

Bhurtun Chambers

Some of the important proposed amendments and our comments
following the Budget Measures Announced and the Explanatory
Notes

16 June 2022

Introduction

The budget speech was delivered on 07 June 2022 by the Honourable Minister responsible for the subject of Finance.

This paper highlights a selection of the most important tax measures contained in the Explanatory Notes to the Budget Measures. These tax measures relate to the imposition of taxes as well as the tax administration.

The Income Tax Act

1. Tax rates for individuals

As from the income year 2022-2023, an individual earning annual net income –

- (i) of up to Rs 700,000 will be taxed at the rate of 10%;
- (ii) above Rs 700,000 and not exceeding Rs 975,000 (i.e. Rs 75,000 per month) will be taxed at the rate of 12.5%; or
- (iii) above Rs 975,000 will be taxed at the rate of 15% and the Solidary Levy, if applicable.

Over the last few years, the tax rates following the Finance Acts were maintained at 10% and 15% and the amendments that were brought in relation to individuals pertained to the Income Exemption Thresholds (IETs).

These amendments to the IETs had an impact on the tax payable in relation to all individuals resident in Mauritius. By way of an example, an increase in the IET affected the tax liability of a person, whether he was earning a net income of Rs350,000 or Rs4,000,000.

With the amendments proposed in the 2022 Budget Speech, only a specific category of persons would be concerned. In particular, they will be subjected to a reduced amount of income tax. Those persons are those who earn a net annual income exceeds Rs650,000 and does not exceeding Rs975,000.

Now the disadvantage with such type of tax rates is that it may in certain instances discourage a person from moving from one tax rate to the other following for example a promotion to a higher post. We can here take the example of Mr X who works as an Inspector for net annual income of Rs695,000 and therefore subjected to a rate of 10%. If promoted to the post of Senior Inspector, his net annual will be Rs 705,000. He has no dependents.

Mr X will end up with less after tax income following the promotion as compared to his situation before the promotion. For the same reason, certain employees may opt to avail themselves of their leaves instead of cashing same to avoid taxation at a higher rate.

2. Income Tax Holiday for Freeport Companies

The following proposed amendment has been made:

An 8-year income tax holiday will be granted to a newly set up freeport operator or developer making an investment of at least Rs 50 million and provided it –

- (i) starts its operations on or after 1 July 2022; and
- (ii) conforms with the substance requirements set by the Organisation for Economic Co-operation and Development (OECD).

Here the Legislator refers to what has been set by the OECD. Whilst it is a good practice to align the Mauritian Income Tax System to international standards, a tax statute must remain simple, efficient and equitable.

The formula set in subparagraph (ii) above will open the door to uncertainties comparable to the substance requirements to benefit from the 80% exemption. There will be further uncertainty as to the manner in which the Revenue Authority will interpret such provision.

3. The Global Minimum Tax

Mauritius has agreed to the Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy. To that effect, it has been proposed that:

The Income Tax Act will be amended to cater for any change that may be required in connection with the introduction of a domestic minimum top-up tax, applicable to companies resident in Mauritius forming part of multinational enterprise groups having a global annual revenue of 750 million euros or more, to ensure that they are taxed at the global minimum rate of 15%.

Tax Administration

1. The Tax Arrears Settlement Scheme (TASS)

The Scheme will provide for penalties and interest under the

- a) Income Tax Act;
- b) Value added Tax Act;
- c) Gambling Regulatory Authority Act

to be waived **in full** if

- a) the taxpayer registers himself by 31 December 2022 and
- b) the taxes are paid in full by 31 March 2023.

In order to avoid cases remaining pending at the level of the ARC and Courts, the taxpayer will have to **withdraw** the case before proceeding under the TASS.

2. Tax Deducted at Source (TDS)

An increase in the rates has been proposed as follows:

- a) Services provided by professionals: from 3% to 5%
- b) Rent paid to a resident: from 5% to 7.5%

It was also proposed that the TDS be extended to:

- a) Consultancy Fees: 3%
- b) Security Services and Cleaning Services: 3%
- c) Pest Management Services: 3%

- d) Payment of fees made by insurance companies to motor surveyors and mechanics for repairs of motor vehicles of policy holders: 3%

3. International Taxation

Mauritius will continue to bring amendments to be in line with the BEPS Project.

Amendments will be made to the Income Tax Act to give effect to international arrangements in respect of alternative dispute resolution. Amendments will also be brought to address the challenges that arise with the digitalisation of the economy.

4. Value Added Tax

- a) Where a person fails to register for VAT, the MRA will be empowered to register him compulsorily
- b) Where a person fails to provide information at Objection Stage, the objection may be lapsed and he would not be allowed to submit same before the Assessment Review Committee.

This intended amendment is not clear in its operation. Normally, when representations are made to the Committee following the lapsing of an objection for failure to provide information, the review is only concerned with the issue of lapsing. In practice, at present, if the documents and information are communicated to the MRA, the case is referred back to the objection level.

With the amendment, it appears that this will no longer be the case and the taxpayer will be able to only explain the reasons for which he considers that the objection should not have been lapsed. The question remains open as to why such provision will be made only for value added tax.

- c) With regard to VAT refund on residential building, the threshold imposed relating to the cost (Rs3m) will be replaced by a threshold relating to the area (1,800 sq feet).
- d) There will be a phase-wise implementation of an e-invoicing system.

- e) Ministries, Government Departments, Local Authorities, Statutory Bodies and the Rodrigues Regional Assembly will have to remit a percentage of VAT payable to a contractor directly to the MRA.

5. The Mauritius Revenue Authority Act

- a) Provision will be made for the appointment of one additional member on the MRA Board.
- b) The threshold for the Alternative Tax Dispute Resolution (ATDR) will be reduced to Rs5 million.

This will therefore result in an increase in the number of case eligible for the ATDR.

- c) At present, there is a statutory requirement for file statement of case only in Income Tax and Value Added Tax cases. This will be extended to Customs cases.
- d) The MRA will be empowered to recover foreign taxes in order to provide assistance to foreign countries in the recovery of taxes.

It is highlighted here that Mauritius is a party to numerous Double Taxation Agreements which provide for assistance in the collection of taxes. Mauritius is also a party to the **Convention on Mutual Administrative Assistance in Tax Matters** and same was given effect through the **Income Tax (Convention on Mutual Administrative Assistance in Tax Matters) Regulations 2015**.

- e) The Prevention of Corruption Act will cater for offences relating to non-deductibility of bribes for Income Tax purposes.

6. The Assessment Review Committee (ARC).

Several amendments are being proposed with regard to the functioning of the ARC. Before commenting on these amendments, it is worth highlighting the fact that the ARC is a quasi-

judicial body which should operate in an impartial manner and must be seen to operate in an impartial manner.

The impartiality and independence of the ARC is undermined in the eyes of a reasonable person given that:

- a) It is established under the MRA Act.
- b) The Director General of the MRA is a party to cases lodged against him.
- c) The members are appointed by the Minister responsible for the subject of finance.
- d) According to the Public Advertisement No. 31 of 2021 of the Public Service Commission, the Vice-Chairpersons are employed by the Ministry of Finance, Economic Planning and Development for a period of 2 years, and their contracts are renewable.

The Revenue and Valuation Appeal Tribunal would have been a better body to deal with tax appeals. It is to be noted that the Bill for the setting up of the Tribunal was already drafted and published in the Government Gazette of Mauritius No. 53 of 15 June 2013.

The piecemeal amendments brought each year in the operation of the ARC may result in a lack of precision. One instance is about the statements of case. There is actually a lack of regulation of the reply of the Director General as opposed to the statement of case of the taxpayer. The status of the statements of case are also unclear. The question remains open as to whether a taxpayer may be allowed to raise issues not mentioned in the statement of case or not.

The frequent changes in the procedure may also result in its improper application, for example, in relation to the requirement to pay 5% before making representations to the ARC.

The following amendments have been proposed:

- a) It has been proposed that the concept of mediation be introduced as follows:

subject to agreement from both parties, one mediation meeting may be held if the Chairperson or the Vice-Chairperson is of the view that some or all of the issues of a case can be resolved through mediation

The case will therefore not be referred to mediation for the mere asking of the parties. The Chairperson or the Vice-Chairperson will have a discretion in order to avoid undue delay in disposing of the matter.

It is expected that the Legislator will include enough precision about the procedure to follow, including the number of days within which the mediation must be completed and the effect of any agreement reached by the two parties.

It will also be interesting to know whether the ARC will maintain the practice of having informal meetings.

b) The second proposed amendment relates to the composition of Panels:

depending on the nature of a tax appeal case, the Chairperson or Vice-Chairperson may constitute a panel consisting of only 2 persons instead of 3 persons, i.e. the Chairperson or Vice-Chairperson and a member

c) The third amendment relates to oral decisions:

the Chairperson or the Vice-Chairperson, alone, may hear a case and may give decision orally on the same day on the issues where –

- a taxpayer has failed to file a tax return or produce required documents to the Objection Directorate of the MRA;
- an aggrieved taxpayer has failed to pay the 10% due on objection or 5% due on appeal;
- a case is lodged after the statutory delay; or
- a point of law is taken before the start of a hearing.

This procedure will definitely expedite matters. However, the ARC would have to ensure that the transcript of the oral decision is made available to the parties as

soon as possible given that the aggrieved party may appeal to the Supreme Court by way of case stated to contest the decision.

d) The fourth amendment relates to changes in the composition of a Panel:

subject to agreement from both parties, a panel of the ARC will be allowed to replace up to 2 of its members, apart from the Chairperson or Vice-Chairperson, and proceed with the hearing of a case without having to start anew

This is a procedure that is already being followed when one member is no longer available at the ARC. The law will, following the amendment, confirm that even two members may be replaced. It is expected that parties would agree to such procedure when the credibility of witnesses or parties is not an issue. Otherwise, one would be left to wonder about the role of members when they sit during the Hearing of a case.

Being present when a case is being heard is important, the more so, when the credibility of witnesses is to be decided. This can be decided based, not only on what has been said as reflected in the transcript, but also on the manner in which the person made his statement before the Committee, his demeanour and the manner in which he reacted to cross-examination, among others.

e) The fifth agreement relates to Hearing through videoconferencing:

the ARC will be able to conduct, at the request of a party, a hearing through videoconferencing subject to the agreement of the other party;

f) The sixth amendment relates to decisions of the ARC based on the statements of case only:

the Chairperson or the Vice-Chairperson, depending on the nature of a tax appeal case, may give a decision based on the submission of statements of case only subject to the agreement of both parties

g) The last proposed amendment relates to the time frame for filing the statements of case:

each party will be given not more than 21 days to submit its statement of case and witness statement, if any, to the Committee with copy to the other party after a case has been called proforma for the first time before the Committee.

7. Taxes at the level of the Registrar General

- a) It has been proposed that the Home Ownership Scheme will be maintained. This Scheme allows for the payment by the Registrar General, in certain instances, of 5% of the cost of the property purchased.

It has been further proposed that the scope of application of such scheme will be enlarged.

The Home Loan Payment Scheme will also be enlarged.

- b) The Arrears Payment Scheme will be reintroduced to provide for a full waiver of penalties and interests if tax arrears due as at 31 May 2022 are settled by 31 March 2023.
- c) In the case of reassessments by the Registrar General, no Notice will be issued where additional duty or tax payable is less than Rs7,500, instead of Rs5,000 at present.

Therefore, in the case of an acquisition of immovable property, a Notice for additional payment will not be issued if the assessed value exceeds the declared value by less than Rs150,000 (Rs100,000 at present)

Conclusion

The various amendments brought should not affect the coherence of the various Revenue Laws. The law should be certain, simple to some extent and efficient. Taxpayers should not be left to await decisions of judicial bodies in order to obtain certainty in the interpretation and application of technical provisions.

The proposed amendments do mention that loopholes will be plugged, thereby admitting that, at present, loopholes do exist in the Revenue Laws. Such loopholes exacerbate

uncertainties this has an impact in the eyes of existing and prospective investors and other concerned persons.

A proper consultation with all stakeholders before the Finance Bill is introduced in Parliament is a highly desirable in order to eliminate to a maximum extent loopholes and inconsistencies.

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