



MALDIVES
INLAND REVENUE
AUTHORITY

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Guide to First amendment to the Tax Ruling TR-2018/B65

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The information in this guide is based on laws and regulations prevailing at the time of publication. It is not expected to be a substitute for a detailed research or exercise of professional judgment on taxation matters in the Maldives. If you do not understand anything in this guide or have queries related to your particular circumstances, call 1415 or send an email to 1415@mira.gov.mv.

I. Introduction

Following the issuance of the Tax Ruling TR-2019/B69, the remuneration received by the directors of a company, partners of a partnership or trustees of a trust, are now considered as income from employment under a contract of service in the hands of the recipients.

Income from employment under a contract of service is not taxed under the Business Profit Tax Act.

2. Key terms and concepts

Some of the key terms and concepts used in this guide are explained below.

Remuneration

Remuneration includes any benefit paid in respect of the performance of any duties as a director, partner or trustee, or otherwise as the holder of the office or employment of director, partner or trustee whether or not in money.

Person holding a substantial interest in the company

Person who is the beneficial owner of shares carrying voting rights of not less than 5%.

Persons who are related

Individual is related to his/her:

- (a) spouse
- (b) child /step-child
- (c) brother/step-brother
- (d) sister/step-sister
- (e) parent/step-parent

Associate

The following persons are associated with each other

- Partners in the same partnership
- Individuals related to each other

Any person associated with a second person is also associated with any other person associated with that second person.

Example 1: associated persons

If person A is associated with person B, and person B is associated with person C, then person A is also associated with person C.

3. Remuneration: tax treatment by the entity which pays the remuneration

Company

Where a company pays remuneration to certain persons, aggregate of the remuneration that is deductible in a tax year must not exceed 10 % of the specified profit. For a company, such persons include:

- (a) director
- (b) person holding substantial interest in the company
- (c) person associated with or related to (a) or (b)

What is considered as remuneration is not limited to the consideration paid to directors for their service as a member of the board. If a director or a person specified in Section 11(c) of the BPT Act is employed under a contract of service (in accordance with the Tax Ruling 2018/B65) by the company, total consideration including salary should be considered as a part of the remuneration that would be subject to the cap.

Where a service is obtained from a director or any other person under contract for service, consideration paid for such a services would be a business expense fully deductible by the company.

Example 2: Remuneration paid to a director

Mr. Ibrahim Hassan is the director of Sovereignty Pvt. Ltd. Remuneration paid by the company to him amounted to MVR 750,000 in the tax year 2018. The specified profit of the company for the tax year 2018 was MVR 5 million.

The maximum deductible amount as directors' remuneration is MVR 500,000 [10% of 5m]. This does not mean that, for each director, MVR 500,000 is deductible. The cap would apply to the aggregate of the remuneration paid to persons specified in 11(c) of the BPT Act such as directors, substantial shareholders, and their relatives and associates.

Example 3: Remuneration paid to a substantial shareholder

Mr. Yian Wong holds 15% of shares carrying voting rights of Autonomy Pvt. Ltd. Mr. Wong is involved in the operation of the company on a daily basis.

The remuneration paid by Autonomy Pvt. Ltd. to Mr. Wong would be treated as a part of remuneration to which the 10% cap applies.

Example 4: Remuneration paid to a relative of director

Consider example 2. Mr. Ahmed Hassan, who is a brother of the managing director, is also a full-time employee at Sovereignty Pvt. Ltd.

The consideration paid the company to Mr. Ahmed Hassan should be treated as a part of remuneration to which the cap applies.

Example 5: Remuneration paid to the managing director

Mr. Steven Smith is the Managing Director of Lagoon Travel and Tours Pvt. Ltd. Mr. Smith's total pay package is worth MVR 1.5 million a year.

The total of consideration paid for Managing Director's employment in the company and for his service as a member of the board must be treated as remuneration paid to him by the company.

Example 6: Remuneration received by an executive director

Ms. Hafsa Ali is an executive director at the Moonlit Solutions Pvt. Ltd. She is also a member of the board of directors. The total amount of consideration paid for her work as the executive director and member of the board of directors would fall within remuneration paid to her by the company.

Non-monetary benefits provided to a director must be treated as a part of the remuneration. Any such non-cash remuneration must be valued at the open market value of such benefits, unless the benefit is a provision of an asset owned by the company. If it is an asset owned by the company, the value of non-cash remuneration would be equal to the amount of capital allowance otherwise claimable for that tax year for that asset. No capital allowance is allowed to be claimed for an asset of the company accorded to a director as a benefit.

Example 7: Non-monetary benefits to a director

Ms. Aishath Ahmed is the director and Chief Operating Officer (COO) of Transdhoani Maldives Plc. Ms. Ahmed is provided a car by the company for her private or non-business use.

If the capital allowance otherwise claimable in respect of the car for the tax year 2018 is MVR 25,000, this amount must be included in the remuneration paid to the Ms. Ahmed for the tax year 2018, and Transdhoani Maldives Plc. would not be allowed to claim the capital allowance in respect of that car.

Partnership

Where a partnership pays remuneration to certain persons, aggregate of the remuneration that is deductible in a tax year must not exceed 10 % of the specified profit. For a partnership, such persons include:

- (a) partner
- (b) person associated with or related to a partner

Example 8: Remuneration paid to a partner

Iqbal & Associates LLP has 6 partners. Total amount of remuneration paid to partners in the tax year 2018 amounted to MVR 1,750,000. The partnership had a negative specified profit in the tax 2018.

The partnership would not be allowed a deduction in respect of remuneration paid to partners in the tax year 2018.

Trust or body of persons

Where a trust or body of persons pays remuneration to certain persons, aggregate of the remuneration that is deductible in a tax year must not exceed 10 % of the specified profit. For a trust or body of persons, such persons include:

- (a) trustee
- (b) person associated with or related to a trustee.

4. Remuneration: tax treatment by the person who receives the remuneration

As per the Tax Ruling TR-2019/B69, recipients of the remuneration must treat the remuneration as income from employment under a contract of service. In other words, such income would not be subject to the Business Profit Tax.

Example 9: Remuneration received by a director

Ms. Aminath Hussain is a director of LO Construction Pvt. Ltd. Ms. Hussain receives on average MVR 50,000 per month as remuneration from the company.

Income received as remuneration by Ms. Hussain would be considered as income from employment under a contract of service, and she would not be required to treat that income as a business income.

Example 10: Remuneration received by director-doctor

Dr. Hussain Hassan is a director of Medics Maldives Pvt. Ltd. He is a full-time doctor at Medics Clinic, owned by Medics Maldives. He also works as a part-time doctor at several other clinics.

Consideration paid by Medics Maldives for Dr. Hassan for his work as a doctor and director of Medics Maldives should be considered remuneration, and hence would not be a business income for him.

Income from consultation services provided in other clinics, in this case would be a business income for Dr. Hassan, as per the Tax Ruling TR-2018/B65.

5. Consideration not falling within the fold of remuneration

Consideration paid for services supplied by a director, partner or trustee to a respective entity for services which does not fall within the “remuneration” would be a business income for the recipients.

Example 11: Consideration not falling within the ambit of remuneration

Ms. Aminath Hussain is a director of LO Construction Pvt. Ltd. Head office of the company is run on a leased property owned by Ms. Hussain. The company pays Ms. Hussain a monthly rental payment of MVR 50,000, and she doesn't conduct any other business activity.

Consideration paid to Ms. Hussain by the company as lease payments for the head office would not be considered as a part of the remuneration, as supply of immovable property on lease would be a “business”, as defined in the BPT Act.

Ms. Hussain would be required to register with MIRA for BPT irrespective whether or not she conducts any other business.

If a director provides a service which is not a part of his duties as a member of the board and also not a part of his duties as employee of the company, income from providing such a service to the company must be treated as a business income in the hands of the director.

Example 12: Director providing a business service to the company

Ms. Fathmath Usman is an executive director of Hakura Tours Pvt. Ltd. which is in travel business. Although Ms. Usman is highly trained in information technology, she looks after the marketing function of the company.

In the year 2018, the company wanted to setup a new computer network, and the contract for this work was awarded to Ms. Usman. Income Ms. Usman has received in respect of this project must be a business income for her in the year 2018.

6. Withholding tax implications

Following the issuance of TR-2019/B69, entities are not required to deduct withholding tax from remuneration paid to non-resident directors, partners or trustees.

Payments to such persons for services specified under section 6 of the BPT Act would still be subject to WHT unless the services are supplied as a part of employment under contract of service.

Example 13: Consideration not falling within the ambit of remuneration

TelMal Plc. has 2 non-resident directors appointed to the board of directors by its parent company based in UAE.

Remuneration paid to non-resident directors would be subject to the 10% cap. However, TelMal Plc. would not be required to deduct withholding tax on remuneration paid to the non-resident directors.

Suppose, a non-resident non-executive director supplies a technical service to TelMal, consideration paid by TelMal for that service would not be a part of the remuneration, and TelMal would be required to deduct withholding tax on such payments.

7. Relevant laws, regulations and tax rulings

The following laws, regulations and tax rulings provide the legal basis for the guidelines provided in this guide:

- Business Profit Tax Act (Law Number 5/2011): <https://bit.ly/3wvh32s>
- Business Profit Tax Regulation (Regulation Number 2011/R-35): <https://bit.ly/3R0tmgl>
- Tax Ruling TR-2018/B65: <https://cutt.ly/k9KZi2y>
- Tax Ruling TR-2019/B69: <https://cutt.ly/a9KZEdw>

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