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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Code of Conduct Group (Business Taxation)
Subject: Maldives's Reduced Tax Rate regime (MV001)
– Final description and assessment
= Law 25/2019 (Part 5)

- (bb) "Employee" means a person who is engaged to provide labour services to another person under a contract of service, a director of a company, a partner of a partnership, and includes a person who is elected or appointed to any office or position, whether temporary or permanent or for a specified term, any person holding a position under a contract of service, and any person holding a position of the State for which the person is remunerated by the State, but does not include an independent contractor engaged by another person to provide services under a contract for services.
- (cc) "Person" includes an individual, company, partnership, cooperative society, trust and body of persons, but, except for the purposes of Section 54 of this Act, does not include any State office or any State institution.
- (dd) "Finance lease" refers to any lease under which substantially all the risks and rewards incidental to ownership of an underlying asset is transferred to the lessee.
- (ee) "Child" includes a grandchild, stepchild and an adopted child.
- (ff) "State institution" includes all offices and institutions of the executive, legislative or judicial power of the State, institutions formed under the constitution or any Act, island councils, atoll councils and city councils, and does not include state owned enterprises or separate legal entities run with the principal purpose of conducting commercial business.
- (gg)
- (1) "Permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
 - (2) The term "permanent establishment" includes especially:
 - (i) a place of management;
 - (ii) a branch;
 - (iii) an office;
 - (iv) a factory;
 - (v) a workshop;
 - (vi) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources, including vessels and ships used for the extraction of such resources;

- (3) The term “permanent establishment” also encompasses:
- (i) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than 6 (six) months;
 - (ii) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue within the Maldives for a period or periods aggregating more than 183 (one hundred and eighty three) days in any 12 (twelve) month period commencing or ending in the tax year concerned;
- (4) Notwithstanding anything to the contrary in this definition, the term “permanent establishment” shall be deemed not to include:
- (i) The use of facilities solely for the purpose of storage or display or delivery of goods or merchandise belonging to the enterprise;
 - (ii) The maintenance of stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - (iii) The maintenance of stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (iv) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
 - (v) The maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity;
 - (vi) The maintenance of a fixed place of business solely for any combination of activities mentioned in subsections 79(gg)(4)(i) to 79(gg)(4)(v), provided that such activity or, in the case of subsection 79(gg)(4)(vi), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.
- (5) Subsection 79(gg)(4) shall not apply to a fixed place business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise

carries on business activities at the same place in Maldives or at another place in the Maldives and

- (i) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of this subsection; or
- (ii) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

- (6) Notwithstanding subsections (gg)(1) and (gg)(2), but subject to subsection (gg)(8), where a person (herein referred to as the “first person”) is acting in the Maldives on behalf of an enterprise (herein referred to as the “second person”), and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are:

- (i) in the name of the second person; or
- (ii) for the transfer of the ownership of, or for the granting of the right to use, property owned by the second person or the first person has the right to use; or
- (iii) for the provision of services by the second person,

the second person shall be deemed to have a permanent establishment in Maldives in respect of any activities which the first person undertakes for the second person, unless the activities of the first person are limited to those specified in subsection (gg)(4) which, if exercised through a fixed place of business (other than a fixed place of business to which subsection (gg)(5) would apply), would not make this fixed place of business a permanent establishment for the purposes of this Section.

- (7) Notwithstanding anything to the contrary in this Section, an insurance enterprise shall, except in regard to re-insurance, be deemed to have a permanent establishment in the Maldives if it collects premiums in the territory of Maldives or insures risks situated therein through person other than an independent agent specified in subsection (gg)(8).
- (8) Subsection (gg)(6) shall not apply where the person (agent) acting in the Maldives on behalf of the first person carries on business in the Maldives as an independent agent and acts for the first person in the ordinary course of that business. Where, however, the agent acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that agent shall not be considered to be an independent agent for the purposes of this subsection.
- (9) The fact that a person doing business in the Maldives is controlled by a person not resident in the Maldives shall not of itself constitute either person a permanent establishment of the other.
- (10) For the purpose of this subsection, two persons are closely related to one another if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons. In any case, where one person possesses directly or indirectly more than 50% (fifty percent) of interest in the other (or, in the case of a company, more than 50% (fifty percent) of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company), the two persons shall be considered closely related to one another.
- (hh) "Maldives" means the territory of Maldives as defined in Article 3 of the Constitution of the Republic of Maldives.
- (ii) "Income derived from the Maldives" means income specified in Section 11 of this Act, irrespective of whether the income is derived by a person resident in the Maldives or by a person not resident in the Maldives.
- (jj) "Maldives Stock Exchange" means the stock exchange established under Chapter 3 of the Maldives Securities Act (Law Number 2/2006).
- (kk) "Resident" means:

- (1) in the case of an individual, any person:
 - (i) whose permanent place of living is in the Maldives; or
 - (ii) who is present in the Maldives or intends to be present in the Maldives for an aggregate of 183 (One Hundred and Eighty-Three) days or more in any 12 (Twelve) month period commencing or ending during a tax year; or
 - (iii) who is an employee or official of the Government of the Maldives and is posted overseas during a tax year;
- (2) in the case of a company, a company:
 - (i) that is incorporated in the Maldives; or
 - (ii) that has its head office in the Maldives; or
 - (iii) the control and management of which is in the Maldives.
- (3) in the case of a partnership, a partnership:
 - (i) that is formed in the Maldives; or
 - (ii) the control and management of which is in the Maldives.
- (4) in the case of a trust:
 - (i) a trust that is formed or settled in the Maldives; or
 - (ii) a heritage trust of a deceased person who was resident in the Maldives; or
 - (iii) a trust that was operated in the Maldives at point in time during a tax year.
- (5) any State office.
- (ll) "Person not resident in the Maldives", "non-resident" and "non-resident person" mean any person that is not a "resident" or "a person temporarily resident in the Maldives", as defined in this Section.
- (mm) "Person temporarily resident in the Maldives" means individuals resident in the Maldives under subsection (kk)(1) who satisfy the following conditions:
 - (1) a person permitted to stay in the Maldives under the Maldives Immigration Act (Law number 1/2007); and
 - (2) a person who is not married to a Maldivian.
- (nn) "Disposal" means:

- (1) the loss of ownership of property whether as a result of any sale, gift, transfer, or otherwise; or
 - (2) the permanent loss of possession of property whether as a result of destruction of the property or otherwise.
 - (3) the permanent discontinuation of use of property or permanent cessation of business in which the property was used, or dissolution of business;
 - (4) the cessation of the owner of the property being within the charge to tax with respect to a business in which the property is used.
- (oo) "Relative" of a person means:
- (1) the person's spouse;
 - (2) the person's child, parent, grandparent or sibling;
 - (3) the spouse of a person referred to in subsection 79 (oo)(2).
- (pp) "Limited liability partner" means a partner of a limited liability partnership.
- (qq) "Limited liability partnership" means a limited liability partnership defined in Section 4(a) of the Partnership Act (Law Number 13/2011).
- (rr) "Loan" means an amount (whether or not in money) given at any time by a person (referred to as the "first person") to another person (referred to as the "second person") under the terms of which the second person has an obligation to pay an amount at a future time, and includes accounts payable and obligations arising under promissory notes, bills of exchange and bonds.
- (ss) "Associate" means each of two persons where one person:
- (1) controls, or is controlled by, the other, or both persons are controlled by the same person or persons; or
 - (2) is a relative of the other person; or
 - (3) is a partnership and the other person is a partner in that partnership; or
 - (4) is a partner in a partnership and the other person is a partner in the same partnership; or
 - (5) is a trust and the other person is a beneficiary of that trust; or
 - (6) is a trust and the other person is a settlor of the trust.

- (tt) "Director's fee" means any benefit received, whether or not in money, in respect of the performance of any duties as a director or otherwise as the holder of the office of director.
- (uu) "Dividend" means any income derived from shares or otherwise in respect of share of profit that does not constitute return on debt.
- (vv) "Fees for technical services" means any payment in consideration for rendering managerial, technical or consultancy services or a service of similar nature, that does not constitute remuneration for employment.
- (ww) "Tax year" means the period from 1 January to the 31 December of the Gregorian calendar year.
- (xx) "Taxable income" means the amount of income derived by a person after deducting expenses authorised under this Act and loss relief as permitted under Section 33 of this Act from the total income of a person during an accounting period.
- (yy) "Partnership" means:
- (1) a partnership to which the Partnership Act (Law Number 23/2011) applies; and
 - (2) 2 (two) or more persons that share the gross receipts and expenses, or the profit or loss, of an activity, whether or not they use a separate name and whether or not the persons have joint or common rights in any property that produces the receipts.
- (zz) "Total income" means the total income, other than income specified under Section 12 of this Act, derived by a person during an accounting period before subtraction of any deductions.
- (aaa) "General partnership" means a general partnership defined in section 3(a) of the Partnership Act (Law Number 13/2011).

80. Payment

- (a) Any reference in this Act to payment means a transfer of funds, crediting a person's account (including a current account), amounts recorded as payables in the books of

accounts of a person, an offset in the payer's accounting records against an amount owing to the payer, or otherwise dealing with an amount in the interest or on behalf of the payee.

- (b) Notwithstanding subsection (a), for the purpose of charging employee withholding tax under Section 54 of this Act and non-resident withholding tax under Section 55 of this Act, the time of payment to a non-resident or the time of payment of remuneration to an employee, shall be the time at which the payment was actually made or the time at which the payment becomes payable, whichever is the earlier.
- (c) Notwithstanding subsection (b), the Regulation made pursuant to this Act shall provide the manner in which withholding tax shall be charged in circumstances where it cannot be determined whether or not an amount is payable in the period to which it relates, or where the exact amount payable cannot be determined, because of the nature of the payment concerned.

81. Timing of residence

A person shall be deemed to have commenced residence in the Maldives in the tax year in which the person becomes a resident of the Maldives on the earliest of:

- (a) in the case of an individual:
- (1) the day on which the person first has a permanent place to live in the Maldives; or
 - (2) the first day of the 183 (one hundred and eighty-three) day period specified in the definition of "resident" in Section 79(kk); or
 - (3) who is an employee or official of the Government of the Maldives and is posted overseas during the tax year, the earliest of:
 - (i) the day that the person commences employment or work overseas; or
 - (ii) the dates determined under subsections (a)(1) and (a)(2);
- (b) in the case of a company:
- (1) the day on which the company was incorporated; or
 - (2) the day on which the company established its head office in the Maldives; or
 - (3) the day on which the control and management of the company was first exercised in the Maldives.

82. Series of transactions

For the purposes of this Act, a transaction is entered into indirectly by two or more persons if there is a series of transactions which are linked and those persons are parties to one or more of the transactions in the series, whether or not they are parties to the same transaction.

83. Appointed person

In this Act, unless the context otherwise requires, if a person holds something or does something as an appointed person for another person, the other person shall be treated as holding or doing the thing.

84. Use of singular and plural

In this Act, words in the singular include the plural and words in the plural include the singular.

85. Repealed Acts

- (a) The following Acts shall be repealed from the date of commencement of taxation under this Act and the taxation systems imposed under those acts shall be continued under this Act.
 - (1) The Business Profit Tax Act (Law number 5/2011); and
 - (2) The Bank Profit Tax Act (Law number 9/85).
- (b) The following sections of the following acts shall be repealed from the date of commencement of taxation under this Act.
 - (1) Tax imposed under Section 18(d) of the Maldivian Land Act (Law number 1/2002);
 - (2) Tax imposed under Section 9(g) of the Maldivian Land Act (Law number 1/2002) amended via the Fourth Amendment to the Maldivian Land Act (Law number 4/2015);
 - (3) Tax imposed under Section 19(e) of the Maldivian Land Act (Law number 1/2002) amended via the Sixth Amendment to the Maldivian Land Act (Law number 39/2015);

- (4) Remittance tax imposed under Chapter 11 of the Employment Act (Law number 2/2008) amended via the Fifth Amendment to the Employment Act (Law number 22/2016).
- (c) The Law on Taxation of Petroleum Companies Operating in Maldives (Law Number 1/89) shall be repealed from the date of commencement of taxation under this Act.

CHAPTER 13: TRANSITIONAL PROVISIONS

86. Persons to whom the transitional provisions apply

This Chapter applies to the following persons to whom this Act applies.

- (a) Persons subject to tax under the Business Profit Tax Act (Law Number 5/2011), immediately before the date of commencement of this Act; and
- (b) Persons subject to tax under the Bank Profit Tax Act (Law number 9/85), immediately before the date of commencement of this Act.

87. Relief from registration

Notwithstanding anything to the contrary in this Act, a person registered with MIRA under the Tax Administration Act (Law number 3/2010) need not be registered under this Act, unless otherwise is required under the Regulation made pursuant to this Act.

88. Continuation of obligations

Notwithstanding Section 85(a), the implementation of those acts and the application of the following aspects as regards those acts, for the periods until the commencement of taxation under this Act, shall be carried out in the manner in which such aspects would have been applied if those acts were in effect.

- (a) rights and privileges granted under those acts;
- (b) obligations and responsibilities specified under those acts;

- (c) carrying out of audits, investigations and assessments to verify and determine the accuracy of the amount of tax paid under those acts and determination of fines and penalties;
- (d) recovery of tax, fines, interest and other monies receivable under those acts;
- (e) relief from penalties.

89. Deadline for payment of tax under repealed acts

Notwithstanding anything to the contrary in the Business Profit Tax Act (Law number 5/2011) and Bank Profit Tax Act (Law number 9/85), a person subject to this Chapter shall end the latest accounting period subject to tax under any of the aforementioned acts before the date of commencement of taxation under this Act and a new accounting period shall be commenced on the date of commencement of taxation under this Act.

90. Settlement of interim payment

Notwithstanding Section 43(a) of this Act, and subject to all the provisions in Section 41 of this Act, where a person who was subject to the Business Profit Tax Act (Law number 5/2011) and Bank Profit Tax Act (Law number 9/85) before the date of commencement of taxation under this Act has to make interim payments under Section 41 of this Act, such interim payments shall each be equivalent to one-half of the person's tax liability for the person's last accounting period which was subject to tax under those acts.

91. Tax paid in excess

Any amount paid in excess of the amount liable under the Business Profit Tax Act (Law number 5/2011) or Bank Profit Tax Act (Law number 9/85) shall be treated as an amount paid in excess under this Act.

92. Set off of loss

- (a) Any balance of loss determined under the Business Profit Tax Act (Law number 5/2011) which was not set off under Section 11 of that Act may be setoff under Section 33 of this Act.
- (b) For the purpose of Section 33 of this Act where subsection (a) applies, the accounting period in which the loss was incurred shall be the period in which such loss was computed under the Business Profit Tax Act (Law number 5/2011).

93. Capital loss

Where, at the end of the last accounting period which was subject to tax under the Business Profit Tax Act (Law number 5/2011), a person has any balance of realized loss which arose in connection to assets and liabilities held on capital account which has not been set off against a realized gain on such capital account, that amount of realized loss may be deducted in the computation of the person's taxable income in accordance with Section 34 of this Act.

94. Capital allowance

- (a) Where Section 25(a) of this Act applies to an asset in respect of which an amount has been deducted as capital allowance under the Business Profit Tax Act (Law number 5/2011) or as depreciation under the Bank Profit Tax Act (Law number 9/85), the amount of capital expenditure incurred on that asset shall be the amount of capital expenditure determined for the calculation of capital allowance and depreciation attributable to that asset under those Acts.
- (b) Capital allowance deducted under the Business Profit Tax Act (Law number 5/2011) or depreciation deducted under the Bank Profit Tax Act (Law number 9/85) shall be deemed to be capital allowance deducted under Section 25 of this Act.

95. Lease of immovable property

- (a) Where a person who has made an election under Section 9 of the Business Profit Tax Act (Law number 5/2011) in respect of income derived by that person from the lease of

immovable property, and if that person is entitled to the provisions of Section 28 of this Act in the person's first tax year under this Act, such person shall be deemed to have made an election under Section 28 of this Act.

- (b) This Section shall not apply to a person who will be eligible to change the election made by that person under Section 9 of this Act if the Business Profit Tax Act (Law number 5/2011) was still in effect on the date of commencement of taxation under this Act.
- (c) Where subsection (a) applies, the period specified in Section 28(d) of this Act shall be counted starting from the accounting period in which an election was made under Section 9 of the Business Profit Tax Act (Law number 5/2011).

96. Provision for bad debts and other liabilities

- (a) Section 23(b)(3) of this Act shall not apply to amounts included in the computation of taxable profit under the Business Profit Tax Act (Law number 5/2011) or the Bank Profit Tax Act (Law number 9/85).
- (b) Where in the latest accounting period before the date of commencement of taxation under this Act, an amount has been deducted under Section 9(3) of the Bank Profit Tax Regulation, the value of "b" in the formula specified in Section 36(a) of this Act shall be the amount determined in accordance with Section 9(3) of that Regulation.

97. Account balance

Where any reference has to be made to any balance in a person's account on the date of commencement of taxation under this Act or at the end of the preceding accounting period, the account balance at the end of the last accounting period subject to tax under the Business Profit Tax Act (Law number 5/2011) or the Bank Profit Tax Act (Law number 9/85) shall be used.

98. First interim payment of banks under this Act

Notwithstanding Section 42 of this Act, the first interim payment required under Section 41 of this Act for the first accounting period of a bank ending on or after the date of

commencement of taxation under this Act, shall be paid on or before the 30th of September falling within the bank's first accounting period.

99. Formulation of the Regulation on transitional provisions

All other requirements and obligations of a taxpayer arising as regards the change of the tax system imposed under the Business Profit Tax Act (Law number 5/2011) or the Bank Profit Tax Act (Law number 9/85) to this Act shall be determined in the Regulation made pursuant to this Act.