



# LRA GUIDES

## PROCEDURE ON OBJECTIONS AND APPEALS

**[Operations Support Division]**

**February 23, 2020**

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## 1.0 KEY DEFINITIONS AND ACRONYMS

“Assessment”	means assessments, decisions, rulings, determinations and directions of the Commissioner General, as the Taxpayer may appeal against within the contemplation of Section 3 of Revenue Appeals Tribunal Act No 2 of 2005.
Customs and Excise Act	Means Customs and Excise Act No 10 of 1982
“Commissioner General”	Means the Commissioner General of Lesotho Revenue Authority appointed under section 17 of the Lesotho Revenue Act No 14 of 2004.
“High Court”	Means the High Court of Lesotho as established under Section 2 of High Court Act No 5 1978.
“ITA”	Means Income Tax Act No 9 of 1993.
“LRA”	Means the Lesotho Revenue Authority established by section 4 of the Lesotho Revenue Authority Act 2001.
“Rules”	Means Revenue Appeals Tribunal rules 2007.
“RAT 5”	This is the prescribed Form which must be completed by a Taxpayer for purposes of lodging an objection against an assessment or decision subject to objection.
“RAT 7”	This is the prescribed form which must be completed by a Taxpayer who is aggrieved by the objection decision and wishes to appeal to the tribunal.
“Registrar”	Means the Registrar of Revenue Appeals Tribunal appointed in terms of Section 11 of Revenue Appeals Tribunal Act.

“Revenue laws”	Means Income Tax Act No 9 of 1993 and Value Added Tax Act No 9 2001.
“Taxpayer”	Includes any person, who is chargeable with and liable to pay any tax, levy, duty charge or other amount imposed in terms of revenue laws and Customs and Excise Act.
“Tribunal”	Means the Tribunal established by Revenue Appeals Tribunal Act No 2 of 2005.
“VAT ACT”	Means Value Added Tax Act No 9 of 2001.

## **2.0 BACKGROUND**

It is the normal business of LRA to raise assessments, make rulings, directions and decisions on Taxpayers. Where the Taxpayer is dissatisfied with tax assessments raised against him/her by the Commissioner General, the Taxpayer may file a notice of objection with the Commissioner General. The Commissioner General will review an objection and will consider reasons for Taxpayer's disagreement. Following the review, the Commissioner General will issue an objection decision letter which will state whether the Taxpayer's objection has resulted in a change in his/her assessment or a disallowance of an objection.

If the Taxpayer does not agree with the Commissioner General's objection decision, he/she may file an appeal with the Revenue Appeals Tribunal. An objection to assessment or the appeal process undertaken by a Taxpayer disputing taxes payable does not suspend Taxpayer's obligation to pay the disputed amount. This is known as a 'pay-now-argue-later' principle<sup>1</sup>. If the Taxpayer does not pay the tax debt by due date, additional taxes will accrue.

## **3.0 OBJECTIVE**

This guide outlines the procedures and/or rules for filing an objection with Commissioner General and for filing an appeal with the Revenue Appeals Tribunal. It has been developed mainly to assist Taxpayers to understand the administrative and judicial processes regulating objections thus aiding Taxpayers to lodge objections and appeals that conform to rules and regulations.

This understanding could lead to expedient settlement of disputes. It is also intended to guide LRA Officials dealing with Taxpayers' objections and appeals to determine the validity of Taxpayers' objections with relevant competency, bearing in mind the implications of time limits so as to deliver procedural and substantive fairness to Taxpayers.

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<sup>1</sup> Section 37 (3) of VAT Act, section 143 (3) of Income Tax Act, and section 23 (1) of Revenue Appeals Tribunal Act. See also *Metcash Trading Ltd v Commissioner, South African Revenue Service and Another* 2001 (1) SA 1109 (CC)

## 4.0 THE LAW AND ITS APPLICATION

### 4.1 OBJECTIONS PROCEDURE

A Taxpayer who is aggrieved by an assessment or by any decision of LRA which is subject to objection and appeal may firstly object to the assessment or decision in accordance with section 137 of ITA on disputes of income tax character or in conjunction with Section 32 of VAT Act for value added tax related disagreements. As the current Customs and Excise Act does not have the provision for the time frame within which an objection can be lodged, reference for purpose of guidance is made on Section 509 of Customs and Excise 2019 bill in this regard. The procedure for filing an objection under ITA, VAT and Customs and Excise Acts is substantively similar, with a slight variance on the question of time limits. It is mandatory to comply with Rules 5 and 6 of Revenue Appeals Tribunal Rules 2007 in relation to the content of an objection and the time limits within which the Commissioner General is to serve the Taxpayer with an objection decision.

Guidance in relation to contents of an objection, on how to lodge an objection, the time limits for filing and objection and the prescribed time periods within which Commissioner General is to respond to an objection will be given in this part of the guide. Appeal procedures will be discussed later under item 4.2.

#### 4.1.1 How to Object

An objection notice must be lodged in writing (on a notice of objection form provided by LRA within the prescribed time periods. This form is attached to this guide and is named **RAT 5**.

#### 4.1.2 Contents of the Notice of Objection Form

- (i) Taxpayer's name, tax identification number (TIN) and the relevant year of assessment or a tax period.

- (ii) Specify an address within 5 kilometers of LRA’s head office in Maseru or LRA’s offices in Leribe and Mohale’s Hoek at which the Taxpayer will accept Commissioner General’s documents in response to Taxpayer’s objection.
- (iii) Full details of why the Taxpayer thinks that Commissioner’s decision is wrong.
- (iv) What the Taxpayer considers to be the correct figures are and how he/she have calculated them.
- (v) A declaration that the information provided in the objection and supporting documentation is true and correct.
- (vi) Dated and signed by the Taxpayer, or where the Taxpayer is unable to personally sign the objection, the person signing on behalf of the Taxpayer shall, state in annexure to the objection the reason why the Taxpayer is unable to sign the objection accompanied also by a power of attorney to that effect.
- (vii) Attachment of information and documents that support the Taxpayer’s reasons for disagreeing with the Commissioner’s assessment or decision. This may include references to legislation, rulings, and case law.

### 4.1.3 Time Limits for Filing an Objection

#### 4.1.3.1 Income Tax Act

<b>OBJECTION TYPE</b>	<b>TIME LIMIT FOR OBJECTION</b>
Assessments	4 (four) years from the date the assessment was given to the Taxpayer.
Amended assessments	The later of: °60 days from the date the amended assessment was given to the Taxpayer °4 (four) years from the date that the original

	assessment was given to the Taxpayer.
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#### 4.1.3.2 Value Added Tax Act

<b>OBJECTION TYPE</b>	<b>TIME LIMIT FOR OBJECTION</b>
Assessments	Within thirty (30) days after assessment was given to the Taxpayer.
Amended assessments	Within thirty (30) days after the amended assessment was given to the Taxpayer.

#### 4.1.3.3 Customs and Excise Act

<b>OBJECTION TYPE</b>	<b>TIME LIMIT FOR OBJECTION</b>
Assessments	Within thirty (30) days after an assessment was given to the Taxpayer.
Amended assessments	Within thirty (30) days after an assessment was given to the Taxpayer

### **4.1.3 Where to Submit an Objection**

The Taxpayer has to submit a completed objection form together with documents supporting the grounds of objection to the Commissioner General at the address that would have been specified in the assessment. Where an objection is delivered at the address other than the address specified in the assessment, such an objection may be deemed to be invalid.

### **4.1.4 What LRA does Upon Receipt of Notice of Objection**

After receipt of an objection, LRA firstly determines whether an objection is valid or not. An objection will be invalid if it does not contain essential details as shown under **4.1.2** above.

#### **4.1.4.1 Procedure for handling an invalid objection**

The Commissioner General may inform the Taxpayer by notice within 30 days of delivery of the invalid objection that it is not accepted as a valid objection. A Taxpayer who receives a notice of invalidity may within 7 days of delivery of the notice submit an amended objection.

#### **4.1.4.2 Procedure for handling a valid objection**

In cases of a valid objection, the Commissioner General reviews and determines whether to allow the objection or disallow the objection in whole or in part. If the result of the review is in favor of the Taxpayer, the original assessment will be amended in whole or in part.

The Commissioner General shall then notify the Taxpayer of its objection decision in writing within 60 days after receipt of the Taxpayer's objection. LRA shall before expiry of time limits detailed above, inform the Taxpayer if the review of an objection will take longer than usual due to the exceptional circumstances, such as the complexity of the matter. The objection decision shall

set out clear factual and legal grounds for disallowing Taxpayer's objection and be signed by the Commissioner General or his representative.

If LRA does not give its written response within prescribed time periods as highlighted above, Taxpayer's objection is deemed to have been disallowed and this allows the Taxpayer to seek external review.

## **4.2 APPEAL PROCEDURES**

A Taxpayer who is dissatisfied with Commissioner General's objection decision must deliver a notice of appeal within 30 days after receipt of an objection decision. The appeal will be referred to the Revenue Appeals tribunal.

Revenue Appeals Tribunal Act No 2 of 2005 established Revenue Appeals Tribunal with a judicial authority to hear appeals under the Customs and Excise Act 1982, the Income Tax Act 1993 and the Value Added Tax Act 2001. It is an independent and impartial body with less expensive and formal processes than the ordinary courts of record. Revenue Appeals Tribunal Rules 2007 issued under Section 27 of the Revenue Appeals Tribunal Act among others prescribe the procedure for lodging an appeal against the decisions of the Commissioner General. Under the rules, a Taxpayer who has lodged an appeal is referred to as the appellant. Before an appeal could be heard by the tribunal, there are generally 5 (five) pre-hearing stages involved. These stages are categorically discussed below.

### 4.2.1 Prehearing Stages

#### Stages 1: (Notice of Appeal and Statements of Grounds of Appeal<sup>2</sup>)

##### (i) Notice of Appeal

The Taxpayer must initiate the appeal processes within 30 days after receipt of Commissioner General's objection decision by filing the notice of appeal with the Registrar and serving same upon the Commissioner General. The Taxpayer must make use of the prescribed notice of appeal form which must be signed by the Taxpayer or his or her representative. This form is attached on this guide and is named **RAT 7**. In the prescribed notice of appeal form, the Taxpayer must:

- Detail out terms of the order or the remedy sought from the tribunal.
- Give an address in Lesotho and, where practicable, a telefax number or email address at which the appellant will receive the service of all documents in such proceedings.
- Inform the Commissioner General that if he intends to oppose the appeal, he must within 14 days after receipt of the notice of appeal, notify the appellant in writing that he intends to oppose the appeal.
- Inform the Commissioner General that the appeal will be set down for hearing on the day to be determined by the Registrar, if no notification of intention to oppose the appeal is given.

##### (ii) Taxpayer's Statement of Grounds of Appeal

The notice of appeal must be supported by a statement of grounds of appeal. It is to be filed with the Registrar within 30 days of filing the notice of appeal. Relevant documents supporting grounds of appeal must be attached to the statement of grounds of appeal.

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<sup>2</sup> Rule 7 and 8.

The statement of grounds of appeal must be divided into paragraphs which shall state in detail:

- Clear and concise statement of the grounds upon which the appellant appeals<sup>3</sup>.
- Material facts and legal grounds upon which the appellant basis his/her appeal.
- Which facts and legal grounds stated in the objection decision of the Commissioner are admitted and those that are denied.

### **(iii) Commissioner General's Notice of Intention to Oppose and Opposing statement of Grounds of Appeal**

If the Commissioner General intends to oppose to Taxpayer's appeal, he must file notice of intention to oppose such an appeal within the time stated in the Taxpayer's notice of appeal. Within 30 days of serving the Taxpayer with notice of intention to oppose an appeal, the Commissioner General must file and serve opposing statement of grounds of appeal.

Relevant documents supporting opposing statement of grounds of appeal must be attached. The opposing statement of grounds of appeal shall concisely state:

- Material facts and legal grounds upon which the Commissioner General relies in opposing the appeal.
- Which of the facts or the legal grounds in the Taxpayer's statement of grounds of appeal are admitted and which of those facts or legal grounds are opposed.

If there is a need to amend statements of either of the parties, parties may agree to such an amendment which must be in writing. Another alternative is to seek

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<sup>3</sup> The Taxpayer is not allowed to add new grounds of appeal. Unless the tribunal grants him/her leave to add new grounds of appeal, the Taxpayer is limited to the grounds as set out in the notice of objection to the Commissioner General. Rule 7 (5) (See also *Computeck v The Commissioner, SARS (830/2011) [2012] ZASCA 178*).

leave to amend through an application to the president of the tribunal. The other party has 14 days to react to the amended statement<sup>4</sup>.

## **Stage 2: (Discovery Stage<sup>5</sup>)**

The process of discovery operates once the procedures involving statements of grounds of appeal (pleadings) have been completed. Under the discovery stage, either party may, within 21 days before date of hearing, deliver a notice of discovery to the other party requesting the party to make discovery on oath, of all documents relating to issues raised in the statement of grounds of appeal.

Discovery ensures that trial takes place with fairness to each party, with sufficient information being placed before the Tribunal to avoid surprises and ambushing the other side. Non-compliance to the request of discovery can have fatal consequences to the case of the party who has been requested to discover. A document not disclosed pursuant to a notice of discovery may not, unless the tribunal otherwise directs, be used for any purpose at the appeal by the party who failed to make disclosure<sup>6</sup>. Several phases of discovery process are discussed below.

### **(i) Discovery of Documents**

A party, to whom a notice of discovery has been delivered, must make discovery on oath of all documents relating to the request within 14 days after delivery of the discovery notice. In a discovery affidavit the party must specify separately:

- The document in or under the party's possession or control, or in or under the control of that party's agent.
- the documents which were previously in the party's possession or control, or under the control of the party's agent, but which are no longer in the party's possession or control or that of the party's agent.

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<sup>4</sup> Rule 10

<sup>5</sup> Rule 11

<sup>6</sup> Rule 11 (5)

- The documents in respect of which the party has a valid objection to produce.

## **(ii) Production or Inspection of the Requested Documents**

The production or inspection of the requested documents takes place at a venue and in a manner as agreed between the parties.

## **(iii) Further Discovery Sought**

If either party believes that, in addition to the documents disclosed, there are other documents in possession of the other party that may be relevant to the discovery request related to the statements or the issues in appeal, that have not been discovered, then that party may give notice of further discovery within 14 days of the initial discovery or the inspection of the documents. The other party must then make such discovery within 10 days of delivery of the further request.

## **Stage 3 :( Pre-trial Conference)<sup>7</sup>**

Either of the parties may request a pre-trial conference or it can be convened at the instance of the tribunal's order.

The overall aim of the pre-trial conference is to shorten the duration of the hearing by agreeing on matters of evidence to be tendered at the hearing and establishing material issues for determination between the parties. It is also the last attempt for the parties to reach an amicable settlement of the dispute.

Where the discovery procedure as set out on stage 2 above was employed during the proceedings, a pre-trial conference must be held within 60 days of the completion of the discovery procedure but not later than 7 days before the hearing of an appeal, or where the discovery procedure was not utilized, the conference must be held within 60 days after the Commissioner General was

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<sup>7</sup> Rule 13 (A meeting held by the parties before trial date to, among other things explore settlement possibility and to reach common understanding of issues that agreed upon and those that are to be decided by the Tribunal).

served with notice of appeal but not later than 7 days before the date of hearing of an appeal. This conference must take place at LRA's offices unless the parties agree that it may take place at a different venue. During this conference, Commissioner General and the Taxpayer must attempt to reach consensus on the following evidentiary issues:

- What facts are common cause and what facts are in dispute
- The resolution of preliminary points that either party intends to take
- The sufficiency of the discovery process
- The preparation of a paginated bundle of documents
- The manner in which evidence is to be dealt with, including an agreement on the status of a document and if a document or a part thereof, will serve as evidence of what it purports to be
- Whether evidence on affidavit will be admitted with or without the right of any party to cross-examine the person who made the sworn statement (deponent)
- Expert witnesses and the evidence to be given in an expert capacity
- The necessity of an inspection in loco<sup>8</sup>
- An estimate of the time required for the hearing and any means by which the proceedings may be shortened
- If the dispute could be resolved or settled in whole or in part.

After the conclusion of the pre-trial conference, the Commissioner General must deliver a minute of the conference within 7 days of the conclusion of the pre-trial. Where the Taxpayer, however, does not agree with the content of the minute, the Taxpayer must deliver his or her own minute to the Commissioner General within 7 days of the date of the delivery of the minute by the Commissioner General.

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<sup>8</sup> (whether it is necessary for the Tribunal to make an inspection of the place where an event connected with case before the Tribunal allegedly took place)

#### **Stage 4: (Securing a date of Hearing of an Appeal<sup>9</sup>)**

Either party can approach the Registrar to secure a date of hearing of an appeal within 30 days of the delivery of pre-trial conference minute. Where the pre-trial conference was not held, date of hearing is obtainable at any time after the delivery of opposing statement of grounds of appeal. Forty (40) days before hearing of an appeal, the register will serve both parties with a notice of set down which will indicate the time and place appointed for hearing of an appeal.

#### **Stage 5: (Subpoena of Witnesses)<sup>10</sup>**

Subpoenas may be issued by the Registrar at the request of either party or by the direction of the Tribunal, requiring a person to attend the hearing of the appeal for the purpose of giving evidence in connection with an appeal. The subpoena may require the person summoned to produce any specified document which may be in the person's possession or under the person's control.

#### **Subpoena of Expert Witness**

The party who intends to call any person as a witness to give evidence as an expert on issues in appeal must deliver to the other party and the Registrar, a notice of expert witness, which notice must be served 30 days before hearing of the appeal.

A summary of such expert's opinion and his or her reasons must be delivered not less than 20 days before the hearing of the appeal. If the party wishing to call an expert witness does not comply with the above, such witness may not testify at the hearing unless the tribunal court allows it.

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<sup>9</sup> Rule 14

<sup>10</sup> Rule 17

### **4.2.2 Procedure during the Hearing of an Appeal**

The procedure before the tribunal is as follows:

- The Taxpayer will commence the proceedings unless the Commissioner General has raised the points of law, which must be decided before the merits of an appeal.
- The Taxpayer commencing the proceedings must present his or her case to the tribunal by way of leading evidence or by tendering a statement of facts on which he or she relies.
- Where oral testimony is tendered, the other party will be allowed the opportunity to cross examine such witnesses.
- At the conclusion of the party commencing the proceeding's case, the other party will likewise be given the opportunity to present its case and the other party will be afforded the opportunity to cross examine any witnesses who testify.
- Both parties will, after all the evidence has been heard by the tribunal, be afforded an opportunity to present oral argument. Thereafter the Tribunal will decide on the issues in dispute or reserve judgment until a later date to enable it to consider all the evidence and arguments presented to court.

### **4.2.3 Delivery of Judgment**

In deciding an appeal, the Tribunal may make an order;

- Affirming, reducing, increasing or varying the assessment, decision, ruling, determination or direction of the Commissioner General under appeal.
- Remitting the assessment, decision, ruling, determination or direction of the Commissioner General under appeal for reconsideration by the Commissioner General in accordance with the directions or recommendations of the Tribunal.

- In the case of an appeal against the amount of an additional tax imposed by the Commissioner General, affirming, reducing, or increasing the amount of the additional tax so imposed, subject to the maximum amount chargeable in terms of any law in question.

The Registrar must by notice deliver the written judgment of the tribunal to the parties within 14 days of delivery thereof.

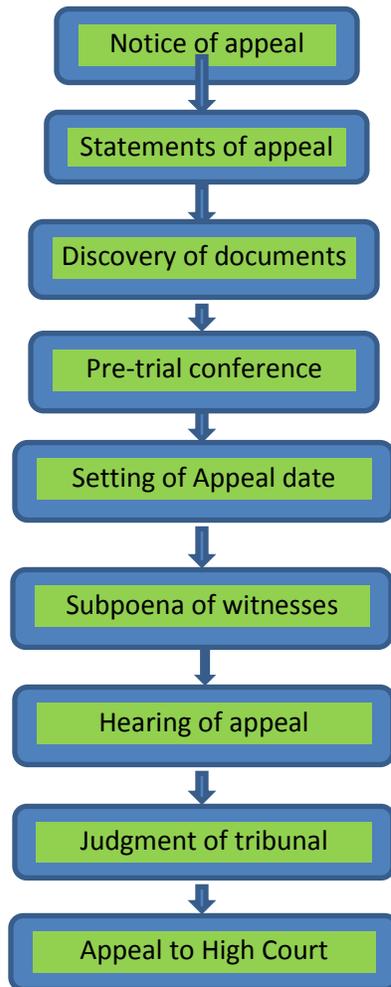
#### **4.2.4 Failure to make Court Appearance**

If a party or a person authorized to appear on the party's behalf fails to appear before the tribunal at the time and place appointed for the hearing of the appeal, the tribunal may decide the appeal upon, (1) the request of the party that does appear; and (2) Proof that the notice of set down of the tribunal has been delivered to the absent party or absent party's representative.

#### **4.2.5 Appealing against the judgment of the tribunal**

Any party aggrieved by the judgment can appeal to the High Court. The appealing party must deliver a notice of appeal to the Registrar and the opposing party within 30 days after the date of the written notice from the Registrar notifying the parties of the tribunal's decision. The notice of appeal must clearly state the grounds of appeal.

**5.0 The Procedure before the Tribunal can be illustrated as follows:**





## **NOTICE OF OBJECTION FORM (RAT5)**

(Complete this form if you want to object to an assessment that the commissioner has made about your tax affairs.)

<b>DETAILS OF A CLIENT</b>												
Full Names												
TIN												
Postal address (P/Bag or P.O BOX)									Postal Code			
Physical address												
Contact telephone number							Email address					

<b>OBJECTION DETAILS (MARK APPLICABLE TAX TYPE WITH (√))</b>											
Type of tax:	Income tax	<input type="checkbox"/>	Value added tax	<input type="checkbox"/>	Customs and Excise	<input type="checkbox"/>					
Nature of the amount in dispute:	Income	<input type="checkbox"/>	Additional tax	<input type="checkbox"/>	Deduction	<input type="checkbox"/>					
Storage fees	<input type="checkbox"/>	Penalties	<input type="checkbox"/>	Other	<input type="checkbox"/>	If other, please provide details below;					
Tax period:											
								Date of assessment notice			
Total Amount objected										M	

<b>Provide reasons for your objection and if additional space is needed, extend your reasons to a separate paper and attach to this form.</b>
Attach documents to support your objection such as copies of receipts, tax invoices, payment summaries, contracts, agreements and other relevant records.

<b>DECLARATION</b>											
I declare that the information contained in this request, and in any attached documents, is true and correct.											
Signature							Date				

## **NOTICE OF OBJECTION FORM (RAT7)**

(Complete this form if you want to object to a decision that the commissioner has made about your tax affairs.)

### **ANNEXURE B:** **NOTICE OF APPEAL (RAT 7):**

IN THE REVENUE APPEALS TRIBUNAL

HELD AT MASERU

Case No: RAT/ /20.....

In the appeal of:

NAME OF A TAXPAYER

Appellant

And

THE LESOTHO REVENUE AUTHORITY

1<sup>st</sup> Respondent

THE COMMISSIONER-GENERAL

2<sup>nd</sup> Respondent

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NOTICE OF APPEAL

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KINDLY TAKE NOTICE THAT:

1. The Appellant will seek an order from this honorable Tribunal that: (**Taxpayer Appellant**) to show clear and concise terms of an order sought).
2. The Appellant will receive notices and service of all documents in these proceedings at: (**Taxpayer to clearly indicate the address at which the Appellant will receive all documents in these proceedings**)
3. The Appellant informs the 2<sup>nd</sup> Respondent that if he or she wishes to oppose this appeal, he or she must notify the Appellant thereof in writing within fourteen (14) days of receipt of this Notice.
4. If no notification of intention to oppose this appeal is given, this appeal will be set down for hearing on the first available day determined by the Registrar, being the first available day at the Tribunal's next sitting session.
5. This Notice is supported by Appellant's Statement of Grounds of Appeal which will be

lodged within thirty (30) days of date of service of this Notice of Appeal.

DATED at MASERU on this \_\_\_\_\_ day of \_\_\_\_\_ 20.....

\_\_\_\_\_  
(Signature of Appellant and his or her Address)

TO:

The Registrar  
Revenue Appeals Tribunal

AND TO:

The Respondents  
(Indicate an address shown in the Notice of assessment)

NB. If the Taxpayer is represented by his agent in these proceedings, Power of attorney in favor of the said agent must be attached to this Notice of Appeal.

**Disclaimer:**

This Guide provides the general interpretation of the law and considers broad principles in providing guidance on the application of Revenue Acts, the Revenue Appeals Tribunal Act No 2 of 2005 and the Revenue Appeals Tribunal rules 2007 on the procedure for tax disputes resolution. The Guide has no binding legal force and shall not affect the Taxpayer's right to argue for a different interpretation, where necessary. Neither is this guide binding on the Commissioner General, should circumstances arise for deviation as necessary or as the Commissioner General may deem otherwise in his discretion.

