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Income Tax Regulation has been amended mandating taxpayers, whose functional currency is a currency other than MVR, to pay taxes imposed under the Income Tax Act in USD

Mariyam Shaliya, Senior Tax Officer, Tax Academy

The Fifth Amendment to the Income Tax Regulation was published on 12 September 2024. The amendment brought changes to the rules governing currency for preparing tax returns and making tax payments under the Income Tax Act.

According to this amendment, taxpayers whose functional currency is any currency other than Maldivian Rufiyaa (MVR) are obligated to prepare tax returns with respect to income tax, interim payments, Employee Withholding Tax (EWT), Non-resident Withholding Tax (NWT), and Capital Gains Withholding Tax (CGWT) in United States Dollar (USD). Such taxpayers are also required to make their income tax payments, interim payments and withholding tax payments in USD.

In addition, this amendment provides taxpayers, whose functional currency is MVR, the option to pay taxes imposed under the Income Tax Act in USD.

The amendment is effective with respect to withholding tax returns and payments starting from the periods ending on or after 31 October 2024. With respect to income tax returns and payments, the amendment is effective from tax year 2024 onwards. However, the currency rules that were in effect prior to the fifth amendment must be followed in filing the first interim return and making payment for the tax year 2024.

MIRA has planned to conduct awareness sessions and publish a guidance regarding this amendment to acquaint taxpayers with the new currency rules. In addition, taxpayers can contact our hotline 1415 or send us an email via 1415@mira.gov.mv if further clarification is required.

Global Ethics Standards for Tax Planning

Aminath Shiyana, Director, International Tax Audit

In April 2024, the International Ethics Standards Board for Accountants (IESBA) introduced global standards on ethical considerations in tax planning and related services. These standards, incorporated into the IESBA Code of Ethics, address public concerns about tax avoidance and establish a principles-based framework and a global ethical benchmark applicable for tax planning services and activities.

Scope and Provisions

The standards added two new sections to the Code, Section 280 (Tax Planning Activities) and Section 380 (Tax Planning Services). These standards apply to Professional Accountants in Business (S.280) and Professional Accountants in Public Practice (S.380). The standards apply regardless of the nature of the employer / client, including whether it is a public interest entity (PIE). Importantly, the provisions in both sections do not override laws and regulations, including any general anti-avoidance rules prevailing in jurisdictions. Further, it does not address tax evasion, which remains unlawful.

Tax Planning Activities and Services

Tax planning activities involve advisory activities that assist organizations in structuring their affairs to achieve tax efficiency. On the other hand, tax planning services are provided by professionals (such as accountants or tax consultants) to help clients (both individuals and entities) optimize their tax-related strategies.

Tax planning covers a wide range of areas, including advising management / client on structuring international operations and transfer pricing arrangements to minimize overall taxes, utilizing losses efficiently, advising on claiming eligible tax credits, helping structure investments and optimizing capital distribution strategies.

Role of Professional accountants in tax planning

Professional accountants play a crucial role in tax planning by contributing their expertise and experience to help organizations meet their tax planning goals while complying with tax laws and regulations. The standards include the requirement for accountants to ensure their

tax planning advice does not exploit loopholes or grey areas in the law that could harm the public interest. Further, it provides guidance to accountant on establishing a credible basis for their tax-planning advice and highlights the importance of transparency and accountability in tax planning, urging them to consider the broader impact of their advice on society and the economy.

For instance, there might be circumstances where a professional accountant becomes aware that a client is obtaining a tax benefit from accounting for the same transaction in more than one jurisdiction, especially if there is no tax treaty between the jurisdictions. In such circumstances, while the client might be in compliance with the tax laws and regulations of each jurisdiction, the professional accountant might advise the client to disclose to the relevant tax authorities the particular facts and circumstances and the tax benefits derived from the transaction in the different jurisdictions.

Further, the standards encourage professional accountants to document various aspects on a timely basis. This includes the purpose, circumstances, and substance of the tax planning arrangements as well as the identity of the ultimate beneficiaries and any uncertainties involved. The accountant should also record their analysis, the options considered, the judgements made, and the conclusions reached.

Responsibilities of management and those charged with governance

In addition to the responsibilities of the professional accountants, the standards also emphasize the responsibilities of the management and those charged with governance. This includes ensuring that the organization's tax affairs comply with relevant laws and regulations, maintaining accurate books and records and implementing necessary internal controls for tax compliance. They are responsible for authorizing tax return submissions and timely interactions with tax authorities. Additionally, management must make required disclosures to tax authorities and ensure that tax strategies and policies are appropriately disclosed in financial statements.

Effective Date

The standards take effect for tax planning services and activities beginning after 30 June 2025. The IESBA has confirmed that early adoption of the provisions is permitted.

Juridical double taxation and tax credit

Mariyam Shaliya, Senior Tax Officer, Tax Academy

Juridical double taxation arises when a taxpayer is subject to tax on the same income in more than one jurisdiction. According to the Income Tax Act (ITA), a person who is a resident of the Maldives is obligated to pay tax on income derived from the Maldives and elsewhere. Hence, income sourced outside the Maldives by residents may be subject to tax in the source country, as well as in the Maldives.

Several policies are implemented by tax authorities to relieve taxpayers of such double tax burden, which includes bilateral and multilateral double taxation agreements between jurisdictions, and foreign tax credit given to taxpayers who pay taxes in source jurisdictions.

This article will look into the procedure on how foreign tax credit is allowed in accordance with the ITA and the Tax Administration Act (TAA) and the corresponding regulation.

Foreign tax credit

The TAA stipulates the legal basis on which credit is given without a double tax agreement (unilateral relief on double taxation). According to section 53 of the TAA, a resident of the Maldives who proves that he has paid overseas tax on any part of his total income that arises from a source outside the Maldives and is taxable in the Maldives is entitled to a tax credit.

Accordingly, the ITA allows credit for foreign tax paid, given that the tax imposed by the laws of the source country is of a similar character to income tax imposed under the ITA. If so, taxpayers are entitled to a deduction of an amount equal to the lesser of the following, from the amount of tax (i.e. tax liability) imposed under the ITA.

(1) the amount of foreign tax paid;
(2) tax payable in the Maldives from the net amount of foreign sourced income.

This rule must be applied separately with respect to each type of income prescribed in section 3 of the ITA, and each country or territory from which each type of income was derived.

Determination of the amount of foreign tax credit allowed

Net foreign sourced income

When calculating the net amount of foreign sourced income, taxpayers can make any deductions allowed under the ITA that relates exclusively to the derivation of that income, from the total amount of income derived outside the Maldives in respect of which foreign tax has been paid.

For example, taxpayer X derived MVR 500,000 in total rental income from a property in Malaysia in the year 2023, for which he paid MVR 40,000

as income tax in Malaysia. The rental income is also subject to income tax in the Maldives under the ITA.

The expenditure incurred in deriving the rental income amounts to MVR 100,000. Hence, the net amount of foreign sourced income calculated according to the ITA amounts to MVR 400,000.

The amount of tax payable in the Maldives from the net amount of foreign sourced income

According to the Income Tax Regulation (ITR), tax payable in the Maldives from the net amount of foreign sourced income must be calculated using the following formula:

A/B x C

Where,

A = Net amount foreign sourced income

B = Total taxable income computed as per the ITA

C = Tax payable under the Act (before the deduction of foreign tax credit allowed under the ITA)

Inclusive of the net foreign sourced income of MVR 400,000, let us assume that the total taxable income computed as per the ITA for taxpayer X amounts to MVR 4,125,000. The tax payable for taxpayer X computed according to the tax rates and brackets for individuals amounts to MVR 405,150.

Hence, the amount of tax payable in the Maldives from the net amount of foreign sourced income for taxpayer X amounts to MVR 39,287 as calculated below.

Tax payable in the Maldives = (400,000/4,125,000) x 405,150
= MVR 39,287

As the tax payable in the Maldives from the net amount of rental income sourced from Malaysia is less than the MVR 40,000 paid by taxpayer X in Malaysia for said income, the taxpayer will be entitled to a tax credit amounting to MVR 39,287..

Circumstances where no amount is deductible as tax credit

However, no amount is deductible as tax credit if the amount of foreign tax paid or the amount of tax payable in the Maldives from the net amount of foreign sourced income is equal to or less than zero. In addition, it is crucial for taxpayers to note that the credit allowed for an accounting period must be deducted no later than two years after the end of that period.

Relationship between tax treaties and domestic law

Sausan Saeed, Manager, International Tax Audit

Tax treaties and domestic law are both crucial in shaping a country's taxation framework but there are notable differences to keep in mind.

Domestic law is a collective term for the statutes and regulations that govern taxation (i.e. how taxes are levied, collected, and enforced) within a country. In the Maldivian context, this would refer to any tax acts and regulations such as the Tax Administration Act and Income Tax Act.

On the other hand, tax treaties (also known as double taxation agreements) are legally binding international agreements between two or more countries aimed at eliminating double taxation without creating opportunities for tax avoidance and evasion. International juridical double taxation occurs when the same income is taxed in the hands of the same taxpayer in more than one jurisdiction. This typically happens when both the country of residence and the country where the income is sourced claim taxing rights over the same income. The rationale behind tax treaties is to ensure that such income is taxed once.

Tax treaties do not generally impose or create taxation. It allocates taxing rights between the source and residence country through either exclusive taxation to residence/source country or concurrent taxation to both countries (with mechanisms to eliminate double taxation). Tax treaties contain specific articles that allocate taxing rights for various types of income. Some of the key articles addressing different types of income are as follows.

• Article 7 - Business Profits: Taxable in the source country only if there is a permanent establishment.
• Article 10 - Dividends: Typically taxed in the source country, often at a reduced rate specified in the treaty.
• Article 12 - Royalties: Generally taxed in the residence country.

It is important to remember that while tax treaties allocate taxing rights, taxes are ultimately levied through the provisions of domestic law. Let's take the example of a permanent establishment. As stated earlier, most tax treaties grant the exclusive right to tax the profits of a permanent establishment to the country where the permanent establishment is located (i.e. the source country). The determination of the taxable income of that permanent establishments is detailed in the domestic law of that country, such as its Income Tax Act.

Some of the provisions of tax treaties also do not operate independently of domestic law because they include explicit references to the meaning of terms under domestic law. For example, under Article 6 (Income from immovable property), income from immovable property located in a country is taxable by that country. For this purpose, the term "immovable property" has the meaning that it has under the domestic law of the country in which the property is located. Conversely, domestic law also defines terms that may be already defined in tax treaties. The interpretation of these terms for the purposes of domestic law may be influenced by such definitions in the tax treaty in accordance with Interpretation Act Section 11 (g)[1] .

[1] The following aids found outside the Act may be used in order to determine the meaning of a certain word, words or sentence in such Act; International conventions and agreements.

Debit and credit note for the purpose of GST

Mariyam Waheed, Senior Tax Officer, Tax Academy

Under the Goods and Services Act, a registered person providing a goods or services to another registered person must issue a tax invoice, if the purchaser of the goods or services requests so, in this regard only one tax invoice must be issued for every transaction.

As a result, if the value of a transaction falls or is reduced after a tax invoice has been issued for that transaction, as credit note must be issued reflecting the reduction in the price. A valid credit note must fulfill the following conditions.

- "Credit Note" must be written in a prominent manner
- Name, address and TIN of the seller of goods or supplier of services
- Name, address and TIN of the purchaser of goods or recipient of services
- Date of issue
- Credit note number
- Reason for issuing the credit note
- Original tax invoice number, its date, amount of tax specified in that tax invoice, amount of tax calculated after the change in value, and the difference between the two

If the value of a transaction increases or is raised after a tax invoice has been issued for that transaction, a debit note must be issued reflecting the price change. A valid debit note must fulfill the following conditions.

- "Debit Note" must be written in a prominent manner
- Name, address and TIN of the seller of goods or supplier of services
- Name, address and TIN of the purchaser of goods or recipient of services
- Date of issue
- Debit note number
- Reason for issuing the debit note
- Original tax invoice number, its date, amount of tax specified in that tax invoice, amount of tax calculated after the change in value, and the difference between the two

In calculating the amount of GST payable, as credit and debit note must be dealt in the same manner as a tax invoice. If a tax invoice is issued in relation to a transaction and if there is a change is the price or value of the transaction, a debit or credit note must be issued within 3 days from the date the change is identified.

If a credit note is issued in relation to a transaction after input tax has been deducted for it, the amount in the credit note must be included in the output tax statement submitted along with the GST return or if you're not submitting the output tax statement the amount must be included in the "Sales of supplies subject to GST at 8%/16%" in the GST return to add back the GST amount deducted. Meanwhile, if GST has been paid to MIRA in relation to transaction and a debt note is issued for that transaction, the debit note amount must be included in the input tax statement and deducted from the GST payable.

The records of debit and credit notes, like tax invoices, must be kept for five years.

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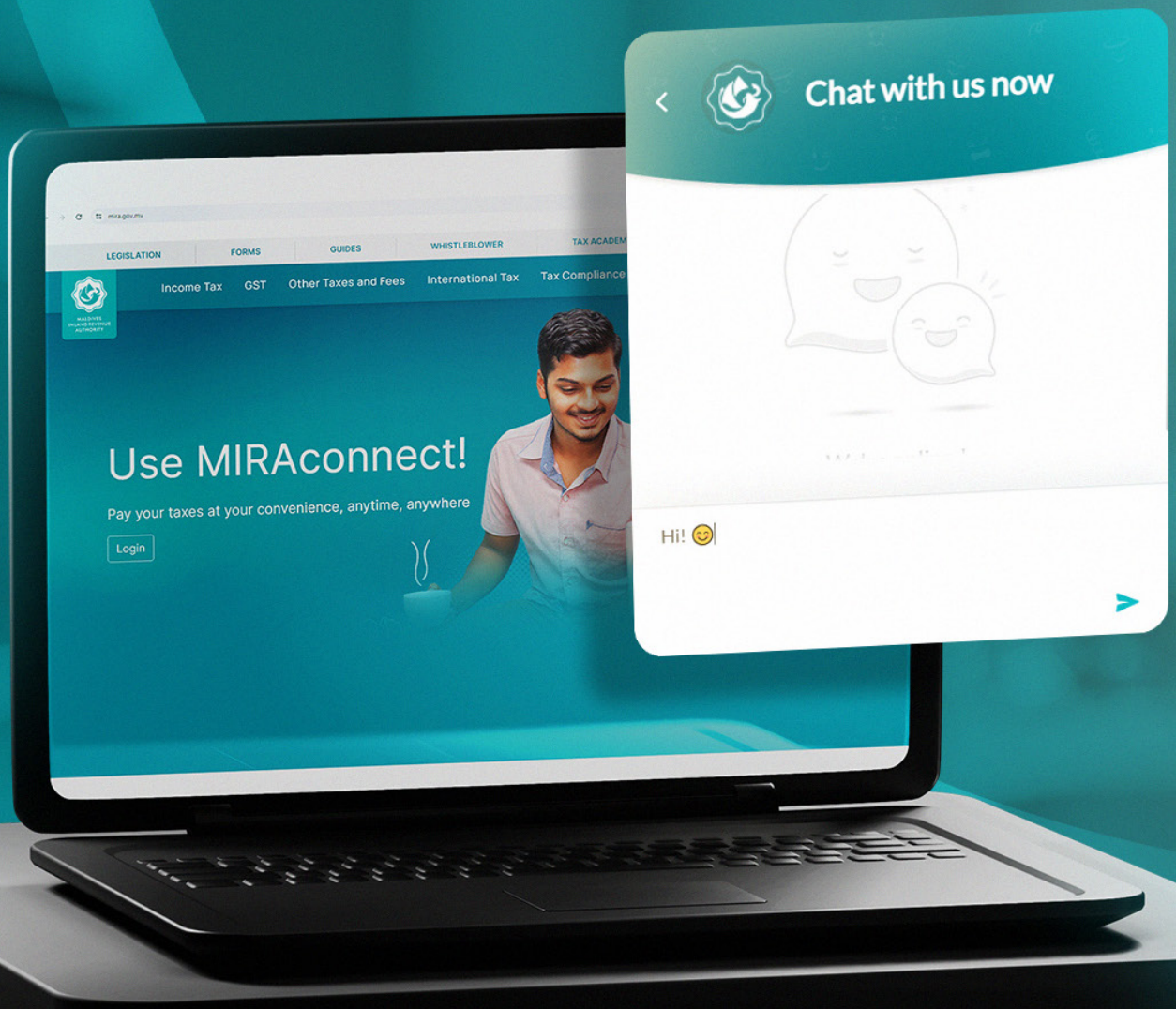

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