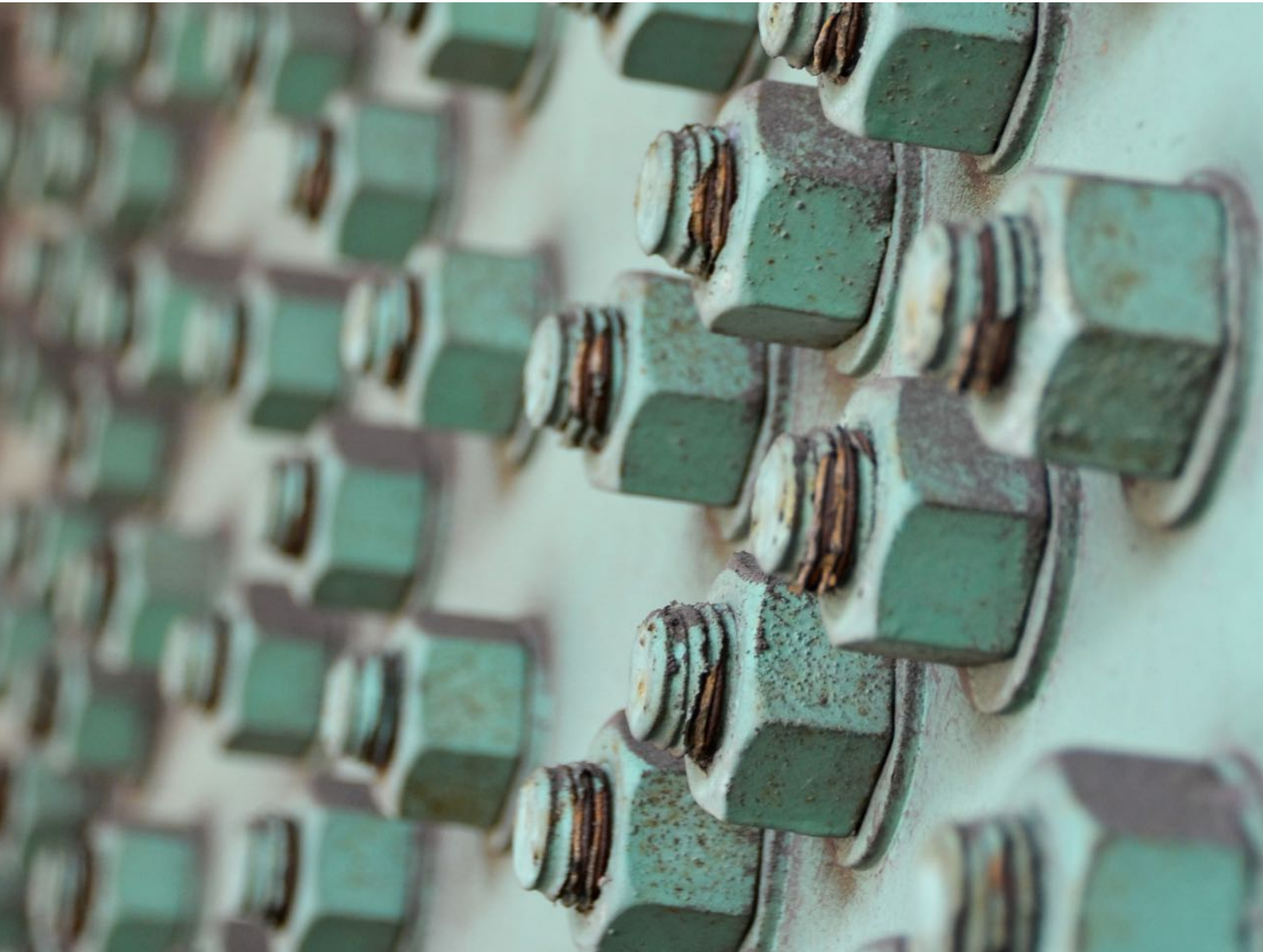


an overview of the
4th Amendment to the
Tax Administration Regulation





1. Introduction

Among other changes, the Fourth Amendment to the Tax Administration Regulation (the “Amendment”) outlines the Maldives Inland Revenue Authority’s (“MIRA”) audit procedure and introduces additional factors in relation to tax assessments and filing objections with the MIRA. The Amendment also elaborates on the procedures to be followed with respect to recovery of non-tax revenues, the Mutual Agreement Procedure (“MAP”), Automatic Exchange of Information (“AEOI”) and the Common Reporting Standard (“CRS”).

This Overview provides a summary of the following key areas of the Amendment, which may have an impact on taxpayers:

- * Record maintenance
- * Auditing and MIRA’s assessment
- * Objection
- * Recovery of non-tax revenue
- * Mutual Agreement Procedure
- * Common Reporting Standard

1. Record Maintenance

With the enactment of the Income Tax Act, commencing from 1 April 2020 onwards, employment income has been taxable in the Maldives. As such, the Amendment has incorporated the following as records that are required to be maintained by taxpayers:

1. Details of remuneration paid in cash to employees
2. Details of benefits in kind provided to employees
3. Details of remuneration received in cash (applicable to employees)
4. Details of benefits in kind received (applicable to employees)

The Amendment also requires taxpayers to maintain records in relation to any income received from the disposal of a movable, immovable, intellectual, or intangible property, particularly for capital gains tax purposes.

2. Auditing & Assessment

2.1 Risk-based tax audits

For the purpose of auditing, the MIRA must employ a 'risk-based tax auditing' policy, which comprises the following.

1

An audit plan that includes the overall audit procedure which must be developed based on the scope of the audit and risks identified.

2

An audit determination can be made based on the selected sample transactions.

3

If the audit observations are not material - as per the materiality threshold set by the MIRA - the MIRA can conclude the audit without determining an amount.

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However, if the taxpayer has not filed a tax return for the pertained audit period, the above will not apply.

2.2 Assessment by MIRA

In addition to what is already provided under Section 23(a) of the Tax Administration Regulation, the Amendment inserts the following factors that the MIRA may consider in making an assessment:

1. Cash and non-cash expenditure
2. Information in relation to ownership of assets, cash in hand, business interests, debts and loans
3. Details of costing and profit margins in relation to goods sold and services provided
4. Industry benchmarks and business standards (i.e. income, costs and profits of comparable businesses operating in the same industry)
5. Details of the employer's income and expenditure

When utilising industry benchmarks and details of comparable businesses in making an assessment, the MIRA may obtain such information from:

1. Tax returns and documents submitted to the MIRA
2. Information made public by State Institutions
3. Information shared with the MIRA by State Institutions
4. Information made public by the relevant Authorities in the industry

2.3 Indirect methods of assessment

The Amendment also stipulates that the MIRA may employ indirect methods in making an assessment. Indirect methods comprise making a determination through examining a range of sources which are not limited to the taxpayer's own declarations and formal records.

Such indirect methods include, but are not limited to the following:

Source and Application of Funds Method

Which is based on the theory that funds utilised cannot exceed funds available except in cases where there are undisclosed sources of income.

Bank Deposits & Cash Expenditure Method

Which is based on the rationality that money received will either be deposited or spent.

Mark-up Method

Which involves the application of a dependable ratio (sometimes derived from industry averages/ similar businesses) to the known base figure to arrive at the taxpayer's gross income.

Unit & Volume Method

Which involves deriving the taxpayer's gross income by the application of price and profit figures to a known volume of business done by the taxpayer.

Net Worth Method

Which is based on the assumption that increases in net assets, after adjustments for non-deductible expenditure and non-taxable income, represents taxable income.

2.4 Amending tax returns after tax assessment

Prior to the Amendment, if the MIRA makes an assessment for a period in respect of which a taxpayer has filed a tax return, the taxpayer was not allowed to amend such returns even if it was within the statutory limitation period granted to amend tax returns under the relevant tax law.

However, now with the Amendment, taxpayers will be allowed to amend such tax returns as long as the amendment does not include transactions in relation to which the MIRA has made an assessment – meaning, if any other discrepancies (which does not relate to MIRA’s tax assessment) are noticed, taxpayers will be able to amend the tax return within the statutory limitation period provided under the relevant tax law – even if it is after the MIRA’s tax assessment.

2.5 Notice of Tax Assessment

Prior to the Amendment, Section 24(b) of the Regulation granted the Commissioner General the discretion to amend or terminate a Notice of Tax Assessment, irrespective of whether the taxpayer filed an objection in relation to it. Section 24(b) has been changed in its entirety now and the discretion granted to the Commissioner General to amend or terminate a Notice of Tax Assessment is removed.

Section 24(b) now stipulates that in stating the basis and details of the MIRA’s assessment, if third party information is utilised, such information will only be shared subject to the confidentiality rules stipulated under Section 15 of the Tax Administration Act (TAA).

3. Objection

3.1 Notice of objection

Section 35(b-2) of the Regulation now stipulates that at objection stage, taxpayers are not allowed to submit documents and other evidences to support an objection if such documents or evidence were not submitted to MIRA upon a written request made by the MIRA prior to the issuance of the Notice of Tax Assessment to which the objection relates.

With this provision, Tax Ruling TR-2015/A2 which specified the process of submission of documents during an objection has been repealed.

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3.2 Matters that cannot be objected

Prior to the Amendment, the Regulation restricted taxpayers from objecting to MIRA's decisions in relation to deadline extension requests or decision on requests for fine reliefs with respect to outstanding dues resulting from failure to meet a certain obligation during that period.

The Amendment has repealed the aforementioned Section, which effectively means that taxpayers may now object to such decisions of the MIRA.

4. Recovery of Non-tax Revenue

Previously, Section 44 of the Regulation broadly outlined the formulation of a policy for recovery of outstanding dues to the State. With the Amendment, additional provisions are introduced to detail the procedures for recovery of non-tax revenue (as explained below), whilst Section 44 only focuses on the policy for recovery of taxes.

4.1 Undertaking actions

The MIRA has the discretion to pursue an action or a combination of actions stipulated under Section 50 of the TAA for recovery of non-tax revenues.

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Publishing the identity of persons in default

For the purpose of disclosing the identity of persons in default, the MIRA will follow the same procedures formulated for recovery of taxes (as stipulated under Chapter 9 of the Enforcement Policy).

Suspension of services being sought from State institutions

Where the MIRA orders a State institution to suspend a certain service in relation to the money in default, such services shall remain suspended unless otherwise notified by the MIRA.

Payment of non-tax revenue on an instalment basis

Although the MIRA is pursuing recovery actions as provided under Section 50 of the TAA, the MIRA may grant an instalment plan for a person in default as allowed by the relevant Authority to which the money relates. Such arrangements must not contravene Section 11.07-1 of the Public Finance Regulation.

Disclosure of details of persons in default with State institutions

The MIRA may disclose details of person in default with the following Authorities:

1. Ministry of Finance
 2. Relevant Authority (the Authority to which the money in default relates to)
 3. Attorney General's Office
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5. Mutual Agreement Procedure

The MAP provisions in tax treaties allow competent authorities to interact with each other to resolve international tax disputes.

The Amendment stipulates that if the parties to a treaty has agreed on MAP, taxpayers may request to resolve disputes through the MAP via the submission of MIRA 921 Form (Request to Conduct Mutual Agreement Procedure). Such requests can be made in relation to disputes arising from:

1

Transfer pricing

2

Juridical or economic double taxation

3

Tax residency

4

Profits attributable to permanent establishments

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Although a taxpayer put forwards a request to invoke the MAP, it does not exempt the taxpayer from any obligation imposed on him under any tax law. However, where a determination is made that the taxpayer has in fact paid additional tax in relation to the matter under dispute, such amounts must be refunded as per the tax laws.

5.1 The Stages of MAP

Initial Stage

Raising a dispute:

a taxpayer presents an MAP request to the MIRA.

Determining if it is well reasoned:

the MIRA will determine if the dispute is backed with valid reasoning.

Resolving the dispute:

if the dispute can be resolved without interacting with other competent authorities, the MIRA will resolve it.

Second Stage

Interacting with competent authorities of foreign jurisdictions:

where the MIRA alone cannot resolve the dispute raised, during the second stage, discussions will be held with relevant competent authorities of foreign jurisdictions to resolve the matter as required.

Where a final decision is made in relation to a certain issue – either by the Tax Appeal Tribunal or any other judicial Court in the Maldives – a taxpayer may not present a MAP request in relation to such issues.

6. Common Reporting Standard

Pursuant to Section 51-2 of the TAA, in accordance with the CRS, information can be exchanged between MIRA and tax administrations of foreign jurisdiction through the AEOI mechanism under a DTAA, TIEA, or Agreement regarding Mutual Administrative Assistance in Tax Matters.

CRS referred to in Section 51-2 of the TAA is the standard outlined under Chapter B of *Standard for Automatic Exchange of Financial Account Information in Tax Matters (second edition)* published by the OECD.

It is the responsibility of all qualifying financial institutions to maintain records, exchange information and carry out due diligence in accordance with CRS.

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CRS is the standard outlined in *Standard for Automatic Exchange of Financial Account Information in Tax Matters*, published by the OECD.

6.1 Pre-existing accounts

When implementing the CRS, although a pre-existing individual account is not considered as a high value account as of 31 December 2020, if on the last day of the following year the account is considered as a high value account (31 December 2021), within the subsequent year (i.e. before the end of year 2022), the Reporting Financial Institution must carry out a review of the account as per the due diligence policies and procedures outlined in the CRS.

Upon review, if the account is determined to be a Reportable Account, details and information related to the account must be shared as per the CRS, for the year of determination and all subsequent years – such information is to be shared annually by the Reporting Financial Institution.

Reporting Financial Institutions must fulfil the following:

1

Complete the review of pre-existing individual accounts by 31 December 2021.

2

If the aggregate account balance or value of a pre-existing entity account exceeds USD 250,000 as of 31 December 2020, complete the review of such accounts by 31 December 2021.

3

Where the aggregate account balance or value of a pre-existing entity account is less than USD 250,000 as of 31 December 2020, but exceeds this threshold by 31 December of any subsequent year, complete the review of such accounts for that year and the year beginning immediately after that year.

6.2 Application for registration

1. Financial institutions recognised as Reporting Financial Institution at the date of effect of this Amendment must apply for registration within 90 days from the date of effect of the Amendment.
2. A financial institution who satisfies the conditions of a Reporting Financial Institution after the date of effect of this Amendment must apply for registration within 90 days from the date the institution is recognised as a Reporting Financial Institution.
3. Applications to register can be made via MIRA 119 Form (Registration of Reporting Financial Institutions) with all the information and details required therein.

6.3 Reporting

1. Financial institutions required to exchange information under the CRS must submit MIRA 922 Form (Common Reporting Standard Report) for each calendar year, by 31 July of the following year.
2. Example: Reporting Financial Institution XYZ will compile the information that is required to be exchanged under CRS for the calendar year 2021 and report it through the MIRA 922 Form no later than 31 July of 2022.
3. If a Reporting Financial Entity fails to meet the above requirement, penalties will be imposed as stipulated under Section 65 of the TAA.

6.4 Terminologies and Definitions

Financial Institutions

Financial Institutions include Custodial Institutions, Depository Institutions, Investment Entities and Specified Insurance Companies.

Maldives- based Financial Institutions

Maldives-based Financial Institutions are Financial Institutions resident in the Maldives - excluding their branches in foreign jurisdictions - and branches of non-resident Financial Institutions located in the Maldives.

Reporting Financial Institution

Reporting Financial Institution means any Maldivian Financial Institution that is not a Non- reporting Financial Institution.

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Non-reporting Financial Institution

The term “Non-Reporting Financial Institution” means any Financial Institution that is:

1. a Governmental Entity, International Organisation or Central Bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution;
2. a Broad Participation Retirement Fund; a Narrow Participation Retirement Fund; a Pension Fund of a Governmental Entity, International Organisation or Central Bank; or a Qualified Credit Card Issuer;
3. any other Entity that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the Entities described in (a) and (b), and is defined in domestic law as a Non-Reporting Financial

Institution, provided that the status of such Entity as a Non-reporting Financial Institution does not frustrate the purposes of the Common Reporting Standard

4. an Exempt Collective Investment Vehicle; or
5. a trust to the extent that the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported with respect to all Reportable Accounts of the trust.

Pre-existing Account

Pre-existing Account means a financial account maintained by a Reporting Financial Institution as of 31 December 2020.

Pre-existing Individual Account

Pre-existing Individual Accounts are Pre-existing Accounts held by one or more individuals.

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New Account

New Account means a Financial Account maintained by a Reporting Financial Institution opened on or after 1 January 2021.

Lower Value Account

Pre-existing Individual Accounts with an aggregate balance or value as of 31 December 2020 that does not exceed USD 1,000,000.

High Value Account

Pre-existing Individual Accounts with an aggregate balance or value that exceeds USD 1,000,000 as of 31 December 2020 or 31 December of any subsequent year.

Contact us

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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 in the 2021 edition of Chambers and Partners, and as a Highly Recommended Tax Disputes Firm by Asia Law Profiles.

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