

BHURTUN CHAMBERS

MONTHLY NEWSLETTER

AUGUST 2021

Introduction

Welcome to the first issue of our monthly newsletter!

Bhurtun Chambers was established in April 2021 by Me Ahmed Richard Bhurtun. The latter has gathered invaluable expertise in the field of taxation while occupying the posts of Legal Counsel of the Mauritius Revenue Authority between 2012 and 2016 and Vice-Chairperson of the Assessment Review Committee between 2016 and 2021.

Bhurtun Chambers focuses principally on tax litigation and advisory as well as corporate issues, including the following:

1. Providing assistance at all levels of dealings with the MRA, including negotiations prior to raising of assessments, at the level of the Objections and Dispute Resolution Department, before the Assessment Review Committee and before the Courts.
2. Advising clients on the choice of corporate structures to be adopted for ideal business strategies and for effective tax planning. Being an expert in the field of international taxation, my advices extend to cross-border corporate structures, and relate to matters such as foreign tax credit and transfer pricing.
3. Indirect taxes.
4. Training on International Taxation, Tax Planning and other tax related topics. Ahmed Bhurtun is a regular lecturer of these topics at tertiary level.

This first issue focuses on the Finance Bill 2021 and decided tax cases for the year 2021.

A. The Finance (Miscellaneous Provisions) Bill (No. XIII of 2021)

Following the Budget Speech 2021/2022, the Finance (Miscellaneous Provisions) Bill (No. XIII of 2021) was set for First Reading on Tuesday 20 July 2021, according to the Order Paper of the Mauritius National Assembly.

The Bill was read a Third Time and passed on 03 August 2021.

Some of the important amendments proposed to be brought by the said Bill are as follows:

1. The Mauritius Revenue Authority Act

- a. The Director General or the Registrar General may give notice, through a registered usher, to a Public Officer who is not in service to attend a Hearing. Non-compliance by the Public Officer will amount to a criminal offence.
- b. Elimination of the Independent Tax Panel
- c. Extension of times in relation to the Covid-19 period
- d. Scheme for waiving of penalties and interests relating to tax arrears outstanding as at 31 October 2020

2. Income Tax Act

- a. Deduction from net income of an individual of donations made electronically to charitable institutions
- b. Manufacturing companies engaged in medical, biotechnology or pharmaceutical sector and Higher Education Institutes set up in Mauritius liable to pay income tax at the rate of 3 percent subject to specific conditions.

- c. Trusts described in subsection 46(2) will no longer be entitled to deposit declarations of non-residence to be exempt.

Exemptions relating to Foundations under subsections 49A(2) and (3) repealed.

Grandfathering periods are provided.

- d. The arm's length test under section 75 has been extended to apply to businesses conducted from Mauritius. It is to be noted that the Assessment Review Committee had, in the Finding in the matter of Bay Lines v Director General of the Mauritius Revenue Authority, concluded that section 75, as it currently stands, does not apply to companies holding Global Business Licences.

The Bill initially provided that this provision would come into operation in respect of the year of assessment commencing on 1 July 2022 and in respect of every subsequent year of assessment. Such provision was deleted during the Committee Stage held on 03 August 2021. The Bill was subsequently read a Third Time before the Assembly and Passes.

The amendments brought to section 75 will therefore take effect following the publication of the Finance Act in the Government Gazette.

- e. For income derived from investment in shares to be considered as income derived from Mauritius, the said shares would have to be in a company resident in Mauritius.
- f. In relation to Acts or things in respect of a period before 3 years of assessment preceding that year of assessment, authorisation will no longer be sought before the Independent Tax Panel, but rather to be dealt with at the level of the Director General himself.
- g. A person may be required by the Director General to give

information or explanation through teleconferencing.

- h. The amount of additional exemption given to individuals in relation to dependents following full-time courses is independent of whether the course is followed in or outside Mauritius. Such exemption will also no longer be dependent on the amount of income of the individual or his spouse.

3. Value Added Tax Act

- a. The Director General will no longer be required to get authorisation from the Independent Tax Panel to proceed outside the limitation period provided in section 28A, in cases where he is of the opinion that there is fraud, wilful neglect or non-submission of return.
- b. The Director General may require a person to attend a meeting through teleconferencing.
- c. Fraud will no longer be the only ground on which the Director General would be entitled to raise assessments beyond a period of 4 years. Wilful neglect and non-submission of certain returns are proposed as additional grounds.
- d. In relation to VAT refund on house construction:
 - i. The maximum amount of VAT refund would be decreased from Rs500,000 to Rs300,000.
 - ii. The cost of construction or purchase should not exceed Rs3million (presently Rs5million)
 - iii. The aggregate annual net income of the Applicant and that of spouse should not exceed Rs1million

(presently Rs3.5million)

- iv. It is also proposed that such refund would be allowable on first construction only.
- e. Some specific persons holding Investment Certificates from the Economic Development Board have been included as exempt persons.
- f. Although Items 11 and 13 of the Ninth Schedule have been deleted, no corresponding amendments have been brought to section 66.

B. Decisions of the Assessment Review Committee

1. Aqua-O Diffusion Ltee v Director General, Mauritius Revenue Authority ARC/VAT/172-18

The objection made by the Applicant was lapsed by the Respondent. When Applicant lodged representations with the Clerk of the Assessment Review Committee, the reasons for representation did not relate to the lapsing but to the assessment itself.

The Respondent took a preliminary objection on that basis.

The Committee considered that the types of cases could be classified in two categories, that is, those in which the objection as considered by the Respondent and a decision taken thereon, and those in which the objection was lapsed. The Committee considered that, in light of the technical nature of cases before it, in relation to objections which have been lapsed, it was sufficient to mention clearly which decision of the Respondent was being subject to review (even though the reasons do not relate to the lapsing)

The Applicant was allowed to proceed.

See on the same issue the decision in the matter of **Mohammad Javed A. I. Roheeman v Director General, Mauritius Revenue Authority ARC/IT/273-18 & ARC/VAT/137-18**

2. Bay Lines v Director General, Mauritius Revenue Authority ARC/IT/377-16

The matter related to the application of the arm's length test under section 75 of the Income Tax Act. The Applicant held a Category 1 Global Business

Licence. It was decided by the Committee that section 75 did not apply given that it applies to “business or other income earning activity carried on in Mauritius.”

Given the nature of Applicant, it was not carrying on business in Mauritius.

It is to be noted that the Finance (Miscellaneous Provisions) Bill 2021 has proposed to amend section 75 by adding the words “or from Mauritius” after the words “in Mauritius” with the result that section 75 would be applicable to bodies holding Global Business Licences. It is to be further noted that it is intended that such amendment would apply to “all business or income earning activities carried out in Mauritius or from Mauritius since the commencement of this Act [meaning the Income Tax Act]”.

3. Mohamud Nooranee Bhatoo v Director General, Mauritius Revenue Authority ARC/IT/180-18

An assessment was raised based on unexplained bank deposits in the bank account of the Applicant. The latter averred that he lent a certain amount of money to his sister and that the deposits were refunds of the loan and other sums obtained from his sister for various other reasons.

Based on the amount of funds involved and the lack of corroborating evidence, the Committee concluded that the Applicant had failed to prove his case and the decision of the Respondent was maintained.

4. Cars-On-Line Auto Imports Ltd v Director General, Mauritius Revenue Authority ARC/IT/667-17 & ARC/VAT/227-17

The main issue in this case was the liability of the Applicant to VAT on deposits effected by clients in relation to the import and sale of cars.

After having considered the case of **Shophold (Mauritius) Ltd v Assessment Review Committee & Anor [2016] UKPC 12**, and the specificities of the Mauritian VAT Act, the Committee concluded that Applicant was liable to VAT on the part-payment received.

**5. Rishy Bukoree v Director General, Mauritius Revenue Authority
ARC/IT/10-15**

The Applicant claimed deduction in relation to expenditure incurred on parking space. He contended that such expenditure was incurred in the performance of his duties.

He had to move around during the day to perform various different tasks. The Committee, relying on section 17 of the Income Tax Act, concluded that the expenses were merely incidental and not directly related to his duties.

Therefore the expenditure was not allowable and the representations were set aside.

**6. Sultanah Cadersaib v v Director General, Mauritius Revenue Authority
ARC/IT/336-19**

The matter related to the Income Exemption threshold. The Applicant was religiously married to another person. They have one child and the other person has two other children from a previous marriage.

The relevant section of the income tax act reads as follows:

Where, in an income year, a person claims an income exemption threshold in respect of Category B, Category C, Category D or Category E, the spouse of that person shall be entitled to claim in

that income year an income exemption threshold in respect of
Category A only

The Committee referred to the Supreme Court case of **The Director General of the MRA v/s Oomajee Sudhoo and Ors 2019 SCJ 315**, and concluded that even in the present matter, only one spouse could consider all three children as dependents. The claim of the Applicant was disallowed.

7. Trendy Thondee v Director General, Mauritius Revenue Authority ARC/IT/345-19

The issue was whether the assessment of the Respondent satisfied the conditions of a “best of judgment” assessment.

The Committee review various decided cases, wherein the criteria, among others, of a best of judgment assessment were identified as follows:

- (a) The tax authority must go honestly and fairly through the process of seeking information;
- (b) There cannot be complete guesswork
- (c) Value judgment on the material before the Tax Authority must be performed honestly and in good faith.
- (d) The Tax Authority is not expected to carry out an exhaustive investigation.

The arguments put forward by the Applicant were considered to be plausible as opposed to the reasons of the Respondent. The Committee concluded that the assessment of the Respondent did not meet the threshold of a “best of judgment” assessment.

8. Geeto Beegoo v Director General, Mauritius Revenue Authority

ARC/IT/142-19

An assessment was raised by the Respondent on the ground that the Applicant was not eligible to interest relief on housing loan. The reason put forward by the Respondent was to the effect that the Applicant was already the owner of a residential building.

After considering the evidence, more particularly the state of the said building, the Committee concluded that the building could not be considered as a residential building. The representations were therefore upheld.

9. Navin Shastri Domah v Director General, Mauritius Revenue Authority

ARC/VAT/92-17 & ARC/IT/168-17

The objection of the Applicant was lapsed for non- payment of the statutory amount of 10 percent. The Applicant did not establish any good reason for not paying same. The decision of the Respondent was therefore maintained.

10. IBL Management Ltd v Director General, Mauritius Revenue Authority

ARC/VAT/143-16

Applicant is wholly owned by IBL Ltd. IBL Ltd is the shareholder of other companies known as the "Investee Companies". It has the right to appoint Directors on the Board of Directors of the Investee Companies. These Directors are employed by the Applicant.

Instead of paying the Directors' fees to the Directors, the Investee Companies effect payment to the Applicant.

It was concluded that Applicant was liable to VAT on the payments received.

**11.Renganarden Sooben v Director General, Mauritius Revenue Authority
ARC/IT/87-19**

The Applicant had claimed a deduction for expenditure incurred on travelling from home to the venue of Board Meetings, given that he was a Director of two parastatal bodies.

The Committee, after considering the principles set out in the case of Pilot v Director General, Mauritius Revenue Authority ARC/IT/74-19 & ARC/IT/197-19, considered that it could not rely on the mere *ipse dixit* of the Applicant.

The Committee also made it clear that allowable expenditure and exempt income were two distinct concepts. The representations were set aside.

**12.Nan Kumar Boodhonee v Director General, Mauritius Revenue
Authority ARC/IT/367-16**

The matter involved mainly the nature of funds transferred from ABC Ltd to the Applicant. The Applicant averred that the funds were refunds of a loan whereas same was denied by the Respondent. The Applicant owned 99.96% of the shares in ABC Ltd.

In light of the evidence adduced by the parties, the Committee concluded that the Applicant successfully established that there was a loan between Applicant and ABC Ltd. The Committee therefore allowed the representations to that extent.

**13.Eurofin Ltd v Director General, Mauritius Revenue Authority
ARC/IT/572-14**

The issue was the application of the Regulation providing for deemed foreign tax credit to Qualified Corporations. It was the contention of the Applicant that

the deemed foreign tax credit should be calculated on the gross income whereas the Respondent maintained that same should be calculated on the net income.

The Committee referred to the definition of Mauritius Tax under the Income Tax Act, the Committee concluded that the deemed foreign tax credit should be calculated on the net foreign income.

The Committee did not consider a further reason for representations given that same was too vague.

It is to be noted that the recent decisions of the Assessment Review Committee are accessible on its website at the following address:

arc.govmu.org

C. Judgments of the Supreme Court

1. Tropical Submarine Safari Ltd v The Director General, Mauritius Revenue Authority & Anor 2021 SCJ 83.

The matter related to credit for input tax following the purchase of diesel for the running of generators. The issue was whether the engines were stationary or not. The Assessment Review Committee (ARC) upheld the position of the Director General of the Mauritius Revenue Authority that the engines were in fact stationary. The taxpayer appealed and one of the objections taken by the Director General was to the effect that issue was not one of law. It is to be highlighted here that, following a Finding of the ARC, the aggrieved party may appeal to the Supreme Court **on questions of law only**. The Supreme Court had decided in previous cases that there are certain very limited categories of questions of fact that may be considered on appeal, for example, where the appreciation of fact by the ARC was so perverse that it could not justify its conclusion. In the present matter, the Committee concluded that the objection of the Director General was well taken and set aside the Appeal.

There is therefore a limited appeal by a taxpayer from the ARC to the Supreme Court. There would be cases where a tax payer would not be able to challenge certain findings of fact by the ARC. This weakness in the procedure of appeal by way of case stated was already highlighted in the Supreme Court case of **Hurhangee Deoraj v Commissioner of Income Tax 2002 SCJ 100**.

2. Sekhar Kumar Ramnauth & Soochitra Ramnauth v The Director, Mauritius Revenue Authority & anor 2021 SCJ 45

The Director General of the Mauritius Revenue Authority had taken an inscribed privilege over an immovable property belonging to the

“communauté” existing between the Appellants for an amount of tax owed by Professional Cleaners Limited. Applicant no. 1 was a Director of the said company.

Based on section 63A of the Value Added Tax Act, it was concluded that Applicant no. 1 could be held personally liable for the amount of VAT owed by the company, since the coming of operation of the said legislation, that is, 15 January 2012.

It was further concluded that the privilege was rightly taken on immovable property belonging to the *“communauté”* based on article 1413 of the Civil Code.

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