



New Regulations made under the Income Tax Act

The Income Tax (Amendment No.2) Regulations 2019 (hereafter referred to as the “Regulations”) were passed on 20 August 2019 to provide clarity on conditions to be met by resident companies to avail of the Partial Exemption Regime (“PER”). The Regulations also clarify the Controlled Foreign Company legislation introduced by the Finance Act 2019 as well as stipulates the conditions to be met by a Freeport operator or private Freeport developer engaged in the export of goods or manufacturing activities to benefit from the reduced tax rate of 3%.

The Regulations are deemed to come into operation on **1 July 2019**.

Our newsletter summarises the salient changes made by the Regulations.

Conditions for eligibility to Partial Exemption Regime (PER)

Among the changes brought about by the Finance (Miscellaneous Provisions) Act 2019, Global Business Companies (“GBCs”) shall now be required to carry out their Core Income Generating Activities (“CIGA”) in, or from, Mauritius, **as required under the Income Tax Act**. This implies that the CIGA requirement now falls under the purview of the Mauritius Revenue Authority (“MRA”).

According to the Regulations, Mauritius resident companies (which include GBCs) generating the following streams of income qualify for the PER:

- interest derived by a company other than a bank;
- 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, licensed or approved by the Financial Services Commission established under the Financial Services Act;
- income derived by companies engaged in ship and aircraft leasing;
- income derived by a company from reinsurance and reinsurance brokering activities;
- income derived by a company from leasing and provision of international fibre capacity; and
- income derived by a company from the sale, financing arrangement, asset management of aircraft and its spare parts and aviation advisory services related thereto.

If they adhere to the following conditions (the “Conditions”):

- (i) carry out their CIGA in Mauritius;
- (ii) employ directly or indirectly an adequate number of suitably qualified persons to conduct their CIGA; and
- (iii) incur a minimum expenditure proportionate to their level of activities.

The definition of CIGA varies for the different income streams that qualify for PER, as tabled below:

Income	Core Income Generating Activities
Interest Income	Agreeing funding terms, setting the terms and duration of any financing, monitoring and revising any agreements, and managing any risks
Income derived by COLLECTIVE INVESTMENT SCHEME	Investment of funds in portfolios of securities, or other financial assets, real property or non-financial assets; diversification of risks; redemption on the request of the holder
Income derived by CLOSED-END FUND	Investment of funds collected from sophisticated investors, in portfolios of securities, or in other financial or non-financial assets, or real property
Income derived by CIS MANAGER	Management of a Collective Investment Scheme; taking decisions on the holding and selling of investments; calculating risks and reserves; taking decisions on currency or interest fluctuations and hedging positions; and preparing relevant regulatory or other reports for Government authorities and investors
Income derived by CIS ADMINISTRATOR	Providing services with respect to the operations and administrative affairs of a Collective Investment Scheme including accounting, valuation or reporting services
Income derived by INVESTMENT ADVISER or ASSET MANAGER	<ul style="list-style-type: none"> • Advising, guiding or recommending other persons, or holding himself out to advise, guide or recommend other persons, whether personally or through printed materials or by other means, to enter into securities transactions; • Managing or holding himself out to manage, under a mandate, whether discretionary or not, portfolios of securities; • Giving advice on corporate finance advisory matters concerning securities transactions
Income derived from SHIP AND AIRCRAFT LEASING	Agreeing on funding terms, identifying and acquiring assets to be leased, setting out the terms and duration of any leasing, monitoring and revising any agreements, and managing any risks
Income derived from REINSURANCE AND REINSURANCE BROKERING ACTIVITIES	Predicting and calculating risk, reinsuring against risks, administering clients' cell, providing related services, preparing regulatory reports, and providing clients technical advice in respect of reinsurance and liabilities
Income derived from LEASING AND PROVISION OF INTERNATIONAL FIBRE CAPACITY	Agreeing funding terms, identifying and acquiring capacity to be leased or otherwise provided, setting out the terms and duration of any leasing or right of use contracts, monitoring and revising any agreements, and managing any risks
Income derived from SALE, FINANCING ARRANGEMENT, ASSET MANAGEMENT OF AIRCRAFT AND ITS SPARE PARTS AND AVIATION ADVISORY SERVICES	Negotiating the terms of purchase and sale of aircraft and its spare parts, arranging for sale and leasing of aircraft, agreeing funding terms and providing advisory services in aviation related services

It is further noted that GBCs may outsource any relevant activities to third party service providers, management companies for instance, provided that:

- (i) the GBCs are able to demonstrate adequate monitoring of the outsourced activities;
- (ii) the outsourced activities are conducted in Mauritius; and
- (iii) the economic substance of the service providers is not counted multiple times by multiple companies when evidencing their own substance in Mauritius.

While the Regulations shed light on the conditions to be met by GBCs to avail of the PER, they nevertheless raise question marks over those that generate income falling outside of the PER scope, for instance trading income, consultancy income etc. It is unclear if these companies will still be required to adhere to the Conditions.

It is also noted that foreign sourced dividend income that has not been allowed as a deduction in the country of source and which benefits from the PER is precluded from the list of income streams for which the Conditions would have to be met in order to claim the partial exemption.

More clarifications will also be needed on whether the MRA will assess the conditions from a Group level.

Controlled Foreign Company Rules (“CFC Rules”)

The CFC Rules were introduced earlier this year under the Finance Act 2019 and is effective as from 1 July 2020.

A CFC is defined as a company which:

- (i) is not resident in Mauritius; and
- (ii) where more than 50% of its participation rights are held either directly or indirectly by a resident company or together with its associated enterprises*; and
- (iii) includes a permanent establishment of the resident company

** associated enterprise means an individual or entity in which the company holds directly or indirectly at least 25% of the participation rights/capital ownership or is entitled to receive at least 25% of its profits.*

Where the non-distributed profits of a CFC are deemed to have arisen from non-genuine arrangements which have been put in place for the main purpose of obtaining a tax benefit, that income shall be accounted as part of the chargeable income of the resident parent company.

Arrangement(s) will be regarded as non-genuine if the CFC would not have owned the assets or would not have undertaken the risk associated with all or part of its income generation if it were not controlled by a company where the people functions, relevant to the assets and risks, are carried out and are instrumental in generating the CFC’s income.

CFC rules will **not** apply in the following instances, where:

- (i) accounting profits do not exceed EUR750,000 and non-trading income is less than EUR 75,000;
- (ii) accounting profits represent less than 10% of its operating costs for the tax period. Note that operating costs exclude the cost of goods sold outside the country where the foreign entity is tax resident and any payments to associated enterprises ; or
- (iii) the tax rate in the in the country of residence of the CFC exceeds 50% of the Mauritian tax rate (i.e. where the headline income tax rate is more than 7.5%)

The Regulations now provide clarifications where it has been determined that the CFC rules will apply, as follows:

- The chargeable income of the CFC to be included in the resident company in a tax year shall be:
 - limited to amounts generated by the CFC through assets and risks which are linked to significant people functions carried out by the controlling resident company;
 - calculated in accordance with arm's length principle;
 - determined in accordance with the Mauritian tax law, as if the CFC has been a tax resident during the foreign tax year;
 - translated to Mauritius rupees at the average conversion rate during the foreign tax year
 - prorated based on the resident company's holding (direct and/or indirect) in the CFC;
 - included in the tax return of the resident company in respect of the income year in which the tax year of the CFC ends.
- In addition, any profits distributed by the CFC to the resident company which has previously been included in the chargeable income of the resident company, will be deducted from the chargeable income when calculating the amount of tax due on the distributed profits.
- The resident company can claim tax credit for any tax paid by the CFC.

New substance requirements for Freeport operator or private Freeport developer engaged in manufacturing activities

Freeport operators or private Freeport developers engaged in the export of goods or manufacturing activities in a Freeport zone and wishing to avail of the reduced tax rate of 3% will need to abide by the following conditions:

- Employ a minimum of 5 staff; and
- Incur an annual local expenditure exceeding Rs 3.5 million

Talk to us

If you have any queries or concerns on how the above changes might impact your current and/or upcoming structures, please feel free to write to your usual contact person or drop us an e-mail on info@intercontinentaltrust.com

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