

Bhurtun Chambers

Monthly newsletter

Issue No 24: June 2024

Introduction

Welcome to our newsletter for the month of June 2024!

For this month, we bring you our usual summary of ARC & Supreme Court decisions to keep you up to date in the fast-evolving tax landscape.

We also highlight for you the Key measures regarding Tax announced in the 2024/2025 National Budget.

Additionally, we recap our enlightening Course on the AML/CFT legal framework in light of the Financial Crimes Commission Act 2023 which was held on June 20th, 2024.

Lastly, take note of our lineup training sessions for 2024, carefully designed to make you an expert in tax matters.

Happy reading!

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Decisions Delivered by the Assessment Review Committee

1. JEAN NOEL STEEVE JULIEN V/S DIRECTOR GENERAL-MRA ARC/IT/72-20

Facts: In this matter, the applicant and his wife were married under the regime of legal separation of goods and property and were residing in an apartment acquired by the wife before marriage. The couple then contracted a loan to purchase a second apartment. Later, the Applicant contracted another loan to refund the first loan. He then claimed interest relief on that loan in his Income Tax Returns. The MRA did not allow the interest relief on the grounds that the Applicant's spouse was already the owner of a residential building.

Issue: The issue was whether the Applicant could be denied the interest relief on the loan considering that he was married under the regime of "*séparation des biens*".

Held: The ARC took the view that the Applicant would be entitled to the interest relief claimed by him in his return. In reaching this decision, the Committee reasoned that since the first apartment was purchased before the marriage and the spouses were married under "*séparation des biens*", the first apartment did not belong to the "communaute". Further, the loan was solely contracted by the Applicant, and interest relief was not being claimed by the Applicant's wife.

2. CHETTA-WATEE SOOKNAH V/S DIRECTOR GENERAL-MRA ARC/CUS/026-23

Facts: In this matter, the Applicant had benefitted from Excise duty. One of the conditions for benefitting from the same was that, for a period of 4 years from 26 February 2019, the Applicant shall not be absent from Mauritius for more than 183 days in aggregate during each year or any other period unless the Director-General of the MRA (DG-MRA) was satisfied that her absence was due to just and reasonable cause. The Applicant spent an aggregate 197 days outside of Mauritius and was issued a Notice of Claim when the DG-MRA was not satisfied with her explanations. The Applicant then lodged representations with the ARC on the grounds: "*Reasons for not travelling on 02/02/2023 rejected on my stated medical grounds*"

Issue: The ARC considered that the grounds of representations as couched should be aside as they did not validly challenge the Notice of Determination and did not satisfy the requirements of **S.19(1) MRA Act**. However, the Committee went to consider the explanations given by the applicant since the Applicant was *inops consilii* and there was no objection.

Held: The explanations given by the applicant were that she did not travel due to her medical condition, and she did not know that she needed to provide the MRA with a Medical certificate proving so. She also stated in an email sent to the MRA that she was not aware that she had gone over 183 days. After listening to these explanations, the ARC decided to set aside the representations, explaining that the 183 days condition is an essential one and that the Applicant has the responsibility and burden of proof to satisfy the MRA that her absence was due to just and reasonable cause, which she failed to do.

3. VAYRES INVESTMENTS LTD V/S DIRECTOR GENERAL-MRA ARC/IT/235-18 & ARC/IT/243-20

Facts: The Director-General of the MRA (DG-MRA) issued a Notice of Assessment to the Applicant on 19 June 2018 for the income year ending 30 June 2014.

Issue: The issue was whether the Assessment was time barred in light of **s.130 Income Tax Act (ITA)**.

Held: The Assessment Review Committee (ARC) took the view that the Assessment was not time barred. In reaching this decision, the ARC observed that the DG of the MRA cannot raise an assessment on a company for a period beyond three years preceding the year of assessment.

In this matter, since the Notice of assessment was issued on 19 June 2018, the committee reasoned this would be in the year of assessment: 01 July 2017 to 30 June 2018 (Reference point).

The Committee then noted that the return was made in December 2014 which corresponds to the income year ending 30 June 2014 (as per **S.118 ITA**) and would be on the year of assessment: 01 July 2014 to 30 June 2015.

Accordingly, the committee reasoned, the three years preceding the assessment of 01 July 2017 to 30 June 2018 are:

First year – 01 July 2016 to 30 June 2017

Second year – 01 July 2015 to 30 June 2016

Third year – 01 July 2014 to 30 June 2015

The Committee pointed out that the phrase “beyond 3 years of assessment preceding the year in which a return is made” should not be interpreted as 3 years preceding the date the return is made. Rather, the DG of the MRA cannot go beyond a period of 3 years from the date the assessment is raised in cases where a return has been made under section 112, 113, 116 and 119.

In the present matter, i.e. once the return was made in December 2014, time started running for the DG of the MRA to issue the assessment within a period of 3 years from the corresponding year of assessment which would be the year of assessment 01 July 2014 to 30 June 2015, otherwise **S.130 ITA** would not serve any purpose.

The Committee therefore took the view that the assessment would not be time barred as from when the date of assessment was issued since the DG of the MRA made an assessment in the year of assessment 01 July 2013 to 30 June 2014.

Selected Decisions delivered by the Supreme Court

1. VARCITY MAURITIUS LTD v THE ASSESSMENT REVIEW COMMITTEE & ANOR 2024 SCJ 260

This was a very interesting decision where the Supreme Court disagreed with the ARC's approach of not hearing a taxpayer's representations because the latter were couched in too general terms.

Facts: The MRA had issued an assessment for VAT on the Appellant, a property developer. The latter objected to the assessment. Aggrieved by the determination of the MRA's objection unit, the Appellant made representations to the ARC. The grounds for representations lodged before the ARC were exactly as the grounds lodged before the MRA's objection unit. The MRA raised an objection to the matter proceeding on the basis that "the grounds of representations are just a copy-paste of the grounds of objection that were before the Mauritius Revenue Authority"

The ARC found that the grounds of representations were drafted in such general terms that they amounted to a request for a tax ruling rather than representations submitted for a decision by the Committee, and they also did not challenge the determination of objection of the MRA. The grounds of representations were accordingly set aside for being couched in too general terms and not satisfying the requirements of specificity in **s.19 MRA Act**.

The Appellant appealed against this decision.

Issue: Whether the ARC erred in law when it rejected the Appellant's representations outright without hearing the case in its merits.

Held: The Supreme Court did not agree with the ARC's approach of shutting out the taxpayer (Appellant)'s representations completely without affording it a hearing. The Court reasoned that this was an extreme measure, not to be lightly resorted to, especially since the hearing before the ARC is the taxpayer's first opportunity at a hearing. The Court further reasoned that where representations are criticised as being vague, the ARC should see whether this

defect is capable of being cured by providing particulars – the MRA can ask for particulars where the grounds for the representations are couched in too general terms.

Further, the court reasoned that the mere fact that the grounds of representations before the ARC (**S.40 VAT Act**) were identical to the grounds of objection before the MRA (**S.38 VAT Act**) did not render the representations vague or unsustainable per se. The Court added that, in this case where the taxpayer was challenging the interpretation of the law by the Director-General, it did not expect any material differences between the grounds of objection before the MRA and before the ARC.

The Court also stressed on the fact that the law provides that it is statement of case which has to state precisely and concisely the grounds for representations, and that this goes a long way towards addressing claims of vagueness in a taxpayer's written representations filed before the ARC.

The Court therefore allowed the appeal and remitted the matter back to the ARC.

2. SUDARSHAN BHADAIN, GCSK v THE INDEPENDENT COMMISSION AGAINST CORRUPTION (ICAC) 2024 SCJ 256

This was an application for leave for a Judicial Review.

Facts: The Applicant was seeking leave for Judicial Review of the Respondent's decision and decision-making process to conduct a further investigation without complying with the mandatory requirement of the then Prevention of Corruption Act (POCA). The Applicant also prayed for a writ of mandamus ordering that the Respondent comply with the requirements.

Held: In finding that there was no arguable case and that the application for Judicial review had no reasonable prospect of success, the Court explained that "In an application for Judicial review it is not the function of the Court to direct an investigative body the manner in which an enquiry should be conducted.

3. THE FINANCIAL SERVICES COMMISSION v THE FINANCIAL SERVICES REVIEW PANEL 2024 SCJ 258

Facts: After having obtained leave, the Applicant was applying for a Judicial Review of the decisions of the Respondent to cancel the disqualification of Mr. Jean Claude Bastos de Morais to hold position as officer in any of the licensees of the applicant for a period of 5 years and to order that the matter be remitted back to the Enforcement Committee of the FSC, in order to have the said decisions quashed.

The Respondent raised the point that there was no live issue warranting the intervention of the Court and argued that there remained no real practical purpose in seeking to restore the disqualification and that the present application had, on that score, become purely academic.

Held: In reaching a decision in this case, the court began by explaining that the Court has now adopted the approach of drawing a distinction between hypothetical and academic questions (See **Marion v The Minister of Health and Wellness [2021] SCJ 319**, **Ah Kong Foo Kune P. v The Mauritius Turf Club [2020] SCJ 194** and **Dahari v Mauritius Examinations Syndicate Anor [2019] SCJ 30**). The Court then went on to explain that a hypothetical question, by definition, would be one that needs to be answered for a real practical purpose and an academic one need not be answered for any visible practical purpose, although an answer would satisfy curiosity. In this case, the court reasoned that there was clearly no visible practical purpose left in seeking to quash the Respondent's determination and restoring the disqualification as the duration of the duration had already lapsed – **purely academic**.

Furthermore, the Court observed that the matter had not yet been remitted to the Enforcement Committee. The Court therefore agreed with the Respondent that there was in the circumstances an alternative adequate remedy available to the Applicant and that it should have exhausted the said remedy before seeking Judicial Review.

For these reasons, the Court decided to set aside the application.

4. SOCIETE KLAS v PANDEA 2024 SCJ 243

This was a very interesting and important judgment in relation to “wasted costs”.

Facts: Counsel for the Defendant in this case moved the court for:

- (i) Compensation by way of costs incurred following the summons issued on witnesses for the defence and their resulting attendance in Court when the case was postponed on the trial date following the motion by plaintiff’s counsel for the plaint with summons to be amended; and
- (ii) Adjournment costs as the trial was postponed.

The motion for amendment of the plaint was granted. The adjournment costs was also awarded as counsel for the plaintiff was no longer objecting to it.

Issue: The issue was therefore limited to whether the motion for “wasted costs” (part (i) above) should also be granted.

Held: The Court made a wasted costs order against the Attorney and the Counsel for the plaintiff and stayed the proceedings until the payment of this cost. In reaching this decision, the court observed that the motion came as a result of the plaintiff’s legal advisers’ late motion for the plaint to be amended, i.e. just before the trial date. The Court then stated that “...it would be fair and in the interests of justice to grant an order for wasted costs at this stage of the proceedings, especially when considering that the defendant cannot be made to incur additional costs due to the trial being postponed at a very late stage through no fault of his, and in circumstances where all the witnesses for the defence had been duly summoned on the date of trial.”

5. V.5 CO. LTD v THE HONOURABLE MAGISTRATE, INTERMEDIATE COURT, MRS SHEFALI N GANOO-AREKION & ANOR 2024 SCJ 248

Facts: This was an application for leave to apply for Judicial Review of the ruling of the Intermediate Court non-suiting the applicant's claim with costs. The Applicant was praying for:

- (i) An Order of *Certiorari* to quash, reverse, set aside or amend the said ruling;
- (ii) An Order of *Mandamus* directing the Respondent (Intermediate Court) to rule on the motion and objection raised in the case.

The Respondent took a preliminary objection to the effect that the application fell outside the ambit of Judicial Review.

Held: The Court refused to grant leave. In reaching this decision, the Court explained that:

- (1) "It is trite law there is no right of appeal against the decision of the Intermediate Court to non-suit a party inasmuch as the said decision is not final. An aggrieved party is not precluded from entering a claim anew following a decision to non-suit a plaintiff in a lower court."
- (2) **S.135(1) Courts Act** makes it clear that "the remedy of *Certiorari* is not available to challenge a judgment, order or determination made by the Intermediate Court. The only avenue of challenge in respect of a judgment, order or determination of a lower court is in accordance with the law governing appeals."

National Budget 2024-2025 – Key measures regarding Tax announced:

- CORPORATE TAX:**

CATEGORY	MEASURE(S)
Partial Exemption	<ul style="list-style-type: none"> - 80% Exemption will be applicable to a company holding a Robotic and Artificial Intelligence Enabled Advisory Services license. - 80% partial exemption granted to a licensed closed-end fund will be extended to cover income from sale of money market instruments or debt instruments. - 80% partial exemption granted to licensed CIS Administrator will not apply to income derived from the provision of administrative services by a management company to a CIS license holder.
Corporate Climate Responsibility (CCR) levy	<ul style="list-style-type: none"> - Introduction of a CCR levy equivalent to 2% on the profits of companies with a turnover of Rs 50 or more.
Medical, Biotechnology or Pharmaceutical sector	<ul style="list-style-type: none"> - 15% tax instead of 3% on income derived from Intellectual property assets by a manufacturing company engaged in medical, biotechnology or pharmaceutical sector.
Exemptions and relief	<ul style="list-style-type: none"> - Interest income derived from a bond issued by a public sector company to finance infrastructure projects provided the exemption is approved by the Minister of Finance, Economic Planning and Development. - Income received as compensation from the government or a public sector for losses directly or indirectly because of a natural disaster. - Income derived from the sale of securities will be extended to cover sale of virtual assets and virtual tokens.
Tax deduction	<ul style="list-style-type: none"> - Companies supporting a registered artist will benefit from a double deduction on the costs incurred.
Premium Investor Certificate	<ul style="list-style-type: none"> - Private investment in the development of the creative industry, including concert venues and theatres will be eligible for a Premium Investor Certificate with incentives on taxation, utilities, labour, infrastructure amongst others.
Investment Tax Credit	<ul style="list-style-type: none"> - Investment Tax Credit of 15% over 3 years will henceforth include Artificial Intelligence and patents.
Captive Insurance	<ul style="list-style-type: none"> - The 8-year Income Tax Holiday granted to a captive insurer will apply as from the date the company has started its activities.

- **VALUE ADDED TAX:**

CATEGORY	MEASURE(S)
Zero-rated	<ul style="list-style-type: none"> - Zero-rated VAT on services provided by a Management Company to: <ul style="list-style-type: none"> (i) Trusts whose settlor and beneficiaries are non-residents; or (ii) Foundations whose founder and beneficiaries are non-residents. - Zero-rated VAT extended to: <ul style="list-style-type: none"> (i) vegetable seeds, fruit and flower seeds, bulbs and plants used for sowing or planting; (ii) Seedling trays (iii) Plant pots; (iv) Agricultural sprayers; (v) Roasted coffee; and (vi) Baby lotions.
Exemptions	<ul style="list-style-type: none"> - Entrance fee to digital art galleries will be exempted from VAT. - The VAT exemption granted on the construction of a purpose-built building for the provision of primary, secondary and tertiary education will be extended to pre-primary and Technical and Vocational Education and Training with retrospective effect. - Provision will be made to grant VAT exemption on motor vehicles, linked to construction, to approved contractors engaged in the construction of social housing units under a contract with New Social Living Development Ltd with retrospective effect. - Value Added Tax, customs duty and excise duty on the procurement of goods and services for a project will be exempted where that project is funded by a donor organisation to the tune of at least 50 per cent grant or concessionary loan. - Provision will be made to allow diplomatic missions and agents to benefit from VAT exemption or refund on services.
VAT Invoice in foreign currency	<ul style="list-style-type: none"> - Where a supplier issues a VAT invoice stating the value of supply in foreign currency, he will be required to specify the conversion rate into rupees.

- **PERSONAL TAX:**

CATEGORY	MEASURE(S)
Lump sum tax exemption threshold	- The exemption threshold on lump sum received as pension, retiring allowance or severance allowance will be raised from Rs 2.5 million to Rs 3 million.
IncomeTax	- All parents having children in full-time education in fee-paying private schools will be eligible to an income tax deduction of up to Rs 60,000 per child per annum.
Exemptions and reliefs	- Exemption granted in respect of income derived from the sale of securities will be extended to cover sale of virtual assets and virtual tokens. - Allowance paid by Government to an individual under a financial assistance scheme.

- **PROPERTY TAXES & SCHEMES:**

CATEGORY	MEASURE(S)
Registration duty	- Transfer of a social housing unit by the New Social Living Development Ltd (NSLD) will be exempted from the payment of registration duty, land transfer tax and tax on transfer of leasehold rights in State land.
Home Ownership Scheme	- For a Property acquired under 'vente en l'état futur d'achèvement' (VEFA), the refund will be made in respect of the amount paid by the purchaser under the VEFA agreement up to 30 June 2025. - A property which has been the subject of a reservation in the prescribed manner will also qualify under the Scheme provided the deed of transfer is signed and registered not later than 30 June 2025. - Where a property is acquired under a vente à terme, payment under the Scheme will be made at the time the buyer pays the purchase price for the property but not later than 30 June 2025.
Home Loan Payment Scheme	- Amounts of loan disbursed up to 30 June 2025 will qualify under the Home Loan Payment Scheme which provides for a refund of 5% of the amount borrowed under a secured housing loan up to a maximum of Rs 500,000.

- **EXCISE DUTY:**

CATEGORY	MEASURE(S)
Extension	- The Negative Excise Duty of Rs 200,000 for purchase of electric vehicles will be renewed up to June 2025.
Exemption	- Plastic bottles made from plant-based materials will be exempted from the Rs 2 excise duty per unit on plastic bottles used in the beverages industry.
New license	- New Excise License will be introduced for the storage and maturation of alcoholic products meant for export or transfer to another excise licensee. The license fee will be Rs 25,000.

- **CUSTOMS DUTY:**

CATEGORY	MEASURE(S)
Removal	- Applicable 15% customs duty will be abolished on milk beverages obtained from nuts, such as walnut and chestnut, to be at par with similar milk beverages such as almond milk, oat milk and soya milk.
Phasing out	- Excise and customs duty rebates on motor vehicles will end on 30 June 2024 and the rebate rates will be incorporated in the statutory excise and customs duty rates on conventional petrol and diesel driven vehicles.

- **TAX ADMINISTRATION:**

CATEGORY	MEASURE(S)
Amended returns	- A taxpayer will not be allowed to submit an amended return if an objection has been made with the MRA against an assessment or a representation has been lodged with the Assessment Review Committee.
Statements of Financial Transactions	- A bank will be required to give, in the statement of financial transactions submitted to the MRA, information pertaining to deposits made by a bank account holder in his credit cards or prepaid cards account.
Tax Arrears Settlement (TASS)	- The Tax Arrears Payment Scheme will be renewed for an additional year. The Scheme will provide for full waiver of penalties and interest where tax arrears, outstanding under the Income Tax Act, the Value Added Tax Act and the Gambling Regulatory Authority Act, are paid in full by 31 March 2025 and provided the taxpayer registers under the Scheme by 31 December 2024.
Inscription of Privilege	- It will be explicitly laid out in legislation that the Registrar-General may inscribe a privilege on the immovable property of a debtor as from the date a notice for additional duty or tax is returned undelivered
Communication to e-tax Account	- Where a notice has been sent by the MRA to the e-tax account of a person, the notice will be deemed to have been served on the date it was sent provided that the person has been informed of this communication, both through an SMS and an email.
VAT Registration	- A person who has voluntarily registered for VAT purposes can claim, against his output tax, the input tax charged to him or paid by him on goods and services acquired as from the date of his voluntary registration.
Time limit for MRA to request information to examine a VAT Return	- The time limit for MRA to require a person to furnish information or to produce books or records for the purpose of examining a return submitted by that person will be 4 years following the taxable period in which the return is submitted.
Time limit for MRA to raise an assessment	- MRA will be empowered to make an assessment of tax payable over a maximum of 4 years prior to the taxable period in which a return is submitted instead of 4 years prior to the taxable period in which the liability to pay tax arose to provide for sufficient time to examine a return which was submitted late.

Events recap

20 June 2024: The AML/CFT legal framework in light of the Financial Crimes Commission Act 2023

On June 20, 2024, Bhurtun School of Taxation hosted a 3-hour course delving into the intricacies of Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) regulations, against the backdrop of the recently enacted Financial Crimes Commission Act 2023. The event, held both face-to-face at Le Ruby D'Ebene and online, attracted a diverse audience keen on understanding the evolving landscape of Compliance.



The course started with an insightful introduction to AML/CFT principles, emphasizing their critical role in combating financial crime. Participants were guided through the core components of the regulatory framework, beginning with an exploration of various money laundering offences and provisions under the new legislation.



Of particular interest were discussions on penalties for non-compliance and the powers of investigatory and supervisory authorities. The focus was also on the obligations imposed on reporting entities, including Customer Due Diligence (CDD) requirements and the necessity of conducting risk assessments. Participants gained practical insights into navigating these obligations in a compliant manner, aligning with regulatory expectations.



Throughout the course, regulatory bodies and their roles were highlighted, alongside the sanctions imposed for breaches of AML/CFT regulations. The event provided a platform for stakeholders to discuss the implications of the new regulatory landscape on their operations and compliance strategies.

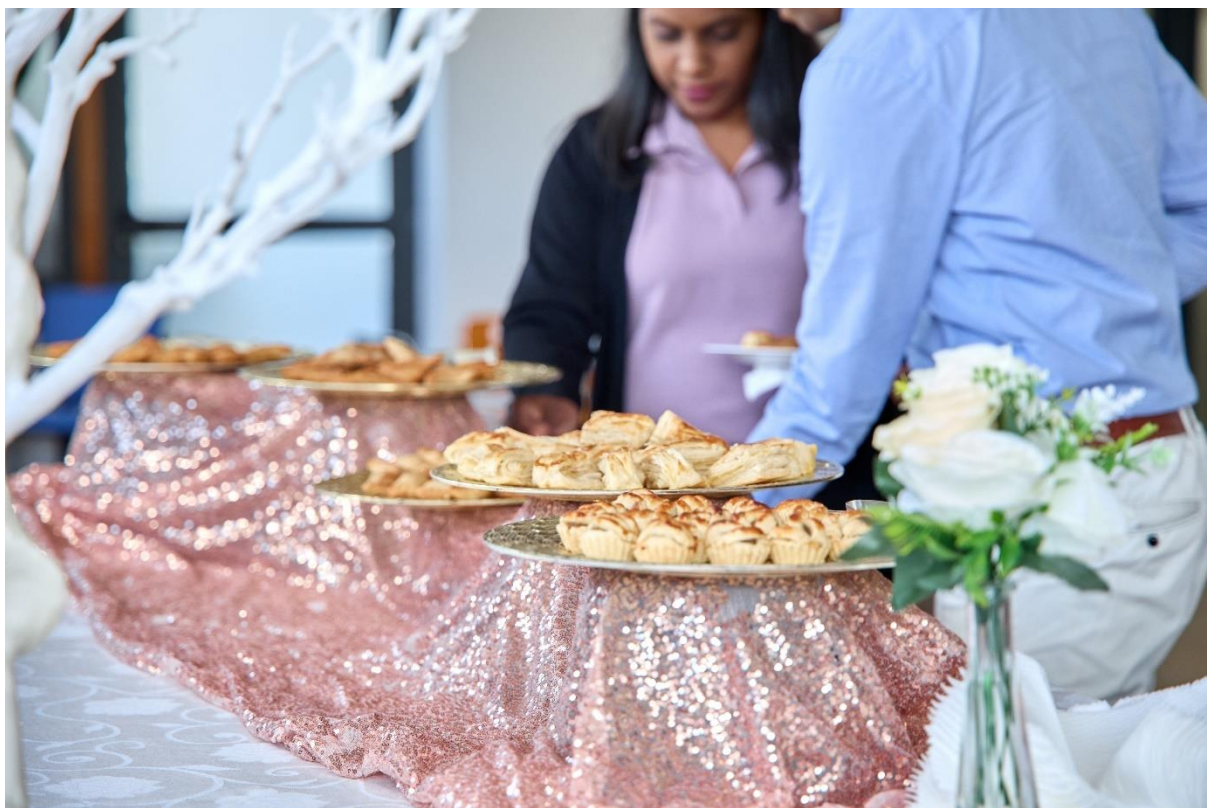


The interactive nature of the course fostered lively conversations among attendees during breaks, where experiences and practical challenges were shared. Participants exchanged insights on implementing effective AML/CFT frameworks within their organisations, reflecting on real-world scenarios and compliance best practices.



Overall, the Course served as a pivotal gathering for professionals seeking clarity on AML/CFT obligations under the new legal framework. As laws to combat financial crime continue to evolve, such forums are essential for fostering understanding and collaboration within the industry, ensuring robust compliance with regulatory standards.





Our Trainings

The trainings that will take place in 2024 are as follows:

Month	Training
February	Payroll Taxes
	Mastering VAT
March	Trusts and Taxation of Trusts
April	Transfer Pricing
May	Directors' Duties and Rights of Shareholders
June	VAT Decoded: Navigating the complexities of Value Added Tax
	AML/CFT
July	Practical Aspects of ARC Cases
	VAT for Beginners
August	Changes brought by the Finance Act 2024
September	Mastering Income Tax
October	International Taxation
November	Mastering VAT

December	Taxation of Real Estate Sector
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All relevant details may be obtained by sending an email to bhurtuntaxtraining@gmail.com or by visiting the Facebook page “Bhurtun School of Taxation”.

TAILOR-MADE TRAININGS FOR EMPLOYERS

Our training institution also provides trainings as per specific requirements of employers for the benefit of their employees. Such trainings are delivered within the premises of the employers. Some examples of such trainings are as set below, but of course, employers may request for specific trainings depending on the needs of their staff:

1. Mastering International Taxation
2. Mastering the Taxation of the Global Sector
3. The operation of the VAT system
4. Mastering the Income Tax System
5. The Taxation of Trusts and Foundations
6. Drafting of Trust Deeds
7. The Conduct of Cases before the Assessment Review Committee
8. The Rules of Statutory Interpretation
9. The Operation of the Pay As You Earn System (PAYE)
10. Trainings on Corporate Law including Duties of Directors, Rights of Shareholders
11. Trainings pertaining to AML/CFT

Our Training Institution is approved by the MQA so that employers are eligible for appropriate refunds by the HRDC, subject to all conditions being satisfied.

Ahmed Richard Bhurtun

Barrister and Founder of Bhurtun Chambers

Email: info@bhurtunchambers.com

Phone: +230 260 6030

Website: bhurtunchambers.com

Mohammad Nasheerl Nadir

Paralegal at Bhurtun Chambers

Phone: +230 260 6030