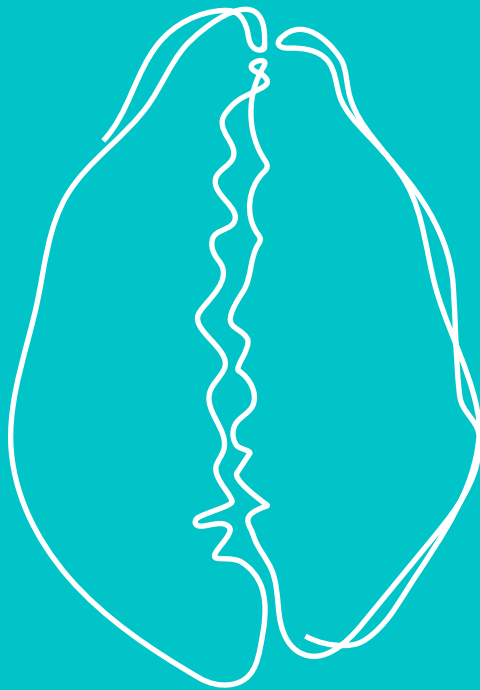


an overview of the

Third Amendment to the Tax Administration Act



Third Amendment to the Tax Administration Act

Areas Addressed



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Recovery of Taxes



Collection & Recovery of
Non-tax Revenues

Introduction

The Third Amendment to the Tax Administration Act ("TAA") has brought about significant changes to the appeal processes to the Tax Appeal Tribunal ("TAT"). It has also granted powers to the MIRA on the collection of non-tax revenues and specifies additional matters on civil suits for recovery of unpaid taxes and non-tax revenues. Furthermore, to further strengthen and promote international co-operation in tax matters, the Act has passed a comprehensive framework for the protection of confidentiality of information exchanged between tax administrations.

The legislative intent of the Amendment includes:

- △ Easing the appeal process to the TAT, including the number of days to file an appeal and the tax clearance amount;
- △ Granting the MIRA the power to collect all non-tax revenues of the Government;
- △ Granting the Attorney General the power to file civil suits to collect any outstanding non-tax revenues of the Government;
- △ Establishing the actions that the MIRA can take to recover non-tax revenues prior to filing a civil suit;
- △ Specifying the guidelines on exchange of information and protection of confidentiality of information under tax treaties.

Appeals Process



Appeal Process to the Tribunal (Section 44)

Prior to the Amendment, where a taxpayer is not satisfied with a decision made by the MIRA regarding a notice of objection, the taxpayer had 30 (thirty) days from the date of MIRA's decision to appeal at the TAT. The Amendment has now changed this period to 60 (sixty) days from the date of MIRA's decision, giving taxpayers more time to file an appeal at the TAT.

With the new changes made by the Amendment, taxpayers can now appeal to the TAT after paying to the MIRA an amount not less than 25% of the assessed amount. This is a decrease of 5% from the tax clearance amounts that taxpayers previously were required to pay before they can file an appeal at the TAT.

Further to this, the Amendment also introduces a provision stipulating that the TAT must decide upon the appeals filed by taxpayers within a period of 180 days from the date of filing. This period can be extended by the members of the TAT by a period of not more than 90 days. Where such an extension is made, the reason for the extension is required to be specified in the decision of the TAT.

The pending appeals by the commencement of the Amendment is to be decided upon within a period of not more than 180 days.

Appeal (Section 55)

The Amendment revises the time limit within which taxpayers and MIRA are to appeal a decision of the TAT to the High Court, from 30 days to 60 days from the date of decision of TAT. The High Court is required to rule upon appeals filed at the Court within a period of not more than 180 days from the date of filing.

Additionally, where the taxpayer or MIRA wishes to appeal the High Court's decision to the Supreme Court, they may do so within 60 days from the date of judgment of the High Court. The Supreme Court is required to rule upon such appeals within a period not more than 180 days of filing.

Similar to the discretion given to the TAT under Section 44, the High Court and Supreme Court may extend the period within which to deliver a judgment, by not more than 90 days, provided that the reason for such extension is given in the judgment of the Court.

Tax Treaties & Exchange of Information



Confidentiality [\(Section 15\)](#)

Prior to the Amendment, the Tax Administration Act provided that any information obtained under a Double Tax Avoidance Agreement (“DTAA”) or Tax Information Exchange Agreement (“TIEA”) must be considered as confidential information and employees of the MIRA are restricted to disclose any such information unless the information is revealed in accordance with a DTAA.

The Amendment, however, allows information to be disclosed in accordance with TIEAs or in accordance with Agreements regarding Mutual Administrative Assistance in Tax Matters, and also revises [Section 16\(a\)](#) of the TAA, making it clearer that information exchanged in accordance to a DTAA, a TIEA or an Agreement regarding Mutual Administrative Assistance in Tax Matters is not to be regarded as breach of confidentiality of such information.

Country-by-Country Reporting [\(Section 31-1\)](#)

The Amendment repealed Section 31(k) and 31(l) of the Act. [Section 31\(k\)](#) of the Act currently requires parent entities of Multinational Enterprises (“MNEs”) that are resident in the Maldives to furnish and submit information relating to the business operations and management of all companies in the group or to submit a Country-by-Country (“CbC”) report to the MIRA. [Section 31\(l\)](#) allows the MIRA to exchange

such reports with other jurisdictions in accordance with TIEAs entered into with foreign jurisdictions.

However, the same requirement is added as a new provision - [Section 31-1](#), headed CbC Reporting. This effectively means MNEs will still be required to furnish and submit CbC reports to the MIRA in accordance with the Regulation made thereunder. The MIRA will also be allowed to exchange such reports with other jurisdictions in accordance with TIEAs entered into with foreign jurisdictions or in accordance with an Agreement regarding Mutual Administrative Assistance in Tax Matters.

This is in an effort to apply and implement the recommendations and guidelines provided under Action 13 (Country-by-Country Reporting) of the Base Erosion and Profit Shifting (“BEPS”) Action Plan and meet the minimum standards set by the organisation to effectively tackle corporate tax avoidance practices and aggressive tax-planning schemes.

Double Tax Avoidance Agreements (DTAAs) [\(Section 51\)](#)

Prior to the Amendment, the Act considered DTAAs to provide relief for double taxation issues, recovery of taxes and related matters including exchange of information for investigations on the prevention of tax evasion or avoidance. The Amendment revises the aforementioned Section to include exchange of information for audit purposes concerning cases of tax evasion and avoidance.

Tax Information Exchange Agreements (TIEA) (Section 51-1)

The Amendment revises Section 51-1 of the TAA to include the following:

- △ Allow 'Mutual Administrative Assistance' in tax matters between tax authorities under Bilateral and Multilateral Treaties; and
- △ Allow exchange of information in accordance with such Treaties entered into with two or more foreign jurisdictions for the purpose of administrative assistance in tax matters or for the purpose of tackling tax evasion and tax fraud or aid in investigating or auditing cases of tax evasion and tax fraud.

Automatic Exchange of Information (AEOI) (Section 51-2)

Information can be exchanged between MIRA and tax administrations of foreign jurisdiction through the AEOI mechanism pursuant to a DTAA, TIEA, or Agreement regarding Mutual Administrative Assistance in Tax Matters and in accordance with the Common Reporting Standards (CRS). The CRS is a standard which aims to provide tax authorities with an effective instrument to tackle offshore tax evasion through exchange of information on tax residents' wealth held abroad. Such information is to be exchanged as per the Regulation made pursuant to the Act.

Obtaining Information from Financial Institutions

(Section 51-3)

For the purposes of a DTAA, TIEA, AEOI or Agreement regarding Mutual Administrative Assistance in Tax Matters, financial institutions will be required to report information relating to taxpayers or their associate parties to the MIRA, in accordance with the Regulation made pursuant to the Act. This includes all institutions who are required to report under the CRS

Beneficial Ownership (Section 51-4)

With the upsurge in complex legal structures, transparency of beneficial ownership information has become vital for deterring tax evasion and tax fraud.

As such, the Amendment gives MIRA the power to establish guidelines on obtaining and disclosure of information regarding beneficial ownership. This includes information in relation to beneficial owners of legal persons or transactions or arrangements. The guidelines are to be established in the Regulation made pursuant to the Act.

Mutual Agreement Procedure (MAP) (Section 52-1)

The MAP provisions in tax treaties allow competent authorities to interact with each other to resolve international tax disputes, including cases of double taxation and inconsistencies in the application and interpretation of treaty provisions.

The Amendment requires such dispute resolution procedures or MAPs to be conducted in accordance to the Regulation made pursuant to the Act. This can be viewed as a step towards aligning current practices with the measures developed under the BEPS Action 14 minimum standard on MAPs, which is considered central to correct application and interpretation of tax treaties.

Advance Pricing Arrangements (APA) [\(Section 53-1\)](#)

An APA is an ahead-of-time agreement entered into between a taxpayer and tax administration specifying the transfer pricing methodology to be applied in a set of related party transactions over a fixed period of time. Such a regime is intended to provide certainty and clarity to taxpayers in the domain of transfer pricing by specifying the methods of pricing, and setting the prices of related party transactions in advance.

The Amendment introduces a basis for APAs, whereby the MIRA is allowed to enter into such agreements with taxpayers or two or more tax administrations of foreign jurisdictions. The Amendment further specifies that where [Section 53-1\(a\)](#) applies, the said provision of the Act will precede over any other policies or guidelines established under any other tax law with respect to related party transactions. APAs can be entered into for a period not exceeding 5 consecutive years.

The specific conditions under which an APA can be entered into and other related matters are to be provided for in the Regulation made pursuant to the Act.

Recovery of Taxes



Civil Suits for Recovery of Unpaid Taxes (Section 49(b))

The Amendment introduces a period of 6 months for the courts to pass judgments on cases filed to recover an outstanding tax due to the Government.

Recovery of Tax in Pursuance of Agreements with Foreign Jurisdictions (Section 49-1)

The existing provision on seeking assistance from foreign jurisdictions for recovery of taxes stipulates that any tax, fine or any other amount payable to MIRA can be recovered with assistance of foreign jurisdictions in accordance with agreements entered with such foreign jurisdictions under Section 51 or 51-1 of the Act.

The Amendment now revises the said Section of the Act so as to provide for and include tax recovery due to tax administration of foreign jurisdictions in the Maldives in accordance with agreements entered with such foreign jurisdictions.

Collection & Recovery of Non-tax Revenues



Collection and Recovery of Non-tax Revenues (Section 50)

The MIRA's authority to initiate legal proceedings with respect non-tax revenue has been questioned in the past and in the recent Supreme Court's judgment it was held that the MIRA's legal authority under Section 50 of Act with respect to recovery of non-tax revenues was restricted to the key condition that such amounts were payable to the MIRA pursuant to an Act.

However, the proposed Amendment now grants the MIRA the power to recover any non-tax amount required to be paid to the Government of the Maldives under any Act, Regulation or Agreement. This includes any fine amounts due under an Act, Regulation or Agreement as well.

For further clarification Section 50(c) now defines the term non-tax revenue as:

A fee, rent, royalty, fine or any other consideration other than tax, payable by any person or legal entity to the Government of the Maldives under an Act, Regulation or Agreement.

The Amendment also grants the power to the Attorney General to initiate legal proceedings to recover outstanding non-tax revenues due to the Government of the Maldives. Additionally, similar to the introduction of statutory period of 6 months for the courts to pass a judgment on civil suits filed to recover an outstanding tax due to the Government, the Acr introduces a statutory period of 6 months for the courts to pass a judgment on civil suits filed to recover outstanding non-tax revenues due to the Government as well.

While the Amendment intends to give the authority to the Attorney General to initiate legal proceedings to recover outstanding non-tax revenues, it also specifically lists out the actions the MIRA can take prior to initiating such legal proceedings. This includes:

- △ Issuance of notice to recover the default amount;
- △ Publicly announce the names of delinquent parties; and
- △ Cease services from state institutions.

The policy on enforcing the above actions are to be provided for in the Regulation made pursuant to the Act.

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ABOUT US

CTL Strategies is a multi-disciplinary law firm registered in the Maldives, specialised in tax advisory services. We advise international hotel chains, multinational companies, some of the big four audit firms, and a number of the world's largest companies as well as high net-worth individuals on commercial transactions, tax compliance, planning and tax disputes.

We are ranked by the Asia Law Profiles as a Highly Recommended tax disputes firm in the Maldives in addition to being recognised as a leading law firm in the Maldives from 2017.

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This publication is intended to provide an overview of the Third Amendment to the Tax Administration Act. It should not be taken as legal advice of any nature, nor should be regarded as offering detailed explanation of all the matters addressed in the Amendment. Readers are advised to seek professional advice specifically to their particular circumstances.

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