

**IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL
ON APPEAL FROM THE SUPREME COURT OF MAURITIUS**

IN THE MATTER OF

THE DIRECTOR-GENERAL, MAURITIUS REVENUE AUTHORITY

APPELLANT

-and-

- 1. ALTEO ENERGY LTD**
- 2. THE ASSESSMENT REVIEW COMMITTEE**

RESPONDENTS

RESPONDENT NO.1'S WRITTEN CASE

29 April 2026

I. INTRODUCTION

1. The appeal in the present case relates to whether Respondent No. 1 (“**Alteo**”), a company incorporated under the laws of Mauritius, is entitled to the exemption from tax of 80% of interest income derived by it pursuant to Item 7 of Sub-Part B, Part II of the Second Schedule (“**Item 7**”) to the Income Tax Act 1995 (“**ITA**”), as read with Regulation 23D(2) of the Income Tax Regulations 1996 (“**Regulation 23D(2)**” and the “**Regulations**”).
2. The Appellant issued a Notice of Assessment dated 29 June 2020 (the “**Assessment**”) to Alteo on the basis that Alteo was not entitled to the exemption under Item 7 because the interest income derived by it was not related to the core business operations of Alteo and therefore that it did not form part of its “core income generating activities”. The Appellant maintained the Assessment in a Notice of Determination dated 26 July 2021 (the “**Determination**”). The Assessment Review Committee¹ (the “**ARC**”) upheld the Assessment in a ruling dated 24 October 2023 (the “**Finding**”). The Supreme Court allowed Alteo’s appeal against the Finding.
3. The appeal turns on the proper interpretation of Regulation 23D(2) (read with Item 7) and in particular, on whether the legislation requires interest income to be derived from a company’s core activity in order for the “partial” exemption on interest income to be available.
4. There is a single ground of appeal, namely that the Supreme Court erred in law in holding that the condition in Regulation 23D(2)(a)(i) was satisfied (such that the partial exemption in Item 7 was available). Alteo resists the appeal and contends that the appeal ought to be dismissed for the reasons set out below.

II. BACKGROUND FACTS

¹ For completeness we note that the ARC has now been replaced by the Revenue Tribunal pursuant to the Revenue Tribunal Act 2025 (with effect from 5 January 2026).

5. The salient facts are set out in the Statement of Facts and Issues agreed by the parties. The relevant facts of the case not being disputed, this appeal essentially turns on how Item 7 and Regulation 23D(2)(a)(i) and Regulation 23D(2)(b)(i) ought to be interpreted.
6. In particular, it is common ground that Alteo is a company domiciled in Mauritius and conducts all its activities in Mauritius. Its main activity is electricity production and its interest income is incidental to its main source of income.
7. Unless otherwise defined in this written case, all capitalised terms shall refer to the terms defined in the Statement of Facts and Issues. All EB references made therein shall refer to the Reproduced Record as at 06 April 2026.

III. THE LEGISLATION

8. Item 7 (as it read at the material time, i.e. year of assessment 2019/2020) stipulates as follows:

(a) Subject to sub-item (b), 80 per cent of interest derived by a company other than a bank referred to in section 44C;

(b) The exemption under sub-item (a) shall be granted provided the company satisfies the conditions relating to the substance of its activities as prescribed.

9. Regulation 23D(2) during the relevant year of assessment stipulated as follows:

(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, 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 –
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”.*

IV. ALTEO’S CASE

A. Preliminary remarks

10. We consider that it would be appropriate to briefly set out the legislative context under the ITA which is relevant to Item 7 (as the law stood at the material time, that is, the year of assessment 2019/2020).
11. Companies resident for tax purposes in Mauritius are generally subject to tax on their chargeable income at the flat rate of 15% (plus corporate social responsibility levy on certain companies). There are certain exceptions. To name a few, certain bodies of persons are exempt from income tax or certain companies are subject to a different rate (such as banks).
12. In addition, certain types of income as specified in the ITA are exempt from tax. This includes Item 7 which stipulates that 80 per cent of interest derived by a company other than a bank referred to in section 44C shall be exempt (provided the company satisfies the conditions relating to the substance of its activities as prescribed). In this written case, we shall refer to this exemption as the “partial exemption” (even though strictly speaking, Item 7 provides that 80 per cent of the interest income is exempt).
13. Item 7 was introduced in the ITA through the Finance (Miscellaneous Provisions Act) 2018 (“**FMPA 2018**”) as part of a comprehensive set of measures following the repeal of the so-called "deemed foreign tax credit regime"² and in order to harmonise the tax treatment of companies holding a global business licence and carrying business

² This was acknowledged by the Appellant’s witness (EB 92) before the ARC. The Supreme Court also makes reference to the parliamentary speech delivered by the then Prime Minister and Minister of Finance and Economic Development confirming the legislative background to the “partial exemption” legislation (pages 9, lines 32-34 and page 10, lines 1-7 of the Supreme Court judgment/ EB243/244).

mainly outside Mauritius (also known as global business companies or GBCs) and other companies incorporated pursuant to the Companies Act 2001 (commonly referred to as "domestic companies" since they carry out business mainly in Mauritius). FMPA 2018 also made amendments to the Financial Services Act 2007 (being the legislation regulating GBCs). At the material time (i.e. year of assessment 2019/2020), there were six (6) items which provided for a partial exemption under the new legislation.

14. Under the partial exemption provisions, a company claiming the exemption needs to satisfy certain prescribed substance conditions. One of those conditions relates to the "core income generating activities" or "CIGA" of the company being carried out in Mauritius. The concept of CIGA stems directly from Action 5 of the OECD/G20³'s Base Erosion Profit Shifting ("BEPS") project. Action 5 relates to "*Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance*" and is one of the four minimum standards of the OECD from the BEPS project. After initially being placed on the OECD's list of jurisdictions having regimes containing potentially harmful tax features (which included the deemed foreign tax credit regime (the "DFTC regime")), Mauritius repealed the DFTC regime as from 31 December 2018 and introduced the so-called "partial exemption" on certain types of income, which included Item 7. The CIGA requirement is a fundamental aspect of the new legislation and ensures that there is no mismatch between the income benefiting from an exemption and the activities required to generate such income⁴.

B. On the merits

15. Alteo's case in this written case is presented as follows:
16. The wording of Item 7 and Regulation 23D(2) are plain, clear and unambiguous. Put simply, the legislation does not contain any requirement or condition for interest income

³ The Organisation for Economic Co-operation and Development.

⁴ Before the Supreme Court, the Appellant acknowledged that the concept of CIGA is not a novel concept and "has been internationally influenced" by the BEPS Action Plan (Transcript of proceedings before the Supreme Court/ EB 231).

to be derived as part of the core or main or principal activity of a company for the partial exemption on interest income to be available.

17. **Firstly**, Item 7 (the correct starting point for interpreting the legislation) does not contain any such condition, restriction or qualifier (as rightly found by the Supreme Court). The legislation cannot be “strained” (to use a term employed by the Supreme Court) to impose an additional condition that the interest income be derived from the core activities of a company.
18. The application of the partial exemption on interest income is subject to sub-section (b) of Item 7 which provides that “*the exemption under sub-section (a) shall be granted provided the company satisfies the conditions relating to the substance of its activities as prescribed*”. While it is necessary to interpret Item 7 in conjunction with such prescribed conditions (i.e. Regulation 23D(2)), it is clear that sub-section (b) refers to conditions which relate to the substance of a company’s activities as set out in Regulation 23D(2). In other words, Item 7(b) has to be read together with Regulation 23D(2) for it to be interpreted properly. There is no stipulation in Item 7 that the interest income must originate from the main or core business activity of the company.
19. Sub-section (a) of Item 7 stipulates that 80 per cent interest derived by a company (other than a bank) is exempt from income tax. Other than the clearly stipulated exceptions (which, ironically, have been extended over the years so that most companies which derive interest income in the ordinary course of their business are excluded), there is no caveat in respect to the nature of the business carried out by a company in sub-section (a).
20. **Secondly**, Regulation 23D(2)(a)(i) and (b)(i) require that the core activities necessary to generate interest income are carried out in Mauritius. In the context of interest income, such activities have been defined as including “*agreeing funding terms, setting the terms and duration of any financing, monitoring and revising any agreements, and managing any risk*”. CIGA therefore does not mean core activities and it is plainly wrong to suggest that the CIGA for the purposes of the interest income exemption is only satisfied if the interest income originates from the core or principal activity of the recipient company. It is a single composite technical term that the legislator has defined in Regulation

23D(2)(b)(i). If the legislator had meant to refer to a business activity (as opposed to a nature of the income stream), it would plainly done so (as it has in fact in relation to a number of other items under the partial exemption provisions).

21. It is trite law that the words of the definition are plain, unambiguous and clear and should as such be interpreted according to their plain or technical meaning (if there is one). *Maxwell on Interpretation of Statutes* sets out as follows⁵:

*The first and most elementary rule of construction is that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one, and, otherwise, in their ordinary meaning; and, secondly, that the phrases and sentences are to be construed according to the rules of grammar. From these presumptions it is not allowable to depart, where the language admits of no other meaning; nor, where it is susceptible of another meaning, unless adequate grounds are found, either in the history or cause of the enactment or in the context or in the consequences which would result from the literal interpretation, for concluding that that interpretation does not give the real intention of the Legislature. **If there is nothing to modify, nothing to alter, nothing to qualify, the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences.***
(Emphasis added)

22. As set out in paragraph 14 above, the term “CIGA” has not been introduced in a vacuum, is not unique to Mauritius and has in fact a meaning expressly borne out of the Action 5 BEPS project. This is not to say that Alteo suggests applying a purposive interpretation of the legislation. Rather it is Alteo’s position that the plain and clear meaning of Item 7 and Regulation 23D(2) is confirmed by the legislative context of the mandatory implementation of the BEPS Action 5 project in Mauritius (insofar as it relates to preferential tax regimes)⁶.
23. The following extracts of the 2015 BEPS Action 5 Report confirm Alteo’s interpretation of Item 7 and Regulation 23D(2):

⁵ P. St. J. Langan, *Maxwell on the Interpretation of Statutes*, Sixth Edition, page 3

⁶ A comparison may be made to the principles set out in the case of *Fothergill v Monarch Airlines* [1981] AC 251 (*House of Lords*) concerning the use of *travaux préparatoires* and other materials as an aid to interpretation of legislation implementing an international convention.

[excerpt from paragraph 71] “*In the context of other preferential regimes, the same principle can also be applied so that such regimes would only be found to meet the substantial activity requirement if they also granted benefits only to qualifying taxpayers to the extent **those taxpayers undertook the core income generating activities required to produce the type of business income covered by the preferential regime**” [Emphasis is ours]*

[excerpt from paragraph 72] “*When applied to other regimes [i.e non-IP regimes], the substantial activity requirement **should also establish a link between the income qualifying for benefits and the core activities necessary to earn the income.**” [Emphasis and square bracketed wording is ours]*

24. These principles are further reinforced in the OECD’s 2017 and 2018 Progress Reports on Preferential Regimes and are all based on the underlying principle that the “substantial activity requirement” (or CIGA) requires a link to be established between the income qualifying for the benefits (in our case, interest income) and the core activities necessary to earn the income⁷.
25. Therefore, it is clear that the substance conditions (as set out in Regulation 23D(2)) relate to the core activities necessary to generate *the* income to which the partial exemption is applicable. This is distinctly different from the Appellant’s (erroneous) interpretation that the CIGA refers to the core activity of the taxpayer. In fact, as Alteo submitted before the Supreme Court, the Appellant appears to confuse “business activity” with “business income”. These are two distinct concepts. Item 7 refers to “interest income” which is a type of income. Item 7 does not say (for example) “income derived by a company engaged in financing or moneylending” or “interest income derived in the ordinary course of a company’s business” (which would be a business activity).
26. Item 7 is one of several exemptions introduced by FMPA 2018 under the new “partial exemption” provisions. The wording of the other exemptions supports Alteo’s interpretation of Item 7. For example, Item 41, which applies to certain financial services

⁷ Interestingly, the Appellant refers to the same extracts in their oral submissions before the Supreme Court, albeit interpreting them differently (EB 229 /230 lines 1-12).

providers (such as CIS managers, administrators, and investment advisers), expressly refers to the specific business activities concerned so that the status of the recipient company is expressly qualified. Similarly, Item 42, relating to companies engaged in leasing ships and aircraft, clearly identifies the qualifying business activity. In contrast, Item 7 simply refers to “interest income” derived by “a company,” without linking the exemption to any particular activity. Unlike Items 41 and 42, Item 7 is not qualified by the nature of the business or activity generating the interest income. Had the legislator intended to refer to a business activity, it would have clearly provided so in Item 7, as it has done in the case of Items 41 and 42. For completeness, we note that the other “partial” exemptions added over the years since 2018 further confirm this.

27. In addition, even if this is not necessary to support Alteo’s position, the proper interpretation of the legislation is further confirmed by the Hansard Debate No. 10 of 2018, and the National Budget Speech for the financial year 2018/2019. The material clearly shows that it was the intention of the legislature to extend the partial exemption on interest incomes to all companies in Mauritius (except banks), irrespective of the nature of its business activities provided the local company could also satisfy the three conditions.⁸ In fact the Supreme Court found it apt to refer to those extracts.

The Supreme Court judgment

28. In respect of Item 7, the Supreme Court correctly determined that:
- (i) Item 7 does not contain any restriction relating to the nature of the business carried out by a company in order for the exemption to be applicable so long as it is a company as defined under section 2 of the ITA; and
 - (ii) the only requirement is that the company satisfies the conditions relating to the substance of its activities as prescribed.
29. As regards the interpretation of the term “CIGA” for the purposes of Regulation 23D(2), the Supreme Court did adopt a different approach to Alteo, being a purposive one. However, this led to the same outcome as Alteo’s approach. After acknowledging that

⁸ EB 244

“the definition of CIGA is hotly contested by both sides in this case”, the Supreme Court decided to *“look to the purpose of the legislation in its historical context”* before concluding that the intended meaning of the word “includes” in Regulation 23D(2)(b) meant that CIGA covered both its ordinary natural meaning (any business activities generating main income) and the extended statutory meaning expressly set out.

30. The interpretation adopted by the Supreme Court is grounded in the statutory text and structure, and recognises the following propositions:
- (i) the statutory requirement is that the company carries out its core income generating activities in Mauritius;
 - (ii) the concept of "core income generating activities" is expanded by the use of the word "includes" in Regulation 23D(2)(b), such that a restrictive interpretation of CIGA is precluded; and
 - (iii) the statute does not impose any requirement that the income benefiting from the regime (in this case, interest income) must be derived from the company's core or dominant or principal activities.
31. The structure of the provision supports these conclusions. There is no wording linking the relevant income (that is, interest income) to the company's core activities as a whole. The expression "core income generating activities" is treated as a single composite concept, not as a set of separable elements. The activities set out in Regulation 23D(2)(b) - namely, agreeing funding terms, managing risks, and monitoring arrangements in the context of interest income - serve to ensure that, even where activities producing a particular category of income do not form part of what might ordinarily be regarded as the company's core business, they may nevertheless qualify as CIGA if carried out in Mauritius for the purposes of Regulation 23D(2). This is further supported by the case of **Jugmohun v. State (2010) SCJ 251** which confirmed that: *“the use of the word ‘includes’ for the purposes of interpreting or defining a word or expression is also used, however, in a technical and legal sense in order to give an extended meaning and scope of application to the word or expression it purports to define”*.
32. On either approach (that is Alteo’s or the Supreme Court’s), there is no requirement that a company’s core activity consists of generating interest income in order for the partial exemption to be available. Item 7 and Regulation 23D(2) operate on an income-specific

basis, not a company-wide basis. This income-specific approach is consistent with the underlying rationale of substance-based regimes: tax benefits are aligned with the jurisdiction in which the activities generating the income benefiting from the tax benefit are actually performed, without requiring that all - or even the main or dominant - activities of the company be located in that jurisdiction.

33. In this case, Alteo is a domestic company domiciled in Mauritius, performing all its activities in Mauritius, whether those relate to its main business or any incidental activity. The activities which generate all its income (including its interest income) are conducted in the same jurisdiction where its income is taxed. On any view, whether literal or purposive, Alteo is clearly entitled to the exemption under Item 7.

V. RESPONSES TO THE APPELLANT'S ARGUMENTS

34. The Appellant advances two main reasons in support of its appeal. First, it contends that the word "core" in the composite term "core income generating activities" imposes a freestanding threshold, requiring that the activities which generate the relevant income must constitute the core activity (and not incidental activity) of the company.
35. Second, the Appellant argues that the reference to the term "substance" of a company's activities in Item 7(b) is to be equated with its "core activities". Both arguments are misconceived as a matter of statutory construction and are addressed in turn below.

(A) Reason One

- (i) The adjective "core" in the term "core income generating activities" means that the company's activities that generate interest income must be its core activities

36. The Appellant's reasoning is clearly flawed. The term "core income generating activity" is a single composite term and it must be given its obvious, and in this case, technical meaning. The Appellant artificially isolates the word "core" from the remainder of the expression in order to suggest that each word must be read and interpreted independently. In doing so, the Appellant is effectively rewriting Regulation 23D(2)(a)(i) to impose a

requirement that interest income must be generated from the core activity of the company
- a requirement that the legislation simply does not contain.

37. It is also telling that the Appellant itself consistently refers to the expression as “CIGA”, that is, “core income generating activities”, as a single unitary concept. By adopting this composite abbreviation, the Appellant implicitly recognises that the expression functions as an indivisible statutory term.
38. The Appellant cannot, on the one hand, treat “core income generating activities” as a unified concept by referring to it as “CIGA”, and on the other hand, seek to isolate the word “core” in order to impose a freestanding condition. That approach is inherently inconsistent.
39. While it is not disputed that every word in an enactment must be given due meaning and weight, the word "core" cannot be interpreted in a manner that introduces a new condition in Regulation 23D(2)(a)(i) to require that the company's core activity be carried out in Mauritius. The correct application of that canon requires that every word in context be given its proper weight and not that individual words be extracted from their composite phrase and given an independent meaning at odds with the clear intention in which the provision was introduced (especially when there is a technical background to it). "Core income generating activity" does not, and cannot, mean the same thing as "core activity".
40. In addition, the Appellant’s reliance on contextual principles such as *noscitur a sociis* and *ejusdem generis* is misplaced. The activities listed in Regulation 23D(2)(b) – agreeing funding terms, setting financing terms, monitoring agreements and managing risks – are drawn from a particular type of activity, namely activities generating interest income. They do not constitute a coherent or universal genus capable of restricting the broader concept of “core income generating activities”.
41. Alteo does not dispute that the word "core" must add something to the expression “core income generating activities”. What it adds is, however, clear: the term "core income generating activities" denotes the core activities that generate the income which is subject to the partial exemption - in this case, interest income. This reading is clearly supported by the definition of the term, which sets out (albeit non-exhaustively) the types of core

activities necessary to generate interest income. The word "core" is plainly not redundant. Without it, any activity with some connection to the production of interest income - however peripheral - could in theory qualify, regardless of whether it was truly "core" to the generation of that income.

42. The absurd effect of the Appellant's interpretation is rendered even more obvious when one considers the current version of Item 7 which effectively excludes companies deriving interest income in the ordinary course of their business so that that the "example" of a holding company used by the Appellant (paragraph 42 of the Appellant's written case) is probably the only type of the company that would be able to avail itself from the exemption if the Appellant were right. This cannot have been the intention of the legislator.

(ii) Regulation 23D(2)(b) is not a definition

43. The Appellant contends that the term CIGA under Item 7(b) is not a definition but rather "examples" of the types of activity which can in principle be CIGA. This reason is a new argument not raised by the Appellant at any point before the instances below. In fact, it is directly contradictory to what the Appellant has argued before the instances below (both the ARC and the Supreme Court) and the Appellant's view in its own Statement of Practice (SP 22/21) (which is still in force as at the date of this written case) to the effect that Regulation 23D(2)(b) is a definition. The arguments made in paragraphs 19 and 20 of the Appellant's written case are therefore surprising and confusing.
44. That said, Alteo disagrees with the Appellant's new contention. Regulation 23D(2)(b) is clearly a non-exhaustive definition of what constitutes "CIGA" for the purposes of the specific type of income to which the exemption relates (in this case, interest income). It does precisely what it purports to do, namely to define (non-exhaustively) the core activities necessary to generate interest income.

(iii) The Supreme Court's reasoning

45. The Appellant observes that the Supreme Court took a different view not argued by Alteo.

46. Although Alteo’s approach differed from that adopted by the Supreme Court, the outcomes are entirely consistent with each other (as explained in paragraphs 28 to 31 above).
47. In particular, the effect of the Supreme Court's approach was that the partial exemption on interest income is available to a company which engages in “agreeing terms etc” in Mauritius. This is completely aligned with Alteo’s position that, in order for the partial exemption to be available, activities necessary to generate interest income must be conducted in Mauritius. It is wholly accepted that the Supreme Court reached this conclusion through a different route, that is, by saying that the word “includes” enlarged the natural definition of “core income generating activity” but the effect is the same: there must be a link between the interest income and the activities generating it and those activities must be conducted in Mauritius.
48. Whether one takes the view that “core income generating activity” means the core activities necessary to generate interest income (being Alteo’s interpretation before the ARC and the Supreme Court) or the activities expressly stated by the legislation as being included in the definition of “core income generating activity” (that is in addition to the core activities of the company), the outcome is the same: the partial exemption is not available unless the activities specified in Regulation 23D(2)(b) as generating that interest income occurs in Mauritius.
49. On each of the two approaches (that Alteo and that of the Supreme Court), there is no limitation as to the type of business activity that must be conducted by a person as its core business in order to qualify for the exemption on interest income.
50. Alteo’s argument was that CIGA must be carried out in Mauritius, and the CIGA must relate to activities which generate income (regardless of what the main activity of a company is).
51. By suggesting that Alteo’s case was limited to interest-generating CIGA, the Appellant misses the real issue that the Supreme Court was required to rule on, which was whether the statute imposes a “core activity” requirement. The Supreme Court correctly held that it does not.

52. The suggestion that Alteo’s position “reflects opportunism” is wholly unwarranted. Agreeing with the Supreme Court’s alternative reasoning is not a matter of shifting position, but of recognising that even on a purposive approach (which is the approach of the Supreme Court) and on any view, one reaches the same conclusion.

(iv) Relevance of the OECD BEPS Action 5

53. The Appellant states that it is impermissible to interpret Mauritian legislation in reference to the BEPS Action 5 framework “*as noted by the ARC*” (paragraph 27 of the Appellant’s written case). In fact, Alteo had a specific ground of appeal before the Supreme Court on the ARC’s observation (namely ground 8) since the ARC was wrong to state that BEPS Action 5 does not concern cross-border activities. In fact, BEPS Action 5 specifically concerns regimes contained in domestic legislation which may have harmful tax features (in the case of Mauritius, this was the ring-fencing of the tax treatment of GBCs from domestic companies which resulted in GBCs having a lower effective tax rate than domestic companies).

54. In addition to the arguments set out in paragraphs 22 to 24 above, Alteo submits that the Appellant cannot credibly contend that an international framework which was the stated and sole impetus for legislation to be enacted (and indeed overhauled) in Mauritius is irrelevant to its construction. To do so would require the Board to construe the domestic legislation in a complete vacuum, ignoring the very object the legislature was seeking to achieve.

55. BEPS Action 5 is concerned with ensuring that companies which claim preferential tax treatment in a jurisdiction have substantial activity in that jurisdiction. This was accepted by the Appellant itself.⁹ The Action 5 Report identifies “core income generating activities” by reference to each relevant income type and describes them as the activities that are centrally involved in producing the relevant income. This is precisely the construction advanced by Alteo.

⁹ EB 117,119

56. The Appellant’s alternative reading requiring the CIGA to constitute the dominant activities of the company overall finds no support in the BEPS Action 5 report and is inconsistent with its evident purpose.

(B) Reason Two

57. Reason Two, as advanced by the Appellant, is a new argument. That said, it is similar to the reasoning adopted by the ARC to substantiate its ruling, which the Supreme Court rightly found “rather confusing” (**EB 239**). The Appellant’s core contention is that the expression “the substance of [a company’s] activities” in Item 7(b) means “core activities”, and that accordingly the partial exemption is only available where a company’s main business activity consists of the production of interest income. That contention is wrong for the reasons set out below.

58. The Appellant’s argument misreads both the text and the legal context of Item 7(b). It is apposite to note at the outset that the Appellant itself, in its skeleton arguments before the Supreme Court (**EB 186**), contended that the grounds of appeal of Alteo were flawed because the terms “essence” and “substance” “*have very different meanings and must not be interpreted as being the same*”, and that “*such term goes much further than the term ‘substance’ which is provided in the law*”. The Appellant now advances precisely the opposite position by contending that “*substance of a company’s activities*” equates to its core activities — a new argument that was not raised at any stage below by the Appellant and that is inconsistent with its own prior submissions.

59. Commenting on the ARC’s reasoning, the Supreme Court correctly held, “*the word ‘substance’ can only be defined by way of its meaning in its ordinary and popular sense*”. In the context of Item 7(b), the word “substance” refers purely and simply to the conditions prescribed under Regulation 23D(2), nothing more.

60. The Appellant’s reliance on a sentence from the Supreme Court’s judgment to support the equation of “substance” with “core activities” takes that sentence entirely out of context (paragraph 34 of the Appellant’s written case). The sentence appears in the passage where the Court correctly determined that the ARC had in effect strained the word “substance” beyond its ordinary grammatical meaning, thereby imposing an

additional restriction on the plain language of Item 7(b) where there was “*no restriction such as the nature of the business activities carried out to claim the said exemption*”. As the Supreme Court expressly concludes, “*there is no qualification that the granting of the exemption in question is reserved to a specific type of business*”.

61. The grammatical structure of Item 7(b) is decisive. The company is required to “satisfy the conditions relating to the substance of its activities”. The phrase “relating to the substance of its activities” qualifies the conditions, not the income. The statute first identifies the relevant income and only thereafter requires that the company satisfy prescribed conditions. At no stage does it require that the income itself must arise from the company’s core or dominant activities.
62. For completeness, it is worth noting that the legislature deemed it fit to amend Item 7 in the Finance Act 2025 (after the Supreme Court judgment) to incorporate an additional provision that “*for the purpose of sub-item (b), the exemption shall be granted provided the relevant activity of the company, generating the income, satisfies the conditions relating to substance requirements.*” The post-judgment amendment is telling and one can hardly say that the word “substance” in the new wording means “core”. Besides, a legislature does not amend what is already clear.
63. The Appellant also misuses the words “as prescribed” in Item 7(b). That expression expressly indicates that the relevant conditions are set out elsewhere — in Regulation 23D(2). Item 7(b) imposes no independent substantive condition of its own. The Appellant’s circular reasoning — that “substance” requires the company to satisfy conditions relating to the “substance of its activities” — is precisely the approach the ARC adopted and which the Supreme Court rightly rejected.
64. If “substance of activities” already meant “core activities” in the sense the Appellant contends, the further reference to “core income generating activities” in Regulation 23D(2)(a)(i) would be circular and redundant.
65. The Appellant’s interpretation adds words to the statute that are not there. As the Supreme Court itself observed, a court or tribunal should not read into legislative provisions words or conditions that the legislature has not chosen to include. Isolating individual words

from item 7 — which must be read as a whole, together with Regulation 23D(2) — produces an absurd interpretation. As confirmed in *Cape Brandy Syndicate v IRC [1921] 1 KB 64*: “*In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment... Nothing is to be read in, nothing is to be implied.*”

66. The Supreme Court helpfully traces the amendments made to Item 7 from its first enactment through the FMPA 2018 to the version in force at the relevant year of assessment. The legislative evolution of Item 7 lends further support to its clear and unambiguous wording: the provision was never intended to restrict the partial exemption to a particular type of business activity, and interpreting the word “substance” to mean “core” would impermissibly strain the legislation.

VI. CONCLUSION AND SUMMARY OF REASONS UPON WHICH ALTEO’S ARGUMENT IS FOUNDED

67. Alteo respectfully requests that the appeal be dismissed with costs on the basis that its interest income fell within the partial exemption in Item 7 for the reasons summarised below:
68. **Firstly**, the clear and unambiguous wording of Item 7 show that it is not a requirement of the law that the interest income forms part of the core income of a company for the exemption to apply. Alteo agrees with the Supreme Court on this aspect.
69. **Secondly**, the term "core income generating activities" is a composite term which is defined in Regulation 23D(2)(b). The inclusive definition in Regulation 23D(2)(b) reflect the core activities which generate the income which is subject to the exemption or the activities necessary to generate the income subject to the exemption, in this case interest income. It is a term which is specifically borne out of the OECD's BEPS Action 5 project whose aim was to ensure that income was taxed in the same jurisdiction as the activities generating that income. Alteo's interpretation is entirely consistent with it.

In the alternative, the Supreme Court's purposive reasoning leads to the same outcome as Alteo's approach. By "enlarging" the definition of "core income generating activities" through the use of the word "includes" in Regulation 23D(2)(b), the legislature intended

that, in addition to the core activities of a company, the activities non-exhaustively set out therein as generating interest income also constitute "core income generating activities" for the purposes of Regulation 23D(2)(a)(i).

70. On either approach, there is no requirement that a company's core activity must consist of generating interest income in order for the partial exemption provided for under Item 7 to be available.

JOHANNE HAGUE

MEDINA TORABALLY

CMS PRISM in association with CMS