

2023 ASSESSMENT REVIEW COMMITTEE TAX COMPENDIUM

Issue:
Repetition of grounds of objection before the ARC

Varcity Mauritius Ltd v Director General, MRA

ARC/VAT/164-19 (12.01.23)

FACTS

The grounds of representations lodged before the Committee replicated the two questions that had been previously submitted before the MRA at objection stage. The MRA argued that the grounds of representations were misconceived since they were just a rehash of the grounds of objections and that they were too vague having no bearing on the Notice of Determination (“**NoD**”). The taxpayer argued that there was no legal obligation to have the grounds of representations drafted by a lawyer and that, having regard to the MRA’s Statement of Reply, it could not be said that the grounds were too vague to the extent that the MRA did not know the case it had to meet. It was the contention of the taxpayer that particulars could be furnished if necessary subject to the discretion of the Committee.

RULING

The Committee commented that the grounds of representations were more appropriate for a tax ruling application given that they were drafted in general terms. Although the Committee noted that the two questions constituted proper grounds before the MRA at objection stage, it held that they lacked the required specificity to challenge the NoD. The Committee also clarified that it would only exercise its discretion to allow a taxpayer to furnish particulars when the grounds of representations actually challenged the NoD properly but lacked clarity on a particular point, not where the grounds were drafted as general questions.

Enhanced Index Funds PCC v Director General, MRA ARC/IT/432-18 (12.05.23)

FACTS

The MRA raised a point of law to the effect that the taxpayer had failed to specify the reasons requesting a review of the NoD on the basis that, in the representations form, the reasons given were “*see attached*” and annexed was a Statement of Case attached to which were “grounds of representations” which, according to the MRA, were a rehash of the grounds of objection.

The taxpayer argued that the MRA had failed to abide by its duty to respond to each and every ground of objection under section 7C of the Mauritius Revenue Authority Act 2004 (“**MRA Act**”) when it failed to address the issue of calculation of the credit on deemed foreign tax at objection stage. The taxpayer further contended that it was not precluded from repeating the grounds of objection when the MRA had misunderstood them or failed to take them into consideration in its NoD. The taxpayer acknowledged the similarity between the grounds of objection and the grounds of representation and attributed the similarity to the fact that they had not been drafted by a lawyer. Relying on **Eurofin v Director General, Mauritius Revenue Authority ARC/IT/572-14**, the taxpayer argued that the Committee could exercise its discretion to allow the taxpayer to furnish particulars, if necessary.

RULING

The Committee first took issue with the fact it was being referred to a document (“*see attached*”) that was not properly marked and highlighted that “*where the Committee is expected to go and look for the grounds of representations and to finally find a document which contains information through which the Committee must sift to decide what amounts to grounds of Representations and what does not*” was not the proper way to draft representations. The Committee pointed out that the document that allegedly contained the grounds of representations did not bear any heading and was, for all means and purposes, drafted as a Statement of Case.

Enhanced Index Funds PCC v Director General, MRA (Cont.)

The Committee further noted that it was not bound by any of its previous rulings and each case had to be decided on its own merits. The Committee reiterated that if there were no grounds of representations or if the grounds did not constitute proper grounds, it would not exercise its discretion to allow the taxpayer to furnish particulars. In this instance, the taxpayer had failed to provide specific reasons when it referred the Committee to its Statement of Case because these were two distinct requirements that could not be merged into one. The Committee added that filing a Statement of Case did not dispense the taxpayer of the statutory requirement to specify the reasons it is asking for a review of the NoD. The following extract clearly demonstrates the Committee's position as to how grounds of representations should be drafted:

“The submission of Learned Counsel that a taxpayer may reiterate the grounds of objection is somewhat misconceived. The Committee reviews the Determination of the objection under Section 19(1) MRA Act. Now if a ground of objection has not been determined, Section 131B (8) of the Income Tax Act provides: “Where the objection is not determined within the period specified in Subsection (7) the objection shall be deemed to have been allowed by the Director General.

Obviously such a scenario will not come before the Committee. But it may be that a ground of objection may have been misunderstood by the MRA or has been wrongly determined. Even then the ground of Representations cannot be just repeating the ground of Objection. It must state clearly that the Objection Department has wrongly determined the said ground and how it was wrong. Just repeating the ground of objection will definitely contain the vagueness which S19(1) MRA Act prohibits by imposing precise reasons for asking for review”.

COMMENTARY

In line with a stricter stance recently taken as to the wording of grounds of representations, these two cases reinforce the necessity for representations to provide reasons for a review of the NoD issued by the Objection directorate, as opposed to merely repeating the same objections that were previously taken before it.

The authors agree that section 19(1) of the MRA Act requires the taxpayer to “specify” their reasons for asking the Committee to review the decision, notice, determination, or claim of the MRA. The role of the Committee is not (on a plain reading of the law) to review or re-examine the assessment.

The Committee makes some interesting points in the decisions that are worth highlighting:

(i) The fact that representations are not required to be drafted by a law practitioner appears to have no bearing on the test to be satisfied under section 19(1) of the MRA Act;

(ii) While the Committee acknowledges that it has discretion to request for particulars of grounds of representations, it clarifies that it will not do so where the grounds of representations do not amount to proper grounds of representations and do not seek to challenge the NoD. Of particular note, departing from its stance in the case of **Eurofin** (supra), the Committee notes that each case is to be decided on its own merits and that “*the Committee cannot be bound by a previous decision if that previous decision was wrong*” [The authors are unclear as to what the Committee is referring to as it is our understanding that the case of **Eurofin** did not proceed to appeal before the Supreme Court];

(iii) The Committee relies heavily on the Supreme Court case of **B.B. Rosunally & Ors v/s The MRA & Anor (2012) SCJ 380** in support of its conclusions. Indeed, the learned judges in Rosunally underscored the fact that procedural formalities should not be taken lightly and flouted easily: “*the statutory procedural requirement of providing written reasons in the representations form filed with the Assessment Review Committee cannot be assimilated to mere technicalities in an appeal process which can be bypassed or disregarded (.....)*”.

COMMENTARY

However, it is perhaps worth bearing in mind that in the case of **Rosunally**, the taxpayer had filed a blank representations form, with no reasons whatsoever given for lodging a case before the Committee. Should a nuance be drawn between the facts behind **Rosunally** and the case where written representations are filed but the language does not reflect the standard that would normally be applicable in an appeal to the courts?

(iv) It is still unclear how an aggrieved taxpayer ought to deal with circumstances where the grounds of objection appear not to have been dealt with at all by the MRA. One possible avenue to explore would be relying on section 7C of the MRA Act which requires the MRA “in respect of each ground of objection”, to specify the reasons for its determination. We will deal with the possible implications of non-compliance with section 7C in a subsequent issue of the Tax Compendium.

Please also refer to Issues No. 1 and No. 2 of the Tax Compendium as regards the Committee’s remarks on having to sift through documents to find the grounds of representations.

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