

**Privy Council Judgment
Director General, Mauritius
Revenue Authority
(Appellant)
vs
Claude Didier de Senneville
and 7 others (Respondents)**

On 1 December 2025, the Judicial Committee of the Privy Council (“the Board”) delivered its judgment in the Director-General, Mauritius Revenue Authority v Claude Didier de Senneville & Ors [2025] UKPC 57, overturning the decisions of the Assessment Review Committee (“ARC”) and the Supreme Court of Mauritius and restoring the Mauritius Revenue Authority (“MRA”) original income tax assessments.

The judgment provides important clarification on the distinction between Section 10(3)(a) and 10(3)(c) of the Mauritius Income Tax Act 1995 (“ITA”) and crucially the correct computation of taxable profits arising from land transactions.

The Board held that where land is acquired in the course of a land-dealing business, taxable profit must be computed using the historical acquisition cost, not the market value immediately prior to development.

Background

- In 1988, Société du Vieux Moulin (the “Société”) purchased undeveloped land at Grand Baie for Rs 1,607,000.
- A morcellement permit was obtained in 2003, allowing the land to be subdivided into 93 residential plots.
- The MRA treated the profits from the land sales as business income under Section 10(3)(c) of the ITA and computed profit by deducting the original 1988 acquisition cost of Rs 1,607,000 from the aggregate sale proceeds.
- The taxpayers argued the land was bought for personal residential use and only later morcelled for sale, and therefore the activity fell within section 10(3)(a) as a “scheme”, requiring profit to be computed using the market value of the land before development (MUR 41,793,000 as at March 1999).

Points at issue

1. Whether or not the gross income from a business is derived from the carrying out of a “scheme” within the meaning of section 10(3)(a) or whether section 10(3)(c) in fact applies.

For reference from the ITA:

"10(3) For the purpose of subsection (1)(b), gross income derived from a business shall include

(a) any sum or benefit, in money or money's worth, derived from the carrying on or carrying out of any undertaking or scheme entered into or devised for the purpose of making a profit, irrespective of the time at which the undertaking or scheme was entered into or devised;

(c) any sum or benefit, in money or money's worth, derived from the sale of any immovable property or interest in immovable property, where the property was acquired in the course of a business the main purpose of which is the acquisition and sale of immovable property;"

2. Whether the original cost of Rs 1,607,000 in 1988 should be used as base cost or the market value of Rs 41,793,000 before development of the land in March 1999.

Representations before ARC

- The ARC rejected the ‘personal use’ story as lacking credibility.
- It found that “from the very beginning” the land was bought through the Société with the intention to carry out a morcellement after a few years “to make a considerable profit”, i.e. a land-dealing business.
- Despite that, the ARC applied the Privy Council’s earlier decision in De Maroussem and treated this as a scheme case, taxing only the uplift arising from the morcellement.
- In doing so, the ARC used as base cost the market value in March 1999 (MUR 41,793,000) (just before development/permit) instead of the 1988 cost (MUR 1,607,000).

Supreme Court Judgment

- By a judgment dated 15 March 2023, the Supreme Court upheld the ARC’s decision, albeit on different grounds.
- The Court found that section 10(3)(c) of the ITA did not apply because the land was not sold as bare land. Instead, it was parcelled into residential lots before sale, which the Court viewed as inconsistent with the statutory wording of section 10(3)(c).
- The Supreme Court held that, after the morcellement process, there was a change in the purpose and nature of the land.
- The circumstances showed that the Société was in fact engaged in an ‘undertaking of a scheme entered into or devised for the purpose of making a profit’ (original emphasis), thus bringing the case within the scope of section 10(3)(a) of the ITA.
- Having characterised the activity as a profit-making scheme, the Supreme Court applied the Privy Council’s reasoning in De Maroussem. It accepted that:
 - ◊ the bare land had development potential,
 - ◊ the land had a determinable market value prior to the implementation of the scheme (March 1999), and
 - ◊ the development carried out after the scheme added further value.
- On that basis, the Court held that the taxable amount was to be computed by deducting from the total morcellement receipts the market value of the land as at March 1999, rather than the 1988 acquisition cost.

Privy Council Judgment

- The Privy Council allowed the MRA’s appeal.
- The Board confirmed that De Maroussem applies only where a pre-existing capital asset is later injected into a profit-making scheme, and therefore only the scheme-related uplift is taxable. It does not apply where land is acquired in the course of a business of buying and selling immovable property under section 10(3)(c) of the ITA.
- The Board rejected attempts to argue that the passage of time (11 years of inactivity) negated business purpose. Holding land idle does not alter the nature of acquisition for section 10(3)(c) purposes.
- The MRA’s original assessments for the years 2004/2005–2006/2007 are restored. That is, the relevant base cost for computing taxable income from the land sales is the 1988 acquisition cost of MUR 1,607,000, instead of the 1999 market value of MUR 41,793,000.

Our comments

This judgment provides authoritative guidance on the proper application and scope of section 10(3)(c) versus section 10(3)(a) of the ITA.

The Board's decision underscores that intention at acquisition is paramount, land acquired for profit-oriented development is taxable under section 10(3)(c), and in such cases, profits must be computed from original acquisition cost, not later market value.

The judgment also underscores the importance of maintaining clear contemporaneous evidence of intention at acquisition.

Property developers and investors should reassess any existing tax-planning structures, particularly those predicated on revaluation arguments, as the MRA is now more likely to challenge morcellement and land sale transactions under section 10(3)(c) and apply original-cost principles with greater confidence.

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