

# Bhurtun Chambers

## Monthly newsletter

Issue No 6: February 2022

### **Introduction**

Welcome to the First Issue for the year 2022 and I seize the opportunity to wish you a very prosperous year!

Taxes may be of different types, like direct or indirect taxes and they may also have different bases, like income, value added, value of goods at import or the value of immovable properties and shares.

Some taxes are paid regularly. Income tax is paid at least once yearly and value added tax is paid everyday by consumers. Other types of taxes are paid less often to the extent that some persons may be surprised by learning about their existence One such example is the land transfer tax payable by a person selling a portion of land or the registration duty payable by the purchaser.

The proper amount of tax payable must be worked out by effecting a proper tax planning. It is also important to bear in mind that in case there is a tax controversy with the relevant authorities (most often the Mauritius Revenue Authority), all procedures must be followed properly so as to avoid any case being simply struck out without the taxpayer having the opportunity to fight his case. One example, as can be seen in one of the cases mentioned below, is an instance where a taxpayer makes his objection to the Director General of the Mauritius Revenue Authority outside delay.

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## **Decision Delivered by the Assessment Review Committee**

### **1. Shivraj S. Teeluckdharry v Director-General, Mauritius Revenue Authority ARC/IT/91-19**

The representations were lodged before the Assessment Review Committee after the statutory delay of 28 days. The Applicant was late by 13 days.

The Applicant explained that he counted 28 working days instead of 28 days. Although the Notice of Determination did mention the last day to make the representations, the Committee allowed the Applicant to proceed with the late representations, taking into consideration that the issues will recur in subsequent income years.

[NOTE: An applicant has to lodge representations before the ARC within 28 days of the date of the decision of the Director General of the Mauritius Revenue Authority or of the Registrar General. The date of the decision is included in the calculation of the 28 days.]

### **2. Xriders Ltd v Director-General, Mauritius Revenue Authority ARC/IT/291-18 ARC/VAT/148-18**

In the present matter, the objection made by the Applicant was lapsed given that it was made 409 days after the statutory period.

The Applicant relied mainly on the averment that the accountant left with all the documents and that the Director had medical issues.

The Committee analysed all the facts. It concluded that the medical condition of the Director was not clear. Also, there was no explanation as to the reason for which the objection was made in August 2018 when the new accountant was appointed in January 2018.

According to the legal principle, the Respondent may entertain a late objection on ground of illness or reasonable cause.

The Committee concluded that the Respondent was right not to have entertained the late objection.

### **3. Cheetamun G. Sachin v Registrar-General ARC/RG/84-21**

The matter related to registration duty payable following the purchase, by the Applicant, of a portion of land.

The Valuer for the Respondent used some comparable sales to assess the value of the property. The declared value was Rs800,000, whilst the assessed value was Rs1,090,000.

On the whole, the Committee was satisfied with the valuation exercise carried out by the Valuer for the Respondent, save that it allowed an allowance of 10% given “the double common untarred roads and the rocks on the land as well as the big tree”.

The land was therefore assessed by the Committee at Rs980,000.

**[NOTE: When an immovable property is sold, the seller has to pay land transfer tax and the purchaser pays registration duty. The land transfer tax and the registration duty are imposed on the value of the property and not on the price.]**

## **Selected Decisions delivered by the Supreme Court**

### **1. Silver Line Services Ltd v. The Mauritius Revenue Authority & Anor 2022 SCJ 2**

The case is one where the Appellant was prosecuted and convicted before the District Court for the offence of making an entry which was false in any particular in breach of sections 158(3) (b) and (5) of the Customs Act coupled with section 44 of the Interpretation and General Clauses Act.

The District Court allowed the Prosecution to amend the information lodged even after the case for the Prosecution was closed. After having reviewed the applicable case law, the Supreme Court upheld the decision of the District Court given that an information may be amended at any stage unless prejudice would be caused to the Accused.

The case also confirmed that even a corporate body may be prosecuted for a criminal offence and that the criminal intention that needed to be proved was that of the person capable of engaging the responsibility of the corporate body. Given that the person who made the false entry was a director of the Appellant, the Supreme Court concluded that the Appellant had the necessary criminal intent.

The conviction was therefore maintained by the Supreme Court.

[NOTE: In order to convict a person of a criminal offence, three ingredients must be proved: (1) A law provides for such offence; (2) the physical act of committing the offence and (3) the mental element, that is, the intention to commit the offence.]

### **2. Stephen Anthony Aldridge v Mordaunt Estates Ltd 2022 SCJ 10**

The Plaintiff entered the case before the Supreme Court to claim remuneration following his dismissal. At the time the case was entered, the Defendant was under administration and entered into a Deed of Company Agreement (DOCA) with its major creditors.

The Plaintiff was also a shareholder of the Defendant and therefore bound by the DOCA.

Now, section 273 of the Insolvency Act provides as follows:

**267. Prohibited acts**

(1) A person who is bound by a deed of company arrangement shall not, while the deed is in force –

(a) apply, or continue with an application, to the Court for the appointment of a liquidator of the company;

(b) except with the Court's permission, begin or continue proceedings against the company or in relation to any of its property; or

(c) except with the Court's permission, begin or continue an enforcement process against the company's property.

(2) In this section, "property" includes property used or occupied by the company, or in its possession.

The Defendant took a preliminary objection (*plea in limine litis*) to the effect that the Plaintiff could not proceed with the case given that leave of the Supreme Court had not been obtained to enter the case.

The Supreme Court concluded that at the time the Plaintiff's Summons was lodged, the DOCA was still in force and therefore leave of the Supreme Court should have been obtained before entering the case.

The fact that the Defendant was no longer under administration subsequently could not be relied upon by the Plaintiff, given that the Plaintiff's Summons was initially wrongly entered. The wrong procedure adopted by the Plaintiff could not be cured by the fact that subsequently, the Defendant was no longer under administration.

The Plaintiff's Summons was therefore set aside.

## **Some aspects of international taxation**

On 20 January 2022, the Organisation for Economic Co-operation and Development (OECD) released an updated version of the OECD Transfer Pricing Guidelines which deals principally with the concept of “arm’s length test” in relation to cross-border transactions.

## Our Trainings

Since its coming into operation in December 2021, the Bhurtun Tax Training Institution has conducted a free webinar in relation to the drafting of Objections and Representations on 03 February 2022.

The following Trainings are also open for registration:

Value Added Tax for Beginners

09, 16 and 23 March 2022  
09h00 to 12h00

Basics of International Taxation

07, 14, 21 and 28 May 2022  
09h00 to 12h00

Registration for the trainings is open. All relevant details may be obtained by sending an email to [bhurtuntaxtraining@gmail.com](mailto:bhurtuntaxtraining@gmail.com) or by visiting the Facebook page “Bhurtun Tax Training Institution”.

The following webinars will also take place:

Some main differences between the OECD and the UN Model Tax Conventions	02 March 2022 10h00 to 11h30
How to deal with objections lapsed for non- payment of 10% or for other reasons provided by law.	06 April 2022 10h00 to 11h30

Registration for the webinars is not yet open. Relevant details will be communicated by email shortly.

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