IN THE HIGH COURT OF LESOTHO

HELD AT MASERU **CASE. NO. CIV(A) 02/21**
CASE NO.

RAT/03/2019/2020

In the matter between:

LETSIE OFFICE PARK (PTY) LTD **APPELLANT**

AND

LESOTHO REVENUE AUTHORITY **RESPONDENT**

Neutral Citation: Letsie Office Park (Pty) Ltd v Lesotho Revenue Authority [2023] LSHC 27 Civ. (04TH MAY 2023)

CORAM: **MOKHESI J**

HEARD: **09TH FEBRUARY 2023**

DELIVERED: **04TH MAY 2023**

SUMMARY

Tax law: *Registration of a company as a VAT vendor in terms of Value Added Tax Act no.9 of 2001-The reckoning of the period in which a vendor must be registered as a VAT vendor in terms of section 17(1) (b) of the Value Added Tax Act- The appellant applying to be registered as a vendor before making taxable supplies – The Commissioner General having approved application for registration and fixing the effective date and later modifying it to coincide with the period when the appellant began making taxable supplies- The appellant claiming credit for input tax in respect of the period prior to its rendering taxable supplies- the respondent rejecting the appellant's application for credit- The appellant noting an appeal before the Revenue Appeals Tribunal- The appeal having been unsuccessful, the appellant further appealed to the High Court- Held, in agreement with the Revenue Appeals Tribunal, that the appellant was not required to apply for registration before rendering taxable supplies and that the Commissioner General is empowered to reassign the effective date of registration having earlier registered the appellant before it could render taxable supplies- The appeal accordingly dismissed with costs.*

ANNOTATIONS

Legislation

Value Added Tax Act No. 9 of 2001 as amended.

Cases

Capitec Bank Holdings Limited and Another v Coral Lagoon Investments 194 (Pty) and Others 2022 (1) SA 100 (SCA)

Commissioner of Her Majesty's Revenue and Customs v Frank A. Smart & Son Ltd [2019] UKSC 39

Commissioner for South African Revenue Services v De Beers Consolidated Mines Ltd [2012] ZASCA 103; 2012 (5) SA 34 (SCA)

Metcash Trading Limited v Commissioner for the South African Revenue Services and Another [2000] ZACC 21: 2001 (1) SA 1109 (CC)

Articles

Schoeman, A.H.A., Evans, C.C and Du Preez, H (2022) "To register or not to register for Value-added tax? How tax rate changes can influence the decisions of small businesses in South Africa," ***Meditari Accountancy Research, Vol. 30 No.7***,

JUDGMENT

[1] **Introduction**

This is an appeal against the judgment of the Revenue Appeals Tribunal (RAT). This appeal is about interpretation of section 17(1)(b) of the Value Added Tax Act No. 9 of 2001as amended (hereinafter "the Act"). The crisp issue for determination in this appeal is whether a vendor is bound to register as vendor in terms of this section only when it starts rendering taxable supplies, and whether the Commissioner General after registering a vendor before it starts making taxable supplies is entitled to reconsider the effective date of registration and to fix it at time when the vendor starts rendering taxable supplies.

[2] **Factual Background**

The appellant company was floated in 2006. It remained dormant but held title by way of registered lease over a vacant Plot No. 12284 – 323 in the prime area of Maseru City Centre. In 2014, its shareholders approached a property development company by the name RPP Developments (Lesotho) (Pty) Ltd (hereinafter 'RPP'). The purpose of the approach was to discuss the possibility of selling the said vacant plot.

[3] RPP conducted research and recommended that the Plot in question could be put to a good use if it was developed and leased out. Following this recommendation, RPP and the appellant entered into an agreement in terms of which RPP acquired all the appellant's issued shares. This was done in 2016. This rendered RPP to be the appellant's holding company. Consequent to acquiring 100% of appellant's shares, both the subsidiary and

the holding companies concluded an agreement in respect of which RPP would develop the plot in question.

[4] For purposes of setting the construction ball rolling, RPP entered into a construction agreement with LSP Construction Proprietary Limited (hereinafter "LSP") on the 17 May 2016. On 26 October 2016, RPP secured a financier for the project in the form of Nedbank Lesotho Ltd. The appellant stood surety for RPP in the stated agreement between it and Nedbank and had a mortgage bond registered in favour of Nedbank over the plot in issue. The loan funds were only made available to RPP to start construction in October 2016.

[5] During the time when RPP was waiting for approval of funding from Nedbank, it incurred costs of development, and on the 21 September 2016, it entered into a Cession Agreement with LSP in terms of which it was agreed that all rights and obligations had been ceded to the appellant (LOP).

[6] A month before conclusion of the Cession Agreement, RPP concluded an agreement with the appellant in terms of which the latter sublet the plot in question to RPP for a fee of M75,000.00 per month form October 2016 until completion of the project. The reasons which were provided by parties for entering into this sublease agreement are the following: RPP required the site in order to manage the contractor and other professional teams; RPP needed storage area to hold stock items which will be needed during construction; sublease agreement was meant to generate income for the appellant in order to cater for costs such as rates, electricity, water, company administration, audit and financing interests.

[7] Construction commenced on 18 April 2016 and was scheduled to run for a duration of twelve (12) months. In short, completion date for construction was expected to be 18 April 2017. RPP made payments to LSP and other professional teams before the Nedbank approved the loan. RPP invoiced the appellant directly for all the costs which it incurred before the loan funds were available.

[8] The appellant applied to be registered as a vendor on the 01 August 2016 and had attached to its application a schedule of cash flow forecast. In terms of the projected cash flow, the applicant expected to start generating rental income in the amount of Eight Hundred and Two Thousand, Eight Hundred and Ten Maloti (M802,810.00) monthly during the initial twelve months period starting July 2017 to June 2018. The application for registration was therefore made eleven months before the start of the projected rendering of taxable supplies. The appellant was registered as a vendor effective from 01 September 2016.

[9] In anticipation of the projected completion date of the building project, the appellant had concluded formal sublease agreements with prospective tenants with the commencement date being set at 01 July 2017. When it became clear that completion date would not be met, commencement date of tenancy was extended to the middle of September 2017. The building was completed in September 2017 and the appellant generated its first invoice on 01 October 2017 and exceeded the VAT threshold in December 2017. The building was meant to be used entirely to generate rental income. In short,

the appellant only began making taxable supplies in October 2017 due to non-completion of construction work on anticipated time, as already stated.

[10] On 03 August 2018 the appellant claimed refund for input credit it contended it paid to LSP from February 2017 to September 2017 during construction, in the amount of M8,713,224.14. It is common ground that this input credit was paid before the property could be let out to prospective tenants. In a nutshell, during that period the appellant had not commenced its business of renting out office space. The assessment was made by the respondent rejecting the claims for refund. In the assessment, the respondent stated that the appellant only began making taxable supplies in 2017 exceeding VAT threshold in December 2017. The Commissioner General further amended the appellant's effective date of registration as a VAT vendor from September 2016 to December 2017.

[11] **Before the Revenue Appeals Tribunal ("RAT")**

There were three mainstay contentions on which the appellant relied for its appeal against the Commissioner General's assessment, namely, (i) Incorrect interpretation of section 17(1)(b) of the Act by the Commissioner General, the impermissibility of modifying an effective date of registration of a VAT vendor by the Commissioner General and thirdly, the Commissioner General's misdirection in making a finding that the appellant entered into the scheme the sole purpose of obtaining a tax benefit, as provided for under section 84(2)(a) and (b) of the Act.

[12] The RAT found that section 17(1)(a) of the Act requires registration as a VAT vendor within 14 days at the end of any of the twelve months if during

that period the person made taxable supplies exceeding the registration threshold. The RAT found that under section 17(1)(b) "such clear formulation is not retained", however, despite this "there can be no doubt that there are no two periods of twelve months but one contemplated in S. 17(1)(b). The beginning of twelve months refers to the same twelve months during which the threshold is projected to be exceeded."

[13 The RAT found support for its position through the interpretation of section 17(1)(b). It held as follows:

> *"[15] Section 17(1)(b) has two basic features that hold a clue to its interpretation. First, it refers to a period of twelve months. In this regard there is reference to the beginning of such period, as well as duration of such period when the registration threshold is likely to be exceeded. The second major feature is the concept of taxable value of taxable supplies.*
>
> ….
>
> *[20] Section 17(1)(b) requires that the taxable value of supplies shall be projected at the beginning of any twelve months period, during which period the reasonable expectation is that the threshold would be exceeded. I am unable to see how a person would reasonably expect to exceed the taxable value of taxable supplies within twelve months period during which he has not started to make taxable supplies, as a matter of fact.*
>
> *[21] In my humble opinion the legislature intended that a person should apply during the twelve months when he has commenced to make taxable supplies. In other words, the beginning of the twelve*

months indicated for registration has to coincide with the making of taxable supplies. This finds support from the definition of taxable supply in the Act. Section 12 defines taxable supply as a supply of goods or services (other than exempt supply) made in Lesotho by vendor (sic) consideration in the course of furtherance of an enterprise carried on by the vendor.

[23] There are further indications in the Act that registration has to be made at the time a person has commenced making taxable supplies. In terms of Section 18(1) and (2) a vendor is required to apply for cancellation of registration within 14 days after ceasing to make taxable supplies. Similarly, a vendor whose taxable supplies drop below the threshold may apply, within two years, for de-registration.

….

<u>Modification of the date of Registration</u>

[25] The conclusion to which I have arrived does not mean that this is the end of the enquiry. The appellant contends that the CG is in any event not entitled to modify the date of registration he allocated to it. It was submitted that none of the provisions of the VAT Act authorizes he CG to amend the date of registration simply because facts on which the vendor relied upon did not materialize. It was contended that the CG cannot thus apply an ex post facto test as he did.

….

[27] I turn to the question of whether the CG has power to modify the registration in terms of the Act. Section 17(8) appears to require the Commissioner, in peremptory terms, to register a person who applies for registration in terms of, inter alia, Section 17(1) unless such a person is not eligible to apply for registration. Put differently the CG

has no power to refuse to register a person who satisfies all the legibility criteria set out in section 17(1).

[28] It is important, especially in this case, that in terms of the Act registration takes effect "from the date of registration as specified in the tax registration certificate or such later date as the Commissioner may determine." In terms of Section 17(13) the Commissioner is empowered to impose conditions or limitations on a registration, or suspend or modify the conditions or limitations on a registration."

Due to this conclusion, the RAT did not find it necessary to deal with the appellant's contention on section 84 (2) (a) and (b) of the Act.

[14] **Before this Court**

The appellant has taken issue with the RAT's interpretation of section 17(1) (b) that it requires a person to apply to be registered as a VAT vendor when he has commenced making taxable supplies and not before such supplies are rendered. This conclusion was reached in view of the provisions of sections 4(2) and 9(4) of the Act, among others.

[15] Mr Zietsman, for the appellant, argued that the abovementioned sections do not lend support to the RAT's interpretation because sections 4(2) and 9(4) of the Act deal with taxable value of a supply and the time of a taxable supply. The argument went further to say that these sections deal with an *ex post facto* interpretation of past events, whereas section 17(1) (b) requires as *ex ante* assessment. Counsel argued that for a person to be required to be registered as a vendor is at a time when he/she realises or ought to have realised that there are reasonable grounds to expect that the total taxable

value of taxable supplies during the following twelfth month period will exceed the registration threshold.

[16] On the issue of modification of taxpayer's date of registration, the appellant argued that the Commissioner General does not have power to amend conditions of registration, as section 17(13) of the Act empowers him to impose certain conditions or limitations on registration or (ii) suspend, or modify the conditions or limitations on a registration, especially in a present case where he did not impose conditions or limitations on the vendor's VAT registration, but only did so later on after registering the appellant. In a nutshell, the appellant contends that the Commissioner General acted *ultra vires* when he amended or modified its effective date of VAT registration.

[17] On the one hand, the respondent shares common cause with the RAT on the interpretation of section 17(1) (b) that the appellant was not required to be registered as a VAT vendor as it had not commenced rendering taxable supplies and that the Commissioner General is entitled to modify the effective date of registration to coincide with the period when the taxpayer commenced rendering taxable supplies. I turn to deal with the issues which are the subject of this appeal, but before I do that the mechanism of the Act should be laid out as it informs how section 17 should be understood and interpreted.

[18] **The Nature of VAT**

VAT is a consumption tax system. As goods and services move along the supply chain, VAT is charged on each step as these goods and services change hands. VAT is paid on the added value which the goods or services

attain with each commercial stage they pass from the initial supply. This feature of VAT was aptly articulated in **Metcash Trading Limited v Commissioner for the South African Revenue Services and Another [2000] ZACC 21: 2001 (1) SA 1109 (CC)** as follows:

> *"[14] Being a tax on added value, VAT is not levied on the full price of a commodity at each transactional delivery step it takes along the distribution chain. It is not cumulative but merely a tax on the added value the commodity gain during interval since the previous supply. To arrive at this outcome a supplying vendor, when calculating the VAT payable on the particular supply, simple deducts particular goods were supplied to it in the first place. As a commodity is on-sold by a succession of vendors by each payment of VAT by each successive supplier must then represent 14% of the selling price less 14% of the price which was payable when that commodity was acquired. According to the scheme of the Act the tax is payable by a supplying vendor is called output tax and the tax that was payable on the supply to that vendor upon acquisition is called input tax."*

[19] In **Commissioner for South African Revenue Services v De Beers Consolidated Mines Ltd [2012] ZASCA 103; 2012 (5) SA 34 (SCA)** at paras. 39 and 51 said:

> *"[39] At this stage, it is necessary to set out the rationale behind and method of application of VAT. On this aspect we can do no better than to cite an English case which deals directly with this aspect in* ***Customs and Excise Commissioners v Redrow Group plc [1999] 2 ALL ER 1 (HL)*** *at 9 g – h:*

"These provisions entitle a taxpayer who makes both taxable and exempt supplies in the course of his business to obtain a credit for an appropriate proportion of the input tax on his overheads. These are costs of goods and services which are properly incurred in the course of his business but which cannot be linked with any goods or services supplied by the taxpayer to his customers. Audit and legal fees and cost of the office carpet are obvious examples."

……..

[51] The primary question requires that there be clarity as to the nature of the "enterprise." What the "enterprise" consists of is a factual question. There must be a particular activity which complies with all the requirements in the definition …

The purpose of the words following "including" is to make certain that the specific categories of activity referred to are included in the defining of "enterprise."'

[20] Tax is the lifeblood of any economy. It is therefore critical that every taxpayer who is eligible to pay tax should do so. VAT being tax on consumption, enterprises play a crucial role in its collection. The mechanism which is used by the Act to collect VAT is through the instrumentality of registered businesses (vendors) by setting eligibility criteria which in our case is through registration and setting of thresholds. Under section 17, the Act decrees a system of voluntary and compulsory registration and thresholds, as will readily be seen in due course. The purpose of registering businesses as VAT vendors is so that they help tax authorities to collect VAT. The importance of registration was highlighted

by the authors **Schoeman, A.H.A., Evans, C.C and Du Preez, H (2022) "To register or not to register for Value-added tax? How tax rate changes can influence the decisions of small businesses in South Africa,"** ***Meditari Accountancy Research, Vol. 30 No.7***, pp.213 – 236 available at **https://doi.org/10.1108/MEDAR-05-2021-1309** at para 2.2:

> *"Registration is a critical component of the successful operation of VAT systems wherever they are operated in the world. Once the entity is registered for VAT, a number of administrative matters need to be complied with; for example, tax invoices need to be issued on the sale of supplies; VAT returns need to be completed and submitted and the net VAT amount payable or refundable needs to be accounted for…."*

[21] At the centre of a VAT tax system is the system of tax deduction which is meant to relieve such business of VAT burden paid in the course of their business activities, which activities are themselves subject to VAT paid by the consumer of such services or goods and onwardly submitted to the tax authorities by the vendor. This ensures tax neutrality of the VAT tax system (**Commissioner of Her Majesty's Revenue and Customs v Frank A. Smart & Son Ltd [2019] UKSC 39** at para. 33**)**. What this system presupposes is that for a business to be required to register as a VAT vendor such business should be operational in a sense that it is carrying on an economic activity which in the end would entitle it to exercise the right to deduct VAT charged on acquiring input goods or services.

[22] I turn to consider the scheme of section 17 of the Act to determine the first issue which arise in this appeal. This section provides that (in relevant parts):

"(1) A person who is not already registered is required to apply to be registered as a vendor –

(a) within fourteen days of the end of any period of twelve months if during that period the person made taxable supplies the taxable value of which exceeded the registration threshold set out in subsection (2); or

(b) at the beginning of any period of twelve months where there are reasonable grounds to expect that the total taxable value of taxable supplies to be made by the person during that period will exceed the registration threshold set out in subsection (2).

(2) The registration threshold is the amount prescribed for the time being by the Minister by notice in the Gazette and the Minister may prescribe different registration threshold in respect of the supply of goods and the supply of services

(3) …

(4) For purposes of subsection (1) and paragraphs (b) and (c) of this subsection –

(a) the term "taxable supplies" means supplies that would be taxable if the person making the supply were a vendor;

(b) the taxable value of the person's supplies is determined under section 14; and

(c) in determining whether the registration is exceeded, regard shall be had to the value of taxable supplies made by the person and associates of the person.

(5) A person supplying goods or services for consideration in the course or furtherance of an enterprise carried on by the persons, other than a person solely making exempt supplies, who is not required by subsection (1), (3), or (6) to apply for registration may apply to the Commissioner to be registered and, at the discretion of the Commissioner, the Commissioner may register the person and issue the person with a value added tax registration certificate.

(6) …

(7) An application for registration shall be in the form approved by the Commissioner and the applicant shall provide such further information as the Commissioner may require.

(8) The Commissioner shall register a person who applies for registration in accordance with subsection (1), (3), or (b) and issue to the person a value added tax registration certificate unless the Commissioner is satisfied that the person is not eligible to apply for registration for purposes of the Act.

(9) A value added tax certificate issued under this section shall state the name and other relevant details of the vendor, the nature of the vendor's trading activities, the date on which the registration takes effect, the taxpayer identification number of the vendor, and any other matters as the Commissioner may prescribe.

(10) The Commissioner may register a person whom the Commissioner has reasonable grounds to believe is required to apply for registration under this section but who has failed to do so.

(11) Registration under this section takes effect from the date of registration as specified in the value added tax registration certificate or such later date as the Commissioner may determine.

(12) A person who is required to apply to be registered under this section but who has failed to do so is treated as registered for the purposes of this Act (other than subsection (1) from the beginning of the tax period immediately following the period in which the requirement to apply for registration arose or from such other time as the Commissioner may determine.

(13) The Commissioner may –

(a) impose conditions or limitations on a registration; or

(b) suspend, or modify the conditions or limitations on, a registration

(14) …

(15) …

(16) …"

[23] The determination of the question whether the appellant should only register in a year in which it makes taxable supplies necessary involves interpretation of section 17. It is trite that interpretation of statutes is a unitary exercise

which takes into account the triad of the language used in the provision, correctly understood in the context in which it is deployed and the purpose of the provision. The court in **Capitec Bank Holdings Limited and Another v Coral Lagoon Investments 194 (Pty) and Others 2022 (1) SA 100 (SCA)** at para. 25, moreover, issued the following caution:

> *"I would only add that the triad of text, context and purpose should not be used in a mechanical fashion. It is a relationship between the words used, the concepts expressed by those words and the place of the contested provision within the scheme of the agreement (or instrument) as a whole that constitutes the enterprise by recourse to which a coherent and salient interpretation is determined …."*

[24] It is no doubt correct as the RAT held that the section 17(1)(a) calls for *ex post facto* assessment of total taxable supplies in the immediate past twelve months, whether they exceeded an administratively set threshold, to trigger the requirement to register as a VAT vendor.

[25] As regards the contentious section 17(1)(b), the appellant contends that the Commissioner General conducted an *ex post facto* assessment on whether it was required to be registered as a vendor. The contention goes: there is a distinction between subsection 1(a) and 1(b), in that subsection 1(a) imposes an obligation on businesses to apply to register as a VAT vendor at the end of any twelve months while on the one hand subsection 1(b) an obligation to apply to be registered arise during the following twelve month period after reasonable grounds were found to exist raising an expectation that the total taxable value of taxable supplies to be made in that period will exceed the set threshold. Taking issue with RAT's interpretation that the taxpayer is

obliged to apply to register only when he commences making taxable supplies, the applicant puts the argument as follows, in its Heads of Argument:

> *"The triggering event in terms of section 17(1)(b), to apply for compulsory registration is thus the point in time when the taxpayer realises or ought to have realised that there are reasonable grounds to expect that the total taxable value of taxable supplies <u>during the following twelfth month period</u> will exceed the registration threshold." (My emphasis)*

[26] The RAT resolved the issue regarding the time compulsory registration should be reckoned by basing itself on what it refers to as 'the two basic features that hold a clue' to the interpretation of section 17(1) (b), namely, the definition of taxable value of taxable supplies and a period of twelve months which is referenced in the sub-section.

[27] The answer to this anterior question lies in the plain meaning of the words used in section 17(1)(b), other sections of the Act and the rational for requiring businesses to register as VAT vendors. Plain in subsection (1)(b) is that "at the beginning of any period of twelve months" when reasonable grounds exist to expect that the total value of taxable supplies will exceed registration threshold, a business should apply to be registered. It is crucial to state, as RAT correctly stated (in paragraph 23 of its judgment), that once a business is registered as a VAT vendor certain statutory obligations flow automatically: a vendor is required to complete and submit tax returns accurately and in a timely manner, and in this case, section 27 (1) provides that they should be filed for each tax period with the Commissioner General

within twenty days after the end of the period. The 'tax period' is defined in section 3 as "the period of one month ending on the last day of each of the twelve months of the calendar year." Quite clearly, the Act considers that a twelve-months period in respect of which tax returns must be filed goes hand-in-glove with the period in which a business is registered as a vendor.

[28] Equally important to recall is the purpose for which registration is required. Unless a business is fully operational and making taxable supplies, it is difficult to understand how it would fulfil its registration obligations of collecting VAT on behalf of the tax authorities. The contention by the appellant that reference to twelve months in subsection (1)(b) is that taxable supplies must be made "during the following twelve-month period" is not borne out by the structure of the Act. As I see it, in agreement with the RAT, the reckoning of the twelve-month period when the business finds reasonable grounds exist to expect that the total taxable value of taxable supplies will exceed the administrative threshold is the period within which the vendor is actually making taxable supplies, not when it is not making any taxable supplies, as in the present case. I am fortified, further, in this view by the provisions of section 12(1) which define "a taxable supply" as a supply of goods and services (other than exempt supply) made in Lesotho by a vendor for consideration in the course or furtherance of an enterprise carried on by the vendor. When the appellant got registered to be VAT vendor it was not carrying on any enterprise renting out office space, as it was in the process of constructing a building from which it would carry on an enterprise of doing so.

[29] The several indicators which the RAT pointed out in its judgment as proof that registration should be running together with the making taxable supplies are on point: section 18 requires the registered vendor to apply to the Commissioner General to cancel registration if the vendor ceased to make taxable supplies and that this application should be made after fourteen days of ceasing to make such supplies. And in terms of section 18(3) a vendor whose taxable supplies during the most recent twelve months fail to exceed the threshold may apply for cancellation. The conspectus of all these suggest to me that the RAT cannot be faulted by concluding that a vendor is required to be registered as a VAT vendor in terms of section 17(1)(b) when it is already making taxable supplies. The projection that taxable value of its taxable supplies will exceed the threshold must fall within the twelve-month period when it is already making taxable supplies and not beyond. In the present case the appellant applied and was registered eleven months prior to the period when it started making taxable supplies. The income projection for applying for registration related to income to be generated from completed office block.

[30] **Modification of the date of Registration**

What is in contention in this appeal, furthermore, is the decision of the Commissioner General to amend the appellant's effective date of registration as a VAT vendor. What happened in this matter, as already stated in laying out the factual background to this case, is that the appellant applied on 01 August 2016 to be registered as a VAT vendor and was successful in that regard. The appellant was accordingly registered effective from 01 September 2016. The Commissioner General, afterwards, modified the effective date of registration from September 2016 to December 2017 to

coincide with beginning of the period when the appellant began making taxable supplies in October 2017. It is the appellant's contention that the Commissioner General is not entitled in law to modify the effective date of registration he initially allocated to it.

[31] In terms of Section 13:

> *"The Commissioner may –*
> *(a) impose condition or limitations on a registration; or*
>
> *(b) suspend, or modify the conditions or limitations on, a registration".*

[32] In the present matter, the Commissioner General had set an effective date of registration, only to modify it later to push it forward to a time when the building will be generating income for the appellant. The question to be answered is whether the Commissioner General has a power in law to review his own decision to set the effective date of registration? The point of departure are the provisions of section 17(13)(b) quoted above. The words used in this subsection are instructive: The Commissioner General is empowered to "modify the conditions or limitations on, a registration". This, to me indicate that this power is triggered after the fact of registration. Modification can only be done on what has already been done, and in this case, registration. As I see it, the fixing of an effective date of registration is a condition attached to a registration. Registration was issued on condition that it became effective in September 2016. The Commissioner General, contrary to the appellant's contention, exercises the power of review to modify the conditions on a registration depending on the demands of the situation.

[33] That the Commissioner General is endowed with wide powers of reviewing registration is projected clearly by the provisions of section 18(5) of the Act. In terms of this provision, he is empowered to cancel registration of a vendor who has not applied for cancellation of registration, but in relation to whom he is satisfied that such a vendor is neither required nor entitled under section 17 to apply for registration. Under section 18(1) a vendor who is registered is obliged to apply for cancellation of his registration if he ceased to make taxable supplies, and in terms of section 18(3) a vendor (other than a vendor required to apply for registration under section 17(3) or (6) may apply in writing to have its registration cancelled, if with respect to the most recent twelve month period, the taxable value of its taxable supplies did not exceed the registration threshold. Although the word "may" has been used in section 18(3), in my considered view, once the vendor has failed to exceed the registration threshold in the most recent twelve months, it is obliged to apply for cancellation. All these, in my considered view, points to the power the Commissioner General has to ensure that entities which are not eligible to register as VAT vendors are stripped of registration. In the present matter, however, the Commissioner General has not elected the extreme measure of cancelling registration but has instead pushed forward the effective date of registration to coincide with the period when the appellant would have started rendering taxable supply.

[34] **Whether the sublease agreement between the appellant and RPP constitutes taxable supplies?**

In disallowing the appellant's objection to the Notice of Assessment dated 3 August 2018 at paragraph 17, the Commissioner General stated:

> *"Whilst it may not be disputed that LOP [appellant] did not sub-let any of its developed property for rental from September 2016 to September 2017, it however enter into a sub-lease agreement with RPP for a fee of M75,000.00 from October 2016 until completion of the construction period and in terms of which it sublet to RPP its premises for reasons already articulated above. I am reluctant to conclude that in so sub-letting its premises to RPP, LOP became engaged in an of subletting developed property; so much so that it could be said that payment made by LOP to LSP were made in the course of furtherance of an enterprise carried on by LOP."*

[35] The above conclusion was reached after the appellant had claimed refunds for input tax it claimed to have paid to LSP from February 2017 to September 2017. It should be reiterated that during this period, as already said, the appellant was not required to apply for registration as a VAT vendor, and that having been registered as such, the Commissioner General was entitled to review and re-set the effective date of registration. What the appellant and RPP did was to enter into an agreement in terms of which the former would supply the latter with unimproved land at a fee for purposes of site establishment and storage. It should, however, be stated that in terms of section 6(2) (b) of the Act, unimproved land is an exempt supply. It follows that I agree with the RAT judgment that the sublease over unimproved land did not constitute a taxable supply. For these reasons, like the RAT, in view of this conclusion, I find it unnecessary to deal with the alternative ground on which the appellant's claim for refund was rejected, that is whether the

reason the appellant applied to be registered as a vendor prior to making taxable supplies was for the sole reason of obtaining a tax benefit contrary to the provisions of Section 84 (2) of the Act.

[36] In the result the following order is made:

(a) The appeal is dismissed with costs.

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MOKHESI J

For the Appellant: **Adv. P. J. J Zietsman instructed by Harley and Morris**

For the Respondent: **Mr M. Lichaba**