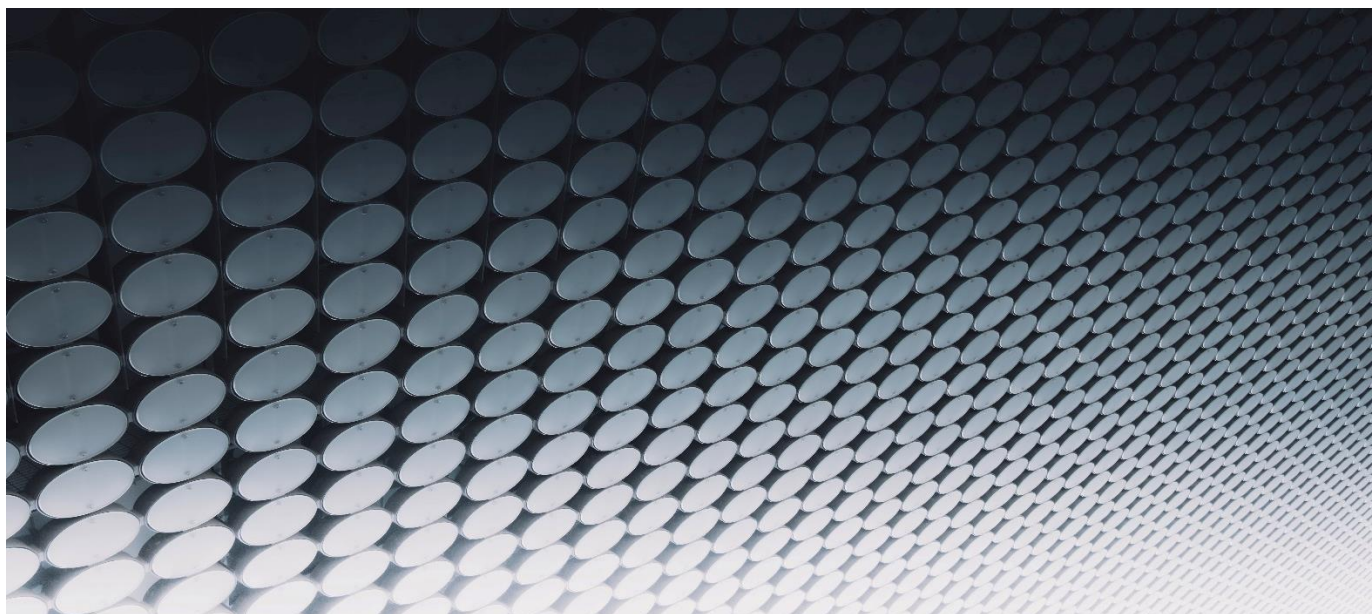


TAX CONTROVERSY DIGEST

RULES OF PROCEDURE



Introduction

Two recent cases have underscored the importance of the rules of procedure in tax litigation. The decisions are a reminder that parties in proceedings before the Assessment Review Committee (the “Committee”), similarly to proceedings before courts, are bound by their ‘pleadings’ i.e., the notices of assessment/determination for the Mauritius Revenue Authority (“MRA”) or representations, or objections for taxpayers.

Dimitris Papakostadinou v Director General of the Mauritius Revenue Authority

In *Dimitris Papakostadinou v Director General of the Mauritius Revenue Authority*, the taxpayer appealed to the Committee concerning a decision of the MRA to disallow the input VAT claimed on certain purchases made in 2018 and 2019. The taxpayer had applied for voluntary registration under section 16 of the Value Added Tax Act 1998 (“VATA”) on 25 February 2020, which came into effect on 17 May 2020. He subsequently claimed the input VAT in his first VAT return for the quarter ended June 2020.

The MRA disallowed the claim and imposed a penalty of Rs 200,000 on the basis that the invoices date more than 3 months prior to his registration for VAT, pursuant to sections 21(9) and 21(10) of the VATA. These sections limit the time frame to any claim of input tax to 3 months prior to compulsory registrations, under section 15 of the VATA. The MRA, in spite of the objection of the taxpayer, maintained its assessment on the basis of the above provisions. The Committee set aside the determination of the MRA on the basis that it was misconceived. More interestingly however, the Committee in its finding (rightly) underlined that it was unwilling to follow the suggestion of the MRA to consider a different basis of assessment other than the one expressed in the notice of determination.

De Guardia De Ponte v The Assessment Review Committee & the Mauritius Revenue Authority 2023 SCJ 21

In the Supreme Court judgment of *De Guardia De Ponte v The Assessment Review Committee & the Mauritius Revenue Authority 2023 SCJ 21*, an appeal by way of case stated of the decision of the Committee to set aside the representations of the taxpayer, the Supreme Court upheld the same principles of certainty, albeit in a different manner. The appeal essentially concerned whether the Committee was right in upholding the MRA's decision to lapse the objections lodged by the taxpayer on the basis that no specific and detailed grounds of objections were listed as required under section 131A (2) (a) of the Income Tax Act 1995 (the "TTA").

The taxpayer contested the decision of the MRA and lodged representations with the Committee referring to the titles of certain sections of the ITA, "income tax assessments out of time" and "parliamentary debate no.25 23.07.2002". The Committee found that the representations did not address the decision questioned by the MRA (i.e., the lapsing of the objections) but rather addressed the substance of the assessment raised on the taxpayer. The Supreme Court upheld the decision of the Committee noting that the Committee was not yet at the stage of reviewing the substance of the assessment raised by the MRA but rather only the decision of the MRA to lapse the objection.

Our view

The intransigence reflected in the recent Mauritian case law on the rules of procedure in tax controversy is a reminder that procedures (evidentiary or otherwise) before tribunals in Mauritius should be given sufficient weight and attention.

Section 19 of the Mauritius Revenue Authority Act 2004 ("MRA Act") provides that when a taxpayer appeals to the Committee, specific reasons for asking for a review of the determination must be listed. In line with the principle of certainty and fairness, section 20 of the MRA Act further adds that an aggrieved person and the Director-General of the MRA shall be entitled to take part in hearings, at which no issue shall be raised other than those set out in the representations made by the person (emphasis added).

Both the Committee and Supreme Court have in the respective cases adhered to these principles. It follows that if a taxpayer is precluded from raising new 'defences' after lodging its representations, the MRA similarly cannot find new bases of assessment after issuing the notice of assessment or determination.

Taxpayers should hence pay close attention to the drafting of their grounds of objection and written representations (ideally with the input of their counsel) in order to avoid the risk of having their case set aside and the unfortunate (or sometimes preventable) consequence of a potentially large tax bill, with no further recourse of appeal.

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About Prism Chambers

Prism Chambers is a full-service business law firm based in Mauritius which specialises in all aspects of revenue law.

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