

# **2023 ASSESSMENT REVIEW COMMITTEE TAX COMPENDIUM**

**Issue:**  
**Lack of precise reasons for filing representations**

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# Tsip Sol Wong Ng v Registrar General

## ARC/RG/151-21 (23.03.23)

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### FACTS

The representative of the applicant (a property valuer) wrote the following grounds as “precise reasons for representations”:

*“Already given before the Objection Unit. N.B. 1) There were 2 adjacent cases; one already settled before the Committee. 2) The Registrar General Department has already sent the case to the Committee.”*

### RULING

Although the Committee considered that it might have held that there was no representation on record, in the interests of justice, it invited the applicant’s representative to clarify the reasons for representations and considered the case based on reasons found in the property valuer’s valuation report. However, on the merits, the Committee found no reason to interfere with the valuation of the Registrar General to ascribe a different value to the applicant’s property.

# GE Mauritius Infrastructure Holdings Ltd v Director General, MRA ARC/IT/452-18 (20.04.23)

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## FACTS

The applicant company, holder of a GBC licence, filed representations with the Committee concerning the computation of credit for foreign tax under regulation 8(3) of the Income Tax (Foreign Tax Credit) Regulations 1996.

## RULING

The Committee held that the taxpayer has failed to comply with the statutory requirements regarding the representations and the Statement of Case given that the document which was to provide precise reasons for the representations failed to disclose any precise reasons asking for a review and the Statement of Case had not been set out in the form and the order set by section 19(1A) of the Mauritius Revenue Authority Act 2004 (the “**MRA Act**”).

The Committee drew attention to the fact that taxpayers should respect two separate statutory obligations (to file precise reasons asking for a review and to file a Statement of Case) and noted that the taxpayer cannot merge both documents together. Although the Committee proceeded to consider the document containing “Reasons for Representations”, it was deemed too vague to constitute proper grounds of representations in accordance with section 19(1) of the MRA Act.

# COMMENTARY

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These two cases illustrate the importance of proper grounds of representations being filed in accordance with section 19 of the MRA Act.

However, the authors consider it worthwhile to distinguish the two cases.

In the case of *Sip Sol Wong Ng (supra)*, the applicant had quite simply not specified any reasons for review, instead merely indicating “already given before the Objection Unit”. Upon invitation from the Committee, the property valuer indicated that the reasons were to be found “in his valuation”. The Committee generously noted that “*although this is clearly not in order, in the interest of justice, the Committee will nonetheless consider the case on the merits on that basis*”.

In the case of *GE Mauritius Infrastructure Holdings Ltd (supra)*, the authors make the following observations:

- the case appears to have been fully heard on its merits, without the MRA raising any objection whatsoever on the nature of the grounds of representations before the Committee. As the Committee commented “*It is a matter of regret that the State Law Officer assisting the MRA has not raised any objection as to the reasons/grounds of Representation*”. It would therefore seem that the Committee set aside the application for reasons that were not raised by either the applicant or the respondent;
- the Committee took a similar stance as in the case of *Betonix Ltd v Director General, MRA* (see [Issue 1](#) of the Tax Compendium) whereby it remarked that the obligation to file grounds of representation is distinct and separate from the obligation to file a statement of case and that “*it is certainly not for the Assessment Review Committee to guess which document and which part of which document contains the specific reasons for asking for review*”. The Committee referred to the Supreme Court case of *Rosunally B.B & Ors v the Mauritius Revenue Authority & Anor [2012] SCJ 380* (where the taxpayer had filed a blank representation form) in support of its reasoning;

# COMMENTARY

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- As to the vagueness of the grounds, the Committee referred to *Ramgolam B v The State* [2017] SCJ 163 and *Ah Sue M.A.C.C. v State of Mauritius* [2019] SCJ 88 (both appeals before the Supreme Court of Mauritius) in support of its finding that “*although it is not for the Committee to go and look for the grounds of Representations to which the vaguely “see attached” refers, the reasons for Representations in Annex I, even if taken to be the grounds of Representations, are vague and do not refer to the determination of the MRA...*”; and
- It remains to be seen whether the recent obiter comments in the case of *Mode Yellow Holdings Limited v The Director-General, Mauritius Revenue Authority & Anor* [2024 SCJ 70] will result in any change in approach of the Committee as regards how it deals with procedural issues: “*However, we are duty bound to observe that the Assessment Review Committee was set up to replace the then Tax Appeal Tribunal, back in 2006. As the name indicates, it is a committee and is presumably less formal than a tribunal and necessarily much more relaxed than a court of law. Whilst courts themselves are regularly looking towards being less rigid and formalistic when it comes to procedure, and not allowing fairness to be sacrificed in the name of formalism, it is not ideal for a committee as described above to function with more formalism than tribunals or courts*”.



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