

Client Advisory

30 December 2021

Third Amendment to the Income Tax Regulation

In Brief

This Advisory summarises the key aspects of the Third Amendment to the Income Tax Regulation¹ gazetted by the Maldives Inland Revenue Authority on 19 October 2021. The Regulation focuses on rules relating to Employee Withholding Taxes, Capital Gains Withholding Taxes, submission of financial statements and immovable properties. The Regulation also removes several provisions related to employment income - which has been added to the Income Tax Act via the First Amendment to the Act².

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

- Employee Withholding Taxes
- Capital Gains Withholding Taxes
- Immovable properties
- Submission of financial statements

¹ Regulation Number 2021/R-135

² Law Number 15/2021



Employee Withholding Taxes (EWHT)

Submission of MIRA 916 Form

Prior to the Amendment, employees who received a remuneration of more than MVR 30,000 a month were required to furnish the Election to Deduct Employee Withholding Tax Form (MIRA 916) via MIRACONNECT. Where an employee, who is paid a remuneration of more than MVR 30,000 fails to furnish the MIRA 916 Form, tax was to be withheld from their remuneration at the flat rate of 8% (for remuneration up to MVR 150,000).

The above requirement is no longer applicable. The MIRA 916 Form is now required to be submitted by employees under multiple employment only. Where an employee under multiple employment fails to declare their primary employer via the submission of MIRA 916 Form, the MIRA is to determine the payer of remuneration who will be required to utilise the tax-free threshold and deduct tax at the default tax rates.

Return Filing

You will no longer be allowed to file your EWHT Return for a certain month, prior to completing your preceding month's employee withholding tax filing obligations.



Capital Gains Withholding Taxes

Computation

The First Amendment to the Income Tax Act³ introduced a new withholding mechanism to tax offshore indirect transfers. The Amendment clarifies that where such a transaction takes place and the 'withholding agent' fails to withhold the correct amount of capital gains tax prior to making the payment to the recipient, the following formula is to be utilised to compute the capital gains withholding tax:

Amount payable to the payee × 0.1

Form

The withholding agent or the payer must declare the capital gains tax and file MIRA 608 Form (Capital Gains Withholding Tax Return).

³ Law Number 15/2021



Immovable Property

Income from immovable property

Prior to the Amendment, the Regulation made it very clear that for the purpose of income tax, the income derived from an immovable property will be deemed to be derived by the owner of the property. The legal form was prioritised over the economic form.

The Amendment has repealed the said provision of the Regulation which implies that the MIRA will look at the substance over form in determining who must pay income tax on income from immovable property.

Definition

The Amendment has also broadened the definition of “immovable property” as follows:

Before

Immovable property includes:

1. Property accessory to immovable property;
2. Livestock and equipment used in agriculture and forestry;
3. Rights to which the provisions of general law respecting landed property apply;

Now

Immovable property includes:

1. Buildings, warehouses, plants, factories, land, uninhabited islands, lagoons, reefs, reef knolls, permanent structures and any other such property
2. Any structural improvement to a type property specified *point 1* or



4. Usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work;
 5. Mineral deposits, sources and other natural resources;
 6. A license or a permit to supply a good or service to the Maldives or any part therein.
3. Including sublease, a lease of a property specified in point 1 or lease of a structural improvement specified in point 2.
 4. Livestock and equipment used in agriculture and forestry
 5. Rights to which the provisions of general law respecting landed property apply
 6. Usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work
 7. Mineral deposits, sources and other natural resources
 8. A license or a permit to supply a good or service to the Maldives or any part therein;
 9. Any property accessory to the types of properties listed above.



Submission of Financial Statements

Non-resident shipping and aircraft operators

In submitting the income tax return, non-resident shipping and aircraft operators are now required to submit an auditor's report attesting to the reliability of the figures declared in the tax return. The Amendment also makes it clear that the auditor must be licensed by the relevant government authority.

No additional documentation is required where no other type of income is derived by the non-resident shipping or aircraft operator. However, where any other type of income is derived, the general rule applicable to persons deriving business income will be applicable and the income tax return must be accompanied by a set of financial statements⁴.

⁴ Section 102(a) of ITR



Contact us

If you have any questions or need our assistance, please contact your principal advisor or any one of the following members of our team.



Zaina Zahir

Senior Associate

Zaina specialises in advising clients on a broad range of tax matters with a particular focus on international taxation, transfer pricing, withholding tax and effective tax management. During her time with us, Zaina has also delivered income tax training sessions to large corporations.

zaina@ctlstrategies.com



Madeeh Ahmed

Partner & Senior Tax Advisor

Madeeh is a chartered accountant and leads the firm's tax advisory practice. During his tenure at the Maldives Inland Authority as the Director of Audits, he has gained an expansive insight into the critical issues that arises in tax audits in the Maldives. His current practice involves providing tax advisory services on multi-million dollar investments and cross-border transactions of multinational corporations and advising on effective structuring of tax responsibilities.

■ madeeh@ctlstrategies.com



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.

ctlstrategies.com

8th Floor, H. Thuniya
Boduthakurufaanu Magu
Male' 20066, Maldives

ask@ctlstrategies.com
+960 795 6996

