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**Ruling issued by the
Assessment Review Committee**

Alteo Energy Ltd (“Applicant”)

v/s

Director General, Mauritius Revenue Authority
 (“Respondent” or “MRA”)

ARC/IT/217-21

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On 24 October 2023, the Assessment Review Committee (“ARC”) issued its ruling in favor of the MRA by denying the 80% exemption on interest income derived by the Applicant, on the grounds that the interest income did not arise from the Applicant’s core income generating activity.

This ruling will have consequential impact on companies claiming or seeking to claim the exemption as any failure to comply with the required conditions would imply an increase in their tax bill to the rate of 15%. The tax bill would even be higher in the case of an assessment by the MRA, as penalties and interests would be imposed.

Facts of the case

- For the year of assessment (“YOA”) 2019/2020, the Applicant derived interest income from:
 - loans granted for treasury management purposes;
 - loan granted to Coal Terminal Management Ltd; and
 - staff car loan.
- The Applicant claimed the 80% exemption on the interest income.
- The MRA objected to the claim of the exemption on the basis that the activity of the Applicant is the production of electricity from bagasse and coal and the activities generating the interest income did not form part of the core business of the Applicant. Hence, according to the MRA, the conditions laid down under the Income Tax Regulations 1996 (“IT Regulations”) to be entitled to the partial exemption were not satisfied by the Applicant.

Analysis

Pursuant to item 7 of Sub-Part B of Part II of the Second Schedule to the Income Tax Act 1995 (“ITA”), 80% exemption is provided on interest derived by a company other than: a bank, 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.

The exemption shall be granted provided the company satisfies the conditions relating to the substance of its activities as prescribed. According to section 23D (2) of the IT Regulations, the exemption shall be granted provided the company satisfies all the below three conditions:

- **Condition 1:** Carries out its core income generating activities (“CIGA”) in Mauritius;
- **Condition 2:** Employs, directly or indirectly, an adequate number of suitably qualified persons to conduct its CIGA; and
- **Condition 3:** Incurs a minimum expenditure proportionate to its level of activities.



For the purpose of interest income, CIGA includes “agreeing funding terms, setting the terms and duration of any financing, monitoring and revising any agreements, and managing any risks”.

The summary of the case for the MRA and the Applicant’s disagreement to the matters raised are depicted in the table below:

MRA’s Case	Applicant’s Contention
<p>The Applicant did not meet Condition 1 on the below grounds:</p> <ul style="list-style-type: none"> • The definition of “CIGA” uses the term “includes” instead of “means” as the intention of the legislator was to enlarge the definition of CIGA for companies having multiple core activities. • The nature of the business of the Applicant is very far from the activities listed in the CIGA definition and from the context of the definition given by the legislator to CIGA. • Partial exemption on interest income in the context of a company carrying on multiple activities, can only be claimed where one of those activities relates to money lending or provision of debt finance or alternatively investment in debt instruments and generates interest income, and such activities are carried out in Mauritius. • The activities generating the interest income had no profit motive and represented only approximately 0.25% of the total income of Applicant for the YOA 2019/2020. • The interest income is therefore incidental income derived from activities not related to the CIGA of the Applicant. 	<ul style="list-style-type: none"> • Except for the exception list provided under item 7(a), there are no other restriction as to the nature of the business carried out by the company. Hence, the law does not require the interest income to be derived in the ordinary course of a taxpayer’s business for it to benefit from the partial exemption. • Had the legislator intended for only companies engaged in money lending business, he would have clearly provided that the interest income must be derived in the course of a business or other income earning activity. • The real test is therefore whether a taxpayer carried out its CIGA insofar as they relate to the production of interest income in Mauritius. • The activities of agreeing funding terms, setting the terms and duration of any financing, monitoring and revising any agreements, and managing any risks were indeed carried out in Mauritius.
<p>The Applicant did not meet minimum employment and minimum expenditure requirement as detailed under Conditions 2 and 3 above. The MRA’s view is as follows:</p> <ul style="list-style-type: none"> • The employees of the Applicant were not employed specifically to provide financing, funding or money lending services. • The treasury management service provider was appointed after the year under review. • The salary expenditure pertains to the main operation of the Applicant and not in the production of interest. • In the VAT return of the Applicant, there were no expenditure incurred regarding loans. 	<ul style="list-style-type: none"> • The minimum employment and expenditure conditions were not part of the basis of Assessment and Determination and cannot now be raised by the MRA as new grounds/arguments. • The Applicant satisfied the minimum employment conditions through the Finance Manager of Alteo Agri Ltd, a treasury management service provider based in Mauritius and the resident director and other staff members of the Applicant. • Reference to VAT is irrelevant and inappropriate as the current case concerns income tax.



Ruling of the ARC

The ARC found that the law is clear and has no ambiguity.

The first test to be considered is the substance of the activities of the company.

The next test is the substance of the activities must satisfy the three conditions laid down in the IT Regulations.

Therefore, according to the ruling, it is not the substance of the activities that must be in relation to the CIGA, but instead, it is the CIGA that has to be in relation to the substance of the activities. As the substance of the activity of the Applicant is the production of electricity and not the provision of loans, the interest income was not derived from the substance of the activities of the Applicant.

Although the law does not clearly state that the interest income must be derived from the CIGA of the company, the ARC mentioned that when item 7 is read together with Regulations 23D(2), it is clear that the CIGA does not stand alone. Hence, when one considers that the CIGA must necessarily include activities which are undeniably linked to the production of interest income, it becomes clear that the legislator has intended for one of the three conditions relating to the substance of the activities of the company to include activities which relate to the production of the interest income and these activities must necessarily exist in the CIGA of the company.

Although the Applicant referred to the OECD BEPS Action 5 Final Report and its associated Progress Reports in interpreting the term "CIGA", the ARC mentioned that these should not be considered as there is no transborder transaction and no base erosion and profit shifting in the present case.

The ARC therefore ruled that the MRA was right to consider that the interest income derived by the Applicant was not in relation to the CIGA/substance of the activities of the Applicant and hence was not eligible for the 80% partial exemption on the interest income.

Concluding remarks

Although it is not clearly stated under the provisions of the ITA and the IT Regulations, based on the ARC ruling, it can be deduced that for interest income to be eligible for the 80% exemption, the below conditions should be satisfied:

- The interest income arises in the ordinary course of the company's business, that is, is generated
- from the substance of the company's business activities;
- The interest income is not incidental;
- The CIGA is carried out in Mauritius;
- The company employs, directly or indirectly, an adequate number of suitably qualified persons to conduct its CIGA in Mauritius; and
- The company incurs a minimum expenditure in Mauritius, proportionate to its level of activities generating the interest income.

We understand that to determine whether what is termed as "CIGA" does in fact relate to the substance of the activities of a company, the particular facts of each case will be considered and each case will be decided on its own merits. Notwithstanding the fact that the MRA's Statement of Practice SP22/21 is not law and not binding on taxpayers, certain prudent taxpayers may still choose to use it as guidance when interpreting CIGA. For completeness, as per SP 22/21, CIGA refers to:

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- Essential activities carried out that generate the income of the company;
- Activities which are central to the main operations of the business organization;
- The activities are strategic in nature and focuses on the improvement of customer value; and
- It is the profit-centre for the company.

This ruling raises questions about the tax attractiveness of Mauritius and the country's commitment to providing tax certainty. The future actions of the Applicant, including the possibility of an appeal to the Supreme Court within 21 days of this ARC ruling, will ultimately determine how this situation unfolds in due course.

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