

Government Notice No. 134 of 2019

THE INCOME TAX ACT

Regulations made by the Minister under section 161 of the Income Tax Act

1. These regulations may be cited as the Income Tax (Amendment No. 2) Regulations 2019.

2. In these regulations –

“principal regulations” means the Income Tax Regulations 1996.

3. Regulation 23D of the principal regulations is amended by revoking paragraphs (2) and (3) and replacing them by the following paragraphs –

(2) (a) The exemption shall, for the purpose of item 7(b) of Sub-part B of Part II of the Second Schedule to the Act, items 41(b), 42(b), 44(b), 45(b) and 46(b) of Sub-part C of Part II of the Second Schedule to the Act, 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.

(b) In paragraph (a) –

“core income generating activities” includes, for the purpose of –

- (a) 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;
- (b) item 41(b) of Sub-part C of Part II of the Second Schedule to the Act, the following as set out in the second column corresponding to the relevant type of licence as specified in the first column of the hereunder table –

Type of licence	Core income generating activities
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
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

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- CIS 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
- CIS Administrator Providing services with respect to the operations and administrative affairs of a Collective Investment Scheme including accounting, valuation or reporting services
- Investment Adviser or Asset Manager 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

- (c) item 42(b) of Sub-part C of Part II of the Second Schedule to the Act, 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;
- (d) item 44(b) of Sub-part C of Part II of the Second Schedule to the Act, includes predicting and calculating risk, reinsuring against risks, administrating clients' cell, providing related services, preparing regulatory reports, and providing clients technical advice in respect of reinsurance of liabilities;
- (e) item 45(b) of Sub-part C of Part II of the Second Schedule to the Act, includes 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;
- (f) item 46(b) of Sub-part C of Part II of the Second Schedule to the Act, includes 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.

(3) A company may, for the purpose of this regulation, outsource any relevant activities to third party service providers, provided that –

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

4. The principal regulations are amended by inserting, after regulation 23E, the following new regulations –

23F. Controlled foreign company rule

(1) (a) The income to be included in the chargeable income of the company shall, for the purpose of section 90A(1) of the Act, be limited to amounts generated through assets and risks which are linked to significant people functions carried out by the controlling company.

(b) The attribution of controlled foreign company income shall be calculated in accordance with the arm's length principle.

(2) The net income of a controlled foreign company in respect of a foreign tax year shall be –

- (a) an amount equal to the taxable income of that company determined in accordance with the Act as if the controlled foreign company had been a taxpayer, and as if that controlled foreign

company had been a resident for the purpose of the definition of “gross income” under section 10 of the Act;

- (b) determined in the currency used in the controlled foreign company for the purpose of financial reporting and shall, for the purpose of determining the amount to be included in the income of the company during any year of assessment, be converted into Mauritius currency by applying the average exchange rate between Mauritius currency and the other currency for that year of assessment.

(3) The income to be included in the chargeable income of the company shall be calculated in proportion to the company’s participation in the controlled foreign company referred to in section 90A of the Act.

(4) The income shall be included in the tax return of the company in respect of the income year in which the tax year of the controlled foreign company ends.

(5) Where the controlled foreign company distributes profits to the company, and those distributed profits are included in the chargeable income of the company, the amount of income previously included in the chargeable income of the company in accordance with section 90A(1) of the Act shall be deducted from the chargeable income when calculating the amount of tax due on the distributed profits.

(6) A credit of the tax paid by the controlled foreign company shall be allowed against the tax liability of the company in accordance with section 77 of the Act.

23G. Freeport operator or private freeport developer engaged in manufacturing activities in a freeport zone

The rate of income tax specified in Part II of the First Schedule shall, for the purpose of section 44B(3) of the Act, be applicable on the chargeable income provided that the freeport operator or private freeport developer –

- (a) employs a minimum of 5 staff; and
- (b) incurs an annual expenditure exceeding 3.5 million rupees.

5. These regulations shall be deemed to have come into operation on 1 July 2019.

Made by the Minister on 16 August 2019.
