Tax Alert

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WHT ON COMMISSION PAID TO ONLINE TRAVEL AGENCIES

This Ruling establishes specific rules on subjectability of Withholding Tax (WHT) on commissions and fees paid or payable to non-resident Online Travel Agents or Agencies (OTAs) by tourist establishments.

As per the new rules, effective from 1 December 2017, WHT is required to be paid on booking commissions only in cases where there is an actual flow of commission from the tourist establishment to the non-resident OTA. This means that there is no WHT if the OTA collects a payment and remits the net amount to the tourist establishments (and thus not requiring an actual flow of commission from the tourist establishment to the OTA) - a model commonly known in the industry as the merchant model.

Prior to this Ruling, the MIRA required WHT to be paid on the commission deemed to be paid under the merchant model as well. This was made clear in the MIRA's circular number 220-TSD/CIR/2016/11 issued on 28 December 2016.

Changes to the rules on the imposition of WHT on booking commission is illustrated below:

	Agency Model	Merchant Model
How it works	1. Payment collected by tourist establishment 2. Commission paid to OTA E.g. Booking.com, Airbnb	1. Payment collected by OTA 2. Remit revenue share to tourist establishment E.g. Agoda, Expedia
WHT treatment		
Before 1 Jan 2017	WHT applicable on the OTA's commission	No WHT
1 Jan 2017 - 30 Nov 2017		WHT applicable on deemed commission
From 1 Dec 2017		No WHT

For a detailed discussion on this topic, see our blog at https://goo.gl/1wGcPE.

LIMITATIONS ON CLAIMING INPUT TAX RELATING TO CAPITAL EXPENDITURE

The MIRA has amended the GST Regulation, via the 23rd amendment, on 21 December 2017 introducing a number of changes to the claiming of input tax on capital expenditure. The crucial changes are summarised below.

Input tax deduction tied to taxable activity

Prior to this amendment, input tax deduction was not tied to individual taxable activities so long as it was incurred by the taxpayer. The only requirement was that the taxpayer incurs the capital expenditure which can then be deducted from their output tax. The new rules stipulate that input tax of a capital expenditure must be deducted only from the output tax generated from that activity.

Removal of MVR 500,000 - 5,000,000 category

Under the previous rules, input tax of any capital expenditure between MVR 500,000 and MVR 5,000,000 was required be to be claimed equally over 12 taxable periods, beginning from the period on which the expenditure was incurred. The amount deducted as input, over those 12 taxable periods, was not to exceed the output generated during that period. Furthermore, if the capital expenditure incurred was 5,000,000 or more, the input tax amount was to be deducted over 36 taxable periods.

However, the new rules eliminate the MVR 500,000 to MVR 5,000,000 category, leaving input tax on capital expenditure to be claimed under two categories: expenses equal to or below MVR 500,000 and expenses above MVR 500,000. With these changes, the Regulation now requires the following:

1. If a taxpayer incurs a capital expenditure of MVR 500,000 or less, the input tax can be deducted in full within 12 months, beginning from the month that expenditure was incurred.
2. If a taxpayer incurs a capital expenditure of more than MVR 500,000, the corresponding input tax amount can be deducted equally over 36 months.
    - ◊ If the taxable activity to which the expenditure attributes to is generating, or has ever generated output tax, the 36 months will be counted beginning from the month in which that the expenditure was incurred.
    - ◊ If the taxable activity to which the capital expenditure attributes to has not generated any output tax when that expenditure was incurred, the 36 months will be counted beginning from the taxable period in which the taxable activity first generates output tax - effectively postponing the taxable period in which the input deduction can be made.

Order of claiming input tax

The ruling also requires input tax to be deducted in the following order:

1. Input tax on revenue expenditure must be deducted first. This can be done regardless of whether you incur output tax or not.
2. Input tax on capital expenditure less than MVR 500,000 can then be deducted if there is enough output tax remaining, and up to the amount of the remaining output tax.
3. Input tax on capital expenditure more than MVR 500,000, apportioned equally over 36 months can then be deducted if there is enough output tax remaining, and up to the amount of the remaining output tax.

Submission of supporting documents

If input tax relating to capital expenditure is to be claimed, the taxpayer must submit the details of that capital expenditure in a format prescribed by the MIRA[1]. Failure to do so will disallow the taxpayer from claiming that input tax in any taxable period.

For an understanding of how this should be applied in practice, see the example below:

Resort Co is registered for GST and is currently constructing a resort. During January 2018. Resort Co has incurred capital expenditure of MVR 6,360,000 (of which MVR 360,000 is GST). The resort also has

[1] See MIRA's circular number 220-TFD/CIR/2018/01

GST inclusive revenue expenditure of MVR 106,000 (of which MVR 6,000 is GST) during that period. It has not generated any output tax during this period (as the resort was not operating). GST calculation for January 2018 is therefore as follows:

	MVR
Output tax	0
Input tax on revenue expenditure	(6,000)
Input tax on capital expenditure	0
GST Payable/ (refundable)	(6,000)

As the taxpayer has not generated any output tax during January 2018, it cannot claim input tax on capital expenditure incurred (of MVR 360,000) during that period, although input tax on revenue expenditure can be claimed. To claim the input tax incurred on capital expenditure, it must wait until it generates output tax. Since the capital expenditure incurred is more than MVR 500,000, this input tax should be claimed equally over 36 months, once the activity starts generating output tax (the said 36 months would be counted from the period in which that activity first generates output tax).

Although the resort could not claim the input tax on capital expenditure incurred during January 2018, it must submit an 'information sheet' to the MIRA with the details of capital expenditure incurred during that period, together with the tax return for this period. If this information sheet was not submitted, the resort might not be able to claim the input tax incurred in future periods as well.

Assuming that the expenditure incurred was less than MVR 500,000, the input tax should be claimed within 12 months, provided that enough output tax is generated within that 12-month period to claim the input tax.

Determining when a taxable activity first generates output tax

The Regulation specifies that any output tax in relation to capital expenditure can be deducted only after that taxable activity generates output tax. For this purpose, output tax will have deemed to be generated from a taxable activity when output tax is generated from the primary business operations of that taxable activity. This means that, for instance, input tax on capital expenditure cannot be deducted from the output tax from the sale of used equipment by a resort under construction. Instead, the resort must wait to claim the input tax after the resort is open.

Commencement of new rules

The ruling stipulates that changes to Section 46 shall take effect from 1 January 2018. However, taxpayers may choose to follow the rules from 21 December 2017 onwards.

Our comments

Prior to this amendment, input tax on capital expenditure exceeding MVR 5,000,000 was required to be claimed within 36 months, but for some business ventures, such as tourist resorts under construction, the claimability of it was limited as the Regulation disallows claiming input tax on capital expenditure if there is no output tax - and for such ventures, output may be generated only when the business has commenced (i.e. in the case of resorts, when the resorts begins operation). The new rules benefit large scale enterprises that undertake construction projects prior to commencement of business operations. Once those businesses register to tax, the Regulation now allows for any capital expenditure incurred during the construction period or development phase, to be deducted upon commencement of the primary business operations of the taxable activity. However, the compliance remains a challenge as information on the input tax is required to be submitted to the MIRA during the period in which they are incurred and later claim it over the required period.

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About us

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Tax disputes are the mainstay of our practice and our tax disputes team, comprising of tax attorneys and tax advisors, can represent and assist you in tax audits and investigations by the MIRA, filing tax objections, filing appeals with the Tax Appeal Tribunal and at every stage of tax controversies.

Contact us

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

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

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