

***MARKING THE 41<sup>ST</sup> ANNIVERSARY OF THE TAX APPEAL BOARD***



Chairman and Members of the Tax Appeal Board, from left Hon. T.O'Neil Lewis (Member), Honourable Chairman Anthony Gafoor and Hon. Malcolm Williams (Member)

**THE SAGA OF THE T A X**

**APPEAL BOARD**

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Hon. Vindra Dean Maharaj (Member)

## **DAWN OF A NEW ERA**

### **FOR TAX PAYERS**

### **TO APPEAL**

## **ASSESSMENTS TO TAXES OF VARIOUS KINDS INCLUDING INCOME AND CORPORATION TAXES**

### ***THE SAGA OF THE TAX APPEAL BOARD***

### ***THE YEAR 1966***

The year 1966 heralded the new relationship between the citizens of Trinidad and Tobago and the variety of assessors of the taxes which were imposed on them by law.

This was the dawn of a new era for taxpayers. Consistent with the models which were established to facilitate taxpayers challenging the tax assessments made by state authorities, the local jurisdiction by Act, No. 29 of

1966 created for the first time a Superior Court of Record outside of the Judiciary to facilitate settlements of disputes between taxpayers and tax assessors.

This Act is known as the Tax Appeal Board Act. The four words which comprise the title have separate meanings. The meaning of Tax in the very familiar sense is that in life, there are only two things that are certain. The first is death and the second is tax. The sense which we must understand is that it is a charge upon the individual which is imposed by the State, and this is conveyed by the word Act, which means that it is done by due process of law which means that firstly it was sanctioned by Parliament which is the law making body of the State and assented to by the Head of State who today is His Excellency, the President. The two remaining words are Appeal and Board and we now proceed to explain these two terms.

The purpose of the Act is described in the words which appear in the beginning of the Act, which says, “An Act to provide for Appeals from assessments to Income Tax, Corporation Tax and other taxes.” The key word is “Appeal”, what this conveys is that the same agency, in the case of personal income tax, the Board of Inland Revenue has the responsibility in law to examine your income for the year of income and determine the amount of tax for which you are liable. In recognition of the right of every citizen to pay the least amount of tax, the law provides that when a taxpayer is served by the Board of Inland Revenue with a Notice of the taxes for

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**Chairman, Members and Registrar, pause for a picture. From left Mr. Dushant Persad-Maharaj (Registrar), Hon. T. O’Neil Lewis (Member), Honourable Chairman Anthony Gafoor, and Hon. Malcolm Williams (Member)**

which he has been assessed, he has the right in law to notify the Board of Inland Revenue of his objection to the liability for the amount of taxes shown on the assessment. This then is the starting point of the word appeal.

If a taxpayer even though saddened by the amount of tax which was notified by the Board of Inland Revenue, accepts the liability to pay that sum and does not use the opportunity to object, then that is the end of the matter. That liability becomes fixed and cannot be revoked and if the taxpayer were to die immediately after through shock and grief, he still does not escape tax as the assets which he leaves behind him which is known as his estate will then be responsible to pay the tax.

Let us now look at a taxpayer who objects to the assessment by the Board of Inland Revenue. He is given fifteen (15) days from the time when he is notified of the assessment. This means that the notice of assessment may have a date, but through delays in posting or getting to him personally or at his last known address means that it is only when that event takes place the time for counting fifteen (15) days will be from that date. You must understand this simple point very clearly. Otherwise you may panic when the notice reaches you and bears such a date that goes beyond the fifteen (15) days which the time allowed to you to make such an objection. If you have this clearly fixed in your mind, it will save you the cost of doctor's bill to lower your blood pressure. Therefore, make a note on it in your own handwriting on the date on which the notice was received and if it came to you in an envelope through the envelope, preserve the envelope which the note came to you and fasten it to the notice.

The next step in the appeal process is that having objected to the assessment and notified the Board of Inland Revenue of the grounds of your objection, there will be a period of waiting. Please note it is very important to state the grounds of your objection. The law recognizes you the taxpayer are the best person to know about your income and therefore you would know or ought to know how to point out to the Board of Inland Revenue where they have made errors. It is therefore the taxpayers pinpointing of the errors made by the Board of Inland Revenue which will amount to the grounds of objection. The Board has twenty four (24) months from the date on which you serve notice to them of your objection. At the end of that period of time should the Board not notify you within those twenty-four (24) months of how you have determined or dealt with your objection, the law prescribes that because of that you would have won your challenge that you made on the assessment which you objected to. The words used in the law is that once the twenty-four (24) months have passed and it was not dealt with by the Board of Inland Revenue, it will be deemed to have been settled in your favour meaning that your liability for the income tax for the particular year will be of the lesser amount which you said it would be.

If on the other hand, the Board notifies you that they are upholding their assessment and notification and that notification is within the twenty-four (24) month period, that notice to you establishes your fixed liability for the amount of taxes of which you were notified. At that point in time, you still have an opportunity to challenge the Board of Inland Revenue and that is why you now have the facility of taking your grievance to the Tax Appeal Board. This means that in law you have a right to ask a Court of Law to hear your case and decide in your favour after hearing the case of the Board of Inland Revenue how to appeal to the Tax Appeal Board is shown later in this article. The important point is that the law gives you a right of appeal. The law has created a Court for this purpose. That Court is known as the Tax Appeal Board. All the processes in making and determining an appeal is contained in the Tax Appeal Board Act.



Chairman and Members listen intently, from left Hon. T. O'Neil Lewis (Member), Honourable Chairman Anthony Gafoor and Hon. Malcol Williams (Member).

## ***MARKING THE 41<sup>ST</sup> ANNIVERSARY OF THE TAX APPEAL BOARD***

We are quite certain that some of you would be reading about us in this presentation may wonder if the Tax Appeal Board started to function in 1966, then what were the arrangements for a taxpayer, be it an individual or a company to challenge an assessment by the Inland Revenue. Once upon a time there was no Board of Inland Revenue. The creation of one in law was part of the tax administration system. Similarly there was a past period of time when there was no creature labeled the Tax Appeal Board. In those by gone days a taxpayer with a grievance had to follow the procedures laid down by the High Court of Justice. Now, you must bear in mind that tax appeals might not be simple and straight forward as disputes between private persons which fall into the classification that the High Court is accustomed to and is known as civil appeals. In such cases, the sitting Judge in the High Court listens to both sides, applies the principle of its professional training, ascertains how similar cases were dealt with either in Trinidad and Tobago or elsewhere and by that process makes his determination on the disputes before him to determine whether a claimant is right or whether the defendant succeeds in his defense.

The great distinction between such appeals and a tax appeal is that in tax appeals, the issues arise because of interpretation of complex and difficult laws which have imposed the taxes upon citizens of Trinidad and Tobago. Experience over the years in other countries have shown the sitting Judge could appropriately be assisted by two other persons with knowledge, experience and skills and disciplines such as accountancy, economics, finance and management. That model has worked successfully in places like Canada, Australia, New Zealand and South Africa. In 1966 therefore, the government of the day decided that provision for such a tribunal would be an important innovation in the local tax administration system. Hence the birth of the Tax Appeal Board! Its record that over the last 41 consecutive years has shown that that 1966 decision was a correct one. The Tax Appeal Board has endeavoured to share its success record by making available to the public at large full particulars of the tax appeal cases which were filed with it Registry, and which were heard and determined by its Tax Appeal Court over the initial years 1967 – 1977. If you the reader have become sufficiently curious you can check with the bookseller, Bookspecialist Limited on Richmond Street, Port of Spain which carries stocks of the first publication of the Tax Appeal Board under the title *Trinidad and Tobago Tax Cases Volume I*.



Attorneys of the Tax Appeal Court in attendance at an Appeal Hearing.

## ***MARKING THE 41<sup>ST</sup> ANNIVERSARY OF THE TAX APPEAL BOARD***

### **PROFILE OF THE TAX APPEAL BOARD OVER THE YEARS**

As you read these words it will be no surprise to us if you were to think that you have never heard of the Tax Appeal Board before and you are wondering what is the reason for this venture to tell you about of the work of the Tax Appeal Board. We wish to assure you that you are not alone in this respect. The reason for this is that the Tax Appeal Board deals with the highly personal and confidential matters of individual taxpayers including corporate taxpayers which can have chargeable profits of small sums in a range that will take you to millions of dollars of taxable corporate profits. This means that the personal and private information of every taxpayer must be protected and safeguarded by the Tax Appeal Board. The law has specified in the Tax Appeal Board Act that where the Tax Appeal Court is concerned which hears evidence from aggrieved taxpayers and the Board of Inland Revenue or other tax assessor that such proceedings must be *in camera*. That expression means that only three parties must be privy to the confidential information of taxpayers. The first of course is the taxpayer himself or herself or itself, the second party is the assessor of the taxes which is the Board of Inland Revenue for Income, Corporation, VAT and Stamp Duty taxes. The third party, of course, is the Tax Appeal Board, its Honourable Chairman and the two Members which comprise the Court, the Registrar of the Board and every member of the supporting staff. We refer to all of these people as a Human Resource. The law requires all these persons to be bound by conditions and oaths of secrecy. In law therefore, no member of the Tax Appeal Board can divulge the personal business to anyone now or ever. Just imagine such an important institution which is entrusted with such a heavy burden which impinge on personal and private rights of individuals and corporations must be faceless and cannot perceived by the public at large nor can it use any of its very valuable information resource in public advertisements. Do you now understand why the public knows so little of the Tax Appeal Board. This venture of communicating with taxpayers have been carefully considered as we believe that taxpayers across the board have every right to know whether this judicial institution is maintained in the state of perfection, efficiency and effectiveness so as to have the power, the strength and the courage to have the scales of justice well balanced between any taxpayer and the Board of Inland Revenue or other Respondents such as the Comptroller of Customs and Excise.

Let us therefore share some basic information with you, a member of the public and most likely a payer of state imposed taxes. The Tax Appeal Board is a place where a taxpayer appeals against assessments by the Board of Inland Revenue to Income taxes, Corporation taxes, Unemployment Levies, Petroleum Taxes, Stamp Duties, Lands and Buildings Taxes, Water and Sewerage rates, Customs Duties, Lands and Buildings taxes imposed by Municipal Corporations and Antidumping and Countervailing duties. Don't you think that list alone should make us feel important!

Let us select at random, the year January to December, 2005. In that year, there were 78 appeals arising out of the imposition of Income and Corporation taxes by the Board of Inland Revenue to put it simply, 78 taxpayers challenge the assessments to tax made by the Board of Inland Revenue. For 2005 the burden of the Tax Appeal Board is to sought out that challenge and determine whether the taxpayer is right, or the Board of Inland Revenue, or whether there has been any anomalies in making the assessment which when discovered before the Tax Appeal Board can result in amicable settlement between the taxpayer and the tax assessor.

Using the same year 2005, the activities within the confines of the Tax Appeal Board resulted in 10 appeals be allowed, 4 appeals being dismissed and 64 appeals being adjourned. Those figures are in relation to the major segment in our appeals system which come from the imposition of income and corporation taxes. For the same period VAT appeals were heard and adjourned. For 1 case of Stamp Duty was heard and adjourned and

similarly 6 cases of Customs Duties. The Tax Appeal Board Act permits a taxpayer who has not appeals within a period of 28 days of confirmation of their assessment by the Board of Inland Revenue or other Respondents in 2005, there were four such applications which were heard and dealt with. The overall picture is that 101 cases were heard, 14 were allowed, 83 were adjourned to be heard in the next year and four cases the taxpayer did not succeed and the appeals were therefore dismissed. On this last point, the sentiment has frequently been

expressed by taxpayers who did not succeed in the appeals that they were satisfied with the fairness of the hearings and decisions of the Tax Appeal Board.

How does our picture look in your eyes?







