best of my knowledge, information and belief and that I am entitled to the remedy claimed.

Signed _____ Dated _____
Defendant

We are acting for the defendant, our address for service is -
.....
.....

Signed _____ (Attorneys-at-Law for the Defendant)

Notes:

- (a) The Defendant may set out his defence in any way he chooses – it is not necessary to use this form.
- (b) The Defendant must –
 - State which allegations in the claim he admits
 - Which he denies
 - Which he neither admits or denies because he does not know whether they are true
 - Identify any documents which he considers necessary to his case.
- (c) He must give his reasons for denying any allegations made by the Claimant.
- (d) The Defendant must set out clearly all the facts on which he relies to dispute the Claim and must set out any different version of events on which he relies.
- (e) The Defendant may not be allowed to give evidence about any fact which is not set out in the defence.
- (f) If the Defendant wishes to counterclaim he must
 - Specify any remedy that he seeks against the Claimant
 - Include a short statement of all facts which he relies
 - Identify any documents which he considers necessary to his case
- (g) Where the Defendant is represented by an attorney he must also sign the form and give his address for service.