MAURITIUS
REVENUE
AUTHORITY

Mauritius Revenue Authority
MS ISO 9001:2008 certified
RF 121

MAURITIUS REVENUE AUTHORITY

STATEMENT OF PRACTICE (SP 22/21)

Income subject to partial exemption

Part II of the Second Schedule to the Income Tax Act

1. Introduction

This Statement of Practice is intended to provide clarification to taxpayers and practitioners on the application of partial exemption on categories of income following amendments brought to the Second Schedule to the Income Tax Act, hereinafter referred to as the Act, by the Finance Act 2018 and to the Income Tax Regulation by Government Notice 127 of 2018.

2. Exemption provision

Sub-Part B and Sub-Part C of the Second Schedule of the Act provides for exemption of some categories of income. Such exemption is applicable to companies subject to their satisfying the prescribed conditions as contained in paragraph 4 and 5 below.

3. Income subject to partial exemption

80% of the following categories of income is exempt for tax purposes:

(i) Foreign source dividend derived by a company provided that it has not been allowed as a deduction in the country of source and conditions as per the Regulation are satisfied;

(ii) Interest derived by a company other than:

- a bank referred to in section 44C;
- a non-bank deposit taking institution;
- a money changer;
- a foreign exchange dealer;
- an insurance company;
- a leasing company; and
- a company providing factoring, hire purchase facilities, or credit sales facilities.

(iii) income derived by a collective investment scheme (CIS), closed end fund, CIS manager, CIS administrator, investment adviser or asset manager, as the case may be;

(iv) income derived by companies engaged in ship and aircraft leasing;

(v) income derived by a company from reinsurance and reinsurance brokering activities;

(vi) income derived by a company from leasing and provision of international fibre capacity;

(vii) income derived by a company from the sale, financing arrangement, asset management of aircraft and its spare parts and aviation advisory services related thereto;

(viii) interest derived by a person from money lent through a Peer-to-Peer Lending platform;

(ix) profit attributable to a permanent establishment which a resident company has in a foreign country.

4. Conditions for eligibility to partial exemption on dividend income

According to Section 23D(1) of the Income Tax Regulations, the exemption of 80% of foreign source dividend income shall be granted provided that the company –

(i) complies with its filing obligations under the Companies Act or the Financial Services Act; and

(ii) has adequate resources for holding and managing share participations.

For pure equity holding companies which only hold equity participations and earn only dividends and capital gains, they must respect all applicable corporate law filing requirements in order to meet the substance activities requirement, and they should be able to show that they have adequate resources for holding and managing share participations.

5. Conditions for eligibility to partial exemption on specified categories of income other than dividend

According to Section 23D(1) of the Income Tax Regulations, the exemption of 80% of items as specified in section 3(ii) to 3(vii) above shall be granted provided that the company –

(i) carries out its core income generating activities (CIGA) in Mauritius;
(ii) employs, directly or indirectly, an adequate number of suitably qualified persons to conduct its core income generating activities; and
(iii)incurs a minimum expenditure proportionate to its level of activities.

In order to qualify for partial exemption on the specified categories of income other than dividend, all the above three conditions must be satisfied.

Condition 1: Company carries out its CIGA in Mauritius

The word "*core*" is not specifically defined in the Income Tax Act. We need to have recourse to the ordinary dictionary meaning. CIGA are 'essential activities carried out that generate the income of the company'. In fact, "core" business activities are those that are central to the main operations of a business organisation, where the earnings of the company are derived therefrom. The non-core activities are those that are only incidental to the company's operations. Identification of non-core business is not fixed across businesses, but it will depend on the nature and type of business. In a simple comparison, a core business is strategic in nature and focuses on the improvement of customer value. It is also deemed as the 'profit-centre' of the company. A non-core business, on the other hand, does not have a strategic function. It is not concerned with the primary functions of the company and it certainly does not qualify as a profit centre for the company.

Condition 2: Company employs, directly or indirectly, an adequate number of suitably qualified persons to conduct its CIGA

The company must employ an appropriate number of suitably qualified staff to carry out only the core business activities as defined above. In other words, the employees must have the appropriate level of knowledge and skills to undertake the CIGA and their roles and duties must include tasks relating to that core business activity.

The term "adequate" is not defined and therefore has its ordinary meaning. The Oxford dictionary defines "adequate" as "Enough in quantity, or good enough in quality, for a particular purpose". What is adequate for each company will depend on the particular circumstance of the company and its business activity. Therefore, the number of staff must be sufficient in relation to the nature and level of activities involved in the company's core business activities.

Outsourcing of core income generating activities is permitted but any such activities outsourced should be carried out within Mauritius. In order to benefit from partial exemption a company that hires a service provider in Mauritius to carry out its core income generating activities must be able to demonstrate that it has adequate supervision of the outsourced activities and that there is no double or multiple counting if the services are provided by the service provider to more than one company.

Condition 3: Company incurs a minimum expenditure proportionate to its level of activities

There must be expenses which are incurred for the purpose of carrying out the CIGA and those expenses must be sufficient in relation to the nature and level of those activities.

A company will have to ensure that it maintains and retains appropriate records to demonstrate the adequacy of the resources utilized and expenditure incurred.

6. Partial exemption on interest income

CIGA for substance requirements in respect of interest income is defined by regulation 23D (2b) of Income Tax Regulations 1996 as follows:

> *"**core income generating activities**" includes, for the purpose of –*
>
> *item 7(b) of Sub-part B of Part II of the Second Schedule to the Act, agreeing funding terms, setting the terms and duration of any financing, monitoring and revising any agreements, and managing any risks;*

The above definition shows that not all businesses are eligible for the partial exemption. Partial exemption on interest income is applicable only to businesses whose CIGA includes "*agreeing funding terms, setting the terms and duration of any financing, monitoring and revising any agreements, and managing any risks*".

In other words, the partial exemption on interest income can be claimed by either:

(i) A company which carries out only money lending business (other than banks and other companies listed in paragraph 3(ii)) or otherwise provides debt finance to a related party or a third party, or otherwise invests in debt instruments, and generate interest income therefrom, and its "*core income generating activities*" comprises solely "*agreeing funding terms, setting the terms and duration of any financing, monitoring and revising any agreements, and managing any risks*"; *or*

(ii) A company which carries out multiple core activities and one of those core activities relate to money lending or provision of debt finance or alternatively investment in debt instruments, and generate interest income and, in respect of such activities the CIGA comprising of *"agreeing funding terms, setting the terms and duration of any financing, monitoring and revising any agreements, and managing any risks" are carried out in Mauritius.*

The word 'includes' has been used instead of the word 'means' to enlarge the definition of CIGA. This will enable companies which have multiple core activities will also be able to claim the partial exemption provided that, among their core activities, some pertain to activities as specified hereinabove and the company carries out its CIGA, that is, *"agreeing funding terms, setting the terms and duration of any financing, monitoring and revising any agreements, and managing any risks" in respect of such activities in Mauritius.*

As a conclusion therefore, companies which, as part of their business activities, lend money or provide debt finance or alternatively invest in debt instruments, other than specifically excluded through GN 295 of 2020, will benefit from the partial exemption on interest income provided that they carry out their CIGA in Mauritius (refer to example provided in annex).

7. Distinction between "credit bail" / hire purchase / leasing and a money lending business

The interest income derived by all businesses cannot be treated in the same manner to benefit from exemption as referred under item 7 of Part II sub part B of the Second Schedule to the Act. For example, we have to make a legal distinction between a credit-bail contract and a loan and that distinction resides in the "passation du titre de propriété''.

Through this distinction it follows that companies engaged in providing finance such as leasing finance or providing hire purchase facilities are **NOT** making loans.

This explains the rationale behind the exclusion of interest income earned on such activities from the partial exemption regime, as confirmed by GN 295 of 2020. Income received by companies, engaged in providing finance, such as leasing finance or providing hire purchase facilities would therefore be treated as part of their gross income falling under Section 10(1)(b) of the Act for the purposes of income tax although such income may be characterized in their financial statements, for accounting purposes, as "interest income".

In fact, exemption is available only on leasing income under items 42 and 47 of Part II of Sub-Part B of the Second Schedule to the Act. The exemption under these items is limited to income derived by companies engaged in ship and aircraft leasing and leasing of international fibre capacity.

8. Private Financing Companies

There are companies which provide funds/loans to related entities within the same group and receive interest from those entities. Such interest would benefit from the exemption referred under item 7 of Part II sub part B of the Second Schedule to the Act provided that the company can establish that its "interest income" is generated from its core income generating activities carried out in Mauritius and it satisfies the criteria under regulation 23D (2) of the Income Tax Regulations.

9. Reinsurance & reinsurance brokering activities

A partial exemption of 80% is available on income derived by a company from reinsurance and reinsurance brokering activities provided that the company satisfies all the conditions specified in paragraph 5 above. According to Regulation 23D of the Income Tax Regulations 'core income generating activities' for the reinsurance business includes predicting and calculating risks, reinsuring against risks, administrating clients' cell, providing related services, preparing regulatory reports and providing clients technical advice in respect of reinsurance of liabilities.

10. Interest received from bank or non-bank deposit taking institutions derived by businesses

The applicability of partial exemption under item 7 of Part II sub part B of the Second Schedule to the Act will vary from case-to-case in relation to companies who have deposited their surplus funds in a bank or non-bank deposit taking institution. Interest earned from the bank or non-bank deposit taking institution's deposits by a company which is already entitled to partial exemption on income derived from its central / main business will qualify for exemption if that company can establish that the bank or non-bank deposit taking institution's interest income, received is intimately connected with its central / main business.

S. Lal

Director General-Mauritius Revenue Authority

12 May 2021

ANNEX

This can be illustrated by way of an example of a company benefiting from partial exemption as part of its core income generating activities:

Income generated by Core Income generating activities		
		RS 000
Fees from Consultancy Services		5,000
Interest Income		2,000
		7,000
Less Expenses		
Expenditure relating to Consultancy Services	1,000	
Expenditure relating to Interest Income	300	
Common Expenses	2,000	
Total Expenses		**3,300**
Net Profit		**3,700**

Net Profit as per Return	3,700	
Less Interest Income (80% x 2000)	(1,600)	**2,100**
Add Disallowed Expenses		
Interest (1600/2000 x 300)	240	
Common Expenses (1600/7000 x 2000)	457	**697**
Chargeable Income		**2,797**
Tax @ 15%		**419**

Check – Separate calculation of the tax payable on the different types of income

Calculation of

:

Interest Income	**Taxable**	**Exempt**
	(20% x 2000) = 400	(80% x 2000) =1600

Expenses relating to Interest	**Allow**	**Non Allowable**
	(20% x 300) =60	(80% x 300) =240
Expenses relating to Common Expenses	(5400/7000x2000) = 1543	(1600/7000 x 2000) = 457

	Taxable	Exempt	Total
Consultancy Fees	5,000		5,000
Interest Income	400	1,600	2,000
Total	5,400	1,600	7,000
Expenses	**Allow**	**Not allowable**	**Total**
Consultancy fees	1,000		1,000
Interest Income	60	240	300
Common Expenses	1,542	457	2,000
Total	**2,602**	**697**	**3,300**
Chargeable Income (5400 -2602)	**2,798**		
Tax @ 15% (15% x 2798)	**419**		

Medium & Small Taxpayers Dept Level 4, Ehram Court, Cnr Mgr. Gonin & Sir Virgil Naz Streets, Port Louis, Mauritius ● Tel: +230 207 6000 ● Fax: +230 207 6058 Hotline: +230 207 6010 ● Email: headoffice@mra.mu ● Website: www.mra.mu