KPMG

Tax Alert

February 2021

MRA issues Statement of Practice on Income subject to partial exemption

Background

Effective 1 January 2019, the Deemed Foreign Tax Credit ("**DFTC**") was replaced by the 80% tax partial exemption. Companies issued with Global Business Licence ('"**GBL**") on or before 16 October 2017, are on the other hand, grand-fathered and allowed to claim the DFTC until 30 June 2021.

The 80% tax partial exemption is available on certain qualifying income streams such as foreign source dividend, interest income and income derived by Collective Investment Scheme ("**CIS**"), upon satisfying pre-defined criteria under the Income Tax Act 1995 ("**ITA**") and the Income Tax Regulations 1996 ("**ITR**").

This alert provides clarification on the conditions that companies have to meet to be eligible for partial exemption on certain qualifying income, based on the guidance provided in the Statement of Practice ("**SOP**") issued by the Mauritius Revenue Authority ("**MRA**") on 27 January 2021.

Clarification to the definition of Core Income Generating Activity ("CIGA")

Conditions under ITA and ITR	Clarification under the SOP 21/22
Carry out its CIGA in or from Mauritius	In the absence of the definition of CIGA in the ITA, recourse should be made to the ordinary dictionary meaning which defines CIGA as "*essential activities carried out that generate the income of the company*". Activities which are only incidental to the company's operations, i.e. which does not focus on the improvement of customer value and does not qualify as profit center for the company, are considered as non-core activities and income from such activities will not qualify for the partial exemption regime.
Employ directly or indirectly, an adequate number of suitably qualified persons to conduct is CIGA	Emphasis is laid out on the word "adequate" in the SOP 21/21 which should be interpreted as "*enough or satisfactory for a particular purpose.*" Outsourcing of CIGA is also permitted to local service provider provided that the company has adequate supervision of the outsource activities and there must be no double or multiple counting if the services are provided to more than one company.
Minimum expenditure proportionate to its level of activities	Companies have to ensure they have appropriate documentary evidence to substantiate local expenditure.

Partial exemption on interest income

Businesses which can avail of partial exemption on interest income

Partial exemption on interest income can be claimed by a company whose core activity or one of its core business activities is money lending, debt financing, and investing in debt instruments.

Moreover, the company will have to satisfy the pre-defined conditions which includes the CIGA test, the minimum expenditure and minimum employments tests. CIGA for a company deriving interest income includes "*agreeing funds, setting the terms and duration of any financing, monitoring and revising any agreements, and managing any risks*."

Interest income on inter-company loans

Companies which give loans to their related entities would generally avail of the 80% partial exemption on interest income generated through related party loans, provided that provision of loans to their related entities is one of their main activities and they also satisfy other pre-defined conditions such as the minimum employment and local expenditure tests.

Interest income from bank

80% partial exemption will normally apply on interest earned on bank deposits provided an entity can establish that these deposits arose from its central business activity which have already been entitled to partial exemption.

Partial exemption on dividend income

For pure equity holding companies, i.e. companies that only holds equity participations in other entities and only earns dividends and capital gains, 80% partial exemption will be granted on dividend income provided that the companies:

— Comply with all applicable corporate law filing requirements;

— Have adequate human resources and adequate premises in the country for holding and managing equity participations in other entities.

Moreover, it is important to demonstrate that companies have sufficient presence and comply with good governance to avail of partial exemption on dividend income.

KPMG comments and views

The principle as to whether bank interest income would avail of partial exemption emanates from a landmark case law, The Mauritius Steam Navigation Co. Ltd., in which the court ruled that, on the basis that income of the company is exempt from tax, interest arising from the deposits which is intimately connected to the main business activity of the company is also exempt from tax.

Eligibility to partial exemption on interest income will have to be assessed on a case by case basis. It is therefore important to have appropriate documentary evidence in place to support the various tests under the ITR and to also seek appropriate advice beforehand to manage tax risks.

While we welcome the clarity over a number of matters, we are of the view that the following matters still remain to be addressed:

— A company whose main activity is to hold investment, has surplus of funds and provide its related party with inter-company loans. It remains unclear as to whether interest income from such transactions would still be eligible to partial exemption.

— Documentary evidence which is required is not clear at the moment. Will the MRA expect a business plan in assessing whether a company can avail of partial exemption on interest income?

— It is common practice for CIS managers incorporated in Mauritius to have investment advisors outside Mauritius, for valid commercial reasons. We await clarification from the MRA as to whether this is a hindrance for such CIS managers in satisfying their relevant CIGA tests.

Issuers of GBL need to ensure CIGA requirements are satisfied not only to avail of partial exemption, but also to be compliant with the Financial Services Act. Failure to meet CIGA requirements may not only result in denial of partial exemption, but also result in possible fines from the regulatory authorities and could also lead to revocation of GBL.

If you wish the read the SOP issued by the MRA, please click here.

Contact Us

We hope you find this tax alert useful. Feel free to contact us if you have any question.

How KPMG can assist your business

An assessment of risks pertaining to CIGA and substance requirements along with identification of any gaps and our recommendations.

Assist our clients in complying with applicable local tax reporting obligations, i.e. the additional information requested on tax returns.

Assist with assessments raised by the tax authority on claims of partial exemption

Please click here to read more on KPMG responsible tax principles.

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