Monthly NEWSLETTER

ISSUE No. 28: OCTOBER 2024

BHURTUN
SCHOOL OF TAXATION

Welcome to Our October 2024 Newsletter!

In this issue, you'll find our usual summaries of Assessment Review Committee (ARC) decisions. One notable case deal with the concept of “badges of trade”, the purpose of which is to distinguish between a transaction of a revenue nature and a transaction of a capital nature.

We also highlight an important Supreme Court judgment dealing with a unique situation where a Mauritian company was in voluntary liquidation, was dissolved and was subsequently restored and reinstated.

Lastly, we invite you to check out our upcoming training on Trusts and Taxation of Trusts crafted to help you master the practical aspects of drafting Trust instruments while gaining insights into key tax regulations in relation to trusts.

Enjoy your read!

THE BHURTUN CHAMBERS &
BHURTUN SCHOOL OF TAXATION TEAM

IN THIS ISSUE

DECISIONS DELIVERED BY THE ASSESSMENT REVIEW COMMITTEE

VAT

1. **GLOBALSPORTS LTD v DIRECTOR-GENERAL, MAURITIUS REVENUE AUTHORITY ARC/VAT/90-15,159-19 - FINDING**

Facts:

- This was quite an interesting matter related to the taxation of betting activities and the interpretation of relevant laws and rules.
- The Applicant is a licensed totalisator (tote) operator and operates betting activities.
- The essence of the tote system is that when a punter (the person who places a bet with the tote operator) wins on an initial bet, the winnings are added to the bet amount, creating a cumulative stake for the next race. Each win effectively carries forward, increasing the stake for subsequent bets.
- In its tax computation, the Applicant deducted amounts re-invested on subsequent legs of a bet from gross stake figures of the respective win/place pools.
- The MRA disallowed the deductions.

Issues:

- The issue was essentially one of interpretation of "gross stake" in **S. 114 Gambling Regulatory Authority (GRA) Act.**
- The Applicant contended that "gross stake" should be given its dictionary meaning of "a sum of money gambled on the outcome of a risky game or venture" and that therefore betting tax should apply only to the initial stake.
- The MRA on the other hand contended that the intention of Parliament was to tax all aspects of such bets, viewing them as individual transactions generating additional income and that therefore all legs of the bet should be taxable.

Held:

- The ARC found in favour of the MRA.
- The Committee noted that, given how the system works, it is only after a win or successive wins that the punter has the opportunity to benefit financially, and that importantly, winning are based on cumulative amounts rather than the initial stake.
- Consequently, the committee reasoned, tax calculations should typically be based on the total gross profits generated from betting activity, rather than just the initial bet as this approach accounts for the cumulative value of each win after pay-outs are made.

INCOME TAX

1. **ALTIUS LTD v DIRECTOR GENERAL, MAURITIUS REVENUE AUTHORITY ARC/IT/147-14 - FINDING**

Facts:

- The Applicant is a company incorporated in Mauritius on 16 August 2004, and is a wholly owned subsidiary of Altima Ltd.
- By virtue of a Land Lease Agreement obtained from Business Parks Mauritius Ltd ("BPML") a plot of leasehold land at Ebene Cybercity for erection of a building (Altima Building) to house an ICT business and office spaces.
- The lease was for an initial period of 30 years, with a possibility of renewal for two additional periods of 30 years.
- The building and construction costs were financed by four separate loans granted by Barclays Bank aggregating to Rs 161,100,000.
- The matter at hand was concerned with the transfer of ownership of the Altima Building to the National Pension Fund (NPF), a disposal which resulted in a gain of Rs 103,168,402.

Issue:

- What was disputed was whether this gain on disposal was of a capital nature and hence not taxable, as was argued by the Applicant, or whether the said gain was of a revenue nature and hence taxable as revenue profits, as contended by the MRA.

Held:

- The ARC found in favour of the MRA that the gain on the disposal of the Altima building was properly taxed.
- In reaching this decision, the Committee considered the concept of "badges of trade", the purpose of which is to distinguish between a transaction of a revenue nature and a transaction of a capital nature and the principles applicable to "badges of trade" as set out in **Danjoux v Commissioner of Income Tax [2006] SCJ 152**; **Galea v The Director-General, Mauritius Revenue Authority (ARC/IT/210-09)**; **Manzur v HMRC Commissioners [2010] UKFTT 580 (TC)**; and **Junction Properties Limited v Commissioner of Income Tax [1974] MR 210**.

2. **DR. MEETA ANNAUTH v DIRECTOR GENERAL, MAURITIUS REVENUE AUTHORITY ARC/IT/112-21 - FINDING**

Facts:

- The Applicant is a medical practitioner who had declared income from her private practice and emoluments from the Ministry of Health for 2019/2020 whereby an amount of Rs 750,000 had been claimed by her as expenditure that had been incurred in the performance of her office duties.
- When the MRA queried as to the nature of the expenses claimed, the Applicant stated that the expenses were incurred in relation to medical intervention, air ticket, hotel accommodation and other related expenses.
- The MRA thereafter issued a determination that the sum of Rs 750,000 was neither incurred wholly, exclusively and necessarily in the performance of the office duties, nor was it incurred exclusively in the production of her gross income.

Issue:

- The issue centered on **S. 17 Income Tax Act** which mandates that expenditures must be wholly, exclusively, and necessarily incurred in the performance of one's duties to be deductible from gross income.
- The Applicant argued that the medical expenses were essential for her continued employment and professional capacity, enabling her to fulfill her duties as an eye specialist effectively.
- The Respondent argued that the expenses did not meet the stringent criteria of **S.17.**

Held:

- The ARC found in favour of the MRA.
- In reaching this decision, the Committee explained that "wholly" means the costs must entirely related to the performance of one's professional duties and that any personal element within the expense will likely disqualify it from being considered for deductions or reimbursements; and
- "exclusively" means that the expense should serve no purpose other than that of fulfilling work-related responsibilities, thereby preventing any personal benefit from being derived from the expense; and
- "necessarily" means that if an expense is deemed optional or not critical to performing one's responsibilities, it may not qualify for reimbursement or deduction.
- Based on this and evidence presented by both parties the Committee found it was clear that the expenses were solely personal expenses incurred by the Applicant in relation to her health issues.

3. **VAYRES INVESTMENTS LTD v DIRECTOR GENERAL, MAURITIUS REVENUE AUTHORITY ARC/IT/609-17 - FINDING**

Facts:

- This matter was concerned with a dispute between a company engaged in gaming operations in Rodrigues (the Applicant) and the MRA.
- Following an audit exercise, the MRA had issued an assessment citing the Applicant's failure to maintain proper records, the lack of an internal control system, and the inability to provide requested information, particularly regarding roulette games. The MRA determined that that these shortcomings resulted in an underpayment of taxes.

Issue:

- The Applicant contested the validity of the assessment on the grounds that:
  - it lacked a lawful basis as the MRA improperly employed the "best of judgment rule" without adequate justification; and
  - the MRA relied on assumptions regarding the company's revenue, emphasizing that there were no legal benchmarks or guidelines supporting the use of a multiplier of 1.848679383 in calculating tax obligations.
- In its counterarguments, the MRA raised preliminary objections that the Applicant's representations were not compliant with procedural requirements under **S.19 Mauritius Revenue Act** and merely re-iterated objections lodged with the MRA without addressing specific errors in its determination.

Held:

- The ARC found in favour of the Applicant.
- In reaching this decision, the Committee first noted that the MRA had indeed raised an assessment based on the best of judgement principle outlined in **S.129 Income Tax Act (ITA)**, employing a multiplier factor to determine the assessment, which is not mentioned in **S.119 Gambling Regulatory Authority Act (GRAA)**. The Committee explained that the MRA cannot apply principles from **S.129 ITA** to raise an assessment under **S.119 GRAA**.
- The Committee also noted that the MRA had failed to give considerations to the obligations imposed by **S.109 GRAA** regarding the installation of Continuous Emissions Monitoring System (CEMS) to ensure that reliable data is available for assessments. Instead, the Committee noted, the MRA relied on guesswork and subjective judgment. The Committee explained that this was a misapplication of the law which highlighted the deficiencies in the MRA's assessment process in this case.
- The ARC also set aside the MRA's objections regarding the Applicant's representations given that the assessment methodology itself was flawed from the outset.

4. **MR. ROHIT SHARMA RAMCHURN v DIRECTOR GENERAL, MAURITIUS REVENUE AUTHORITY ARC/IT/606-17 - RULING**

Facts:

- This ruling was in relation to a decision of the MRA who had determined the objection filed by the Applicant regarding an income tax assessment.
- The Applicant argued that there had been a significant change in the basis of the assessment.
- Initially, the Applicant's assessment was derived from a mark-up exercise. However, this basis shifted to a profit margin after the Applicant communicated his bank statements to the Respondent.
- The Applicant argued that this alteration in the assessment methodology warranted the annulment of the revised tax computation which utilized a net profit margin.
- The Applicant added that as per **S.19 Mauritius Revenue Act**, the Committee is obligated to adjudicate solely on the representations made by any aggrieved individual regarding a decision by the Respondent and insisted that he cannot amend his representation during the hearing stage. As a result, he argued, the revised tax computation necessitates the assessment being set aside, and that the Committee should refrain from hearing the matter.
- The Respondent contended that the Committee has yet to receive evidence which may include necessary documents, details, and guidelines, without which the Committee cannot accurately ascertain the validity of the revised computation or determine whether a genuine change in the assessment basis has occurred.

Held:

- The ARC considered that the issue of the correctness of the assessment can only be resolved through the evidence presented by both sides.
- The Committee therefore ruled that it will proceed with the hearing of the matter, allowing both parties to present their evidence on the points raised by both parties.

REGISTRAR GENERAL

1. MR & MRS MAYVEEN RAMPHUL v REGISTRAR-GENERAL ARC/RG/127-20 - FINDING

Facts:

- This was quite an interesting case concerning the valuation of a property belonging to a Societe (Bizlall Ramphull).
- The Societe was constituted in 2019 and had as *societaires* Mr. and Mrs. Mayveen Ramphul, Mr. Nitin Ganga and Fairylands & Co Ltd (Hereinafter 'Fairylands') and the capital of the societe was Rs 10M and was divided as follows for 10,000 part sociales:

Societaire	Part sociales	Apports of Societaire
Mr. & Mrs. Mayveen Ramphul (Applicant)	7000 part sociales	Portion of land of 275 toises at Flic en Flac valued at Rs 7,000,000
Mr. Nitin Ganga	500 part sociales	Rs 500,000 cash
Fairylands	2500 part sociales	Rs 2,500,000 cash

- In August 2019, the Applicant ceded to Fairylands and Mr. Nitin Ganga the 7000 *part sociales* belonging to them in the societe for a consideration of Rs 7,000,000 – the open market value of the 275 toises *ensemble tout ce qui peut dependre pour faire partie sans exception ni reserve* in the societe is declared at Rs 7,000,000.

Issue:

- According to the Government Valuer's report, a storey building was standing on the land and the property together with the building was reassessed at Rs 37,950,000.
- The Applicants contended that the tax assessment should only reflect the land value of Rs 7M because the buildings constructed on the property were financed by Fairlylands and therefore did not constitute assets of Societe Bizlall Ramphul. They added that the deed forming the société did not include the building.

Held:

- The ARC found that the Respondent was right to take account the value of both land and building to assess the value of shares in the cession of the *parts sociales* because in light of Articles 1832 and 1843-2 Code Civil Mauricie, the assets brought in by both the Applicants and Fairylands were "commun" and belonged to the société.

2. **ALTEO AGRI LIMITED PATRICE LEGRIS v REGISTRAR-GENERAL ARC/RG/190-21, 191-21 - FINDING**

Facts:

- The subject property here was a portion of land of an extent of 4985.15 m^2 located at L'Amitié, Rivière-du-Rempart.
- The property was purchased by Mr. Patrice Legris for a sum of Rs 4,484,000 from Alteo Agri Limited.
- The property was assessed by the Government Valuer, at the request of the Registrar-General, determining its open market value to be Rs 11,800,000 with an additional land transfer tax of Rs 420,670.

Issue:

- The Applicants' Expert valuer advocated for the residual method of valuation, considering the property's unique characteristics – its agricultural nature, unserviced status, and difficult topography. The Applicant considered that
- The Government Valuer on the other hand insisted on using the comparative method of valuation, citing the property's location, zoning status, and available sales evidence.

Held:

- The ARC considered that the Applicant raised valid points regarding the unusability of the comparables and the need for a different approach to determine the property's true market value.
- Upon examination of the comparables used by the Government Valuer, it became clear to the Committee that none of them could be compared to the subject property due to differences in size, topography, and infrastructure made the comparables inadequate for a reasonable valuation.
- The Committee therefore took the view that the Government Valuer should give a further allowance of 20% in his calculation.
- Furthermore, in light of the Indian case **Neelaveni (s) (Smt) v CWT [1980] 125 ITR 665 (Karn)** which emphasise the importance of a systemic and evidence-based approach to property valuation utilizing a range of methods to ensure accuracy and reliability, the Committee found that an average of the declared value and the assessed value (after giving the allowance) would reflect a fair market value.
- As such, the ARC calculated the market value of the property as follows:

[(Rs 11,800,000 x 0.80) + Rs 4,484,000] / 2 = Rs 6,962,000

CUSTOMS

1. **SIRIUS LTD v DIRECTOR-GENERAL, MAURITIUS REVENUE AUTHORITY ARC/CUS/004-22 - FINDING**

Facts:

- This matter concerned the classification of a consignment imported by the Applicant which included "PVC Profile", plastic profilage, metal hardware, and plastic sanitary ware referred to as Siphon.
- The Applicant argued that siphon should be classified as sanitary ware under HS Code 3922.9090 while the MRA contended that it should be classified as pipe fittings under HS Code 3917.400.

Issue:

- The issue was therefore under which HS Code the products imported by the Applicant should be classified.

Held:

- The Committee took the view that Siphon should be classified under HS Code 3922.9090.
- In reaching this conclusion, the Committee explained that to assign the correct HS Code to the product, it was crucial to understand its intended use. The Committee noted that the evidence presented indicated that the siphon retains water, serving as a barrier against odours. The Committee then proceeded to examine the definition and intended uses of the siphon within the framework and found that while both fittings and sanitary ware fall under the plumbing category, they serve different functions; fittings are essential for directing water flow, while sanitary ware promotes hygiene. The Committee then explained that recognising this distinction is crucial for accurate classification.
- Based on these, the Committee reasoned that as the siphon is considered as a plumbing fitting and its purpose is to prevent sewer gases from leaking by holding a small amount, serving as a barrier and which are typically found in sinks, toilets and drainage system, it fits the description of the fitting (Plastic Sanitary Ware) found under 3922.9090.

2. **ISM LTD v DIRECTOR-GENERAL, MAURITIUS REVENUE AUTHORITY ARC/CUS/016-24 - RULING**

Facts:

- The primary issue here was the 32-day late submission of an objection to a notice of under-payment.
- The MRA refused to accept the objection, citing importance of adherence to deadlines and miscommunication – the objection referenced a previous notice which was not directly communicated to the representative of the Applicant but to a non-executive shareholder.

Held:

- The Committee decided that the MRA should reconsider the objection, emphasising fairness and the taxpayer's procedural rights, while acknowledging the Applicant's good faith and efforts to address the issue promptly.

3. **YUVI LTEE v DIRECTOR-GENERAL, MAURITIUS REVENUE AUTHORITY ARC/CUS/10-16,11-16,12-16,13-16,14-16,15-16,16-16,30-16 - FINDING**

Facts:

- The Applicant Company is a car hire company which benefitted from a concession on Excise Duty and VAT for a vehicle.
- Following joint inspections at the Applicant's premises, it was alleged that the vehicle was rented to a couple (Couple C), rather than directly to tourists as stipulated in the conditions of the concession.
- A Customs Offence Report was filed against the Applicant Company for breaching these conditions, and when the latter refused to have the offence compounded, it faced prosecution where it was fined Rs 10,000.
- The MRA issued a claim to recover the duty and taxes.

Issue:

- To determine whether the conditions attached to the exemption were breached, the Committee had to determine whether Couple C were in the country as tourists or in some other capacity.

Held:

- After reviewing the evidence concerning the nature of Couple C's stay, the rental agreement terms, and the conditions of the exemptions granted to the Applicant, the Committee concluded that Couple C were not residing in Mauritius under a tourist visa, but under a residence permit obtained through the IRS Scheme.

SELECTED DECISIONS DELIVERED BY THE SUPREME COURT OF MAURITIUS

1. GOWTAMSINGH DABEE v REGISTRAR OF COMPANIES 2024 SCJ 463

Facts:

- This was quite a unique case where a Mauritian company was in voluntary liquidation, was dissolved and was subsequently restored and reinstated.
- The Applicant was appointed as liquidator to place the company in voluntary liquidation. After he had circulated the final liquidation report, the company's voluntary winding up was formally dissolved and liquidation of the company was thus completed. The Company was subsequently removed from Register of companies and the liquidator became functus office and was discharged of his duties.
- Application was then made to the Supreme Court to restore and put the said company back on the Register of companies.
- The Supreme Court then made an order that the company be revived and directed the Respondent to restore the company and to put it back on the register.
- However, simply making an order of restoration without reversing the final liquidator's report was causing difficulties for the restored company to function.

Issue:

- The Applicant prayed for an order pursuant to **S.320(4) Companies Act** to in effect: reverse his final liquidation report; and declare and confirm that he remained and automatically resumes and is restored to his position as liquidator or in the alternative appoint him as liquidator for the company.
- The issue was this exceptional occurrence and absence of guidance from body of law in Mauritius.

Held:

- To deal with this issue, the Court sought guidance from New Zealand case law: **Re Ocean Shipping Ltd HC Auckland M348/96**; **The Registrar of Companies v Body Corporate 307730 CA [2013] NZCA 659**; and **Wenzhou Hongliang Trading Company Limited v The Registrar of Companies [2023] NZHC 621**.
- The Court then held that it was a fit and proper application to make an order reversing the liquidator's final report as from the date of restoration of the company on the Register, in light of **S.174(4) Insolvency Act** and in the circumstances that the Registrar of Companies was also supporting the application and that it is the reversal of the final report which has the effect of abrogating the completion of the liquidation.

- Now, since the company had already been restored, the effect of making this reversal order of the liquidator's final report was that the former liquidator (Applicant) resumed office.

OUR TRAININGS

Our training for November 2024 will focus on Trusts and Taxation of Trusts. Please see more details below:

Trusts and Taxation of Trusts

Description of Course:

Unlock the secrets of Trusts and their taxation with our expert-led course. Ideal for legal and financial professionals, this course offers a deep dive into trust formation, trustee responsibilities, and the nuances of Trust taxation. Master the practical aspects of drafting Trust instruments while gaining insights into key tax regulations.

Register today and deepen your understanding of trusts in just three half-days!

Course content:

DAY 1	DAY 2	DAY 3
✓ The definition of Trust and the evolution of the concept. ✓ The creation of Trusts ✓ Drafting Trust Instrument ✓ Appointment of Trustees and their duties	✓ Powers of Trustees and breach of trust ✓ Aspects relating to confidentiality ✓ The taxation of trusts: - Residence of Trusts - International aspects - Rules of taxation	✓ The taxation of trusts: (cntd): - Taxation of distributions from Trusts - Tax Rulings issued by the MRA ✓ Uses of Trusts ✓ Trusts and Foundations

Course date & duration:

04, 06 & 07 November 2024

09h15 to 12h15 (3hours)

Mode of delivery:

Face to Face or Online

Venue:

13 Rue Union, Port Louis

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.

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.

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Thank you.

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