

# Grain SA's victory for Emerging Farmers

By Johan Kotze

Grain SA is the well-known agricultural organization situated in Bothaville.

For many South Africans Grain SA is more known for being the organizer of Nampo Harvest Day which showcases many facets of agriculture.

For Grain SA's members, being grain farmers, it is a non-profit, autonomous and independent organization, which strives to be involve in all matters bearing on the wellbeing of the grain industry.

Grain SA was recently involve in a tussle with the South African Revenue Services (SARS), which culminated in a court case (No. 1434/2010) on 29 July 2010 in the Free State High Court, heard by Judge Jordaan.

In short the issue in the case involve whether funds donated by The Maize Trust (the Trust) to be used for The Farmer Development Programme (the Programme) by Grain SA should be subject to value-added tax (VAT), and if SARS was correct that the donation should be subject to VAT, if this was the case, it would simply have meant that the amount to be used in the Programme would have been 14% less.

The Programme contributes to the commercialization of black farmers. The need for training, skill development and support to these farmers has never been greater, as more and more farmers of colour access agricultural land without the necessary financial and technical support.

Grain SA also faced the dread of being assessed on the last five years' donations from the Trust, with possible interest and penalties thereon.

The Trust is the survivor to The Maize Board. Prior to 1996 South Africa's agricultural industry was dominated by Control Boards; The Maize Board being one. The different Boards had their origin a few decades ago and fell under the auspices of the Marketing Act, 1968.

These Boards had as their primary objective control over the marketing of the product under their jurisdiction and as a secondary objective these Boards fulfilled various support functions to promote the agricultural industry it represented.

In 1996 The Marketing of Agricultural Products Act came into force and provided for the dissolution of the Boards and made provision for the formation of Agricultural Industry Trusts.

The Maize Board, when its marketing operations were discontinued in 1996, had certain reserve funds in terms of the Maize Marketing Scheme. These funds were derived from profits on imported maize that was sold in the domestic market during the drought years preceding the demise of the Board, as well as from levies that were collected on maize sold by producers in the domestic market.

An agreement was reached between the maize industry and the Minister for Agriculture and Land Affairs, at the time, which stipulated that the reserve funds of the Board were to be transferred to a Trust for the future benefit of the South African maize industry.

The Trust was therefore founded in August 1998 to promote the South African maize industry. The Trust serves the industry through financial support of institutions and

organisations with programmes aimed at market and production related research, the assimilation and dissemination of market information and also to broaden market access.

Thus any person active in the maize industry can apply for funding from the Trust if such person can demonstrate, and satisfy the Trust, that the contemplated programme will benefit the maize industry as a whole.

Since its establishment, the Trust has awarded funds to a variety of organisations and institutions involved in research, development and information programmes in the South African maize industry. The grants made by the Trust are paid out of the annual income of the Trust, which is derived from dividends and interest earned on donations received by the Trust from the Maize Board. The Trust does not have any other income, nor does it have any assets other than the funds it received from the Maize Board as donations, which have been invested by it.

Grain SA's projects can be categorised into three main functional areas, namely input, production and marketing in the maize industry.

The funds Grains SA receive from the Trust are used in respect of the following objectives:

- acquisition, assimilation and dissemination of information to schools *via* a programme on grain and the importance of the grain industry in the South African economy;
- market access, *inter alia* by providing market- and production-related research information;

- market- and production-related research and the acquisition, assimilation and dissemination of market (input) information for maize producers and the broader maize industry; and
- market access in respect of the South African maize industry, *inter alia* by providing marketing infrastructure, training and assistance in rural areas where the need exists. Grain SA refers to this objective as 'The Farmer Development Programme', and the receipt of funding from the Trust in respect of this programme was the focus of this VAT dispute between the Grain SA and SARS.

The Programme is solely funded by the Trust, and Grain SA has been receiving funding from the Trust for this programme since it was founded in August 1998.

The Trust does not specify who should be trained as part of the Programme, as this is left to the discretion of Grain SA which reports back to the Trust on the completion of each programme. Apart from the fact that individual emerging maize farmers selected by Grain SA are trained by Grain SA using funds awarded to it by the Trust in respect of the Programme, there is no connection between the individual emerging farmers and the Trust, which is unaware of the identity of the individual emerging maize farmers at times when payments were, and are, made by it to Grain SA in respect of the Programme.

The VAT Act generally provides that a supply of goods and services would be subject to 14% VAT, unless it would otherwise be exempt. The 14% has to be on the consideration for the supply of goods and services. The term 'consideration' is defined in the VAT Act and excludes any payment made by any person as a 'donation' to an association not for gain.

The term 'donation' is also defined and means 'a payment whether in money or otherwise voluntarily made to any association not for gain for the carrying on or the carrying out of the purposes of that association and in respect of which no identifiable direct valuable benefit arises or may arise in the form of a supply of goods or services to the person making that payment or in the form of a supply of goods or services to any other person who is a connected person in relation to the person making the payment ...'.

In 2008, on advice from its auditors, Grain SA approached SARS to provide a ruling as to whether SARS agrees that the funding it receives from the Trust is donations for purposes of the VAT Act and therefore exempt from VAT.

SARS replied to the request and originally ruled that the amounts Grain SA receives from the Trust were all subject to VAT, i.e. the payments which Grains SA receives from the Trust are not 'donations' as defined in the VAT Act.

Grain SA then approached the law firm Bowman Gilfillan Inc., and on advice from Johan Kotze, head of tax dispute resolution at the firm, representation was again made to SARS. SARS then withdrew its first ruling and issued a new ruling. SARS then held that all monies received from the Trust for the first three objectives are 'donations' for purposes of VAT and therefore exempt from VAT. SARS still maintained that payments by the Trust to Grain SA in respect of the Programme are subject to VAT.

Grain SA then decided to approach the Free State High Court for a declaratory order, declaring that SARS is wrong to rule that the amounts Grain SA receive from the Trust in respect of the Programme is subject to VAT.

Judge Jordaan held that the amounts are indeed donations in terms of the VAT Act, because the payments are made voluntary by the Trust to Grain SA and no 'identifiable direct valuable benefit' arises to the Trust or a person connected to the Trust.

SARS has accepted Judge Jordaan's because it decided not to appeal against it.

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