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

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THE REPUBLIC OF TRINIDAD & TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO. CV2018 - 02605



IN THE MATTER OF THE VALUE ADDED TAX CHAP. 75:06
IN THE MATTER OF THE LEGAL PROFESSION TAX ACT CHAP. 90:03
IN THE MATTER OF THE INTERPRETION OF THE VALUE ADDED TAX ACT CHAP.
75:06

BETWEEN

THE LAW ASSOCIATION OF TRINIDAD AND TOBAGO

Claimant

AND

THE BOARD OF INLAND REVENUE

Defendant

SUBMISSIONS IN RESPONSE TO THE CLAIMANT'S SUBMISSIONS
FILED ON 25TH JANUARY 2019

Preliminary

1. The essential matter for the Court's determination of this matter is quite simply whether the annual subscriptions paid by members of the LATT are subject to VAT under the **Value Added Tax Act Ch 75:06 ("VATA")**. The Claimant has divided that core question into 3 parts and for ease and convenience the Response on the part of the Defendant will treat with the matter accordingly towards the end of these Submissions.
2. However, before proceeding to deal with that core issue there is one preliminary point which has to be dealt with, relating to the claim for repayment of all monies paid with respect to VAT on subscription fees.

Claim for repayment of VAT paid on subscription fees

3. This relief is set out at **paragraph 3(b)** of the Fixed Date Claim Form where it is stated as follows:

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

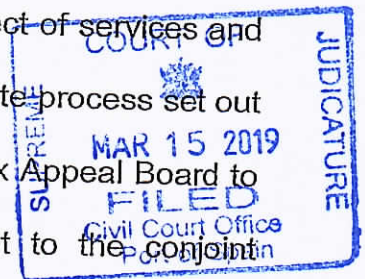
4. Reference is also made to this relief at **paragraph 2** of the Claimant's submissions and as well as **paragraph 51(ii)** under the heading **Disposition**. In addition, it is also clear from **paragraph 42** of the affidavit of Theresa Hadad (**"the**

Hadad Affidavit") and exhibit TH 13 that the Claimant has been assessed to VAT on subscriptions and that assessment is being challenged.

Response

5. It is respectfully submitted that the claim for such relief is not only misconceived but also unsustainable for the following reasons:

- i. There is no mention whatever of the cause of action upon such a claim for repayment is founded. It is not said whether the monies should be repaid under a mistake of fact or law.
- ii. That the appropriate course of action to be taken by a party claiming that VAT is not payable on any monies in respect of services and seeking a refund thereof is to invoke the appellate process set out in **Section 40 of the VATA** and to go to the Tax Appeal Board to make any such order for repayment pursuant to the conjoint operation of **Section 3 (4) and Section 8(3) of the Tax Appeal Board Act Ch. 4:50 ("TAB")**.
- iii. That there is a well-established principle in relation to tax matters that where a statutory procedure for an objection and appeal is available to a taxpayer who disputes liability then the Court should only in exceptional circumstances allow a taxpayer to ignore that procedure and opt to go to the High Court for relief.



- iv. That there are no exceptional circumstances elicited in this case which would justify the Claimant ignoring the statutory procedure for an objection and appeal and approaching this Honourable Court instead.
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6. Our short consideration and expansion on those foregoing grounds is now set out hereunder:

The cause of action

7. It is highly unusual and unsustainable to seek relief from the Court on a Claim when the cause of action for such relief is not properly set out as is the position in this case. In relation to a claim for repayment of taxes, the leading text of **Goff and Jones on The Law of Unjust Enrichment (Ninth Edition)** addresses the cause of action for such a claim at paragraph 22-01 under a chapter entitled **Money Paid as Taxes and other levies that are not due** as follows:

“This chapter is primarily concerned with the recovery of money paid as taxes that are not due. This might happen, for example, because a mistake of fact is made when calculating the claimant’s tax liability, or because the claimant pays money as tax under legislation that is ultra vires...”

8. The Claimant in the current case before this Court makes no reference to any alleged mistake of fact or law upon which its claim is based. As such, on the

pleadings presently before the Court, the Claimant has no cause of action for making a Claim for repayment of any monies paid to the BIR.

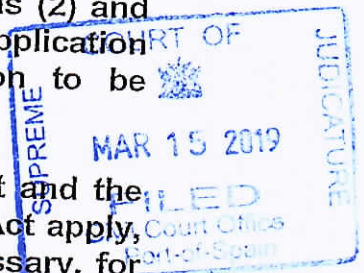
The appropriate course of action to be taken by a party claiming that VAT is not payable and seeking a refund thereof

9. The procedure to be adopted when a Taxpayer is in disagreement with its assessment to tax under the VATA is set out at **Section 40** of that Act as follows:

40. (1) "A person disputing an assessment, or the amendment of an assessment, under section 39 may apply to the board by notice of objection in writing delivered to the Board to review and to revise the assessment

(a) sections 86 and 97 of the Income Tax Act apply, with such modifications as are necessary and subject to subsections (2) and (3), for the purpose of enabling the application to be dealt with and the objection to be determined; and

(b) section 87 of the Income Tax Act and the provisions of the Tax Appeal Board Act apply, with such modifications as are necessary, for the purpose of enabling the making of, and the hearing and determination of, appeals from decisions of the Board upon objections under this section."



10. In the present case there is no evidence that the proper procedure was considered by the Claimant. Furthermore, the Claimant completely ignored the existence of the Tax Appeal Board being the body established by statute as the appropriate judicial forum concerning Tax Appeals in this jurisdiction. Instead, the

claim for repayment of disputed taxes ended up in the High Court. The jurisdiction of the Tax Appeal Board is set out at Section 3(4) of the TABA as follows:

~~"The Appeal Board shall have jurisdiction to hear and determine-~~

- (a) Appeals from the decision of the Board of Inland Revenue upon objections to assessment under the Income Tax Act;
- (b) Appeals from such other decisions of the Board of inland revenue or of any other person under the Income Tax Act as may be prescribed by or under that Act;
- (c) Such other matters as may be prescribed by or under this Act or any other written law."

Where there is statutory procedure for an objection and appeal in tax matters recourse to the High Court is only available in exceptional circumstances

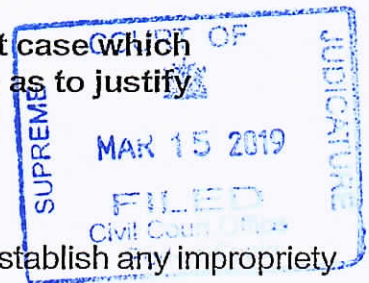
11. There are a number of cases up to the level of the Privy Council which establish quite clearly that where taxes are disputed the recourse available to the taxpayer is to follow the statutory procedure for objection and appeal as opposed to going to the High Court for relief. The relevant Privy Council cases are: **Miller v Commissioner of Inland Revenue** [2001] 3 NZLR 316 at paragraphs 14 and 18, (on appeal from New Zealand) and **Harley Development Inc v Commissioner of Inland Revenue** [1996] 1 WLR 727 (on appeal from Hong Kong) at pages 735 to 736 where Lord Jauncey of Tullichettle quoted the dicta of Fox LJ in the case of **Inland Revenue Commissioners v Aken** [1990] STC 497 as follows:

"In *Vandervell Trustees Ltd v White* [1971] AC 912 at 933, 46 TC 341 at 365, Viscount Dilhorne said—

"... but where the correctness of an assessment, and so the liability to pay income tax or surtax, is challenged, that can only, in my opinion, be decided by the special or general commissioners."

I refer also to the speech of Lord Diplock in that case (see [1971] AC 912 at 940 and 944, 46 TC 341 at 371 and 374). That then is the true principle applicable in these cases, namely, that the statutory machinery is exclusive machinery for an appeal from a notice of assessment; there is normally no other. However, I do not say there are no cases in which, exceptionally, a challenge by way of judicial review or otherwise to a decision of the Revenue would be possible. There may be cases where, for example, there has been some abuse of power or unfairness, which would justify the intervention of the court (see eg *Preston v IRC* [1985] STC 282). But that is exceptional. Normally the statutory machinery under the Taxes Management Act 1970 is the exclusive machinery for challenge to an assessment by a taxpayer.

In my judgment there is nothing in the present case which comes near to such impropriety by the Crown as to justify departure from the normal procedure."



12. In the present case, similarly, there is nothing that would establish any impropriety on the part of the BIR to the extent that would allow for a departure from the statutory procedure as the Claimants have done.

Conclusion

13. Accordingly, it is submitted that the claim for repayment or refund of VAT paid by the Claimant is not only unsustainable as a matter of law but also in the wrong judicial forum. It should be dismissed.

Substantive issue

14. We now turn to consider the substantive matter in this case i.e. whether the annual subscriptions payable by members of the LATT are subject to VAT.

15. However, before proceeding to respond to the 3 issues set out at **paragraph 1** of the Claimant's Submissions it is appropriate to undertake an analysis of the relevant provisions of the VATA and the decided cases which are of assistance in interpreting same. That analysis is now set out hereunder.

The registration of LATT for the purposes of VAT and the implications thereof

16. It is clear from **paragraph 3** of the Claimant's submissions and the Hadad Affidavit at **paragraphs 14 to 24** that there has been a significant back and forth between the Claimant and the Defendant as to the registration of the Claimant for the purposes of the VATA.

17. It is the Defendant's position that the back and forth as to registration, de-registration and re-registration is irrelevant and does not impact upon the issues to be decided before this Honorable Court save and except for the fact that the Claimant is now registered.

18. In that regard at **Paragraph 3 (i)** of the Claimant's Submissions it is being suggested that when the Claimant re-registered in 2015 after acquiring a Building for rental at 95-97 Frederick Street, somehow that Re-registration was "in respect to rental income only." The statement is obviously designed to somehow exclude from the VAT charge members' subscriptions. However, it is

respectfully submitted that it is legally meaningless since partial registration for some specific income is not permissible under the VATA. It is clear that upon a conjoint operation of **Sections 20 and 21 of the VATA** that any person who makes a commercial supply exceeding \$360,000 annually is obliged to register for the purposes of VAT.

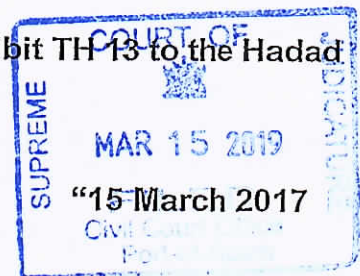
19. There is no statutory provision which speaks to partial registration for a certain type of income and partial non-registration for another type of income.
20. Accordingly, it is submitted that once the Claimant has been registered for VAT purposes then it is exposed to having to charge VAT on subscriptions of its members as an organisation carrying on business in Trinidad and Tobago which provides facilities or advantages to its members within the meaning of **Section 4 of the VATA**. In this regard this point is made clear in the letter from the Defendant to the Claimant of 15th March, 2017 (see Exhibit TH-13 to the Hadad Affidavit) where it is stated as follows:

Mr. Reginald Armour S.C.
President, Law Association of Trinidad and Tobago
2nd Floor, 95-97 Frederick Street
Port of Spain.

Dear Mr. Armour

Subject: Value Added Tax on Subscription Fees.

Further to my meeting with yourself, Mr. Dennis Gurley and Mr. Wade George on 15 September 2016, when representations were made on behalf of your Association



regarding the issue of Value Added Tax on subscription fees, I wish to confirm the following:

- (a) In accordance with the provision of the Value Added Tax Act 1989, in particular Section 4 of the said Act, the activities of the Law Association of Trinidad and Tobago are regarded as a business and as such subscription fees paid by members is subject to Value Added Tax.
- (b) As stated previously, we have not been able to find any legal notice, correspondence or other documents to support the claim that any advice or dispensation has been granted for the treatment of subscription fees paid by members of the Law Association of Trinidad and Tobago to be not subjected to Value Added Tax.

Please be guided accordingly.

Yours respectfully,

Nayak Ramdahin
Commissioner of Inland Revenue"

21. Having regard to the foregoing, we now turn to consider the meaning and implications of Section 4 of the VATA for the purposes of these Submissions.

Section 4 of the VATA

"4. (1) In this Act "business" includes any trade, profession or vocation.

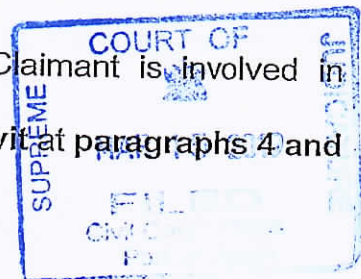
4. (2) for the purpose of this Act-

- a) An activity that is carried on, whether or not for pecuniary profit, and involves or is intended to involve in whole or in part, the supply of goods or services for consideration.

- b) The activities of a club, association or organisation, other than a trade union registered under the Trade Union Act, in providing, for a subscription or other consideration, facilities or advantages to its members; or
- c) An activity involving the admission, for a consideration, of persons to any premises;
- d) (Deleted by Act No. 9 of 1990).

shall be regarded as a business”

22. It is clear from the foregoing provision that the Claimant comes within the terms of Section 4 (2) (b) of the VATA in that it is of the association or Organization involved in providing for a subscription facilities or advantages to its members. It is therefore to be regarded as a business for the purposes of the VATA.
23. In particular the facilities or advantages which the Claimant is involved in providing are specifically referred to in the Hadad Affidavit at paragraphs 4 and 7.
24. For example, in Paragraph 4 of the Hadad Affidavit it is stated:
- “... Membership fees which are paid by said members in order to secure their practising certificates which are required in order to practise law in Trinidad and Tobago. The LATT charges its members separately for all the services afforded to them including the provision of ID cards, attendance seminars and social functions, certificate of fitness, the rental of facilities and the sale of the Lawyer (Journal).”



Further at Paragraph 7 in the same Affidavit it is stated that:

“...Furthermore, by reason of Section 9 (2) of the LPA “... only members who pay the annual subscription are eligible to attend and vote at the general meeting or at an election meeting of members of the Council or to be elected to the Council.”

25. It is the case for the Defendant that the aforementioned matters constitute the provision of facilities and advantages of the members of the LATT within the meaning of Section 4 (2) (b) of the VATA. The result is that the LATT is to be regarded as carrying on a business in respect of which VAT is chargeable on the annual subscriptions. In other words, there is a link between the subscriptions paid by members of LATT and the services which are provided by LATT.

Establishing the link between the service provided by the Law Association and the subscriptions paid by its members

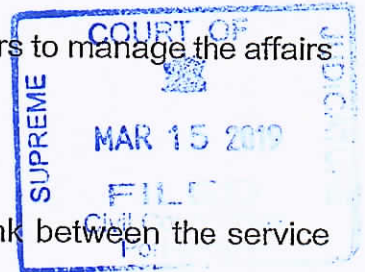
26. It is at the heart of the contention of the LATT that the decided cases require that there should be a link between the service provided by the LATT and the subscription paid by its members in order for VAT to be chargeable on such subscriptions (see paragraphs 16 to 35).

27. It is submitted on behalf of the BIR that that link is established by reason of the following:

- (i) That upon a proper construction of the Legal Profession Act (LPA) it is quite clear that Parliament has established the LATT as the regulator and

more importantly the gate keeper for those who wish to enter the legal profession and earn a living by the practice of law (see sections 5, 12 and 23).

- (ii) In order for a person to enter into the legal profession and to be entitled to earn a living through the practice of law such person must pay a fee by way of subscription to the LATT under **Section 23**.
- (iii) The service provided by LATT in order to earn that subscription is to facilitate entry through the gate into the legal profession by the issuing of a practice certificate through the Registrar under **Section 23 (2)** of the LPA. As a consequence pursuant to **Section 9** of the LPA members of the LATT acquire the right to participate and have a voice in the conduct of the affairs of the LATT by being able to attend and vote at General Meetings and to be elected to the Council which is vested with the powers to manage the affairs of the LATT.
- (iv) Having regard to the foregoing, there is a direct link between the service provided by the LATT and the annual subscription which is being paid by members of the legal profession.



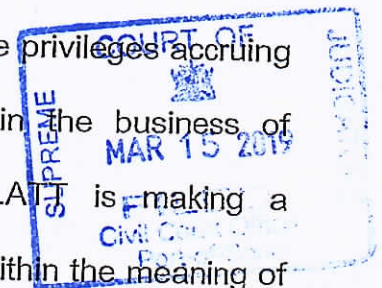
Authorities in support of the foregoing

28. The foregoing submissions are supported by the decisions of the Courts in New Zealand on the VAT legislation in that country which is called "Goods and

Services Tax” (GST) and is in similar terms to the local VATA. It is submitted that those decisions establish as follows:

- (i) That the imposition of VAT under Section 6 of the local VATA on the supply of services made in the course of any business (see section 14 of the VATA) and the broad definition of services (see Section 15 of the VATA and Schedule 3 paragraphs 1 and 5 of the VATA) are reflected in the New Zealand equivalent in Section 8 (1) of the GST Act in New Zealand. The similarities of the local sections to those in New Zealand are to be found in the leading case of the **Canterbury Jockey Club Incorporated v Commissioner of the Inland Revenue [2018] NZHC 2569** at paragraphs 30 to 40.
- (ii) That the fees or subscriptions charged by an organisation in order for a person to gain access to the facilities, advantages or services provided by that organisation whether created under an Act of Parliament or otherwise are to be treated as consideration for a taxable supply.
- (iii) What is important is the contractual legal relationship between the organization and the person paying the fee or subscription. If the fee or subscription is designed to enable the payer to gain access to the facilities or services provided by the organisation, then that constitutes consideration in respect of the supply of services. In other words, there is sufficient nexus so as to trigger the charge to VAT.

- (iv) For instance, in the New Zealand case of **Turakina Maori Girls College Board of Trustees v Commissioner of Inland Revenue (1993) 15 NZTC 1032** the issue was whether attendance dues which under the **Education Act 1989** were able to be charged to parents or caregivers of enrolled children at such schools were a consideration for a taxable supply. The Court of Appeal held that the attendance dues were payments made to secure enrolment of a pupil in a school which the proprietors provided. The supply of these things was held to be a taxable service and GST was payable.
- (v) It is submitted that this case is very similar to the **Turakina** case in that the payment of the annual subscription by members of the legal profession is done for the purpose of gaining entry into the profession in order to practise law and to utilize and enjoy the privileges accruing therefrom. The LATT is the person engaged in the business of facilitating that access. As a consequence, LATT is making a commercial supply in furtherance of its business within the meaning of **Section 14 (1), Section 15 and the Schedule 3 paragraphs, 1 and 5 of the VATA**. Accordingly, VAT is charged on those subscriptions.



We now turn to consider the Claimant's submissions.

The Claimant's Submissions

29. At paragraph 16 to 35 of the Claimant's submissions there is detailed and substantial reliance on what is referred as the **Apple and Pear Development Council** case. That case is relied on in support of the contention that in order for there to be a commercial supply of services within the meaning of **Sections 3 6,14,15 and Part 5 of the Schedule 3 to the VATA** there has to be a direct link between the services provided by the Claimant and the consideration received in the form of annual subscriptions.
30. In other words, the Claimant is contending that there must be some element of reciprocity or mutuality between the Claimant and its members (**see Paragraphs 16 to 27**). In the absence of such a link between the services provided and the consideration received it is contended that there can be no commercial supply of services so as to trigger the liability on the part of the Claimant to charge VAT on members' subscriptions. In this case the Claimant has submitted that such a link or element of reciprocity does not exist and therefore VAT is not chargeable on Members' subscriptions.

Defendant's Response

31. In response to those submissions it is respectfully submitted on behalf of the Defendant as follows:
- (i) That **Apple and Pear decision** is distinguishable from the present case and the reliance placed on it by the Claimant is misconceived and blinkered.

- (ii) That there does exist the direct link between the service provided by the Claimant and the consideration received. The element of the reciprocity revolves around not only the role of the Claimant as the gate keeper for persons wishing to enter the legal profession (as referred to at **paragraph 4** of the Hadad Affidavit) but also the multiplicity of services which LATT states that it provides to its members. (See **paragraph 4 of the Hadad affidavit**). That evidence has already been set out at **paragraph 24** above.

Essential Points of Distinction between the Apple and Pear case and the present case

32. The **Apple and Pear Development Council Order** provided that the Council's powers and functions included inter alia, the promotion and production of apple and pears and research into growing and marketing of apples and pears;
33. The Council was mandated to impose a charge at a rate based on each grower's holding in order to meet administrative or other expenses incurred or to be incurred in the exercise of the Council's functions. As was stated by Fox LJ in the Court of Appeal in England referred to at **paragraph 18 on page 9 of the Claimant's submissions:**

"...the grower has no choice in the matter. If he has specified acreage, he must register and must pay the levy. There seems to be no mutuality in any of this."

"The statutory obligation to pay in fact bears no direct relations to the services of the payer. It is a matter for the Council and how it discharges its functions;

the grower of pears may have little interest in the Council's activities in relation to apples."

34. It is therefore clear from the foregoing, that growers of apples and pears derived little or no benefits or privileges from paying the mandatory levy which they were required by statute to pay the Council. In other words there was no link between what was being done by the **Apple and Pear Council** and the levy which was imposed on the growers.

Contrast with Present Case

35. Those facts contrast sharply with the position of the instant case. This is because the Claimant in the present case is extending and providing certain benefits and privileges to members who pay annual subscriptions to the LATT. The role of the LATT is not limited to its duties and responsibilities set out in **Section 5 of the Legal Profession Act (LPA)**. Indeed, it is one of the purposes of the LATT as stated at **Section 5 (b) of the LPA "to represent and protect the interests of the Legal Profession in Trinidad and Tobago."** That is one of the services or benefits to be derived by members who pay their subscriptions.
36. Furthermore, there is a direct link between the role performed by the LATT and the subscriptions received as consideration for the performance of its role as has been stated repeatedly above. The LATT is really the gate keeper and the organisation which permits entry into the legal profession to practise law and to earn a living by members who have qualified as attorneys. This has been

recognised at **paragraph 21** of the Claimant's Submissions by reference to payment of the annual subscription by members being the key to entry into the profession and becoming entitled to the benefits and privileges resulting therefrom. Without such a payment there would be no entry into the profession in order to acquire the entitlement to practise law and to participate in the affairs of the LATT with the opportunity to serve on its Council to govern the conduct of its business.

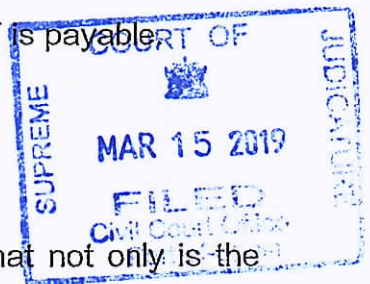
37. It is submitted that the foregoing matters set out in the preceding paragraphs establish a direct link between the advantages emanating from the LATT and the subscriptions paid by members of the LATT. Accordingly, there is the required element of reciprocity and mutuality so as to justify the conclusion that there has been a commercial supply of services in respect of which VAT is payable.

Conclusion

38. Having regard to the foregoing it is respectfully submitted that not only is the **Apple and Pear** case distinguishable but also there is a direct link between the benefits and advantages emanating from the LATT and the subscriptions which it receives from members.

Further Support for the Defendant's Submissions

39. In further support of the contentions set out above this Honourable Court is requested to take cognizance of the House of Lords decision in the case of **Eastbourne Town Radio Cars Association v Customs and Excise**



Commissioners [2001] STC 606. The importance and relevance of that case arises from the fact that it involved consideration of the **Value Added Tax Act 1994** of the United Kingdom in **Section 5 (2) and 94 (2)** which are almost in identical terms with **Sections 4, 14 and Schedule 3 Parts 1 and 5** of the local **VATA** (see paragraphs 3 to 5 of the decision). The case is also of importance because it demonstrates what is required to establish that there is a direct link between the services provided and the payment made for such services so as to satisfy the test in the **Apple and Pear** case which was specifically referred to in the judgment.

40. That case involved the Association's members carrying on businesses as private hire car drivers. The purpose of the Association was to employ staff through third parties to supply to its members the use of telephone equipment and other goods and facilities. Each member contributed a regular amount in order to cover the expenses of the Association which was managed by an elected committee of members.

The question which arose for decision was whether the Association was carrying on business in relation to the services provided to its members and the subscriptions paid were chargeable to VAT.

The **House of Lords** held that the Association was providing facilities or advantages to its members within the meaning of the equivalent of **Section 4** of the local **VATA** which was **Section 94 (2)** of the **UK Value Added Tax Act** and

the subscriptions paid by members were subject to VAT. In the leading judgment in the House of Lords Lord Slynn stated as follows:

[21] It seems to me that the joining subscription and the state of expense paid constitute consideration for what is done by the association in engaging staff (whether as employees of the association or the members) on the terms of the association's constitution, in providing through the staff engaged the operation of a radio or telephone system to link customers to drivers, in advertising, procuring insurance and otherwise. The association is reimbursed by the members for the services supplied and there is a direct link between the services and the payment as required by *Apple and Pear Development Council v Customs and Excise Comrs* (Case 102/86 [1988] STC 221 at 234 and 237, [1988] ECR 1443 at 1461 and 1468.

[22] This is in my view so even though the sum is fixed annually and not by individual services specifically charged for. What is done thus constitutes the provision by an association for consideration of facilities or advantages available to members of the association. It thus is deemed to be the carrying on of a business by the association.



Conclusion

41. It is submitted that the factual matrix and the decision in the *Eastbourne Town Radio Cars Association* case are directly relevant to and should be relied upon by this Honorable Court in rejecting the submissions proffered by the LATT.

Alternative contention: Claimant's activities not economic in nature

42. There is one further issue raised in the Claimant's submissions to which the Defendant needs to respond.

At paragraph 39 of the Claimant's submissions it is contended that the charging of subscriptions does not amount to a business since that activity is not economic in nature. In support of such a contention reliance has been placed on the case of *Institute of Chartered Accountants in England Wales [1999] STC 398*. That was a case in which that body was carrying out on behalf of the State a regulatory function in each of 3 financial areas to ensure that only fit and proper persons were authorized to carry out activities as auditors, investment business advisors and insolvency practitioners. That was a function of the State for the protection of members of the public such as the actual or potential investor, trade or shareholder.

43. However, the position is altogether different and distinguishable in the present case. The evidence in this case shows that by 15th January, 2015 (see exhibit TH 6) the Claimant had acquired a building for the use and benefit of its members which was rented out for income in excess of \$360,000.00 per year. The foregoing is clearly an activity of an economic nature. Indeed, the only manner in which the LATT could have funded the purchase of that building at 95-97 Frederick Street was from the income accumulated over the years from the annual subscriptions received from its members. Such transactions are clearly of an economic nature.

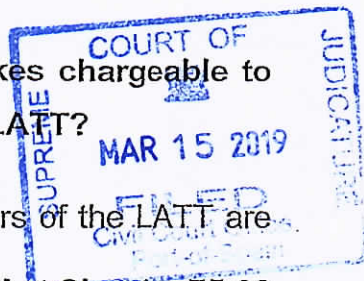
44. Furthermore, as has been stated above it is clear that by reason of **Section 4 (2) (b) of the VATA** that the LATT is to be regarded as a business. (See paragraphs 21 to 22) hereinabove.
45. Accordingly, the lack of economic activity argument derived from the decision in the **Institute of Chartered Accountants of England and Wales** case does not arise for consideration and is clearly distinguishable from the present case.
46. Having regard to the matters set out above, we are now in a position to answer the 3 issues raised at **paragraph 1** of the Claimant's submissions in the manner set out hereunder.

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

47. It is submitted that the annual subscriptions paid by members of the LATT are chargeable to value added tax, under the **Value Added Tax Act Chapter 75:06** for the reasons set out in the foregoing paragraphs.

Issue 2: Whether the annual subscriptions are a commercial supply and thus chargeable to Value Added Tax?

48. The annual subscriptions are paid in respect of a commercial supply of services by LATT to its members and are therefore chargeable to **Value Added Tax (VAT)**.



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

~~49. The subscription fees are paid by members for the supply of services in the~~
course of or in the furtherance of a business within the meaning of the Value
Added Tax Act in particular **Section 4** thereof.

Disposition

50. For all of the foregoing reasons this Honourable Court is respectfully requested to dispose of this matter by the following:

- (i) Declare that the annual membership subscription fees paid by members of LATT are subject to **Value Added Tax (VAT)** under the provisions of the **Value Added Tax Act Chapter 75:06**;
- (ii) Declare that the Claimant is not entitled to any order for repayment or refund of all monies paid to the Defendant in respect to Value Added Tax (VAT) on the subscription fees paid by its members;
- (iii) Make such necessary and consequential orders, directions as may be necessary expedient or as the Court deems fit.

Dated this 15th day of March, 2019.



Ann Merise Duncan
Instructing Attorney at Law for the Defendant



Lisa Singh-Dan
Instructing Attorneys at Law for the Defendant

Claude H Denbow SC

**TO: THE REGISTRAR OF THE SUPREME COURT
HIGH COURT OF JUSTICE
KNOX STREET
PORT OF SPAIN**

**AND TO: MS. NICOLE DE VERTEUIL -MILNE
ATTORNEY AT LAW
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