

Decision of the Assessment Review Committee

In the matter of:

GODOLPHIN LTD

("Applicant" or "the Company")

v/s

The Director General
Mauritius Revenue Authority
("Respondent" or "MRA")

On 28 June 2024, the Assessment Review Committee (“ARC”) ruled against the Company by denying the partial exemption claimed on its interest income. The claim was rejected on the basis that the Company did not employ directly or indirectly an adequate number of suitably qualified persons to conduct its core income generating activities (“CIGA”) in Mauritius, in accordance with the provisions of Section 23D of the Income Tax Regulations 1996 (“ITR”).

Detailed Discussions

The Applicant is a Global Business Company incorporated in Mauritius and which is engaged in investment holding activities.

The Applicant advanced loans of ZAR 75,000,000 to its South African subsidiary, Extrupet Pty Ltd (“EPL”), on which interest income was derived.

The MRA denied the partial exemption claimed by the Company on the interest income for the Years of Assessment 2020/2021 and 2021/2022, on the basis that the Company did not meet the minimum employment requirements in Mauritius.

In relation to interest income, pursuant to Section 23D of the ITR:

Paragraph 2(a) –

The exemption shall be granted provided the company:

- i. carries out its core income generating activities 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.*

Paragraph 2(b) –

In paragraph (a) – “core income generating activities” includes, for the purpose of –

(i) 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 Company’s arguments were based on the following grounds¹:

1. The Company is the sole bearer of the economic risk related to the loans.
2. The Company carries out its CIGA from Mauritius at its registered office address in Mauritius.
3. The Company through its Management Company (“MC), has appointed 2 resident directors and 3 employees to take care of the daily administration, secretarial, taxation and accounting works for the Company.
4. The loans are monitored by its MC.
5. Drafting of the loan agreements was delegated to companies based in UK. However, the loan agreements between

the Company and EPL including the terms of the loan were reviewed by Mauritian legal counsel and duly approved in writing by the resident directors of the Company.

6. The Company reiterated that the drafting (as opposed to the approval) of legal documentation is administrative in nature and could not constitute CIGA.

The MRA denied the Company's claim for partial exemption on the interest income² on the basis that the core functions relating to the loans to EPL are performed by entities outside Mauritius. Invoices produced by the Company indicated that the overseas companies were involved in the conduct of the Company's CIGA, that is, granting of the loans to EPL.

After careful analysis of the evidence presented to the ARC, the ARC pointed out that there was 'a sustained attempt to undermine the tasks' carried out by the overseas companies, while 'blowing up the tasks' carried out by its MC.

The ARC contended that there were no director's emoluments paid/accrued for the year ended 28 February 2021. The Company only paid professional fees to its MC for the provision of 2 resident directors on the Board of the Company. No contract of employment existed between the Company and its resident directors.

According to the Statement of Practice 22/21 ("SOP") dated 12 May 2021 issued by the MRA, where CIGA is outsourced to a service provider, the company must demonstrate adequate supervision of the outsourced activities and ensure no double or multiple counting of the services.

The ARC highlighted that the Service Agreement between the Company and its MC did not entitle the Company to exclusive services from any experienced MC staff member. Although 'exclusivity of services provided' is not a legal requirement, the ARC was not convinced that the services of three staff members were sufficient to meet the 'adequate' number of employees criteria in the context of the activities of the Company.

In light of the above, the ARC ruled in favour of the MRA, by denying the claim of partial exemption made by the Company on the interest income.

Concluding remarks

Although the employment condition may be satisfied indirectly, through outsourcing to a service provider in Mauritius, the outsourced activities should relate to the company's CIGA and not merely support or administrative tasks. It is important to clearly distinguish between core functions relating to the CIGA of a company and routine company secretarial work performed by an MC.

Where CIGA is outsourced to an MC, service agreements detailing the scope of duties of staff and resident directors assigned to relevant companies, should be robustly documented. Additionally, invoices issued by an MC to a relevant company should be supported with detailed description of the nature of the work conducted.

The Authors find similarities between the ARC ruling and the Income Tax Rulings 248 and 249 (together referred as the “MRA Rulings”) issued by the MRA. In the said MRA Rulings, partial exemption was also denied on interest income. Based on the redacted facts of the MRA Rulings, we note that the taxpayers had two Mauritian resident directors responsible for the monitoring of a loan and the MC was carrying out administrative activities. Although the reason for denying the partial exemption was not mentioned in the MRA Rulings, it appears that satisfying the employment condition indirectly through the board of directors is being challenged, especially if there is little to no evidence of the directors performing the CIGA.

It remains to be seen if the Company will appeal against this decision but it is clear that the ruling brings into focus the necessity of ensuring that companies claiming the partial exemption are able to evidence substance and are actually carrying out CIGA physically in Mauritius.

¹ Employment is the indicator relevant to the present case, as expenditure has not been specifically questioned in the Notice of Determination.

² It is undisputed that in order to qualify for partial exemption, all three conditions as per Regulation 2D should be satisfied.

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