

# MIRA POST



## Interpretation of “Use” of Goods in Withholding Tax Rules

Key Insights from the Tax Appeal Tribunal’s  
Decision on Dhivehiraajjeyge Gulhun Plc vs MIRA

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# Interpretation of “use” of goods in withholding tax rules

## Key insights from the Tax Appeal Tribunal’s decision on Dhivehiraajjeyge Gulhun Plc vs MIRA

Mariyam Nisha, Senior Tax Officer, Legal Service Division

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### Summary

This case concerns Dhivehiraajjeyge Gulhun Plc (“Dhiraagu”) following an audit conducted by MIRA from 1st January 2018 to 31st December 2022. MIRA issued an audit decision on 2nd February 2022, determining Dhiraagu’s withholding tax liability under Section 6 of Business Profit Tax Act (BPT Act) on payments made for Submarine Cable Ship Standby Charges and membership subscription fees to the GSM Association and APNIC, resulting in an additional tax for these transactions.

Dhiraagu disputes the audit decisions, arguing that MIRA’s tax assessment conflicts with section 6 of the BPT Act and prior Supreme Court’s rulings. However, MIRA’s position is that these payments fall within the scope of Section 6 of the Business Profit Tax Act, which deals with payments to non-residents.

The Tax Appeal Tribunal has issued its decision in case number TAT-CA-W/2020/010.

### Facts and observation:

#### The transaction:

The audit conducted by MIRA mainly focused

on payments made to non-resident entities, particularly those related to Cable Ship standing charges and membership subscription fees paid to the GSM Association and APNIC.

MIRA determined that both categories of payments were subject to withholding tax under Section 6 of the Business Profit Tax Act. In relation to the cable ship standing charges, MIRA concluded that the payments fall under Section 6(a)(1) of the Act, as they are made in respect of the use of a tangible asset. Although Dhiraagu maintained that the charges were merely to ensure the ship’s availability and not for actual use, MIRA considered the substance of the arrangement to be a fee for the right to access and utilize the ship as needed, which amounts to the use of a tangible asset for tax purposes.

Regarding the membership subscription fees, MIRA’s position was that they fall within the scope of Section 6(a)(4), on the basis that they are payments for technical services. The organizations in question provide ongoing technical support, network resources, and essential infrastructure that directly contribute to Dhiraagu’s ability to operate its telecommunications network.

#### Basis of appeal

Dhiraagu, however, contested both aspects of

the assessment. They argued that the cable ship standing charges do not relate to the use of a tangible asset, and that the company does not derive direct benefit from the physical use of the ship itself. With regard to the membership fees, Dhiraagu argued that they are not tied to specific technical services provided by the organizations and should be treated as general organizational fees rather than taxable technical services.

Despite the taxpayer's objections, MIRA maintained that the payments represent income derived from the Maldives by non-residents and is subjected to Withholding tax under section 6 of the BPT Act.

### **TAT's decision:**

#### **Issue 01:**

The Tax Appeal Tribunal upheld MIRA's assessment, concluding that the cable ship standing charges were payments "in respect of the use of a tangible asset" under Section 6(a) (1) of the Business Profit Tax Act. With reference to the agreement entered by Dhiraagu, The Tax Appeal Tribunal found that the substance of the arrangement involved the right to access and utilize the cable ship, which aligns with the definition of using a tangible asset for tax purposes.

#### **Issue 02:**

Regarding this issue, The Tax Appeal Tribunal referred to a previous case they had decided on the same issue

(TAT-CA-W/2020/004) Dhiraagu vs MIRA and highlighted the following key takeaways;

The TAT clarified that these membership subscription fees do not strictly qualify as payments for "technical services" because such services require direct human intervention or active technical assistance. In the case of the GSM Association and APNIC, membership does not automatically entitle the member to specific technical services in the traditional sense.

However, since the subscription fees are paid in connection with the range of services and support these organizations provide, the tribunal categorized these payments under "other fees or commissions" as outlined in Section 6(a)(4) of the Business Profit Tax Act. Consequently, even though the fees are not classified as technical service payments as such, they are still subject to withholding tax.

This interpretation ensures that even if the membership fees are not strictly for technical services, they are still considered payments for services or commissions under the law and must be subject to withholding tax.





# Record keeping in respect of goods and services supplied free of charge

Ahmed Shaheen, Deputy Director, Engagement

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In accordance with the provisions of a tax act or a regulation made pursuant to the act, section 27 of the Tax Administration Act requires the maintenance of documents and financial accounts. Hence, every GST registered person must take note of maintaining documents related to goods and services supplied free of charge stipulated in section 54 of GST Regulation.

Where goods and services are supplied free of charge to a person directly in connection with the promotion of the business of the supplier or directly for the purpose of carrying on the business of the supplier or as charitable donations to an institution which is financed wholly or primarily through the state budget, as per section 54 of GST Regulation, GST should not be charged on the value of goods and services supplied. However, in other circumstances if goods and services are supplied free of charge, GST must be charged assuming that the applicable amount of tax has been included in the open market value of such goods or service provided free of charge.

In a situation stated in section 54 of the regulation, if the recipient of a good or service is an employee of the supplier of the goods and services or a person related to an employee of the supplier of the goods and services or a director of the supplier of the goods and services or a person related to a director of the supplier of the goods

and services or a person related to the supplier of the goods and services, the supplier of the goods and services are not required to account for GST for the goods and services supplied free of charge during the time the person actively conducts the business of the supplier of the goods and services. Further, GST is not required to be accounted for the goods and services supplied free of charge for a person specified above during the day if the person spends a reasonable amount of time during that day devoted wholly to activities directly connected with the business of the supplier of the goods and services. Hence, the supplier of the goods and services must keep a true and correct written record of the activities undertaken by the recipient on each day and the time or times during which those activities are undertaken. For above stated instances, GST will not be charged for up to 168 hours. GST must be paid for any transaction that exceeds this.

Furthermore, section 92 of Goods and Services Tax Regulation requires a registered person to maintain all documents to validate the accuracy of their tax payable. Similarly, details of goods acquired by the registered person for his private use or for a purpose other than business, and details of goods taken for private use and the details of goods or services supplied for free or on a complimentary basis must be maintained.

# Record keeping for green tax

Aishath Inaan Hathim, Senior Tax Officer, Tax Academy

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Green tax is a tax applicable to tourists who stay in tourist resorts, integrated tourist resort, tourist hotels, resort hotels, hotels, tourist vessels and tourist guesthouses operated in the Maldives. The tax is levied per day of stay, and any such establishment must be registered for Green Tax from the date an operating license is issued by the Ministry of Tourism, under the name of the operating license holder. Additionally, local agents of foreign tourist vessel must also register the vessel for green tax.

Once registered for green tax, the registered persons are required to submit a green tax return and a green tax information sheet to MIRA each month. These documents must be prepared in the format prescribed by MIRA. The green tax information sheet should include information about all the guests who stayed at the

establishment during the filing period.

Registered persons have a legal obligation to maintain comprehensive records of their guests in addition to adhering to the general record-keeping requirements set by the Tax Administration Act and Tax Administration Regulation.

## General record-keeping obligations

Under the Tax Administration Act and the Tax Administration Regulation, all persons registered to any tax –including green tax—are required to maintain sufficient records that can verify the tax payables and any expenses deducted in computing the tax payable. These records must be preserved for a minimum period of five (5) years from the end of the relevant taxable period.

## Specific green tax record-keeping requirements

In addition to the general record-keeping requirements, entities registered for Green Tax must also maintain specific documentation as outlined in the Green Tax Regulation. These include:

- Guest register
- Guest registration cards
- Copies of passports of children under the age of 2 years

From 1 January 2025, under the 14th amendment to the Maldives Tourism Act, children under 2 are exempt from Green Tax. However, passport copies must still be kept for record-keeping purposes.

- Copies of passports or ID cards of Maldivian guests
- Copies of visa of resident permit holders staying as guests

These records must be maintained to an extent which it can be used to fully verify the information declared in the Green Tax Returns and the accompanying information sheet.

## Guest register and registration cards

As part of the documentation required for Green

Tax, establishments are required to maintain both a Guest Register and individual Guest Registration Cards.

- A Guest Register is a log of details of all guest arrivals and departures.
- A Guest Registration Card is an official record of each guest's stay and a separate registration card must be completed for each guest's stay.

While the Maldives Inland Revenue Authority (MIRA) does not mandate a standardized format for these documents, they must contain sufficient detail to support the information reported in the Green Tax Return and Information Sheet.

However, it is important to note that the Ministry of Tourism has prescribed standardized formats for these documents which establishments are also expected to follow.

To stay compliant with Green Tax obligations, it is important to ensure that all required documents are updated and stored correctly. This involves regularly reviewing internal systems and adequately training staff on proper record-keeping procedures. Effective record-keeping not only ensures that the necessary data is readily available when preparing the Green Tax return, but also minimize the risk of errors or omissions and prevent potential penalties.



# Input tax in relation to capital expenditure of resorts under construction

Ahmed Shaheen, Deputy Director, Engagement

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Input tax is the tax payable by the recipient of the good or service to the supplier of the good or service in relation to a transaction between two GST registered persons. Output tax is the tax charged by a GST registered person from the recipient of a good or service for the supply. To compute the GST payable to MIRA, input tax can be deducted from the output tax of the taxpayer. Input tax can be categorized into two, input tax in relation to capital expenditure and input tax in relation to revenue expenditure. Input tax incurred by a resort under construction should be deducted in accordance with section 46 of GST regulation.

Under section 51 of Goods and Services Tax Act, resorts are registered for GST based on the operating license issued by the Ministry of Tourism. Input tax incurred during the construction period of the resort can be claimed if the person is registered for GST. For this reason, even if an operating license is not issued by the Ministry of Tourism, MIRA facilitates the registration of resorts under construction for GST. MIRA 105 form can be submitted along with permits and documents issued by relevant authorities to register for GST. A GST registration certificate will be issued upon registration to the resort under construction, similar to other GST

registered activities.

As per section 46 of GST Regulation, details of the capital expenditure incurred must be submitted to MIRA together with the tax return of the taxable period in which that capital expenditure was incurred. Where the details of input tax in relation to capital expenditure are not submitted, such input tax cannot be deducted in any taxable period. Therefore, resorts under construction should be thoughtful about registering for GST even if the operating license was not received and submit the details of the capital expenditure incurred during the taxable period along with the tax return.

As stated in the regulation, input tax in relation to capital expenditure for any taxable activity can be deducted only after an output tax is generated from that taxable activity. Further, output tax shall be deemed to have been generated from a taxable activity only when output tax is generated from the primary business operations of that taxable activity. Hence, once the resort starts its operations and starts generating an output, input tax in relation to capital expenditure can be deducted as per section 46 of the Goods and Services Tax Regulation.

Therefore, where the gross capital expenditure incurred in the acquisition of similar products or for the same purpose is MVR 500,000 or below, input tax in relation to capital expenditure can be deducted in full, from the output tax. Such input tax in relation to such expenditure can be deducted within 12 months starting after the end of the taxable period in which the capital expenditure was incurred. Additionally, where the gross capital expenditure incurred in the acquisition of similar products or for the same purpose is above MVR 500,000, input tax in relation to such expenditure can be deducted

from the output tax equally over 36 months from the taxable period in which such expenditure was incurred. If the taxable activity does not generate an output tax in any taxable period up to and including, the taxable period in which the capital expenditure was incurred, the 36-month duration should be counted starting from the last month of the taxable period during which an output tax is generated for the first time from that taxable activity. Any amount of input tax in relation to capital expenditure that remains unclaimed, for any reason, by the end of the 12-month duration or 36-month duration may be set off against the output tax in subsequent taxable periods in accordance with section 46 of the regulation.

With this regard, input tax in relation to revenue expenditure should be claimed first followed by input tax in relation to capital expenditure less than or equal to MVR 500,000 and input tax in relation to capital expenditure that exceeds MVR 500,000. The amount of input tax in relation to capital expenditure that exceeds MVR 500,000 deducted in a taxable period should not exceed the amount derived when the total input tax in relation to revenue expenditure that can be claimed in that taxable period and the total input tax in relation to capital expenditure less than or equal to MVR 500,000 that is deductible from the output tax of that taxable activity for that taxable period. Where such amount exceeds, the excess amount can be carried forward to be deducted in subsequent taxable periods.

Therefore, resorts under construction must pay attention to register for GST, submit capital expenditure information and follow the procedures stipulated in section 46 of the regulation when claiming input tax. Further, it is important to ensure that all the tax invoices obtained for the purpose of input tax deduction fulfil the requirements stipulated in the Act.

