

**AB v Mauritius Revenue Authority, R No. 96727 and Mauritius Revenue Authority v AB, R No. 97059****2015 SCJ 153****Apportionment of output VAT and VAT on sale of a business asset with mixed use****Background/ Facts**

AB was at all material times an attorney-at-law practising in Mauritius. On 01 October 2002, he became a VAT registered person. In September 2000, he purchased a private car which he sold in 2003. He made representation to the Assessment Review Committee ('ARC') against a decision of the MRA which resulted in the ARC concluding that VAT is chargeable as per the VAT Act on the sale price of the car and that the VAT charged (output VAT) on the sale price of the car should be apportioned to provide 60% business and 40% private on the basis that for income tax purposes 60% capital allowances are allowed for professional and business use of the car.

**Appeals**

The conclusion of the ARC led to the lodging of two appeals which the Court heard together. In the first appeal, AB is challenging the decision that VAT is chargeable in full on the sale of the car. In the second appeal, the MRA is claiming that the VAT Act does not provide any apportionment of output VAT on the sale price of the car leaving VAT to be payable in full.

**Apportionment**

The MRA claims that the VAT Act does not provide for any apportionment of output VAT in the case of a mixed use of capital item, i.e. business and private use. The Act provides that an apportionment may be made in respect of the deduction of input VAT as a credit only in the case where the goods are used to make 'both taxable and exempt supplies', which is not the case in the present matter which is on output VAT.

The Court found that output VAT could not be apportioned to 60% of the sale price of the car on the basis that the proportionate percentage which has been assigned for business purposes was 60%.

The second appeal succeeded and the Court held that the sale price of the car can only be subject in full for VAT.

**Sale of business asset with mixed use**

AB claims that VAT is not chargeable in respect of the sale of the car since it was not a supply made in the furtherance of his business. He reckons that in the exercise of his profession, his business consisted of the supply of legal services and did not concern the supply of goods, thus not making the sale of his private car a taxable supply. On the other hand, the MRA claims, by virtue of the VAT Act, that AB is bound to pay VAT on the sale price of the car being a taxable supply for a consideration in the furtherance of a business.

It was established that AB has, on its own accord, chosen to use the car both for private and professional business purposes and has incorporated the private car into his business assets as a capital item when he opted to claim capital allowances for income tax purposes in view of 'business' use of the car. As a result, the sale of the car became a taxable supply in the furtherance of a business within the purview of the VAT Act, and was thus unambiguously subject to VAT charge.

**Fiscal neutrality and double taxation**

The Court addressed a further argument on the concept of a neutral tax with the preclusion from making any deduction in respect of the input tax paid on the purchase of car, yet there is a charge to VAT in respect of the same car, without being allowed any credit for input VAT. The VAT Act does not allow for the deduction of any input VAT paid upon the purchase of a motor car thus giving rise indisputably to double taxation. But however unfair is the liability to double VAT taxation, i.e. on purchase and on sale of the same car, it is nevertheless legal and enforceable in view of the VAT Act.

The Court found no merit in the first appeal which is dismissed.