



**Trinity Term**  
**[2026] UKPC 27**  
**Privy Council Appeal No 0103 of 2025**

## **JUDGMENT**

**Alteo Energy Ltd and another (Respondents) v  
Director-General, Mauritius Revenue Authority  
(Appellant) (Mauritius)**

**From the Supreme Court of Mauritius**

before

**Lord Sales  
Lord Hamblen  
Lord Leggatt  
Lady Simler  
Lord Doherty**

**JUDGMENT GIVEN ON  
30 June 2026**

**Heard on 10 June 2026**

*Appellant*

Yvan Jean-Louis SC

Imran Afzal KC

Riya Bhatt

(Instructed by RWK Goodman LLP)

*First Respondent*

Johanne Hague

Medina Torabally

(Instructed by Étude Guy Rivalland)

## **LORD LEGGATT:**

### **Introduction**

1. This appeal raises a question of interpretation of legislation which grants a partial exemption from income tax for interest income derived by a company which “carries out its core income generating activities in Mauritius”. The issue is whether, on the agreed facts, the first respondent, Alteo Energy Ltd (“Alteo”), satisfied this condition so as to be entitled to the partial exemption on interest income received in the tax year 2019/20.

### **Background to the applicable legislation**

2. In 1998 the Organisation for Economic Co-operation and Development (“OECD”) published a report entitled *Harmful Tax Competition: An Emerging Global Issue*. The report raised policy concerns about tax practices which enable multi-national businesses to avoid or minimise tax by recognising profits in countries that offer preferential tax treatment. Among the harmful tax practices identified were practices which allow income to be reported in a country other than where the economic activities which generated the income were carried out and practices which give preferential tax treatment to companies carrying on activities abroad in comparison with domestic taxpayers.

3. In 2013 the OECD approved an *Action Plan on Base Erosion and Profit Shifting* to “counter harmful tax practices more effectively, taking into account transparency and substance”. Action 5 included giving priority to “requiring substantial activity for any preferential regime”. As explained in a report published in 2015, the essence of this substantial activity requirement is that a regime should offer tax benefits only when the taxpayer undertakes within the territory concerned “the core income-generating activities required to produce the type of income covered by the preferential regime”: see the OECD’s *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5: 2015 Final Report*, p 9.

4. Chapter 4 of the OECD 2015 report first explained the substantial activity requirement in the context of regimes applicable to intellectual property (IP) and then in the context of other regimes. As stated in para 72:

“When applied to IP regimes, the substantial activity requirement establishes a link between expenditures, IP assets, and IP income. Expenditures are a proxy for activities, and IP assets are used to ensure that the income that receives benefits does in fact arise from the expenditures incurred by the qualifying taxpayer. The effect of this approach is therefore to

link income and activities. When applied to other 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 added.)

5. Before 2019, Mauritius offered a preferential tax regime to companies classified as global business companies. In the 2018–19 budget speech the Government announced that, to “give its full support to the global business sector whilst ensuring compliance with the best international norms and standards”, it was abolishing this regime and “introducing a new harmonised fiscal regime for domestic and Global Business Companies and a specific fiscal regime for banks”. Global business companies would also “be required to comply with enhanced substance conditions”. The legislation enacting these measures took effect from 1 January 2019.

### **The applicable legislation**

6. Section 7(2) of the Income Tax Act 1995 provides:

“Any income specified in Part II of the Second Schedule shall be exempt from income tax.”

7. Sub-part B of Part II of the Second Schedule to the Act is headed “Dividends, Interest and Royalty”. With effect from 1 January 2019, this included at item 7:

“(a) Subject to sub-item (b), 80 per cent of interest derived by a company other than —

(i) a bank referred to in section 44C; ...”

Item 7(b) stated:

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

8. The conditions referred to in item 7(b) are set out in regulation 23D(2) of the Income Tax Regulations 1996, which was inserted in October 2018 and came into operation on 1 January 2019. This states:

“(a) For the purpose of item 7(b) of Sub-part B of Part II of the Second Schedule to the Act, the exemption shall be granted provided that 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 agreeing funding terms, setting the terms and duration of any financing, monitoring and revising any agreements, and managing any risks.” (Emphasis added.)

### **The agreed facts**

9. Alteo is incorporated and domiciled in Mauritius. The company is part of a global group which operates mainly in the sugar industry, but Alteo’s principal activity for the tax year 2019/20 was the production of electricity. Its main source of income was from the sale of electricity to the Central Electricity Board. This accounted for 95.7% of its total income in that year. Alteo also received interest on certain loans made by the company. This interest income was a very small proportion (about 0.25%) of Alteo’s total income and was incidental to its main activity.

### **The proceedings**

10. The Mauritius Revenue Authority (“MRA”) issued a notice of assessment in relation to the tax year 2019/20 which assessed Alteo as liable to income tax on the whole of its interest income. Alteo objected to the assessment maintaining that it is entitled to an exemption for 80% of interest under section 7(2) and item 7 of Sub-part B of Part II of the Second Schedule to the Income Tax Act 1995.

11. The assessment was upheld by the Assessment Review Committee. Alteo appealed to the Supreme Court, which allowed the appeal. From that decision, the MRA brings this appeal to the Board.

12. The sole issue in the appeal is whether the Supreme Court should have held that the first condition in regulation 23D(2)(a) is not satisfied because, on the agreed facts, Alteo does not carry out its “core income generating activities” in Mauritius.

### **The rival interpretations**

13. The MRA’s position is that in this phrase: (1) the word “income” refers to income capable of qualifying for the relevant exemption from income tax—here interest income; and (2) the word “core” signifies that, to satisfy the condition, the activities generating such income must be core business activities of the company, ie those that are central to its main operations. Applying that test to Alteo, it is common ground that the lending activities which generated interest income in the relevant period were not core business activities of the company but were incidental to its principal activity of producing electricity. The MRA contends that, for this reason, the first condition in regulation 23D(2)(a) is not satisfied and the interest income received by Alteo in the tax year 2019/20 therefore does not benefit from the partial exemption from income tax.

14. Although Alteo did not dispute the MRA’s interpretation of the word “income” before the Assessment Review Committee or the Supreme Court, the Supreme Court did not accept it. The court took the view that the “income” referred to in regulation 23D(2) is not restricted to income to which the (partial) exemption provided by item 7 potentially applies but encompasses all income generated by the company. The Supreme Court ordered that the case should be remitted to the Assessment Review Committee to apply the exemption provisions interpreted in this way to the facts. The result would inevitably be to disallow the assessment, as it is not in dispute that the core activities which generated Alteo’s total income for the tax year 2019/20 were carried out in Mauritius.

15. In response to this appeal, Alteo relies, if necessary, on the Supreme Court’s reasoning. But its primary contention is that, even if in the context of regulation 23D(2) the word “income” refers to interest income, the first condition does not require the activities which generate that income to be core business activities of the company. Rather, it requires only that the core activities which generate that income are carried out in Mauritius. As Alteo carried out all its activities in Mauritius, that condition is on any view satisfied.

## **The meaning of “income”**

16. In the Board’s opinion, the Supreme Court was wrong to interpret the term “income” in regulation 23D(2)(a) as including income generated by any of the company’s activities. The parties were right to interpret the term as referring only to income of the kind referred to in item 7. Three reasons lead to that conclusion.

17. The first is that the function of regulation 23D(2) is to set out conditions which must be satisfied for the partial exemption from income tax for income specified in item 7 to apply. In that context it is logical to understand the phrase “income generating activities” as used in regulation 23D(2)(a) to be referring to activities of the company which generate income that might benefit from the exemption, ie interest income, and not to income which cannot benefit from the exemption and is therefore logically irrelevant to whether the exemption applies.

18. Second, this interpretation reflects the underlying purpose of ensuring that the regime for granting tax exemptions complies with the substantial activity requirement, as explained, for example, in the OECD 2015 report. This requires a link to be established between the income qualifying for tax exemption and the core activities necessary to earn that income. For the purpose of item 7, the relevant link is therefore between interest income and the core activities necessary to produce that income. What, if any, other income the company’s activities generate is beside the point.

19. Third, it is significant that regulation 23D(2) is not the only provision in which the phrase “core income generating activities” is used. If the phrase had been confined to this provision, it might have been reasonable to infer that “income” meant income of any type on the basis that, if the intention was to refer solely to “interest”, that term (or a similarly specific term such as “interest income”) would have been used. But, in fact, the phrase “core income generating activities” is also used elsewhere. Item 7 is just one of many items specified in Part II of the Second Schedule to the Act for which an exemption or partial exemption from income tax is granted provided the company satisfies “conditions relating to the substance of its activities” prescribed in the Income Tax Regulations. In each case those conditions are expressed in similar terms and use the expression “core income generating activities”. The only variation is in the list of specific activities which the phrase is said to include.

20. To take two examples, item 42 provides an exemption for “80 per cent of income derived by companies engaged in ship and aircraft leasing” and item 44 provides an exemption for “80 per cent of income derived by a company from reinsurance and reinsurance brokering activities”—in each case “provided the company satisfies the conditions relating to the substance of its activities as prescribed”. In each case the three conditions prescribed are expressed in exactly the same language as those prescribed for

the purpose of item 7 (quoted at para 8 above). Thus, the first condition is that the company “carries out its core income generating activities in Mauritius”. But in these (and other) cases the income covered by the exemption is not, or is not restricted to, interest. The approach taken in drafting the conditions has evidently been to use a standard form of words which is capable of applying to whatever income is relevant for the purpose of the exemption in question. In these circumstances no implication can be drawn from the use of the word “income” that the intention is to refer to the whole of the company’s income. Rather, the use of this general term is explained by the fact that the type of income depends on the scope of the underlying exemption.

21. The Board concludes that, on the proper interpretation of the phrase “core income generating activities”, wherever the phrase is used in the legislation the word “income” refers to income of the type capable of benefiting from the relevant exemption. For the purpose of item 7, therefore, the word “income” when used in regulation 23D(2) refers only to interest income.

### **What is meant by “core”?**

22. As mentioned, the MRA contends that the word “core” signifies that the activities carried out by the company which generate income of the type qualifying for the exemption must be core business activities of the company, ie those that are central to its main operations. In support of this interpretation, the MRA relies on the explanation in regulation 23D(2)(b) of the phrase “core income generating activities” as including “agreeing funding terms, setting the terms and duration of any financing, monitoring and revising any agreements, and managing any risks”. While accepting that the use of the word “includes” makes clear that this list is not exhaustive, the MRA submits that this provision indicates the kind of activities that can satisfy the first condition in regulation 23D(2)(a), if carried out in Mauritius. The activities listed are all activities in which a company whose core business involves lending money to generate interest income would typically engage. This is said to show that it is necessary to ask whether activities which generate interest income are core activities of the company.

23. The MRA also relies on the reference in item 7(b) to “conditions relating to the substance of [the company’s] activities”. The MRA submits that the “substance of [the company’s] activities” are its core activities. This is said to show that the first condition prescribed in regulation 23D(2)(a) should be understood as requiring the activities which generate the income qualifying for exemption to be core activities of the company that are carried out in Mauritius. That requirement was not satisfied here, as Alteo’s core business activities were the production and sale of electricity and did not include money lending or other interest generating activities.

24. The Board does not consider that the words used in regulation 23D(2) are reasonably capable of bearing the meaning for which the MRA contends. The first prescribed condition is that the company “carries out its core income generating activities in Mauritius”. The word “core” qualifies the “income generating activities” which the company carries out. It signifies that, even if the company does not carry out in Mauritius all the activities generating the relevant income, it must carry out in Mauritius the “core” activities which generate that income. The provision does not say and cannot be read as saying that the activities which generate the relevant income must be core business activities of the company, central to its main operations.

25. The Board agrees with the MRA that the word “core” should be read with the reference in item 7(b) to “the substance of [the company’s] activities”. As discussed above, the clear purpose of the conditions prescribed in regulation 23D is to ensure that the regime satisfies the OECD’s “substantial activity” requirement. That purpose is achieved by imposing a condition that the core activities required to generate the interest income for which partial exemption is granted must be carried out in Mauritius. It does not justify imposing a condition that the company’s core business activities must include money lending or similar activities.

26. This analysis is reinforced by the second and third conditions in regulation 23D(2)(a), which also reflect the approach taken in the OECD 2015 report—for example, in the passage quoted at para 4 above. The evident reason for looking at where persons conducting the relevant activities are employed and where expenditure is incurred is also to ensure that the income qualifying for tax benefits does in fact arise from the core activities required to generate the income.

27. The only feature of regulation 23D(2) consistent with the MRA’s case is the list of activities specified in sub-paragraph (b). The list would make more obvious sense if item 7, like several other items in Part II of the Second Schedule to the Act, had referred to income derived by companies engaged in particular activities (eg ship and aircraft leasing in item 42) or to income derived from particular activities (eg reinsurance and reinsurance brokering activities in item 44).

28. In contrast, item 7 is not limited in this way. It does not refer, for example, to “income derived by companies engaged in money lending or in the provision of debt finance or investment in debt instruments”. The main limitation in its scope is that the exemption applies only to a particular type of income, namely, “interest”. The only restriction on the activities or companies capable of qualifying for the exemption is that certain types of company are excluded. At first, the only excluded companies were banks (which are the subject of a separate regime). But more exceptions were later added (with retrospective effect from 1 January 2019). These were for: “(ii) a non-bank deposit taking institution; (iii) a money changer; (iv) a foreign exchange dealer; (v) an insurance company; (vi) a leasing company; and (vii) a company providing factoring, hire purchase

facilities, or credit sales facilities”. Interest derived by such companies therefore falls outside the scope of the item 7 exemption.

29. It is hard to see why paragraph (b), with its list of specific activities such as “agreeing funding terms, setting the terms and duration of any financing” etc, was included in regulation 23D(2), unless it was simply assumed that it should follow the same pattern as other provisions prescribing the conditions that must be satisfied to qualify for an exemption. The best—or least unsatisfactory—explanation may be that it was intended to make clear that the exclusion of banks (and later further specified types of company) does not prevent other, non-excluded companies engaged in financing as their principal or sole field of operation from claiming the benefit of the exemption for interest income. But whatever the explanation for the inclusion and drafting of paragraph (b), it cannot displace or alter the plain meaning of the first condition in paragraph (a). A provision that “core income generating activities” includes certain specified activities cannot be construed as a condition that the specified activities or activities of a similar kind must be core business activities of the company. Regulation 23D(2) simply does not contain any such condition. It places no restriction on the nature of the company’s business. It is concerned only with where the company carries out its core interest generating activities.

### **Application to this case**

30. What were those activities in the case of Alteo? In principle, a broader or a narrower view could be taken. The narrower view would focus on the activities of entering into loan agreements which were the immediate cause of the receipt of interest in the tax year 2019/20. On one reading, paragraph (b) might be said to support this approach. On the broader view it is appropriate to look beyond the making of the loans on which interest was received and to consider the whole of the company’s operations. On the agreed facts, interest was a tiny proportion of the company’s total income and this income, and the loans which generated it, were essentially a by-product of Alteo’s principal business activity.

31. As all Alteo’s activities were carried out in Mauritius, it makes no difference to the outcome of this case which view is adopted. On either view the company carried out its core income generating activities in Mauritius. But, in the opinion of the Board, the broader view is to be preferred. It fits better with the approach of focusing on the substance of the company’s activities and with the second and third conditions in regulation 23D(2)(a), which use number of employees and expenditure as a proxy for the relevant activities. For a company such as Alteo in which earning interest on some loans was incidental to its business, the number of persons employed and the expenditure incurred in making those loans are of doubtful relevance. It makes more sense to consider whether the activities which generate all the company’s revenue—including, indirectly, interest derived from lending some of its money—are located in Mauritius. The facts that

Alteo employed an adequate number of suitably qualified persons to conduct those activities and incurred expenditure proportionate to its level of activities provides confirmation that this requirement was genuinely met.

## **Conclusion**

32. For these reasons, which differ from those of the Supreme Court but lead to the same conclusion, the appeal will be dismissed.