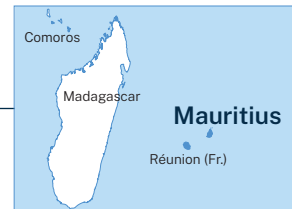


# MAURITIUS

## Law and Practice

### Contributed by:

Johanne Hague, Gaelle Angoh Li Ying Pin, Medina Torabally and Béatrice Phanjoo  
**CMS Prism in association with CMS**



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**Contributed by:** Johanne Hague, Gaelle Angoh Li Ying Pin, Medina Torabally and Béatrice Phanjoo,  
**CMS Prism in association with CMS**

**CMS Prism in association with CMS** specialises in all aspects of revenue law, including tax advisory, transactional tax and tax controversy matters, with a significant cross-border element. It represents clients at all levels of the dispute resolution process, including before the Supreme Court of Mauritius and the Judicial Committee of the Privy Council. The firm's expertise is consistently sought out for high-profile tax litigation cases on complex cross-border matters, including transfer pricing cases. In addition to domes-

tic and international tax planning, the firm has a strong private wealth practice. It helps (ultra) individuals with high net worth, business owners, and family offices structure their affairs in a tax-efficient and compliant manner. The firm's founder, Johanne Hague, has appeared as an expert witness in Mauritius tax laws before the UK's First Tier (Tax) Tribunal and regularly lectures on Tax issues at both local and international levels (notably at the International Bureau of Fiscal Documentation).

## Authors



**Johanne Hague** is the founder and managing director of CMS Prism. She is a barrister-at-law practising at the Mauritian Bar and a solicitor of England & Wales. She has worked in

London for many years at magic circle law firm Linklaters LLP and US investment bank JPMorgan Chase Bank. She was a Senior Partner at DLA Piper Africa's member firm in Mauritius prior to founding CMS Prism. Johanne's main area of expertise is tax law. She specialises in domestic and international taxation, and her expertise covers a broad range of transactional, contentious and advisory tax matters.



**Gaelle Angoh Li Ying Pin** is the head of dispute resolution and a barrister-at-law practising at the bar of Mauritius. She leads the firm's litigation practice with a strong focus on commercial

disputes and tax controversy. Prior to joining CMS Prism, Gaelle was senior state counsel at the Attorney General's Office of Mauritius, where she worked for over 11 years. Gaelle played an essential role in advising and representing the Mauritius Revenue Authority in complex tax cases. She has successfully handled high-profile tax controversy cases, including transfer pricing, exemptions and anti-avoidance matters. Her advocacy experience spans over a range of forums, including the Supreme Court of Mauritius and specialised tribunals like the Assessment Review Committee.

**Contributed by:** Johanne Hague, Gaelle Angoh Li Ying Pin, Medina Torabally and Béatrice Phanjoo,  
**CMS Prism in association with CMS**



**Medina Torabally** is a senior associate at CMS Prism and a barrister-at-law practising at the Mauritian Bar. She worked as an assistant legal counsel at the Permanent Court of Arbitration

(PCA) and as a litigation associate at a Tier-1 Chambers in Mauritius. Medina's practice mainly focuses on tax advisory and tax controversy matters. She regularly advises multinational and domestic clients on contentious and transactional tax issues and assists clients in connection with audits, investigations and assessments by the Mauritius Revenue Authority. Medina regularly appears before the Assessment Review Committee and other tribunals and also has experience in commercial disputes, construction contracts and data protection.



**Béatrice Phanjoo** is an associate at CMS Prism and a barrister-at-law practising at the Mauritian Bar. Prior to joining CMS Prism, she acquired litigation and advisory

experience in private practice. Her main areas of expertise were civil and employment law, where she regularly advised domestic clients. Beatrice's practice now also includes tax controversy and tax advisory matters. She regularly appears before the Assessment Review Committee and advises Prism Chambers' clients on the tax implications of cross-border transactions.

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## CMS Prism

Level 7 IconEbene  
Rue de L'Institut  
Ebene  
Mauritius

Tel: +230 403 0900  
Email: [jhague@cms-prism.com](mailto:jhague@cms-prism.com)  
Web: [www.prismchambers.com](http://www.prismchambers.com)

**CMS PRISM**  
in association with CMS

## 1. Tax Controversies

### 1.1 Tax Controversies in This Jurisdiction

Mauritius follows a self-assessment system whereby taxpayers self-assess their tax liability when filing their annual tax returns. Tax controversy usually arises when a taxpayer is audited by the Mauritius Revenue Authority (MRA). Audits are usually conducted using a risk-based approach (see 2. Tax Audits).

Tax controversies may also arise when a taxpayer asks for a refund of tax paid, when a taxpayer files an amended tax return, when the MRA is not satisfied with the returns submitted by a taxpayer, or when a company files for deregistration from the Registrar of Companies in Mauritius or initiates liquidation proceedings. More recently, following international developments, tax controversies have also arisen as a result of information obtained by the MRA pursuant to an international exchange of information between tax authorities.

When the MRA conducts an audit into the taxpayer's affairs, the taxpayer's tax returns will typically be reviewed, and the MRA may ask for supporting documentation and explanations (which may include financial statements, copies of invoices, agreements, etc). If the MRA identifies any discrepancies or non-compliance, it may initiate further investigations or issue "*notice of assessment*". The majority of assessments are issued under the Income Tax Act 1995 (ITA) and the Value Added Tax Act 1998 (VATA). Unless otherwise specified, this guide will therefore focus on tax controversy in these two areas.

### 1.2 Causes of Tax Controversies

Personal and corporate income tax, as well as value-added tax (VAT), are the most frequent causes of tax disputes in Mauritius.

In relation to personal income tax, the dispute may relate to under-declared income, disallowable expenses and the denial of exemptions claimed by the taxpayer.

The issues related to corporate income tax vary widely. Frequent examples include:

- under-declared income;
- the disallowance of expenses (typically because they are not incurred exclusively in the gross production of income); and
- the denying of exemptions or tax holidays.

More recently, the MRA has been increasingly applying targeted anti-avoidance provisions (such as Section 75 of the ITA – namely, the arm's length provision) and general anti-avoidance provisions (Section 90 of the ITA) to arrangements such as interest-free loans and other intra-group arrangements.

In relation to VAT, disputes arise regarding taxpayers' non-registration for tax purposes, under-declared taxable supplies, and the disallowance of input VAT. Occasionally, the MRA also invokes anti-avoidance provisions – eg, in cases where the taxpayer enters into arrangements to artificially avoid the threshold for VAT registration purposes.

Although less common than corporate and VAT issues, disputes relating to the imposition of customs and excise duties are also regularly referred to the tax tribunal in Mauritius, particularly relating to the classification and value of imported items, the applicable duties and any upliftment of the value of a consignment.

Disputes with respect to transfer taxes are not uncommon, particularly regarding the valuation of immovable property.

## 1.3 Avoidance of Tax Controversies

Tax controversy can be mitigated through:

- having the proper documentation in support of the tax filings made (eg, invoices, contractual agreements, transfer pricing analysis if appropriate, legal or tax opinions);
- applying for a ruling from the MRA – rulings are binding on the MRA and provide the taxpayer with certainty on the particular issue in question (see 6.4 **Avoiding Disputes by Means of Binding Advance Information and Ruling Requests**); and
- Indicate an expression of doubt on an income tax return at any point of uncertainty. This will ensure that no penalty is levied on the taxpayer with respect to any eventual assessment raised on the relevant point.

Once an assessment is raised, there are ways of mitigating the amount of tax assessed (see 2.6 **Strategic Points for Consideration During Tax Audits**).

## 1.4 Efforts to Combat Tax Avoidance

In addition to its existing bilateral exchange of information agreements, Mauritius has implemented the Common Reporting Standard in Automatic Exchange of financial account information since 2017. Through this mechanism, Mauritius is now able to obtain information on financial accounts held by non-residents abroad. In some cases, this has led to tax assessments being raised in Mauritius.

Since November 2017, Mauritius has been a member of the Inclusive Framework and has committed to implementing the minimum standards set by the Base Erosion and Profit Shifting (BEPS) initiative. In 2018, the country overhauled its tax legislation to comply with the recommendations of BEPS Action 5 (Countering

Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance). The updated fiscal legislation is now aligned with the the Forum on Harmful Tax Practices (FHTP). As a result, certain tax regimes, such as the deemed foreign tax credit and the freeport regimes, were identified as having potentially harmful features and were subsequently abolished. Substance requirements have also been introduced for entities that intend to benefit from a partial exemption on certain sources of income. There has since been a considerable increase in tax controversy on the application of substance requirements and the eligibility of taxpayers to claim partial exemption.

Mauritius has also enacted the Multilateral Instrument (MLI) through the Income Tax (BEPS) Regulations 2019, which came into force on 1 February 2020; the amendments to the covered treaties with Mauritius took effect in August 2020. As far as is known, no tax controversies have been raised as a result of the application of the MLI. In particular, it will be interesting to see whether any tax controversy arises due to treaty benefits being denied pursuant to the introduction of the “*principal purpose test*” (PPT).

## 1.5 Additional Tax Assessments

In Mauritius, the obligation to pay any additional tax considered due arises upon the issuance of a tax assessment. In relation to income tax and VAT, the taxpayer has the right to contest the assessment by filing objections with a separate unit within the MRA called the Objections, Appeals and Dispute Resolution (OADR) department.

To object to the OADR department, the taxpayer must first pay 10% of the assessed amount. Alternatively, in case of financial difficulties, the Director General (DG) of the MRA may accept

that the taxpayer furnishes a bank guarantee instead of paying the 10%.

With respect to transfer taxes, the transferor or transferee (as the case may be) is typically required to pay the full amount of assessed duty before they can contest the assessment.

### Tax Interest and Penalties

Interest and penalties apply if the taxpayer fails to declare and/or pay the tax in due time. The sanctions for failing to file declarations correctly, pay taxes or fulfil other tax obligations can be divided into two broad categories:

- late payment interest and tax fines applied by the MRA, which may be subject to review by the Assessment Review Committee (ARC); and
- criminal penalties, which courts may impose.

### Interest

Late payment interest is applicable at rates varying between 0.5% and 1% per month, depending on the nature of the tax and the cause of non-payment.

The late payment interest may be waived in whole or in part in certain circumstances, at the discretion of the DG or under specific schemes that may be introduced by the Minister of Finance, Economic Planning and Development (MOFED) from time to time.

### Penalties

Penalties may also be levied at a rate not exceeding 50%. The rate of penalty levied varies depending on the issue leading to the non-declaration of tax, the frequency of under-declaration, and the taxpayer's behaviour and co-operation during the audit process. The MRA has issued a statement of practice (SP 13/16)

providing broad guidelines on the penalty rate applicable in different circumstances.

### Criminal Penalties

Tax laws, including the ITA and the VATA, provide for criminal offences punishable (regardless of civil interest and penalties) by imprisonment and fines. The fines vary depending on the nature of the tax and the relevant issue.

## 2. Tax Audits

### 2.1 Main Rules Determining Tax Audits

The MRA does not publicly prescribe criteria for conducting audits; taxpayers are audited on a discretionary basis using a risk-based approach. Some entities (particularly large taxpayers) may be more likely to be subject to tax audits than others.

In addition, certain specific events may trigger a tax audit, including requests for tax refunds, requests for MRA approval prior to liquidation, requests for approval for deregistration for VAT purposes, or requests for removal from the register of companies. The MRA may also focus on specific strategic sectors (such as gambling) or issues (such as the application of the arm's length principle in intra-group arrangements or the eligibility for partial exemption on certain types of income).

### 2.2 Initiation and Duration of a Tax Audit

There is no specific time limit within which the tax audit must be initiated; however, tax authorities are limited by the statutory time limits for raising an assessment.

For personal and corporate income tax, the DG can require information or conduct its investigation pertaining to a period not beyond three



years preceding the current year of assessment. However, the DG may assess beyond the above time limit if a tax return has not been filed or fraud has occurred.

For VAT cases, the DG may not require any person to furnish or give any information, nor to produce any books or records, after five years immediately following the last day of the taxable period in which any related transaction took place. However, this timeframe is not applicable in case of wilful neglect, evasion or fraud.

There is no prescribed duration for audits except for the abovementioned time limitations.

The statutory time limitations start anew if an amended tax return for a particular year of assessment or taxable period is submitted to the MRA.

## 2.3 Location and Procedure of Tax Audits

Generally, audits start remotely upon the DG requesting certain information, books and records from the taxpayer. Information can be provided in printed format or sent electronically. Meetings usually occur at the MRA headquarters, where the taxpayer may choose to be accompanied by their tax adviser or counsel. The DG may also carry out field audits, whereby officers of the MRA may physically present themselves at the taxpayer's business premises to check the books and records of the business and inspect its stock, machines, or other equipment.

The DG also has broad powers to request information, including from third parties.

## 2.4 Areas of Special Attention in Tax Audits

Recently, tax auditors' areas of focus in relation to personal and corporate income tax have included:

- the application of the arm's length principle in intra-group transaction;
- claims of partial exemption on certain sources of income;
- the disallowance of expenses unrelated to the production of gross income; and
- cross-border transactions generally.

In relation to VAT, focus continues to be on non-registration for VAT purposes, under-declared taxable supplies or over-declared input VAT.

## 2.5 Impact of Rules Concerning Cross-Border Exchanges of Information and Mutual Assistance Between Tax Authorities on Tax Audits

The MRA has raised some assessments based on information obtained pursuant to the implementation of the Common Reporting Standard.

Tax authorities of other jurisdictions have also requested information on Mauritian taxpayers from the MRA during tax audits conducted in those jurisdictions based on bilateral exchange of information agreements.

## 2.6 Strategic Points for Consideration During Tax Audits

A tax audit can be challenging, costly, and time-consuming for individuals and businesses. Being well prepared can considerably help minimise the impact of a tax assessment and ensure a more favourable outcome.

Key points to consider from a strategic perspective include the following.

- Conducting periodic reviews of all relevant documents, such as financial statements, tax returns and contractual documentation, and ensuring that they are complete and accurate. It is also advisable to organise documentation in a clear and logical manner, making it easy for the auditor to review and understand. If the taxpayer has a tax function, it is essential that the tax department's role is not limited to tax compliance but takes a proactive role in assessing and managing the taxpayer's tax risks.
- Seeking advice and support from a tax adviser and tax counsel on any grey areas or tricky issues concerning any point of law.
- Establishing a clear, co-operative and continuous line of communication with the MRA auditor. It is essential that the taxpayer acts in good faith in their co-operation with the MRA and responds promptly and clearly to any requests for information or clarification. Being open to discussion can help achieve a more favourable outcome (particularly where the issue is factual and depends on evidence as opposed to a point of law). The taxpayer should keep minutes of meetings held with the auditor and any correspondence exchanged with the auditor.
- Not ignoring any requests for information. If appropriate, the taxpayer should request extensions to respond to requests for information.

## 3. Administrative Litigation

### 3.1 Administrative Claim Phase

The notice of additional tax comes in the form of "*notice of assessment*", which should include:

- any amount in whole or in part of any deduction claimed by the person which has been disallowed, and the reason for the decision;
- the basis for the computation of the amount and its justification; and
- the reason for making the assessment or claim.

The taxpayer who is dissatisfied with such an assessment may object to the assessment with the OADR department; see **1.5 Additional Tax Assessments**. The objection is not mandatory and is the taxpayer's option. Any objection has to be lodged within 28 days, together with the payment of 10% of the amount assessed. Any failure to object within the required time (subject to certain exemptions, such as illness) will render the total assessed amount immediately due.

However, the objection phase is a necessary process prior to any judicial phase – ie, except in certain specific cases, the taxpayer cannot lodge representations with the ARC without having lodged objections with the OADR department first.

### 3.2 Deadline for Administrative Claims

The OADR department has four months from the receipt of the objections to maintain, revise or set aside the assessment made.

When an objection is finalised, the MRA issues a notice of determination of objection to the taxpayer. Any tax payable specified in the notice of determination, together with penalty/interest, should be paid within 28 days of the date of determination. If the taxpayer is not satisfied with the MRA's decision, the taxpayer may lodge representations with the ARC (see **4. Judicial Litigation: First Instance**).

Any objections that have not been determined within the four-month period are deemed to have been allowed by the DG of the MRA (ie, the assessment is set aside).

## 4. Judicial Litigation: First Instance

### 4.1 Initiation of Judicial Tax Litigation

Judicial tax litigation is initiated by filing representations with the clerk of the ARC, a quasi-judicial body, to contest any notice, decision, or determination of the MRA (in the circumstances prescribed by the Mauritius Revenue Authority Act 2004).

In some limited circumstances (particularly where there is no possible recourse before the ARC), the taxpayer may also have recourse to the Supreme Court for the judicial review of a decision of the DG of the MRA.

### 4.2 Procedure for Judicial Tax Litigation

The judicial stage typically starts with the taxpayer filing representations with the ARC. Representations must be filed with the ARC clerk within 28 days of the MRA's notice, decision, determination, or claim. The taxpayer is normally required to pay an additional 5% of the tax assessed to the MRA.

Where representations have been made at the ARC, the payment of tax determined on the objection is suspended. However, interest on any outstanding tax continues to accrue until payment is made. Conversely, interest at the prevailing repo rate also accrues on the 15% paid by the taxpayer, and this amount is refunded to the taxpayer if the ARC sets aside the notice of determination, claim or decision of the MRA.

When the case is called before the ARC, the parties are usually able to file and exchange statements of case, providing facts of the case, grounds of grievances, witness statements and submissions on any point of law to be raised.

Prior to the hearing being held, arguments may be heard on preliminary points of law or on procedural issues. The ARC will issue a ruling on the issue before the merits of the case can be heard, if need be. Common preliminary issues include arguments on non-payment of 10% (or 5%, as the case may be), representations being filed with the ARC outside the statutory time limit or representations being vague or not addressing the MRA's notice of determination, claim or decision.

If the case proceeds to be heard on the merits, the ARC fixes the case for hearing (counsel for both parties usually have the opportunity to provide dates for the hearing). During the hearing, witnesses from both sides will usually be heard (examination in chief and cross-examination) to adduce evidence supporting their respective cases. On conclusion of the witness evidence, counsel will make their submissions orally and/or in writing. The ARC will then reserve its ruling. Whilst the law provides for the ARC ruling to be provided within four weeks from the end of the hearing, in practice, this timeline is rarely respected; some cases have been awaiting an ARC ruling for over a year.

Alternatively, the taxpayer and the MRA also have the possibility to mediate before the ARC, where the ARC considers that the issues raised in the written representations can be resolved through mediation. The mediation option has recently been introduced and is, therefore, quite novel. The taxpayer may also apply to the Alternative Tax Dispute Resolution (ATDR) panel (sub-

ject to certain conditions being met) if it wishes to reach a settlement with the MRA on the tax dispute. An application to the ATDR panel may be made whilst an appeal is pending before the ARC, in which case the appeal is usually suspended whilst the application is being heard before the ATDR panel. It should be noted that an application to the ATDR may also be made at the objection stage or where there is an appeal pending before the Supreme Court or the UK Judicial Committee of the Privy Council (JCPC), although the MRA has taken the position that a taxpayer may only apply to the ATDR panel once. See also 6. **Alternative Dispute Resolution (ADR) Mechanisms.**

## Disputes

In case of any dissatisfaction with a ruling made by ARC, the process for resolving is as follows.

- A person who is dissatisfied with an ARC ruling on a point of law may lodge a written representation with the ARC, requiring it to state “case” for the opinion of the Supreme Court of Mauritius within 21 days of that decision.
- The ARC has 28 days to state and sign “case”, which is communicated to the appellant and to the other party.
- Upon receipt of the case stated, the appellant has 14 days to cause the “*appeal*” to be lodged.
- The respondent in the appeal has two months after the date of service of the notice to serve on the appellant and file a notice of their intention to resist the appeal.
- The appeal case is normally fixed for hearing within a year of receipt of the notice to resist the appeal from the respondent.
- Judgment from the Supreme Court may take several years.

As a final resort, where a taxpayer or the MRA is dissatisfied with a judgment of the Supreme Court on a point of law, an appeal may be lodged to the JCPC in the UK. The aggrieved party shall have to apply for leave to appeal within 21 days from the date of the Supreme Court judgment.

## 4.3 Relevance of Evidence in Judicial Tax Litigation

Any documentary evidence is generally annexed to the statement of case filed by either party (as further described in 4.2 **Procedure for Judicial Tax Litigation**). Although the law allows for the production of witness statements to the statement of case, in practice, all witnesses are heard at the hearing.

The hearing before the ARC remains a trial on the basis of the evidence adduced. Direct and cross-examination of facts and expert witnesses is standard in all civil tax litigation. However, expert witness reports are particularly common in cases involving complex issues, such as transfer pricing.

It is important to note that the ARC typically does not consider evidence that was not presented to the MRA during the audit or objection stage. The reason for this is that the role of the ARC is to review a notice of determination by the DG of the MRA in order to determine whether the MRA was right in its decision based on information that was available to it and not to consider all evidence (including new evidence) anew where such evidence was never presented before the MRA by the taxpayer. This approach has been confirmed by case law. In exceptional cases, the ARC has allowed the production of evidence (for example, a transfer pricing report) where the evidence was deemed necessary and helpful in determining the outcome of the case (see 4.5 **Strategic Options in Judicial Tax Litigation**).

Civil rules regarding evidence are otherwise generally applicable.

## 4.4 Burden of Proof in Judicial Tax Litigation

As a general rule, tax litigation adheres to the principle that the party who asserts must prove. A taxpayer appealing an assessment of the MRA bears the burden of proof (*Société Boodheea & Cie, v ARC & Anor* [2017 SCJ 193]). There are exceptions to this rule, including where the MRA is alleging tax avoidance or fraud. The burden of proof then usually lies with the MRA in proving its allegations.

In criminal tax litigation cases, the prosecutor usually has the burden of proving that the taxpayer has committed a tax offence.

## 4.5 Strategic Options in Judicial Tax Litigation

The strategic options to consider during tax litigation depend heavily on the case's factual background. There are, however, several general considerations to bear in mind regarding the conduct of a tax litigation case, including the following.

- The mandate of the ARC is to review the notice of determination issued by the OADR department or some other decision or claim of the MRA in light of the representations filed with the ARC by the taxpayer. Once the representations are filed, no new representation may be added (except in rare cases, such as when the issue relates to a pure question in law). Taxpayers should, therefore, ensure that all issues in dispute are set out in the representations filed with the ARC. This includes grounds of objections that the MRA did not address in their determination.
- As indicated in 4.3 **Relevance of Evidence in Judicial Tax Litigation**, documentation not produced by the taxpayer at the audit or objection stage will usually not be allowed before the ARC. It is therefore crucial that a taxpayer is properly advised (and supported) by a tax adviser or tax counsel pre-litigation to avoid the possibility of an appeal failing due to the non-production of key documentation at the audit or objection stage.
- In complex cases (particularly on transfer pricing issues), taxpayers may choose to present any expert witness report that may provide an independent assessment of the facts and evidence in the case. Any indication as to whether there will be an expert witness/report should ideally be made prior to fixing the hearing date or, if possible, indicated in the case statements. The ARC has previously admitted the use of expert reports even if they were not produced at the OADR department level, especially where the expert report pertains to a live issue and was produced at an early stage (see *Peak Trading Overseas Ltd v DG* (ARC/IT/337-19)). At the hearing, the expert should be present so the other party has the opportunity to cross-examine them.
- A variety of other factors may influence a taxpayer's choice of whether or not to litigate. These include the presence (or absence) of judicial precedents on any relevant issue, whether it can pay the prescribed amount before commencing litigation, and the litigation costs involved in defending an assessment. Settlement (through the ATDR panel or otherwise) is to be envisaged by the taxpayer if it is more favourable to settle matters when taking into account the evidence, the prospects of success, and the strengths and weaknesses of the case.
- In cross-border cases where witnesses may be travelling from abroad, it is recommended

that requests be made in advance to the ARC for the case to be heard on consecutive days to mitigate the time and costs involved in litigation.

## 4.6 Relevance of Jurisprudence and Guidelines to Judicial Tax Litigation

As a common law jurisdiction, jurisprudence is always relevant in litigation in Mauritius, including tax litigation. Supreme Court decisions are binding upon all lower courts and tribunals in Mauritius. The ARC regularly refers to decisions made by the Supreme Court or the JCPC on Mauritian tax cases.

Although not binding in Mauritius, the ARC or the Supreme Court of Mauritius usually consider decisions from courts of other jurisdictions that have similar provisions to the Mauritian equivalent provisions (such as the United Kingdom, New Zealand, or Australia) to support their rulings or judgments.

In light of Mauritius implementing the BEPS minimum standards and joining the OECD's Inclusive Framework, it is hoped that the ARC and Supreme Court will now also consider the OECD reports, commentaries and guidelines (such as the OECD Transfer Pricing Guidelines).

## 5. Judicial Litigation: Appeals

### 5.1 System for Appealing Judicial Tax Litigation

There are three tiers to the judicial tax litigation procedure in Mauritius (see 4.2 Procedure for Judicial Tax Litigation):

- a taxpayer must generally appeal to the ARC in relation to any assessment made by the

MRA (generally after the administrative objection stage);

- decisions from the ARC decreed as being erroneous in law can be appealed before the Supreme Court by way of case stated; and
- any appeal against a judgment of the Supreme Court (where the value of assessment exceeds MUR10,000) normally lies with the JCPC.

### 5.2 Stages in the Tax Appeal Procedure

Please see 4.2 Procedure for Judicial Tax Litigation.

### 5.3 Judges and Decisions in Tax Appeals ARC

The ARC is the first instance of appeal and operates as a quasi-judicial body. It consists of a Chairperson, three Vice-Chairpersons (barristers appointed by the Public Service Commission) and other members (who are not members, officers or employees of the MRA) with different areas of expertise, such as economics, taxation or business administration. A panel of the ARC usually consists of the Chairperson or a Vice-Chairperson and two members.

### Supreme Court

In the second instance, appeals of tax cases are generally heard by two judges of the Supreme Court.

### JCPC

The JCPC is the third and final appeal instance in tax matters. It is composed of judges whom the King of England appoints on the advice of the British Prime Minister. The panel of judges for Commonwealth matters is typically composed of five judges and three judges for other matters.



## 6. Alternative Dispute Resolution (ADR) Mechanisms

### 6.1 Mechanisms for Tax-Related ADR in This Jurisdiction

Two main ADR mechanisms are provided for in Mauritius's tax laws: the referral of disputes to the ATDR panel or the resolution of disputes by way of mediation.

#### The ATDR Panel

The ATDR panel was set up as a fast-track system to deal with applications for review made by any person who has objected to an assessment or lodged a case before the ARC, Supreme Court or JCPC, subject to certain conditions being met (see **6.5 Further Particulars Concerning Tax ADR Mechanisms**). Upon the taxpayer's application to the MRA, their case is referred to the ATDR Panel within one month of receipt. The ATDR panel is required to issue a decision within six months of being referred a case, leading the MRA to amend or maintain the assessment in conformity with the decision of the ATDR panel.

The ATDR panel is useful in cases where taxpayers wish to find an amicable settlement to the tax dispute. It is not a forum for the case to be heard on its merits nor to present arguments in law. In practice, the ATDR panel would usually expect some tax payable, often no less than the amount (10% or 15%) the taxpayer has already paid when lodging their objections or representations with the OADR department or the ARC, as the case may be.

#### Mediation

The mediation of tax disputes has recently been introduced in the tax laws of Mauritius in an attempt to encourage mutually acceptable agreements. A case's referral for mediation

depends on the Chairperson of the ARC and the mutual agreement of both parties.

During mediation, the Chairperson or Vice-Chairperson acts as mediator, facilitating a settlement between the parties in a fair and reasonable manner. If no agreement is reached, the Chairperson or Vice-Chairperson shall proceed with the hearing of the representations.

### 6.2 Settlement of Tax Disputes by Means of ADR

#### The ATDR Panel

The ATDR panel consists of a director of one of the departments at the MRA, who serves as Chairperson, a senior officer of the MRA chosen by the DG, and a law practitioner appointed by the MOFED. All three have not previously been involved in the dispute.

The ATDR panel usually reviews the application enclosing information already available from the applicant's case at the ARC, Supreme Court, or the JCPC, but supplementary information may be requested from the taxpayer. In practice, discussions before the ATDR panel favour negotiating the assessed amount to settle the claim rather than evaluating the merits of the case *per se*.

Any settlement agreement drafted shall cover all items in dispute and contain the terms and conditions of the tax liability settlement. The settlement agreement is a full and final settlement of the tax dispute in question and is binding on both parties. However, it cannot serve as a precedent in other cases. Where a settlement is reached before the ATDR panel, the objection or appeal is withdrawn before the OADR department, ARC or other courts (as the case may be).

## Mediation

Generally, over the span of one sitting, a tax mediation sees the parties collaborate to settle the dispute, with the assistance of the Chairperson or Vice-Chairperson of the ARC as mediator. If reached, a settlement agreement shall cover all issues in dispute and the terms of the settlement of the tax liability. The settlement agreement is final and binding on the parties and must be signed by both parties in the presence of the mediator and filed with the ARC. The representations shall be withdrawn subsequently. If no agreement is reached, the Chairperson or Vice-chairperson shall proceed with the hearing of the representations.

### 6.3 Agreements to Reduce Tax Assessments, Interest or Penalties

Please see 6.1 Mechanisms for Tax-Related ADR in This Jurisdiction and 6.2 Settlement of Tax Disputes by Means of ADR for the framework and procedure for agreements to reduce tax assessments through mediation.

Outside formal mediation and the ATDR panel, the taxpayer may also reach a settlement with the OADR department. In this case, the MRA will typically issue a revised assessment, and the taxpayer will then agree to withdraw their case before the ARC.

A request may also be made to the DG of the MRA to waive part or all of the interest and penalties. The power to waive is at the sole discretion of the DG of the MRA. In practice, the DG of the MRA may be more inclined to waive part or all of the interest and penalties where the taxpayer has co-operated in good faith with the MRA to reach an out-of-court settlement.

## Tax Arrears Settlement Scheme (TASS)

From time to time, MOFED may introduce a TASS, which is a scheme designed for a complete waiver of any penalties and interests applicable to any tax arrears due under the ITA, VATA or the Gambling Regulatory Authority Act 2007 after an assessment has been issued or a return submitted. The waiver of the interest is conditional upon the full payment of the tax arrears (existing for a prescribed period) by a prescribed date and the withdrawal of any case before the ARC, Supreme Court or JCPC. For the financial year 2024/2025, taxpayers who would like to benefit from a 100% waiver of penalty and interests under TASS would be able to make an application for such waiver, provided the application is made on or before 31 March 2025, and tax arrears are settled in full by 26 June 2025 at the latest.

### 6.4 Avoiding Disputes by Means of Binding Advance Information and Ruling Requests

#### Income Tax/VAT Ruling

A taxpayer deriving income or taxable supplies may apply to the DG to make a ruling on a tax issue under the ITA or VATA. The DG shall provide a ruling within 30 days of the receipt of an application. In practice, this timeline is rarely respected, as the MRA frequently has requests for clarification or requires additional documentation in order to consider the application for rulings. A ruling is binding on the MRA, except in cases where there is a material difference between the facts relating to the transaction and the details contained in the application.

The effectiveness of the ruling system in ensuring certainty and avoiding disputes in Mauritius is evidenced by the relatively low number of tax disputes that are brought before the ARC and the Supreme Court pertaining to matters that



have been the subject of an MRA ruling. This suggests that taxpayers are able to obtain a clear understanding of the tax treatment of their transactions and arrangements through the ruling system and are able to plan their affairs accordingly to avoid potential disputes. However, it is important to note that a tax ruling is not binding on the taxpayer, who may choose to take a different position if it does not agree with the stance of the MRA.

## 6.5 Further Particulars Concerning Tax ADR Mechanisms

### ATDR Panel

Taxpayers who have lodged objections or filed representations at the ARC or appealed to the Supreme Court or the JCPC in relation to cases of income tax, VAT, environment protection fee, certain customs cases or gambling tax are eligible for review by the ATDR panel. The amount of tax payable under dispute should exceed MUR5 million, and the applicant is precluded from having been convicted of any criminal offence under the Dangerous Drugs Act 2000, the Financial Intelligence and Anti-Money Laundering Act 2002, the Prevention of Terrorism Act 2002 or the Prevention of Corruption Act 2002. It should also be noted that the grounds specified in the application should not be different from those in the notice of objection or appeal.

The taxpayer shall be informed of the ATDR panel's decision within six months of the date the case was referred to the ATDR Panel.

There is no specific cap on the value of claims that can be resolved through the ATDR panel in Mauritius, other than the threshold value of MUR5 million for eligibility to apply to the panel. The decision of the ATDR panel is not binding on the taxpayer, who may choose to continue with their objection or appeal (as the case may be).

As described in 6.1 Mechanisms for Tax-Related ADR in This Jurisdiction and 6.2 Settlement of Tax Disputes by means of ADR, the objective of the ATDR panel is for parties to reach an amicable settlement. Its purview is not to assess a case on its merits nor to hear arguments in law.

### Mediation

The taxpayer must have lodged representations at the ARC to be eligible for mediation. Mauritian tax legislation does not provide a specific timeline or limitation regarding the claim's value or type for mediation.

Any settlement agreement reached shall be final and binding on both parties without any chance of appeal. One mediator shall assist the parties, namely the Chairperson or Vice-chairperson of the ARC. The Chairperson has the statutory power to make rules for the conduct of the mediation meeting. There is no statutory requirement for mediation "*decisions*" to be based on strict law. It is to be noted that the terms of a settlement agreement will not be considered as a binding precedent in relation to other cases.

## 6.6 Use of ADR in Transfer Pricing and Cases of Indirect Determination of Tax

There is no formal ADR mechanism for settling transfer pricing disputes with the tax authorities in Mauritius. Mauritius has no transfer pricing regulations, although there is a broadly worded arm's length provision under the ITA (Section 75 of the ITA). Transfer pricing disputes are a fairly novel occurrence in Mauritius, with limited case law at both the ARC and Supreme Court levels.

However, taxpayers may opt for the mutual agreement procedure (MAP) under applicable treaties or apply to the ATDR panel to reach a settlement with the MRA.

## 7. Administrative and Criminal Tax Offences

### 7.1 Interaction of Tax Assessments With Tax Infringements

In practice, most disputes between taxpayers and the MRA do not escalate to criminal offences. When the MRA suspects that a taxpayer lacks sufficient evidence to support their annual returns or has significantly understated their taxable income, it typically imposes a higher “*assessing penalty*” in the notice of assessment instead of pursuing criminal charges. The MRA follows its own statement of practice (SP 12/16) regarding penalties, which usually amount to 50% of the assessed amount in cases of suspected tax fraud.

The MRA’s Legal Services Department (LSD) handles the prosecution of tax offence cases. The DG refers enquiries to the LSD when an offence is suspected under Mauritian tax legislation. LSD enquiring officers have the same powers as police officers for the performance of their duties, aside from any powers to arrest. Where an enquiring officer has grounds to reasonably suspect a person of having committed an offence under any revenue law, they shall lodge information before a Magistrate.

According to the latest annual integrated report of the MRA for 2022/2023, 32% of prosecutions were initiated against taxpayers who failed to submit Income Tax and VAT returns, and 16% were initiated against taxpayers for Miscellaneous customs and excise offences.

### 7.2 Relationship Between Administrative and Criminal Processes

In practice (and although both civil and criminal cases may technically run concurrently), the

prosecutor would wait for a civil case to be concluded before initiating a criminal case.

A criminal case is not required to be suspended until the tax due is determined under a civil case. The DG retains the discretion to stay any assessment or claim intended to be raised where the LSD has initiated proceedings in respect of certain offences under the revenue laws or where a money laundering offence may have been committed in respect of these offences and the matter has been referred to the Independent Commission Against Corruption for investigation.

Cases that have previously been referred for criminal prosecution involve customs and excise offences (including false entry, failure to declare, wrong classification, false certificate), failure to pay VAT or income tax, trading without a licence under the Excise Act 1994 and failure to keep or produce books and records.

### 7.3 Initiation of Administrative Processes and Criminal Cases

Criminal tax cases are usually initiated after the conclusion of a civil case or after sufficient corroborating elements are found to prove “*realistic prospect of a conviction*” of a charge.

While civil tax assessments usually carry interest and penalties until the tax due is paid, criminal offences generally attract more stringent punishments, including fines and imprisonment.

### 7.4 Stages of Administrative Processes and Criminal Cases

Mauritian tax laws provide for a three-tiered appellate mechanism against assessments raised by the MRA. There is no prescribed procedure for criminal tax cases. Proceedings pertaining to criminal tax cases generally follow the Criminal Code. The Criminal Code does not pre-

scribe any special procedure/treatment for tax evasion cases but follows the general procedure applicable in respect of criminal offences.

In practice, the DG refers a case to an LSD enquiring officer where a suspected offence under any revenue law is involved, who then carries out the enquiry. Where a person is reasonably suspected of having committed an offence under Mauritian tax legislation, information may be lodged before a District Court, the Intermediate Court, or the Supreme Court. The Director of Public Prosecutions has a discretionary power to determine the right venue regarding certain offences.

## 7.5 Possibility of Fine Reductions

As a general rule, a taxpayer cannot benefit from any reduction in potential fines in criminal cases based on the upfront payment of civil additional tax assessments, subject to any offence compounding (see 7.6 Possibility of Agreements to Prevent Trial).

## 7.6 Possibility of Agreements to Prevent Trial

Offences committed by a person under certain revenue laws (including the ITA and VATA) may be compounded where that person agrees in writing to pay an amount acceptable to the DG representing any income tax unpaid and an amount of penalty not exceeding the maximum penalty imposed under the relevant revenue law for such offence.

If an offence is compounded, the amount paid by the person shall be deemed to be tax-assessed and recoverable as income tax. No further proceedings shall be taken with respect to the offence so compounded against the person. However, the person shall not be relieved of their liability for payment of any income tax due.

## 7.7 Appeals Against Criminal Tax Decisions

Where the person has been convicted before the District Court or the Intermediate Court, an appeal shall lie, to the Supreme Court, while a person convicted before the Supreme Court at first instance may appeal against their conviction or sentence to the Court of Criminal Appeal.

## 7.8 Rules Challenging Transactions and Operations in This Jurisdiction

No known criminal tax cases pertaining to any GAAR provisions in Mauritius exist. However, the MRA has issued assessments pursuant to arm's length and other tax avoidance provisions in a number of civil tax cases. Criminal procedure is rarely invoked, even in cases of tax avoidance.

# 8. Cross-Border Tax Disputes

## 8.1 Mechanisms to Deal With Double Taxation

Cases of double taxation are generally resolved through the mechanism provided by the relevant double tax treaty under the MAP mechanism. There have been a handful of cases where the MAP has been invoked by taxpayers who are engaged in litigation with the MRA.

It is difficult for a taxpayer to use domestic litigation for relief against double taxation, except where domestic legislation provides a specific mechanism for relief, such as claiming credit for foreign tax paid.

At the time of publication, measures under the MLI have not yet been invoked or used in Mauritius.

## 8.2 Application of GAAR/SAAR to Cross-Border Situations

Mauritius has specific and general anti-avoidance provisions under certain revenue laws (including the ITA and VATA). There is generally limited jurisprudence on those provisions and even less so in relation to cross-border situations covered by bilateral tax treaties. Bilateral tax treaties have not prevented the MRA from applying GAAR provisions.

Given the novelty of the PPT in covered tax agreements with Mauritius under the MLI and the rapidly evolving trend of tax litigation in Mauritius, it is difficult to anticipate how the MRA will apply those amendments in practice.

## 8.3 Challenges to International Transfer Pricing Adjustments

The MRA could challenge a company's transfer pricing method based on both domestic provisions and double tax treaty provisions. At the date of publication, there are no published rulings or judgments challenging international transfer pricing adjustments, although it is understood that a number of cross-border cases are currently pending at the ARC.

## 8.4 Unilateral/Bilateral Advance Pricing Agreements

Mauritian tax legislation does not currently cater to advanced pricing agreements.

## 8.5 Litigation Relating to Cross-Border Situations

The key areas for special attention for tax auditors are intra-group transactions, claims for foreign tax credits and permanent establishment issues. These questions, therefore, generate the most litigation in cross-border situations.

Litigation could be mitigated by ensuring the taxpayer has all supporting documentation when filing tax returns. For instance, evidence of foreign tax paid is necessary in claims for foreign tax credit. In relation to intra-group transactions, although there are no transfer pricing regulations in Mauritius, robust documentation in support of a particular pricing has become essential in practice.

## 9. State Aid Disputes

### 9.1 State Aid Disputes Involving Taxes

This is not applicable as Mauritius is not an EU member state.

### 9.2 Procedures Used to Recover Unlawful/Incompatible Fiscal State Aid

This is not applicable as Mauritius is not an EU member state.

### 9.3 Challenges by Taxpayers

This is not applicable as Mauritius is not an EU member state.

### 9.4 Refunds Invoking Extra-Contractual Civil Liability

This is not applicable as Mauritius is not an EU member state.

## 10. International Tax Arbitration Options and Procedures

### 10.1 Application of Part VI of the Multilateral Instrument (MLI) to Covered Tax Agreements (CTAs)

Mauritius has opted to include "final offer" arbitration in Mauritius' covered tax agreements, except to the extent that competent authorities mutually agree on different rules or where other

contracting jurisdictions have reserved their right to adopt the “*independent opinion*” approach as the default type of arbitration process, pursuant to Article 23(2) of the MLI.

## 10.2 Types of Matters That Can Be Submitted to Arbitration

Under the MLI, Mauritius has reserved the right to exclude cases involving the application of Section 90 of the ITA (GAAR) or cases involving criminal offences.

## 10.3 Application of Baseball Arbitration or the Independent Opinion Procedure

Mauritius has opted for the baseball arbitration method (also known as the final offer arbitration or the last best offer arbitration). The reason for this option is unknown.

## 10.4 Implementation of the EU Directive on Arbitration and/or the MLI

It is too early to comment on the application of the arbitration option under the MLI with respect to Mauritius.

## 10.5 Existing Use of Recent International and EU Legal Instruments

Other than a handful of MAPs, the use of international instruments to settle tax disputes in Mauritius is a fairly novel occurrence.

## 10.6 New Procedures for New Developments Under Pillars One and Two

As an engaged member of the OECD Inclusive Framework, Mauritius is committed to implementing Pillars One and Two. Given the complexity of the subject matter of Pillars One and Two and the ongoing discussion at an international level, the extent to which the implementation of those two pillars will prevent and resolve tax disputes in Mauritius is unclear at this stage.

## 10.7 Publication of Decisions

In principle, information given and received during arbitration is treated as confidential.

## 10.8 Most Common Legal Instruments to Settle Tax Disputes

Depending on the matter at stake, taxpayers may choose the most suitable legal instrument to settle their cross-border tax disputes. This may include:

DTTs that include an arbitration clause (eg, the DTT with the Congo and Monaco in relation to unresolved issues under the MAP mechanism); or

DTTs impacted by the MLI.

## 10.9 Involvements of Lawyers, Barristers and Practitioners in International Tax Arbitration to Settle Tax Disputes

In principle, taxpayers are allowed to hire independent professionals to represent them during arbitration proceedings.

# 11. Costs/Fees

## 11.1 Costs/Fees Relating to Administrative Litigation

Other than the 10% of the assessed amount to be paid in order to lodge objections with the OADR department (see 3.1 Administrative Claim Phase), there are no costs to litigate at an administrative level.

## 11.2 Judicial Court Fees

The taxpayer may choose to be represented by counsel at the ARC. If the ARC gives a favourable ruling, the taxpayer is not able to recoup any legal fees incurred (however, it will be refunded

any initial amounts paid to the MRA, together with interest at the repo rate).

Any appeal before the Supreme Court requires the appointment of an attorney and counsel.

As a general rule, costs are borne by the losing party and would include all reasonably necessary expenses incurred by the winning party. However, the Supreme Court has the discretionary power to award costs as it sees fit by way of a costs order in accordance with established principles and in relation to the facts of the case and any relevant grounds connected with the case (*Pokun Ismael v Kwong Soon Ten Sing* [1998 SCJ 85]).

## 11.3 Indemnities

No indemnities are provided for under Mauritian tax legislation if the court decides that the tax assessment is to be set aside. The MRA and any of its members or employees enjoy statutory immunity from civil and criminal liability in the performance of their duties in good faith. A civil suit against the MRA shall only be possible for any acts done in bad faith or any “*faute lourde*” (*Dooboree K. v The State of Mauritius & Anor* [2020 SCJ 207]).

## 11.4 Costs of ADR

There are no court fees to be paid for the ADR mechanisms at the ARC or MRA.

## 12. Statistics

### 12.1 Pending Tax Court Cases

The latest report from the Director of Audits on the accounts of the government of Mauritius for 2023–2024 states the following (extracts reproduced below):

- As of 30 June 2024, the arrears of revenue were at RS49.5 billion, of which RS12.7 billion were collectable, and RS36.8 billion represented the amount not yet settled/pending cases. An increase of some RS5.6 billion was noted in the total outstanding debts as compared to RS43.9 billion as of 30 June 2023. Out of the RS36.8 billion of the amounts not yet settled/pending cases, RS26 billion, representing 71%, were under examination at the ARC as of 30 June 2024.
- The past four years have shown that the total revenue for income tax collected has grown significantly, increasing by some 119% from RS41 billion in the financial year 2020-21 to RS89 billion in the financial year 2023-24. This indicates substantial growth in revenue collection during this period. Meanwhile, revenue arrears have also increased by 53%, from RS32 billion in the financial year 2020-21 to RS49 billion in the financial year 2023-24.
- Despite the figures showing an increase in revenue collection, the MRA still faces a challenge in collecting overdue taxes.

### 12.2 Cases Relating to Different Taxes

There are no official statistics regarding the number of cases initiated and terminated relating to Mauritius’ different types of taxes.

### 12.3 Parties Succeeding in Litigation

For the financial year ending 30 June 2021, ten cases (out of 1,299 cases) were ruled in favour of the MRA by the ARC, and the Supreme Court ruled in favour of the MRA in three cases (out of five cases determined during the year).

**Contributed by:** Johanne Hague, Gaelle Angoh Li Ying Pin, Medina Torabally and Béatrice Phanjoo,  
**CMS Prism in association with CMS**

## 13. Strategies

### 13.1 Strategic Guidelines in Tax Controversies

As mentioned in **2.6 Strategic Points for Consideration During Tax Audits** and **4.5 Strategic Options in Judicial Tax Litigation**, having robust documentation in place, together with the support of an experienced tax adviser or counsel, has become essential in a tax controversy in Mauritius.