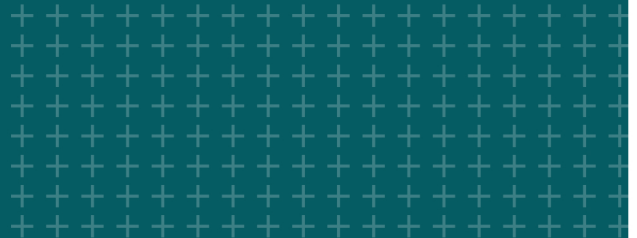
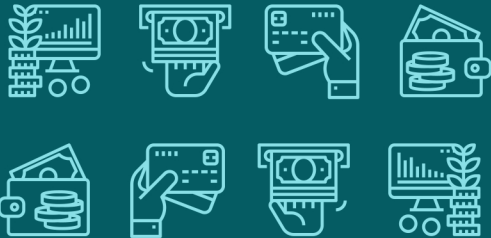
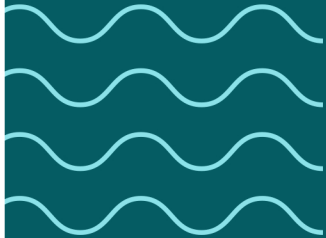




Income Tax Guide: Non-resident International Airlines and Shipping Operators



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Taxpayers can rely on this guide as to the MIRA’s interpretation of the relevant tax laws and regulations. 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.

Abbreviations and acronyms

CG	Commissioner General of Taxation
DTAA	Double Tax Avoidance Agreement
ITA	Income Tax Act (Law Number 25/2019)
ITR	Income Tax Regulation (Regulation Number 2020/R-21)
MIRA	Maldives Inland Revenue Authority
PE	Permanent Establishment
TAA	Tax Administration Act (Law Number 3/2010)
TAR	Tax Administration Regulation (Regulation Number 2013/R-45)

I. Introduction

Non-resident international airlines and shipping operators are subject to special rules when taxed under the Income Tax Act (Law Number 25/2019) (ITA).

This guide explains the special rules applicable under the ITA to such airlines and shipping operators. More specifically this guide will explain:

- The S.11(r) Income
- The S.12(k) Exemption
- The S. 12(h) Exemption
- Relevant PE rules

Resident airlines and shipping operators, whether or not they are engaged in international transportation, are taxed under the ITA in the same way as that of the other residents. That is, they must register and pay income tax on their worldwide income.

Since there are no special rules or special exemptions with regard to taxation of resident airlines or shipping operators, for a summary of standard rules, rates and brackets applicable to resident airlines and shipping operators, you may refer to the [Income Tax Summary Guide](#) available on our website.

2. Non-resident airlines and shipping operators in international transportation [non-resident international transport operators]

The income derived from the Maldives by non-residents are subject to income tax.

If an airline or shipping operator derives any of the incomes specified in the section 11 of the ITA, such income is considered as to have derived or sourced from the Maldives. However, there are some unique rules that are applicable to non-resident international airlines and shipping operators.

In this guide, the phrase “non-resident international transport operators” will be used throughout to denote non-resident international airlines and non-resident international shipping operators.

Determining the residency status of a non-resident

For the specific rules on determining residency, refer to page 10 of the [Income Tax Summary Guide](#) or Section 79(kk)–(mm) of the [ITA](#).

2.1 Registration under the ITA

The provisions of the ITA applies to non-residents only where the non-resident derives income from the Maldives. What constitutes “Income derived from the Maldives” [source rules] are provided for in the section 11 of the ITA.

There are several circumstances where a non-resident deriving income from the Maldives would be required to register under the ITA. The comprehensive set of registration rules can be found in the chapter 2 of the Income Tax Regulation (ITR).

If a non-resident international transport operator has a permanent establishment (PE) in the Maldives, it must be registered with MIRA under the ITA.

2.2 Taxation of “S.11(r) Income”

Normally international airlines flying to the Maldives carry passengers and cargoes, while international shipping operators carry cargoes to and from the Maldives. Hence, the most relevant source rule for non-resident international transport operators would be that of the section 11(r) of the ITA.

The phrase “S.11(r) Income” will be used throughout this guide to denote the income specified in the section 11(r) of the ITA.

S.II(r) Income

Section 11 of the ITA states:

Income derived from the Maldives

The following income shall be deemed to be derived from the Maldives.

...

(r) Income derived by a non-resident shipping or aircraft operator in international transportation that has **a permanent establishment** in the Maldives, from carrying passengers or livestock or mail or parcels or merchandise or goods on an aircraft or a ship which departs from a place located in the Maldives.

Example- I

Sky Italia is a non-resident airline that flies between Malé and Milan, and has PE in the Maldives. Most of its tickets are issued in Milan for the route Malpensa (MXP)-Velana International (MLE)-Malpensa (MXP).

Irrespective where the tickets are issued, the portion of the income attributable to MLE-MXP sector would be considered as S.II(r) Income.

The ITA provides special rules on the taxation of S.II(r) Income, i.e., S.II(r) Income is taxed on gross basis at the rate of 2%. No deductions are allowed against S.II(r) Income. It is important to note that S.II(r) Income comes into play only if the non-resident transport operator has a PE in the Maldives.

The following income are excluded from taxation at the rate of 2%.

- *income derived from a passenger who transits in the Maldives in the course of a journey between two places outside of the Maldives;*
- *income derived from a transshipment of livestock, mail, parcel, merchandise or goods.*

2.3 Business income derived by non-resident transport operators through a PE

If a non-resident transport operator derives business income which do not fall within S.II(r) Income, through a PE in the Maldives, such income would be taxed in the standard way. That is, the taxable income attributable to the PE would be taxed at the standard rates and brackets given in the Section 7 or 9 of the ITA.

2.4 The S.12(k) Exemption

The section 12 (k) of the ITA provides for non-resident airlines and shipping operators [including charterers and lessors of aircrafts or ships] in international transportation to apply for an exemption from taxation of S.II(r) Income. It also allows non-resident lessors

to apply for exemption from taxation of income derived as lessors of aircrafts or ships or equipment which are integral to airworthiness of aircrafts used in the Maldives or seaworthiness of ships used in the Maldives.

This exemption is contingent upon availability of a reciprocal exemption to the Maldives resident airlines, shipping operators, charterers, or lessors, in the country of residence of the non-resident airline seeking the exemption. For the purpose of this exemption, the applicant's country of residence would be the jurisdiction of the location of the central management and control of the applicant.

2.4.1 Procedure to apply for the S.12(k) Exemption

To apply for this exemption [MIRA 607](#) form must be submitted to MIRA, together with the following documents.

- A document from the external auditor verifying the location of the central management and control of the applicant;
- If the applicant is a lessor of an aircraft, ship or equipment wishing to get exemption from non-resident withholding tax (NWT), agreements and other documentation related to the lease.

When an application for S.12(k) Exemption is received and if there is no reciprocal arrangement already in place with the jurisdiction of residence of the applicant, MIRA will communicate with the tax authority of the jurisdiction of the residence of the applicant for the establishment of a reciprocal arrangement. If MIRA cannot establish the required reciprocity within three months from the initial communication with the other tax authority, the application file will be closed and the applicant will be informed accordingly. If there is an existing reciprocity or when the reciprocity is arranged, the outcome of the application will be communicated to the applicant in writing. If granted, the exemption start date would be the date on which all the necessary documents were submitted to MIRA.

Find out more

The list of countries with which the Maldives have reciprocal arrangements is available at <https://cutt.ly/J9FAvLN>.

2.5 The S.12(h) Exemption - exemption under a treaty or agreement

A tax treaty or international agreement between the Maldives and another country may limit the right of taxation of the profits from operation of ships or aircraft in international traffic to the State in which the operator is resident. In such cases, non-resident

international transport operators will not have to pay tax in the Maldives on S.II(r) Income. However, even in such cases, non-resident international transport operators' income tax return filing requirement is not waived.

The non-resident transport operators who are eligible for this exemption, may request in writing with a valid residency certificate, for a confirmation letter from MIRA.

2.6 Permanent establishment (PE)

As indicated previously, S.II(r) Income is applicable only if the non-resident international transport operator has a PE in the Maldives. Similarly, business income derived by a non-resident transporter through a PE is subject to the income tax. Hence, the concept of PE is central to the taxation of non-resident transport operators.

As per the Section 79(gg) of the ITA, a PE means a fixed place business where a business of an enterprise is wholly or partly carried on, and includes especially:

- a place of management
- a branch
- an office
- a workshop
- a factory
- a workshop

Hence if a non-resident has one of above establishments in the Maldives, it is very likely that the non-resident has a PE in the Maldives. That is to say, such establishments is highly likely to meet the fixed place of business test in the section 79(gg)(1).

Example-2

Fly Bharat is a non-resident airline operating flights to and from the Maldives. Fly Bharat has a permanent office in Male', where 5 of its employees, including the Station Manager, work.

Fly Bharat has an office in the Maldives through which it conducts business, and therefore has a PE in the Maldives.

Example-3

Air Indo is a non-resident airline operating flights to and from the Maldives. Air Indo has one its employees based in the Maldives. Air Indo does not have an office in the

Maldives. However, the employee based in the Maldives is allowed to use the office of TT Travels Pvt Ltd, its GSA in the Maldives.

Since office of the TT Travels Pvt Ltd is at the employee's disposal, and is the place through which activities related to the business of Air Indo are carried on, the arrangement would constitute a PE of Air Indo in the Maldives.

The above list is not the complete list of what constitutes a PE. The full set of PE rules is given under the section 79(gg) of the ITA. Given the nature of airline operations and shipping operations in the Maldives, the PE rules explained in the following sections may be of relevance.

2.6.1 Service PE [Section 79(gg)(3)(ii) of ITA]

If a non-resident provides a service in the Maldives through employees or other personnel engaged by that non-resident for that purpose, aggregating more than 183 days in a 12-month period, it would constitute a PE of the non-resident in the Maldives.

Example-4

Toronto Air, a non-resident airline flying to the Maldives, provides aircraft maintenance service at Velana International Airport (VIA) to other airlines. The service is provided by its employees based in the VIA, and is available throughout the year.

Provision of aircraft maintenance service by Toronto Air would constitute a PE in the Maldives.

2.6.2 Agency PE - [Section 79(gg) (5), (6) and (7) of the ITA]

A person [agent] acting in the Maldives on behalf of a non-resident [principal] would constitute a PE of the principal if:

in doing so, the agent habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the principal, and these contracts are either:

- in the name of the principal; or
- for the transfer of the ownership of, or for the granting of the right to use, property owned by the principal or that the principal has the right to use; or
- for the provision of services by the principal;

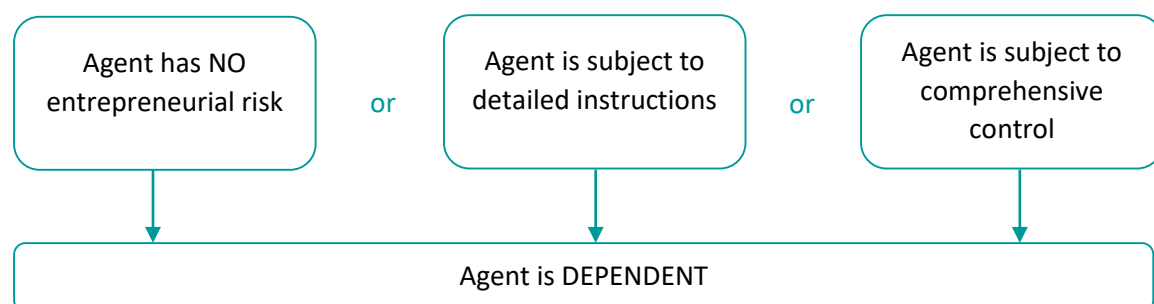
However, it is important to note that for the agency PE to exist, the agent must not be an independent agent acting in its ordinary course of business.

Determining whether the agent is “independent” is not straightforward. MIRA’s interpretation of “independent agent” will be in line with the interpretation given in the UN Model Tax Convention [United Nations Model Double Taxation Convention between Developed and Developing Countries 2017].

The ITA clearly excludes agents who act exclusively or almost exclusively on behalf of one or more principals to which it is closely related, from the definition of independent agents. An independent agent cannot be said to act in the ordinary course of its business as an agent when it performs activities that are unrelated to that agency business.

All the facts and circumstances must be considered in determining whether the agent is independent.

To be an independent agent, the agent must be both legally and economically independent, and the agent’s activities must constitute an autonomous business conducted in which the agent bears risk and receives reward through the use of the agent’s skills and knowledge. Legal independence means that the principal has no control over, or power to interfere in, the day-to-day business of the agent. Legal independence would normally be evidenced by the existence of a contract between the agent and his principal. Economic independence means that the agent conducts his own exclusive business wherein he bears the entrepreneurial risk of the business, i.e. there is no merging of the business interests of the principal and the agent. If the agent’s commercial activities for the principal are subject to detailed instructions or to comprehensive control by the principal, the agent cannot be regarded as independent. These points can be summarized as below:



An independent agent will typically:

- ✓ be responsible to the principal for the results of the work;
- ✓ be not subject to significant control with respect to the manner in which the work is carried out;
- ✓ be not subject to detailed instructions from the principal as to the conduct of the work.

The fact that the principal is relying on the special skill and knowledge of the agent is an indication of independence.

Another factor to be considered in determining independent status is the number of principals represented by the agent. Independent status is less likely if the activities of the agent are performed wholly or almost wholly on behalf of only one principal over the lifetime of the business or a long period of time.

Example-5

IOE (Indian Ocean Express) is a non-resident international shipping operator in the Maldives. Rapid Logistics (RL), a company resident in the Maldives, acts throughout the year as an agent for the IOE selling cargo space on its ships. RL acts exclusively for the IOE and is subject to detailed instructions from the IOE as to the bookings.

The facts indicate that RL is a dependent agent which habitually concludes contracts on behalf of IOE, and therefore the arrangement would constitute an Agency PE of IOE in the Maldives.

Example-6

Fly Malaya is a non-resident airline operating scheduled flights between Malé and Kuala Lumpur. ELCO Travels is the GSA of Fly Malaya in the Maldives, and sells tickets of Fly Malaya in the Maldives. ELCO Travels is an exclusive business wherein it bears entrepreneurial risk of the business, and is not subject to detailed instructions from Fly Malaya. Similarly, ELCO Travels acts as a GSA of several other non-resident airlines.

The available facts indicate that the ELCO Travels is an independent agent, and therefore this arrangement would not constitute an Agency PE of the Fly Malaya in the Maldives.

2.7 Interim returns and interim payments

Non-resident transport operators with a PE in the Maldives must file interim returns and make interim payments, if one of the following conditions are met:

- If this is the first tax year and estimated income tax payable for this tax year is more than MVR 20,000; or
- Annualized income tax payable for the previous tax year was more than MVR 20,000.

Deadline: Interim return and interim payments

- First interim return must be filed, and first interim payment must be made on or before 31 July of the tax year.
- Second interim return must be filed, and second interim payment must be made on or before 31 January of the following tax year.

Find out more

Interim Return ([MIRA 603](#)) and a [guide](#) on how to complete the Interim Return are available on our website.

2.8 Income tax return & final payment

The full set of rules on exemption from income tax return filing is given in the section 101 of the ITR. If a non-resident transport operator derives S.11(r) Income or conducts any other business in the Maldives through a PE in the Maldives, an income tax return must be filed for that tax year. This requirement remains unchanged even if S.11(r) Income is made exempt under a DTAA or the S.12(k) Exemption.

As it was noted previously, S.11(r) Income is taxed on gross basis at the rate of 2%, without allowing for any deductions in the computation of the taxable income. If the non-resident is deriving both S.11(r) Income, and other business income through a PE in the Maldives, the income tax on that other business income must be accounted for using the standard rules for calculating the taxable income of a PE.

Deadline: Income tax return & final payment

The income tax return must be filed and corresponding final (balancing) payment of income tax must be made on or before 30 June of the following tax year.

Find out more

Income Tax Return ([MIRA 604](#)) and a comprehensive [guide](#) on the income tax return are available on our website.

2.8.1 Documents to be submitted along with the income tax return.

If a non-resident international transport operator derives only S.II(r) Income in a tax year, the income tax return must accompany an auditor's report which attests to the reliability of the S.II(r) Income figure used in the income tax return. Besides this report, no other financial statement or a document is required to be submitted together with the income tax return.

However, if a non-resident international transport operator derives both S.II(r) Income and any other income through a PE, in addition to the auditor's report attesting to the S.II(r) Income figure, a full set of financial statements must be submitted together with the income tax return as required by the ITR. The full set of rules regarding preparation and submission of financial statements is provided for in the section 102 of the ITR.

In all circumstances, where an auditor's report is mentioned, it means an auditor licensed by the Institute of Chartered Accountants of the Maldives.

Relevant laws, regulations and other documents

[Income Tax Act \(Law Number 25/2019\)](#)

[Income Tax Regulation \(Regulation Number 2020/R-21\)](#)

[Tax Administration Act \(Law Number 3/2010\)](#)

[Tax Administration Regulation \(Regulation Number 2013/R-45\)](#)

[United Nations Model Double Taxation Convention between Developed and Developing Countries 2017](#)

[OECD Model Tax Convention on Income and on Capital 2017](#)



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