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GST implications on the operation of foreign tourist vessels in the Maldives

Mariyam Waheed, Senior Tax Officer, Tax Academy

A foreign tourist vessel must enter the Maldives after appointing an agent in the Maldives to be responsible for the vessel's affairs. The vessel is required to obtain a cruise permit from the Ministry of Tourism (MoT) as per the Foreign Tourist Vessel Regulation. In addition to the cruise permit, if a foreign tourist vessel wishes to accommodate persons other than its crew, owner and his/her family as passengers during the period of the cruise permit, a charter license must be obtained in the name of the vessel's agent from the MoT. It is important to note that this charter license issued by the MoT is different from the charter defined in the Goods and Services (GST) Act for the purpose of determining tax treatment of leasing such vessels in the Maldives.

A taxable activity for the GST purpose includes supply of a good or service by a vessel cruising and harboring in Maldivian waters under a charter license issued by the MoT, or a vessel that is required to hold a charter license issued by MoT for cruising and harboring in Maldivian waters. Hence, above activity is required to be registered for GST. However, if the foreign tourist vessel meets all the below conditions, such vessels would not be a taxable activity. This means that the vessel would not be required to register for GST. These conditions are:

- Holds the cruise permit issued by the MoT for the foreign tourist vessel to cruise and harbour in Maldivian waters.
- The vessel neither holds nor is required to hold a charter license from the MoT.
- The vessel does not allow embarkation or accommodation of new passengers during the period of cruise permit issued by MoT,
- The vessel has not spent more than 180 days in the Maldives Exclusive Economic Zone (EEZ) in the 12-month period following the issuance of the cruise permit by MoT.

Since the charter license is a form of operating permit issued to a tourist vessel by the MoT, the goods and services supplied by the foreign tourist vessel would classify as tourism sector goods and services. Therefore, foreign tourist vessel is required to collect GST at 16% for all supplies made during the period of cruise in the Maldives (except zero-rated, exempt and out-of-scope supplies), irrespective the nationality of the recipient of the supply.

Foreign tourist vessel's charter license is issued in the name of the agent, the agent would be registered for GST as the agent would be the operator of the vessel for the purpose of GST. Each voyage would be registered as a separate registration. To register for GST, the agent of the foreign tourist vessel must submit a GST Registration (MIRA 105) form to MIRA.

As the operating permit holder, the agent is liable to:

- register for GST,
- file GST returns,
- collect and pay the GST for the goods and service supplied by a foreign tourist vessel for the period in the Maldives,
- maintain all relevant records.

If the foreign tourist vessel is leased after the arrival in the Maldives and is operated in the Maldives, the agent must determine whether the lease is within the definition of a charter for GST purpose. The implications being:

1. If the lease is a charter for GST purposes, the agent must account for GST based on the value of the charter.
2. If the lease is not a charter for GST purposes, the leasing of the vessel will be ignored, and the agent must account for the GST from the value of supply provided to the passengers by the lessee. This treatment prevails irrespective of the terms of the agreement between lessor and the lessee.

Charter refers to leasing of a tourist vessel:

- for a particular voyage or voyages not exceeding a period of 15 days; or
- for the lessee's own consumption.

For determining the 15-day period, the number of days in all leases entered within any 60-day period, with the lessee or persons related to the lessee must be aggregated together.

New international tax system – Two pillar solution

Maryam Shaliya, Senior Tax Officer, Tax Academy

1. The status quo

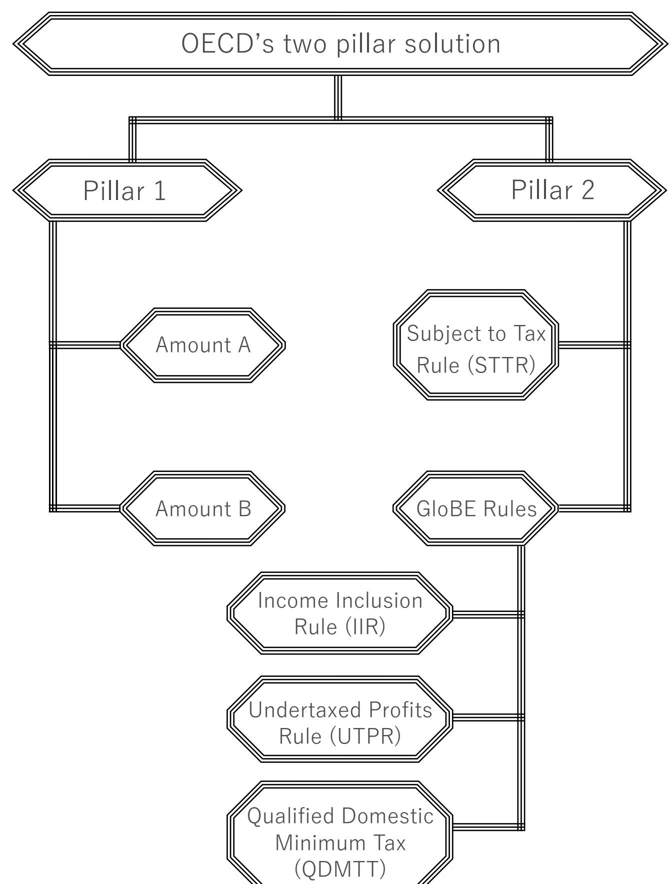
The existing international tax system was built around traditional business practices in a “brick-and-mortar” economic environment, whereby taxing rights are allocated based on the physical presence of the business in a particular jurisdiction (i.e. the permanent establishment). However, advancement in information technology and digitalization of the economy has facilitated ways in which companies can sell into jurisdictions without maintaining a physical presence of any kind.

Hence, a tax system that conforms to nexus rules based on physical presence and profit allocation based on arms-length principle is no longer fit for a globalized and digitalized economy and calls for a substantial reform to combat the resulting revenue losses globally.

2. The two-pillar solution

The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) has built a global platform of over 145 countries and jurisdictions to address tax avoidance, and to ensure profits are taxed where economic activities generating the profits are performed and where value is created. This is done through the work carried out on Action 1 of the BEPS action plan.

The tax challenges arising from digitalization is addressed in the Action 1 of the BEPS package, which prescribes a two-pillar solution to reform international tax rules in a way that ensures multinational enterprises (MNEs) pay a fair share of tax wherever they operate. As of October 2021, over 135 countries, including the Maldives, has endorsed the two-pillar plan and joined the global efforts.



3. Pillar 1: The new tax right

Through changes to profit allocation and nexus rules, Pillar 1 aims to reform the international tax system in alignment with the modern business practices. It reallocates the taxing right of large MNEs from their home country to market jurisdictions where actual value is created, regardless of their physical presence in that jurisdiction.

OECD estimates a reallocation of taxing rights of more than USD 125 billion of profit to market jurisdictions each year.

3.1 Amount A of Pillar 1

Amount A represents the share of residual profit allocated to market jurisdictions based on a new nexus.

3.2 What is the scope for Amount A?

MNE groups with global turnover above €20 billion and profitability above 10% (i.e. profit before tax/revenue) are within the scope of Amount A, with the exclusion of MNEs in extraction, regulated financial services and defense sectors.

The current scope applies to about 100 of the largest and most profitable companies. However, the turnover threshold is expected to reduce to €10 billion after 7 years of implementation.

3.3 Which market jurisdictions get taxing rights of the MNE's profit?

Under Pillar 1, in order to determine which market jurisdictions are eligible to tax a portion of the profits of MNEs, a new nexus is established. According to the new nexus, market jurisdictions from which MNE group derive at least €1 million of revenue will be eligible for the taxing right of that MNE.

For smaller jurisdictions whose GDP is less than €40 billion, market revenue threshold of €250,000 applies. Hence, the new nexus and revenue sourcing rules ensures that even developing countries such as Maldives, get the right to tax a portion of the profits in the Maldives, despite the absence of physical presence.

3.4 How is Amount A derived?

Consolidated profit is the amount of Profit Before Tax (PBT) derived from the consolidated financial statement of the MNE group as a whole. Only a limited number of book-to-tax adjustments will be made, and losses will be carried forward subject to time limits.

The amount of profit within 10 percent of revenue is known as routine profit. **Residual profit** is the profit in excess of 10 percent of revenue.

Amount A is the portion of MNE's residual profit that will be attributed to market jurisdictions. It is 25 percent of the residual profit. This amount will be distributed among market jurisdictions, proportionate to the revenue derived from each jurisdiction.

3.5 What are the measures taken to eliminate double taxation arising on Amount A?

An overlay exists between the new taxing rights that is determined at MNE group level, and the current profit allocation rules that is determined at entity level. Hence, in order to avoid double taxation arising on Amount A, a reconciliation should be made between the two.

The mechanism to eliminate double taxation under Amount A will determine which entity or entities within the MNE group bears the Amount A tax liability, and which jurisdictions will be responsible for relieving the resulting double taxation and in which amount.

3.6 What are the administrative procedures?

Step 1: Determine the Coordinating Entity (entity within the MNE group that will bear the Amount A tax liability), and the Lead Tax Administration responsible for taxing Amount A (typically the parent jurisdiction).

Step 2: Coordinating Entity files the Amount A tax return and Common Documentation Package for the MNE Group centrally with the Lead Tax Administration.

Step 3: The Lead Tax Administration distributes the tax return and Common Documentation Package of the MNE Group to all the Affected Parties (i.e. market and relieving jurisdictions) through Exchange of Information.

Step 4: A Designated Payment Entity of the MNE group will then make all payments related to Amount A to market jurisdictions.

3.7 The implementation of Amount A

Amount A is implemented through a Multilateral Convention (MLC) developed by the Inclusive Framework, which allows jurisdictions to reallocate and exercise a domestic taxing right over Amount A. This MLC will enter into force upon ratification by 30 jurisdictions accounting for at least 60 percent of the ultimate parent entities (UPEs) of in-scope MNEs. Once this minimum condition is met, the States that ratified the MLC can decide when it will enter into force. The Inclusive Framework intends for the MLC to come into effect during the year 2025.

3.8 What do Maldives gain from implementing Amount A?

It is important to stress that implementation of Amount A does not adversely affect our current domestic tax system or revenue collection. Potentially, Maldives would be reallocated additional profits from MNEs where the current system fails to tax as these MNEs fails to have a physical presence or a permanent establishment here in the Maldives. Though with the absence of a permanent establishment these MNEs derive revenue from the Maldives.

4. Amount B: Transfer pricing – the status quo

Over a third of international trade is conducted within corporations operating across multiple jurisdictions. The risk of tax planning arising from transactions conducted between related parties and the resulting revenue loss for the host countries constitutes the establishment of a mechanism to determine the price of transactions with and between related corporations.

To combat this particular tax risk, the OECD has established Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (TPGs). This guideline has adopted the arm's length principle which prescribes that the price of an MNE's cross-border transactions should be comparable to those carried out between independent entities.

To comply with the TPGs, tax authorities conduct comparability analyses for each transaction. This has become complex, resource intensive, and administratively burdensome to apply, especially for developing countries where the lack of appropriate local market comparable is a key challenge in the implementation of the TPGs.

4.1 Amount B of Pillar 1

Amount B of Pillar 1 aims to establish a new framework to simplify the existing transfer pricing rules and the application of the arm's length principle to baseline marketing and distribution activities. As opposed to Amount A, the revenue increment under Amount B is expected to be modest as it does not create new taxing rights for particular jurisdictions. However, it is aimed to simplify the administration of the current transfer pricing mechanism, and promote more efficient utilisation of resources for both taxpayers and tax administrations.

4.2 What is the scope for Amount B?

Reports from some low-capacity jurisdictions estimate that among all transfer pricing disputes they face, 30 to 70 percent represent transfer pricing disputes relating to distribution activities. Hence, the transactions in scope of Amount B includes:

- Buy-sell marketing and distribution transactions where the distributor purchases goods from one or more associated enterprises for wholesale distribution to unrelated parties.
- Sales agency and commissionaire transactions where the sales agent or commissionaire contributes to one or more associated enterprises' wholesale distribution of goods to unrelated parties.

However, retail business models, services and distribution of commodities and non-tangible goods and services are explicitly excluded from the scope of Amount B. Further work will be done to determine the appropriate application of Amount B to the wholesale distribution of digital goods.

4.3 What is the transfer pricing framework for the in-scope transactions under Amount B?

The arm's length price for in-scope transactions will be determined with reference to a pricing matrix that will be built by the Inclusive Framework. This will standardize the mechanism by which arm's length prices are established across the globe, eliminating the need for local market comparable that are appropriate for every in-scope transaction.

4.4 The implementation of Amount B

Amount B proposal would be implemented by bringing necessary changes to the OECD's Transfer Pricing Guidelines (TPG). The Inclusive Framework plans to approve a final report on Amount B and incorporate key content into the OECD Transfer Pricing Guidelines by January 2024.

4.5 Why is it important to implement Amount B?

Amount B simplifies the existing transfer pricing rules for all transactions in scope. The application of new guidelines would improve tax certainty, reduce compliance and administrative cost specially to countries like Maldives with no local market comparable. MIRA and taxpayers can use a fixed set of rules in determining the transfer prices which would bring consistency and certainty.

UN members voted to develop a historic UN Tax Convention

Hussain Amir, Deputy Director, Taxpayer Education

Members of the UN have adopted a resolution paving way for negotiations to establish a convention on international tax cooperation. The resolution was passed with a significant margin of 125 countries voting in favor of the resolution including the Maldives, 48 countries voting against and 9 abstained. The work faced significant challenges from the US, UK and the European countries, who are currently at the forefront of international tax rule making with OECD. The UN's intergovernmental process to develop a new tax convention will begin in 2024. The work would ensure transparency, global representation and would follow the UN principles in laying out international tax rules.

MIRA collects MVR 2.01 billion as revenue in October 2023

Zimaamath Hussain, Tax Officer, Marketing

MIRA collected MVR 2.01 billion as revenue in October 2023. This is an increment of 61.3% compared to the same period last year. Moreover, it is an increment of 29.7% compared to the forecasted amount for October 2023.

The increment in revenue of October 2023 compared to October 2022 is mainly due to the increase in collection of GST, Tourism Land Rent, Expatriate Quota fee and Green Tax. This is because Payment deadlines in September 2023 of GST, Airport Taxes and Fees and Green Tax were extended to the first week of October. Furthermore, MIRA has stated that tourist arrivals in September 2023 increased by 16.9% compared to September 2022, which led to a significant increment in tourist related revenues.

In addition, Revenue collection increased in comparison to forecasted revenue, as the tax deadlines were extended to first week of October due to the initial deadline being declared as a public holiday after the elections.

In October 2023, GST accounted for the largest share of revenue received by MIRA, which is 65.74% or MVR 1.32 billion. The next largest revenue was from Income Tax which is 8.02% or MVR 161.47 million. In addition, Tourism Land Rent amounted to MVR 152.82 million (7.59%), Green Tax amounted to MVR 92.56 million (4.60%), Airport Development Fee amounted to MVR 77.19 million (3.83%) and other taxes and fees amounted to MVR 205.72 million (10.22%).

Out of the revenue collected in October 2023, USD 77.10 million constitutes the dollar collection.

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