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Tax Alert

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TAX RULING B60: THIRTEENTH AMENDMENT TO THE BPT REGULATION

This Ruling amends Section 65 of the BPT Regulation which imposes certain rules relating to payments subject to Withholding Tax (“WHT”) under Section 6 of the BPT Act. The amendment explains when an amount becomes “payable” as prescribed under Section 6(a) of the BPT Act and Section 65(a) and (b) of the BPT Regulation. As per the amendment, a payment subject to WHT becomes payable on the earlier of:

1. The date on which the payee receives a hard or soft copy of an invoice or any other indication of a liability to pay; or

2. The date on which the payee accrues the payable amount in their books; or
3. The date that a current obligation of the payee arises in connection with a past event

The Ruling further stipulates that if a payment date is unascertainable, but the payee is aware of the month the payment falls due, the amount is deemed payable at the end of that month. In cases where the total amount payable to the non-resident is unknown to the payer, the payer has to submit an amended tax return once the correct tax liability for that amount can be ascertained and, if the amended return results in a higher amount of tax, applicable late payment and fines will be imposed.

Our comments

The issue that requires most attention of taxpayers, is where the total amount payable to the non-resident is uncertain. If the amount is not certain by the due date of tax return, but if it is accrued in the books, the Ruling requires a tax return be filed based on an estimate and file an amended tax return later. However, as per the Ruling, late payment fines will be imposed if the tax payable as per the amended return is higher than the amount declared initially. This would be an issue commonly faced by taxpayers making payments upon finalization of their accounts – such as management fees of tourist resorts.

TAX RULING G41: TWENTIETH AMENDMENT TO THE GST REGULATION

The Ruling amends Section 42 (Sale of a going concern) by inserting subsection 42(a)(3) which stipulates that a sale of a going concern may be zero-rated if the MIRA determines that there is no revenue loss to the State. Prior to this Ruling, the disposal of a going concern could only be zero-rated if both parties are registered for GST prior to the sale, or if the transaction is for the transfer of ownership of a business from an individual(s) to a company.

The Ruling also amends Section 59(c) of the Regulation to the effect that when a taxpayer wants to deduct tax paid on an irrecoverable debt as prescribed under 58 of the regulation, that person must provide documentation that proves that the events stated in Section 58(a), (b), or (c) occurred. Prior to this amendment, documentation was submitted only if the deduction was being claimed against irrecoverable debts relating to court judgments.

Our comments

With the new rule under Section 42(a)(3), the disposal of a going concern may now be zero-rated even if the buyer is not registered for GST – however, the MIRA must first determine that there is no revenue loss to the State from the transaction. The Ruling however does not prescribe how such a determination may be sought by the taxpayer.



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CONTACT US

Third Floor
H. Meerubahuruge Aage
Ameer Ahmed Magu
Male', Maldives

+960 7956996
ask@ctlstrategies.com
www.ctlstrategies.com

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