

an overview of the
2nd Amendment to the
Income Tax Regulation





1. Introduction

The Second Amendment to the Income Tax Regulation (the “Amendment”) was published in the Government Gazette on 19 April 2021. Some of the significant changes introduced via the Amendment relates to the tax treatment of payments made under an operating lease, capitalised borrowing costs and withholding tax refunds.

Our Overview covers the following key areas of the Amendment:

- * Employee Withholding Tax
- * Non-resident Withholding Tax
- * Capital Allowance
- * Submission of Income Tax Return
- * Operating Lease
- * Tax Avoidance

1. Employee Withholding Tax (EWHT)

1.1 Withholding Tax Reconciliation Return

Prior to the amendment, Employers furnishing EWHT returns were required to submit a Reconciliation Statement by 28 February of the following year. However, with this amendment, Withholding Tax Reconciliation Returns are required to be submitted by selected employers and only in the case the MIRA determines that the employer is required to do so. In such cases, the MIRA will decide upon a filing deadline and inform the employer of the same.

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1.2 Tax refunds in relation to EWHT

Given that EWHT paid by an employer is tax paid on behalf of the employee, if an amendment to an EWHT return results in the determination that an excess tax payment has been made, the resulting excess tax paid will not be considered as a payment made by the employer - it will be considered as a payment made by the employee. This effectively means that EWHT paid in excess will not be refunded to the employer.

2. Non-resident Withholding Tax (NWHT)

2.1 NWHT Return

Section 98(b) of the Amendment requires a NWHT return to be submitted even in the case the payments made to the non-resident are exempt from tax under a treaty or an agreement made between the Maldives and a foreign jurisdiction or an international organization.

Meaning, even in the case a Double Tax Avoidance Agreement (“DTAA”) restricts a person doing business in the Maldives from withholding tax at source on a certain payment made to a non-resident, a NWHT Return must be furnished including the details of those payments although no tax is required to be withheld.

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2.2 Tax refunds in relation to NWHT

Where NWHT is deducted by a person doing business in the Maldives from a payment made to a non-resident who has a Permanent Establishment (“PE”) in the Maldives, the tax paid is considered as tax paid by the PE. Therefore, if an amendment to a NWHT tax return results in the determination that an excess payment has been made, it will not be considered as an excess payment made by the person doing business in the Maldives.

3. Capital Allowance

3.1 Capitalised borrowing costs

IAS 23 (Borrowing Costs) require an entity to capitalise borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset as part of the cost of that asset. However, with the amendment, for Maldives income tax purposes, taxpayers are no longer allowed to include borrowing costs in computing the cost of capital assets for the purpose of claiming capital allowance. The borrowing costs can be deducted separately and will be subject to the 6% interest cap provided under Section 22 of the Income Tax Act (“ITA”) and the thin capitalisation rules imposed under Section 71 of the ITA.

If the borrowing costs have been included in the computation of the cost of your capital assets prior to tax year 2020, the above rule is not applicable and such borrowing costs need not be separated from the cost of the asset.

3.2 Special deduction against rent from immovable property

The Amendment now allows you to put forward a request in writing to the Commissioner General if you are a rental income earner who has opted for the special 20% deduction against the rent from immovable property and you wish to change to actual expense method prior to the expiry of the 5-year period.

Where the Commissioner General approves such request, while computing the claimable capital allowance of the assets in the year you change to the actual expense method, you must make a notional adjustment to the tax written down value of the asset, as if you have claimed capital allowance on the asset during the period in which you claimed 20% rental relief.

4. Income Tax Return

4.1 Submission of tax return

If a taxpayer meets the interim filing requirements, the taxpayer must submit the Interim Tax Returns (MIRA 603) prior to filing the final Income Tax Return (MIRA 604).

A different Income Tax Return (MIRA 606) is now available for all Banks.

4.2 Exemption from filing

Individuals

Previously, individuals were exempt from filing an Income Tax Return for a tax year if the taxable income and gross income of that individual for that period did not exceed MVR 720,000 and MVR 2,000,000 respectively. With the Amendment, for an individual to be eligible for the exemption, even the previous tax year's taxable income and gross income must not exceed MVR 720,000 and MVR 2,000,000 respectively.

Persons other than Individuals

Exemption from filing an Income Tax Return is granted for all persons other than individuals and banks, if the taxable income and gross income of the person for the pertained tax year and the prior tax year does not exceed MVR 500,000 and MVR 2,000,000 respectively.

If the number of days in the taxpayers pertained tax year is less than 365 days, in considering whether the exemption applies, the above thresholds must be prorated accordingly.

Notwithstanding the above exemption, the following persons are required to submit the Income Tax Return:

1

Income derived by a non-resident shipping or aircraft operator in international transportation (those who fall within Section 11 (r) of the ITA).

2

All insurance companies.

3

Individuals who receive remuneration from a non-resident who does not have a PE in the Maldives and the individual exercises his employment duties in the Maldives and reaches the tax paying threshold (as stipulated under Section 7 of the ITA).

4.3 Requirement by the Commissioner General to file a return

Section 102-2 (a) of the Amendment elaborates on the cases under which the Commissioner General may require a Tax Return to be filed from a person on the grounds that the person may have committed or has committed an event that would result in a loss in tax revenue. The outlined circumstances are as follows:

1

Leaving the Maldives permanently to live abroad.

2

For employment purposes, leaving the Maldives for a period exceeding 5 years.

3

Exchange or transfer of money or assets worth more than MVR 10,000,000 out of the Maldives.

4

If more than 50% of the value of company, partnership or trust is directly or indirectly related to an immovable property situated in the Maldives, the disposal of shares or interest in such a property.

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In such cases, the taxpayer is required to file an Income Tax Return 15 days prior to the occurrence of such an event. The Return will be based on an estimate and in case the actual income received is more than the declared income, you are allowed to submit an amended Income Tax Return within 15 days from the date of realisation of such a change.

In addition to the above, even under the following circumstances, the Commissioner General may require a Income Tax Return to be filed:

1

Transfer of assets of a PE in the Maldives to its Head Office outside of the Maldives or to another PE outside of the Maldives.

2

Where the Head Office is in the Maldives, transfer of assets of the Head Office to its PE outside of the Maldives.

3

Change of residency status due to a change in control or change in Head Office.

4

Where a non-resident disposes of a share or any interest in a company or partnership or trust which is resident in the Maldives.

5. Operating lease

5.1 Payments under an operating lease

The Amendment makes it clear that the nominal interest arising under IFRS 16 Leases from leases which do not substantially transfer the risks and rewards to the lessee (IAS16 operating leases), will not be considered as interest for income tax purposes. Hence, bottom line, the interest arising from IAS 17 operating leases will not be subject to the 6% interest cap and thin capitalisation rules provided under the ITA.

The Amendment ensures that any expense deducted in relation to an operating lease in accordance with the adopted international accounting standards is a deductible expense for income tax purposes.

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5.2 Transitional provisions

With respect to rental payments made under an operating lease prior to the commencement of the ITA, although you may have followed IFRS 16 in the computation of lease deductions, the BPT Ruling required you to claim tax deduction on such leases on a straight line basis, thereby creating a temporary difference between tax and accounting rules. Although the temporary difference will not exist from 2020 (since the accounting treatment will be accepted for tax purpose), the temporary difference created prior to 2020 should be adjusted in your 2020 accounts.



For example, you entered into an 'IAS 17 operating lease' in the year 2019, which you have recognised in your accounts under the new standard IFRS 16. The amounts deducted in your P&L with respect to the lease (ROU asset amortization and interest on lease liability) and the amount claimed for tax purpose (which is based on straight line basis) are depicted below:

IFRS 16	Straight Line Basis (MVR)	Temporary Difference (MVR)
ROU asset amortization: 250,00		
Interest on lease: 100,000	250,000	100,000
Total claimed: 350,000		

Even though for accounting purpose, you had a deduction of MVR 350,000, under the BPT regime, you were required to deduct these type of lease expenses on a straight line basis (in this case 250,000). There is a temporary difference of MVR 100,000 which is supposed to become nil eventually.

Since in 2020, you will give the same treatment on this transaction for tax purposes (thereby no temporary difference will exist from 2020 onwards), if no tax adjustment is made for the MVR 100,000 difference created in 2019, you will not get the benefit of this difference. Hence the regulation requires you to make this adjustment in your 2020 return. (in this case, you will get an additional deduction of MVR 100,000)

6. Tax Avoidance

Section 66 of the ITA allows the Commissioner General to declare an arrangement or transaction entered into by a person as void, if the person has gained a tax advantage from avoidance of tax or by obtaining a reduction in tax liability.

Accordingly, for the purpose of applying the anti-avoidance rule, the Amendment specifies the following circumstances which may be construed as tax avoidance:

1. The transaction was carried out in bad faith (lacks a bona fide commercial purpose);
2. The transaction lacks economic substance;
3. Abusing the business structure/form;
4. Changing the nature of a transaction or arrangement. (recharacterisation)

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Section 128-1(b) of the Amendment also elaborates on circumstances which may be considered as 'abusing' the business/ownership structure to avoid tax. This includes an indirect shift in the ownership of a tax resident in the Maldives or a PE in the Maldives to another party through the exploitation of tax residents or PEs in low tax jurisdictions; and structuring holding companies in jurisdictions with which the Maldives has a DTAA for the purpose of treaty shopping.

7. Other Considerations

7.1 Preparation of Accounts

Prior to the Amendment, Section 57(a) of the ITR required all persons other than those who receive employment income from a single employer to maintain financial statements. Section 57(a) is now amended as such that financial statements are required to be maintained by persons receiving business income.

7.2 Accounting standard

For the purpose of computing capital gains, election of cash basis of accounting is not applicable, irrespective of whether the MVR 10,000,000 threshold is met.

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7.3 Banks and non-banking financial institutions

The Amendment adds the following to the list of Banks and non-banking financial institutions approved by the Commissioner General:

- * Banks or financial institutions granted a license by the Maldives Monetary Authority to operate as a Development Finance Business.
- * Banks or financial institutions granted a license by the Maldives Monetary Authority to operate as an Insurance Business.

Contact us

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ABOUT US

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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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