



## **Addressing fiscal evasion: A comparative analysis between Mauritius and South Africa**

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### **Abstract**

Fiscal or tax evasion is a global phenomenon depriving a country of the tax revenue which can be used for development projects of that country. Mauritius is not immune to tax evading fraudulent activities committed by perpetrators. In this pursuit, the government of Mauritius is undertaking various endeavours to tackle tax evasion and the aim of this study is to discuss both legal and other measures that are being taken by the Mauritius government to deal with tax evasion. The study intends to identify loopholes present in the existing legal and regulatory framework and will look at initiatives adopted by South Africa to combat tax evasion practices.

This research will discuss the issues underlying the practice of tax evasion and for this purpose, existing literature on the subject will be examined. The comparative study between the various measures adopted by Mauritius and South Africa will be carried out with the view to provide effective recommendations for Mauritius to achieve an adequate and appropriate legal and regulatory framework that would be more effective in tackling issues of tax evasion.

The methodologies for the research are in essence comprised of the black letter approach which will analyse the legal provisions relating to tax evasion in Mauritius and South Africa. Journals, books, reports amongst others will be also examined. A comparative study will also be carried out with respect to the laws on tax evasion of South Africa.

The paper aims at responding to the research objectives set out above. In particular, it is suggested that the laws of Mauritius should be amended to provide for some measures that have been adopted by South Africa to help the stakeholders concerned fight against tax evasion. In terms of legal provisions, the study is limited only to tax evasion offences set out in the Mauritius Income Tax Act, the other tax laws of Mauritius have not been considered in this research.

**Keywords:** tax evasion in Mauritius and South Africa, Mauritius tax laws and penalties, Mauritius government on tax evasion, Tax evasion penalties, tax evasion loopholes in Mauritius

### **1. Introduction**

Before delving into the concept of tax evasion, this part of the thesis will provide a brief definition of the term taxation. Various individual authors have defined “tax” but it is difficult to come up with an all-encompassing definition because there exist several types of taxes with differing requirements. Mesfin and Bogale (2013) believe that the most appropriate way to understand the term is to state the fundamental idea of a tax and then to denote its leading characteristics. Bastable (2017) <sup>[2]</sup> defines tax as a compulsory contribution of the wealth of a person or body of persons for the service of the public powers. This definition confirms that the amount, mode and time of levying, persons affected as well as the purposes of the tax money are all determined by the sovereign and its delegates. Most of the authors agree in common consensus that taxation has to meet the needs of government’s expenditure for the public. Similarly, De Parieu (2015) <sup>[5]</sup> defines taxation as the charge levied by the State on the property or labour of the citizens in order to provide for public expenses. Johannes (2009) <sup>[7]</sup>, Welham (2015) <sup>[12]</sup> and Zhang (2016) <sup>[13]</sup> Also defined tax as an obligatory imposition by government on income, expenditure, capital or assets with the aim to finance public expenditure.

### **1.1 Tax Evasion**

The Asprey Committee Report defines tax evasion as an act which is in contravention of the law whereby a person who derives a taxable income either pays no tax or pays less tax than he would otherwise be bound to pay. The OECD defines tax evasion as a term referring to illegal arrangements where liability to tax is hidden or ignored, i.e. the taxpayer pays less tax than he is legally obligated to pay by hiding income or information from the tax authorities.

The different ways in which tax evasion occurs have been highlighted by various scholars. For instance, the non-declaration or underreporting of income, financial assets and income from such assets held abroad to the domestic tax authorities are considered to be tax evasion techniques (Fuest and Riedel, 2009) <sup>[6]</sup>. In addition, tax evasion occurs when the taxable income, profits liable to tax or other taxable activities are concealed, the amount or source of income are misrepresented or tax reducing factors such as deductions, exemptions or credits are deliberately overstated. From this analysis, it is evident that tax evasion can be characterised by:

1. Either a willful and conscious intent to violate law; or
2. There is a negligence from the taxpayer to honor his tax obligations while disclosing his income.

## 1.2 Problem statement

The increase in the number of tax evasion around the world has led to a drastic fall in government revenue. Countries where tax evasion is very low, are achieving more economic growth compared to where it is very high due to the high loss of government revenue. Here the challenge that every country faces is to find a solution to deter tax evasion.

Each country has adopted their own measures against tax evasion. Taxpayers are constantly using new means to evade tax. Legislators are bringing new legislations to cater for those changes. However, the issue is to what extent they will be able to keep the law in line with the new emerging types of tax evasion.

### The research objectives are

- To examine the laws on tax evasion in Mauritius and South Africa;
- To discuss the other measures being undertaken by Mauritius and South Africa to combat tax evasion; and
- To identify loopholes in the legal and regulatory framework of Mauritius with respect to tax evasion and to make recommendation from the comparative study carried out to come up with more appropriate measures to tackle issues of tax evasion.

### This study will aim to address the following questions

- What is the current situation in Mauritius regarding tax evasion?
- What are the other measures undertaken by the Mauritius government to combat tax evasion?
- What are the loopholes in the taxation law of Mauritius with respect to tax evasion?
- To what extent are the laws of South Africa effective in combating tax evasion?
- What are the recommendations that Mauritius can inspire from South Africa to enhance its battle against tax evasion?

The first part of this paper has provided a general introduction on the topic followed by a deep study of its historical background and various definitions of tax evasion. The following parts of the paper are structured as follows: part 2 consists of a review of existing literature from international, national and South Africa on tax evasion. Part 3 will analyse the various laws and measures taken in Mauritius to combat the problem of tax evasion. Parts 4 will examine the various laws and measures taken in South Africa to combat the problem of tax evasion. Part 5 comprises of a comparative analysis of the laws and measures from the two jurisdictions and recommend which measures can be taken from South Africa to implement in the Mauritian tax system. Part 6 will finally conclude the paper. In terms of legal provisions, the study is limited only to tax evasion offences set out in the Mauritius Income Tax Act, the other tax laws of Mauritius have not been considered in this research.

## 2. Literature Review

### 2.1 National

The digest of Revenues Statistic 2006-2015 shows that the revenue collected in Mauritius by taxation had increased from

Rs 34.2 Billion in 2006/07 to Rs67.8 Billion in 2015. This figure is approximately twice that of 2006/07 (Mauritius Revenue Authority, 2016). This huge increase in revenue gives the impression that the MRA has been successful in its tax collection task. Similarly, a report by the director general of the MRA reveals that tax collections for 2013 were in line with the economic growth (Africamoney.info, 2018) <sup>[1]</sup>.

The latest update reveals that for the year 2016/17 the amount of tax revenue collected was Rs76.1 billion which represented an increase of 8.6% from that of the previous year. For the year of 2017/18, the objective fixed is Rs85.5 billion (Bhuckory, 2017) <sup>[3]</sup>. This method of using the amount of revenue collection to measure the performance of MRA shows that MRA is on the right track.

However, in 2013 a study conducted by the MRA targeting shops and supermarkets shows that there has been a shortfall of Rs200 million on a single item of VAT (Business.mega.mu, 2018) <sup>[4]</sup>. A further revelation was that revenue from VAT amount to 40% of the total tax revenue. Such loss of 40% will have a negative impact on the country if not remedy now. These in the future can lead to a decrease in the annual tax revenue. Another inquiry in 2013 reveals that barristers and the attorneys had annual revenue of Rs2 to 6 million but claimed that they were not liable for any tax payment (Business.mega.mu, 2018) <sup>[4]</sup>. These professionals had luxurious properties which they tended to transfer in the name of their relatives to escape tax liabilities. Similarly, in 2014 the MRA began an investigation which revealed that there has been tax evasion by businessmen for several years whose turnover often appear to be Rs2 million to 5million (Business.mega.mu, 2018) <sup>[4]</sup>. Hence, it is extremely important to note that despite an increase in the trend of the amount of tax revenue, there are still numerous cases of tax evasion. The method of monitoring the amount of tax revenue earned to determine the problem of tax evasion is an unreliable one in the case of Mauritius. To solve the above mentioned problems, the MRA has opened further investigation on specific individual if the MRA has any doubt on them.

Mauritius is continuously engaging in new ways to fight against tax evasion. In 2014, Mauritius has signed the international treaty for the combat of tax evasion created by the Organisation for Economic Co-operation and Development (OECD) which came to effect September 2018 (Lutte Contre L'évasion Fiscale: Maurice se conformera à l'échange automatique de renseignements, 2014). This treaty is known as the Automatic Exchange of information which provides an overview of the OCED and global foreign on transparency and exchange of information for tax purpose (OECD, 2018) <sup>[8, 9]</sup>.

Despite the above measures, during a press conference of 2014, Mr. Sudhamo Lall highlighted that the MRA is still facing difficulties to combat tax evasion (MRA—PAIEMENT DE LA TVA: Une loterie pour empêcher l'évasion fiscale, 2014). Thereupon, the MRA took further initiatives and launched the "VAT lucky draw scheme". This scheme concerned all the receipts which has a minimum VAT of Rs 75. The main aim of the scheme is to encourage the population to request a receipt for their transaction and the VAT registered person to provide a VAT receipt for all his transactions. In this way, the population will tend to impose

on the VAT registered person to provide a receipt thus solving the practice of evading tax by not providing VAT invoice (Mauritius Revenue Authority, 2017).

## 2.2 South Africa

The problem of tax evasion also had an impact on the South African economy. Due to the high number of non-compliance, the tax revenue forecast for 2017/2018 was revised downward by Rs 50.8 billion (PwC, 2018) <sup>[10]</sup>.

To cater for these tax evasions, the South African Revenue Service (SARS) has enacted the Common Reporting Standard (CRS) under the Tax Administration Act of 2011 (South African tax dodgers are screwed, 2015). This standard imposes reporting obligations on all South African Financial institutions. The CRS main aims are as follows: The reporting financial institutions must review their financial accounts to identify reportable accounts by applying due diligence rules and then report the relevant information (Sars.gov.za, 2018).

According to J. Snyman a specialist of AlphaWealth under the Tax Administrative Act the penalties for intentional tax evasion is 10% and 5% for tax evasion due to negligence (Screws on for SA tax evaders with offshore funds, 2015). Here, we can highlight that the Tax Administrative Act has

### 3.1.1 Income Tax Act 1995

Table 1

Offences relating to returns, books and records (section 147)	Any person who wilfully <ul style="list-style-type: none"> <li>▪ Submits false return</li> <li>▪ Gives false information</li> <li>▪ Produces false books and documents</li> <li>▪ Refuses to give evidence when required by the Authority</li> <li>▪ Misleads the Director general</li> </ul>	Liable to a fine not exceeding Rs 50,000 and imprisonment for a term not exceeding 2 Years (section 147(1)). Section 147(2) provides that in addition to the above penalties, the court may order the payment of an amount not exceeding 3 times the income tax liable and the income already paid.
Other Offences (section 148)	Any person who <ul style="list-style-type: none"> <li>▪ Fails to submit return</li> <li>▪ Fails to obtain a Tax account number</li> <li>▪ Fails to furnish information</li> <li>▪ Fails to keep books</li> <li>▪ Fails to produce books and records for examination</li> </ul>	Liable to a fine not exceeding Rs 5,000 and to imprisonment not exceeding 6 months. Where a person is convicted for failure to furnish return in addition to the above penalty shall be ordered to furnish the information.
Offences relating to PAYE (section 145)	Any person who <ul style="list-style-type: none"> <li>▪ Fails to register as an employer</li> <li>▪ Fails to pay tax required and tax arrears</li> <li>▪ Fails to give the Statement of Emoluments and Tax Deduction to his employee</li> <li>▪ Submits to his employer an incorrect Employee declaration form</li> </ul> Any person who: <ul style="list-style-type: none"> <li>▪ Gives statement of Emolument and tax deduction which is false to his employee</li> </ul>	Liable to a fine not exceeding Rs 5,000 and imprisonment for a term not exceeding 6 months (section 145(1)). Liable to a fine not exceeding Rs 50,000 and to imprisonment for a term not exceeding 2 years (section 145(2))

## 3.2 Current Measures taken to solve the problem of tax evasion in Mauritius

### 3.2.1 Fiscal Investigation Department (FID)

In 2006, the MRA established the Fiscal Investigation Department. The function of this department is to review cases of tax evasion. In its first year of operation, investigations were done into 170 cases of tax fraud which resulted in an additional tax yield of Rs136.7 million (Mauritius Revenue Authority, 2008). This department was successful because it was set up specifically for the review of tax evasion cases and has specialists and experts who were appointed.

also considered unintentional tax evasion which in numerous countries are not considered as tax evasion, as they set 'intention' as an essential element to prove the offence of tax evasion. This is a very good incentive as it will have the effect of forcing taxpayers not to be negligent. The SARS make this deterrence factor more effective by adding a penalty of 75% and 50% in case if the undeclared fund is found after the audit.

## 3. Tax evasion in Mauritius

The body responsible for tax in Mauritius is the Mauritius Revenue Authority (MRA). The latter was established by the Section 3 of the Mauritius Revenue Authority Act 2004 with the authority for the collection of tax.

### 3.1 Laws on Tax Evasion

Mauritius in various of its legislations cater for the crimes of tax evasion. These legislations include the Income Tax Act 1995, the Value Added Tax Act 1998, Customs Act 1988. In any case of tax evasion, the prosecution must prove beyond reasonable doubt that the accused is guilty of tax evasion. For the purpose of this paper, only legal provisions relating to the Income Tax Act on tax evasion will be considered.

Since new types of tax evasions are emerging, one of the challenges of the MRA is to keep his staffs up to date. For this purpose, the MRA came forward with the continuous development of the staff of the Fiscal Investigation Department. In 2011, it organizes a seminar on VAT compliance (Mauritius Revenue Authority, 2011). Later in 2012, a training course on anti-money laundering was organized for the FID staffs (Mauritius Revenue Authority, 2012).

### 3.2.2 Taxpayers Education

The MRA is continuously educating the general public. In

2008, the MRA adopted another strategy by targeting specific segment of taxpayer on a regular basis. (Mauritius Revenue Authority, 2008). This strategy enables the MRA to prepare contents of the seminars more tailor-made to the particular segment. The main advantage of targeting specific taxpayers is that the seminar's contents will meet their specific means. For instance, in 2014 the MRA organizes a seminar for newly set small businesses on the importance of submitting income returns to the Small and Medium Enterprises Development Authority (SMEDA) (Mauritius Revenue Authority, 2014a). The result was a positive response. On the same date upon the request of the "Association des Contracteurs", a seminar was conducted by the MRA to provide an explanation on income and VAT declaration (Mauritius Revenue Authority, 2014b). Later in 2015, the MRA with the collaboration of the National Woman Entrepreneur Council (NWECC) explained women in business the basis of taxation for newly set-up and existing business (Mauritius Revenue Authority, 2014c). Afterwards, the participants became compliant taxpayers.

One of the main cause of tax evasions is due to lack of information. The problem is that taxpayers are aware of the need for tax payment but they did not know the procedures to make such payment. Taxpayers in most cases do not take initiative to pay and follow a course on the matter but rather would evade the tax by using the excuse of lack of knowledge. To deal with this issue, the MRA is continuously providing numerous courses targeting every group.

### 3.2.3 International collaboration

The MRA had not only stopped at the national level but also tried to collaborate with international organizations to seek remedies to combat tax evasion. This started in 2008 when the MRA organized the "CATA Workshop" for combating tax evasion in developing economies (Mauritius Revenue Authority, 2008b). This workshop was done in collaboration with the Commonwealth Association of Tax Administrators (CATA).

Similarly, on 15th July 2013, the MRA had organized a workshop with collaboration with the International Monetary Fund (IMF), the Economic Cooperation and Development (OECD) <sup>[8, 9]</sup> and the African Tax Administration Forum (ATAF) (Mauritius Revenue Authority, 2013). The title of the seminar was "how to improve compliance by the sharing of best practice".

### 3.2.4 Automatic exchange of information

In 2014, Mauritius has signed the international treaty of OCED namely the Automatic exchange of information(AEOI) to combat tax evasion. The AEOI under the common Reporting standard involves the systematic transmission of taxpayer's information from one country to another. After years of implementation of the AEOI, it was forecast that Mauritius will start the AEI with other nations from September 2018 (AfricaMONEY, 2018).

### 3.2.5 Pols

In 2014, the MRA came forward with a new strategy to tackle the problem of VAT evasion, namely the VAT Lucky Draw Scheme (VLDS). The objective of this scheme is to encourage the population to claim receipt for all their transactions and for

registered persons to issue invoices for all their transactions (Mra.mu, 2018). This is likely to solve the problem of not issuing receipts.

By encouraging both the buyers and VAT registered persons to claim and issue invoices, this will allow the MRA to have a complete picture of all the transactions that the population is engaging in and thus it will be more effective in its taxing.

## 4. Tax Evasion in South Africa

The Authority concerned for the collection of tax in South Africa is the South Africa Revenue Service (SARS). Section 34 of the South Africa Revenue Service Act established the SARS as an autonomous agency which is responsible for administering the South African tax system and customs services. Briefly the objectives of the SARS are to increase the customs and Excise compliance and the tax compliance, the ease and fairness of doing business with SARS, the cost of effectives and internal efficiencies and public trust and credibility (Sars.gov.za,2018).

### 4.1 Laws on Tax Evasion

The laws on tax evasion are the Tax Administration Act 2011, Income Tax Act 1962, Value-Added Tax 1991 and the Custom and Excise Act 1964.

#### 4.1.1 Tax Administration Act 2011

The Tax Administration Act imposes two types of penalties namely Administrative Non-compliance penalties under its chapter 15 and understatement penalty under its chapter 16. The main goal of this type of penalties as explained by the SARS is that the threat of punishment will deter non-compliance and tax evasion (Newtons Chartered Accountants, 2018). We can observe that the SARS has made a separation rather than treating all the offences directly as tax evasion. On one side, there is the administrative non-compliance penalties and understatement penalties and on the other side, the criminal offences relating to tax evasion.

#### a) Administrative Non-compliance penalty

Part B of chapter 15 defines "Non-compliance" as a failure to comply with obligations imposed by the tax acts. It consists of two types of penalties, the fixed base penalties and the percentage base penalties. The fixed base penalties are as follows

Table 2

Preceding year loss and taxable income	Penalty
Loss	R250
R0 - R250 000	R250
R250 001 - R500 000	R500
R500 001 - R1 000 000	R1,000
R1 000 001 - R5 000 000	R2,000
R5 000 001 - R10 000 000	R4,000
R10 000 001 - R50 000 000	R8,000
Above R50 000 000	R16,000

The penalty will increase by the same amount each month if the taxpayer fails to remedy the non-compliance within one month.

### Some example of percentage base penalties are as follows

Table 3

Tax	Penalties
Income tax(sec 35A of Income Tax Act)	When a South African resident buy an immovable property from a non-resident and not pay the fixed percentage tax, he shall be liable to a penalties of 10%.
Turnover tax (sixth schedule of Income tax act)	A late payment percentage if business doesn't pay VAT.
Employers and employees 'tax fourth Schedule of Income tax act)	Employer who fails to file a return, The SARS can impose a percentage penalty not exceeding 10% for each month the employer fails to file complete return. Employers who do not pay employees' tax must pay a penalty of 10%.
Value-added tax (sec 39 of VAT act)	Business who fails to pay VAT shall be liable to a penalty of 10%.

#### b) Imposition of Understatement penalty

The definition section of chapter 16 defines understatement as any prejudice caused to the SARS as a result of:

- Default in rendering a return,
- An omission from a return,

c. An incorrect statement in a return,

d. A failure to pay the correct amount of tax.

If the tax payer has committed the above offence, he will have to pay the tax payable plus the understatement tax penalty percentage in accordance with the table below.'

Table 4

Behaviour	Standard case	Repeat case	Voluntary disclosure after notification of audit	Voluntary disclosure before notification of audit
Substantial understatement	25%	50%	5%	0%
Reasonable care not taken in completing return	50%	75%	25%	0%
No reasonable grounds for 'tax position' taken	75%	100%	35%	0%
Gross negligence	100%	125%	50%	5%

#### 4.1.2 Income Tax Act 1962

Section 30 of the income tax act classified tax evasion as follows:

Any person who willfully:

- fails to deduct any employee's tax and to pay such amount to the commissioner,
- fails to submit his taxable income,
- withholds any amount of employees' tax for other purpose than, that of payment to the commissioner,
- fails to give any employee any employees' tax certificate,
- fails to comply with conditions provided by the commissioner to matters regarding the employees 'tax certificate,
- fails to registered as an employer or fails to notify the commission of having ceased to be an employer,
- not being an employer and issue employees' tax certificate,
- fails to submit any taxable income, shall be liable to a fine or to imprisonment for a term not exceeding 12 months

#### 4.2 Current measures taken to solve the problem of tax evasion

##### 4.2.1 Tax preparers to be registered as Tax practitioners

To reduce the risk of tax evasion by tax preparers, the SARS in 2013 made an amendment to the Tax Administered Act 2011 which imposed on taxpayers to be registered as tax practitioners. This is in line with section 240A of the Tax Administration Act which stipulates that tax preparer will not be allowed to practise if they are not registered as tax practitioners (Tax Practitioner Connect Issue 10, 2017). To be registered as a tax practitioner, the tax preparer will have to register with the SARS and with a Recognized Controlling Body. An example of a recognized controlling body is "South African Institute of Tax Professionals (SAIT)".

This new registration requirement will ensure that only competent tax preparers are practising as the SAIT imposes minimum qualification criteria and minimum experience criteria to be registered as tax practitioners. It also requires an online competency examination for applicants whose qualifications are outdated. This will have the effect of eliminating tax preparers who are likely to commit tax evasion.

The SARS has set up a system of "reporting" in line with Section 241 of the Tax Administration Act which has come into force in January 2018. Through this reporting system, in case the tax practitioner has committed any breach, the taxpayer can report the matter to the Recognized Controlling Body (Thesait.org.za, 2018).

In cases of complaints by the taxpayer, the SAIT will undertake investigations. If it is a minor offence, it will be discussed in the presence of all the parties concerned. However, if it is of a serious nature, the matter will be referred to the disciplinary committee who has the power to impose sentences such as caution, fine or reprimand (Thesait.org.za, 2018).

##### 4.2.2 Requirement for supporting documents and additional information

Most cases of tax evasion are due to the incomplete image of the affairs of organizations by the tax authority. In order to hide transactions, companies try not to provide all documents. To cater for this, the SARS in 2018 has set a minimum number of required documents so as to complete the Income-tax return of companies (SARS, 2018). This includes:

- Financial statements and administration deductions
- All certificates and documents relating to income and deductions

- Proof in relation to any tax credits claimed
- Particulars of assets and liabilities

Similarly, for filing at any SARS branch, all the supporting documents and information must be provided.

Additionally, there has been an amendment in section 12H of the income tax act. This amendment requires a new schedule to be added to return notably the learner schedule. The learner ship agreements for employers is a deduction as per 12H. This new schedule will avoid the misuse of this deduction as it will require the disclosure of the number of learners and the allowances.

#### 4.2.3 Seminars on tax evasion

Recently on 30th January 2018, the SARS has organized a global seminar on the core topic of “The strengthening of the fight against tax evasion” (South Africa Revenue Service, 2018). The advantage of such global seminar is that it brings together global tax expert to share their experience in the combat of tax evasion.

This will enable South Africa to use the remedies taken by other countries and implement such remedies in its system. Thus, South Africa in its combat against tax evasion will not limit itself to solely its national knowledge.

#### 4.2.4 Common Reporting Standard

In 2016 South Africa signed up to the Common Reporting Standard (CRS). The CRS is a global standard for the automatic exchange of information which was developed by the Economic Co-operation and Development (OECD) (Oecd.org, 2018) <sup>[8, 9]</sup>. It requires jurisdictions to gain information from their financial institution for the purpose of an automatic exchange of that information with other jurisdictions on a yearly basis.

Judy Snyman, a specialist at AlphaWealth says that the aim of the CRS is to make tax evasion impossible (Screws on for SA tax evaders with offshore funds, 2015). She argued that the CSR will show its effects immediately, as the voluntary disclosure of bank accounts and financial assets made to the SARS and to the South African Reserve bank will result to significantly less penalties compared to the penalties if these assets would have been discovered as part of the automatic exchange of information. She explained that penalties for breach of the CRS regulation will be determined on a case by case basis and are likely to be higher.

Taxpayers will have to provide information such as client information, data on financial services providers and account number. This will allow the authority to have a complete image of the affairs of financial institutions, thus rendering tax evasion more and more difficult.

#### 4.2.5 Consumer Education

Many offences of tax evasion are due to the lack of knowledge on taxation. Many people are not aware of their tax obligation. This is very often the case for small businesses. To cater for this issue, the SARS has set up the Branch Operations Engagement (BOE). The main function of the BOE is the undertaking of education and campaigns intervention (South Africa Revenue Service, 2016).

To increase compliance, the BOE has expanded the footprint of SARS by setting up three units notably the Mobile Tax units (MTUs) in three regions: Limpopo, Kwazulu- Natal and Eastern Cape. Such initiative will enable the BOE to be closer to its taxpayers and thus know exactly their needs as the literacy level, poverty, education will differ from region to region. Such expansion will enhance the quality of the education and campaign as it will be more tailor made to the specifically targeted taxpayers.

#### 4.2.6 Establishment of tax courts

The SARS has created a special tax court to deal with income tax matters. Section 83(3) of the Income Tax Act 1962 established the tax court which is a division of the high courts (South Africa Revenue Service, 2017). This court has jurisdiction for dispute between the SARS and taxpayer where it involves assessment of more than R100, 000. Cases that can be heard at the tax court includes:

- Income tax issues
- Employment tax issues
- Interest cases
- Pension cases
- Foreign tax issues
- Estate and gift tax

The judge of the tax court is a judge of the high court and is assisted by an accountant having more than 10 years’ experiences and also assisted by a representative of the business community (Pressler, 2009). The practice of being assisted by an accountant and business representative is very crucial as the judge will not have the required business knowledge. Such knowledge is extremely important to tackle cases of tax evasion. With the assistance of the accountant and the business representative the judge will be more effective in arising at a better decision.

### 5. Recommendation

#### 5.1 Analysis of the law

##### 5.1.1 Comparative analysis of tax laws

Each jurisdiction’s approaches differ, for instance in Mauritius, each act makes a list of all the different tax evasion offences along with their penalties applied. For South Africa, all the penalties are provided in the Tax Administration Act and all the offences are provided in the other respective acts.

The South African laws deal with the tax evasion penalties separately. This enables the legislation to put more emphasis on the effectiveness of sanctions. The Mauritian tax law penalties are very limited as compared to South Africa where it has divided the sanction into three categories; the administrative Non-compliance penalty, the understatement penalty, and the Criminal penalty. Through this approach, it ensures that the right degree of sanction is imposed, the administrative penalty and understatement penalty for less serious offence and criminal penalty for more serious offence. Similarly, these penalties are based on a time limit system that is the penalty will increase each month if fails to comply with. This will increase the taxpayer’s incentive to pay the fine as soon as possible. If Mauritius increases the effectiveness of its sanction, this will result in a reduction in tax evasion.

### 5.1.2 Loopholes in the Mauritius tax system

Table 5

Current measures being taken in South Africa	Current measures taken to solve the problem of tax evasion in Mauritius
1. Tax preparers to be registered as Tax practitioners	×
2. Requirement for supporting documents and additional information	×
3. Seminars on tax evasion	Taxpayers Education
4. Common reporting standard	International collaboration/ Automatic Exchange of Information
5. Consumer education	Taxpayers Education
6. Establishment of Tax Courts	×

## 5.2 Recommendation from South Africa

### 5.2.1 Requirement for supporting documents and additional information

Section 116 of the Mauritian income tax act provides that a company shall submit all income derived by the company and other particulars that may be required by the Director-General. This section does not provide a minimum set of required documents. The SARS in 2018 has set a minimum requirement of supporting documents to be provided by companies.

Thus, South Africa will have an advantage in detecting any tax evasion, as they have the possibility to countercheck the return with the supporting documents. However, for Mauritius, such checks can be possible only by the request of information or inspection by the MRA upon doubt of tax evasion.

By adopting the South African approach, the MRA would be able to crosscheck returns anytime and eliminate the cost and time-consuming process of inspecting the premises of taxpayers.

### 5.2.2 Tax preparers to be registered as Tax practitioners

Section 79 of the income tax act namely “Provisions applying to agents” does not provide for any qualification or number of experience required so as to practise as a tax practitioner. However, for South Africa section 240A of the Tax Administered Act imposes on tax preparers to be registered as tax practitioners with a Recognized Controlled Body.

It is this Recognized Control Body which will provide a complete framework for the regulation of tax practitioner. For example, it will provide the minimum qualification and experience, qualification criteria and all the rules and regulations required.

By imposing on tax practitioners to be registered as tax practitioners with a Recognized Control Body, this will discourage tax practitioner to commit fraud as such Recognized Controlled Body imposes severe sanctions such as the removal of the name of the tax practitioner thus, preventing him from practising.

### 5.2.3 Consumer Education

Mauritius is very up to date in its consumers’ education strategy. However, a loophole is that it is the MRA who sets up all the training program. This is not the case for South Africa where the SARS has created the Branch Operations Engagement (BOE). The SARS has delegated his authority of undertaking consumer education to the BOE in which the

SARS has appointed tax experts and specialists. This branch will be more specialized in consumer education.

For an optimal result, it is advisable for the MRA to set a similar branch. By doing so, the seminars and conference’s contents will be more tailor-made to the customer which it is targeting. Additionally, the adoption of the BOE approach of setting up different units in different regions will enable the MRA to know its customer better, as customers’ behaviours differ from region to region.

### 5.2.4 Establishment of tax courts

In 2006, the MRA has established the Fiscal Investigation Department which function is to review cases of tax evasion. This is a very good initiative by MRA. However, the limitation of such department is that it does not have the powers of the judiciary such as hearing of cases, imposing damages, appealing and soon.

South Africa has a special court namely the tax court which main function is to deal with tax cases. The judgment given by the tax court will be binding on the parties and are of a persuasive precedent. Additionally, the judge is assisted by an accountant and a business representative.

In Mauritius cases of tax evasion is tried in courts according to the gravity of offences. The creation of a special tax court similar to that of South Africa will be more effective than existing courts, as it would be specialised in tax cases. The fact that the judge will be assisted by an accountant and a business representative will allow the special court to give better judgement and the persuasive nature of these judgement would facilitate the court in future tax cases.

## 6. Conclusion

The main aim of this study was to analyse the issue of tax evasion in Mauritius and to assess its effectiveness in order to find the loopholes present in Mauritius’ tax system. As we have seen in section 2, tax evasion is a very important problem and cannot be overlooked.

To reach a better solution, the laws and practices adopted in South Africa to curb tax evasion were considered. Then a comparative study of laws and practices used in Mauritius and South Africa was done, which has allowed us to identify the loopholes present in the Mauritian tax system.

Finally, recommendations were taken from South Africa which was set out in section 5 of the paper. These recommendations will contribute to combat tax evasion and eliminate various loopholes present in Mauritius tax system which will result to a decrease in tax evasion.

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