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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 4)

- (e) Income or payments that are subject to tax under this Act and are derived or made before the date of registration of the person deriving the income or making the payment, such income or payment shall be subject to tax notwithstanding that they were derived or made before that person's registration.

CHAPTER 10: TAX AVOIDANCE

66. General anti-avoidance rule

- (a) This Section shall apply where the Commissioner General has reasonable grounds to believe that one of the purposes of any arrangement or transaction entered into in any accounting period was the avoidance of tax or obtaining of a reduction in tax liability.
- (b) The Commissioner General may void an arrangement or transaction entered into by any person where such person has obtained a tax advantage from or under such tax avoidance arrangement or transaction, whether by issuing an assessment in accordance with Section 39 of the Tax Administration Act (Law number 3/2010) or otherwise.

67. Arrangements or transactions between associates

- (a) This Section shall apply in respect of an arrangement or transaction between two persons, in the following circumstances:
- (1) Such arrangement or transaction was entered into between two persons who were associates;
 - (2) the terms on which the arrangement or transaction was entered into between the persons were not arm's length terms;
 - (3) had the arm's length conditions been made or imposed:
 - (i) the amount of the income of one of those persons for an accounting period would be greater; or
 - (ii) the amount of any deduction that may be allowed to one of those persons for an accounting period would be less; or

- (iii) the amount of any loss of one of those persons for an accounting period would be less.
- (b) Where this Section applies to any person in an accounting period, the taxable income of that person shall be computed in accordance with the arm's length terms, irrespective of the actual terms of such arrangement or transaction.
- (c) Where this Section applies to a person and such person has not computed the person's taxable income in accordance with subsection (b), MIRA may make one or more of the following adjustments:
 - (1) increase the amount of the income of the person specified in subsection (a)(3)(i);
 - (2) reduce the amount of the deduction that may be allowed to the person specified in subsection (a)(3)(ii);
 - (3) reduce the amount of loss of the person specified in subsection (a)(3)(iii).
- (d) Where a person carries on business through a permanent establishment, this Section shall apply as if the person and the permanent establishment are separate and distinct persons.

68. Exempt arrangements and transactions [Transfer Pricing Documentation]

- (a) This Section shall not apply where:
 - (1) the arrangement or transaction undertaken by a business categorized as either a micro, small or medium sized business under the Law on Small and Medium Enterprises (Law number 6/2013): or
 - (2) the arrangement or transaction is made in respect of an exempt income.
- (b) Every person liable to income tax under this Act, shall prepare and maintain documentation (herein referred to as "transfer pricing documentation") in respect of transactions and arrangements entered into between associates and the documentation shall include the following information:
 - (1) details of the commercial and financial relations between the two parties involved as respects the transaction; and
 - (2) the terms and conditions made or imposed between the two parties involved as respects the transaction or arrangement; or

- (3) an explanation as to why the terms of the transaction are concluded as at arm's length;
and
 - (4) any other information as may be prescribed in the Regulation made pursuant to this Act.
- (c) The transfer pricing documentation required to be maintained under subsection (b) shall be prepared and finalized by the due date for the submission of tax return for the accounting period to which the transaction or arrangement relates.

69. Disposition in favour of minor to be disregarded

- (a) Where any income producing property is transferred to a person who has not reached the age of 18 on the first day of any tax year, the income derived from that property shall be treated as being derived by the transferor.
- (b) Where subsection (a) applies the transferee shall not be personally responsible for complying with any of the requirements imposed under this Act, and it is the responsibility of the person who transferred the property to comply with the requirements imposed under this Act.
- (c) For the purposes of this Act, where a person who has not reached the age of 18 on the first day of any tax year derives any income, such income shall be treated as income derived by the person who is appointed as the person's legal guardian.

70. Controlled foreign entities

- (a) This Section applies when a company, partnership, trust or other entity that is not a resident of the Maldives (referred to in this Section as a "foreign entity") is controlled by 5 (five) or fewer residents of the Maldives.
- (b) The taxable income of the foreign entity specified in subsection (a) shall be calculated in accordance with the provisions of this Act.
- (c) Each person that is a resident of the Maldives and holds a share in the capital of the foreign entity shall include in its taxable income its share of the taxable income of the foreign entity, calculated using the following formula:

$$\frac{\text{resident shareholder's interest}}{\text{Total of all shareholder's interests}} \times \text{Taxable income}$$

where:

"resident shareholder's interest" means:

- (1) where the foreign entity is a company, other incorporated body or partnership, the average of the voting rights of the person who is a resident in the Maldives, in the share capital of the entity throughout the accounting period, calculated on a daily basis; and
- (2) where the foreign entity is not a company, other incorporated body or partnership, the average of the interest of the person who is a resident in the Maldives, in the capital of the entity throughout the accounting period, calculated on a daily basis;
- (3) where the foreign entity is a trust, 1;

"Total of all shareholders' interests" means:

- (1) where the foreign entity is a company, other incorporated body or partnership, the average of the voting rights in the share capital of the entity of all persons that held such rights during the accounting period, calculated on a daily basis;
 - (2) where the foreign entity is not a company, other incorporated body or partnership, the average of the interests in the capital of the entity of all persons that held such interests during the accounting period, calculated on a daily basis;
 - (3) where the foreign entity is a trust, the number of trustees that are resident in the Maldives;
- (d) Any amount included in a resident's taxable income under this Section shall not be included in the person's taxable income when the foreign entity distributes any of that income to the person.
- (e) For the purpose of counting residents under subsection (a), a person and its associates shall be treated as one person.

71. Thin capitalisation

- (a) This Section shall not apply to:
- (1) banks specified in Section 8 of this Act;
 - (2) insurance businesses or finance leasing businesses or housing finance businesses or non-banking financial institutions licensed to conduct financing business under the Maldives Monetary Authority Act (Law number 6/81);
 - (3) persons categorized as micro, small or medium sized businesses under the Law on Small and Medium Enterprises (Law number 6/2013); and
 - (4) State-Owned Enterprises (SOEs), of which the Government of the Maldives directly holds majority of the ordinary share capital.
- (b) Where the total amount of interest paid, except to a bank licensed under the Maldives Banking Act (Law number 24/2010) or to an insurance business or finance leasing business or housing finance business licensed under the Maldives Monetary Authority Act (Law number 6/81), exceeds the interest capacity of a person for that period, such excess amount shall not be deducted in the computation of taxable profit of that person for that period.
- (c) The amount of interest disallowed under subsection (b) may be carry forwarded and deducted in the computation of taxable income for subsequent periods in such that the total amount of interest deducted does not exceed the interest capacity of the person for that period.
- (d) Where subsection (c) applies, a person shall carry forward the amount of interest disallowed to be deducted in subsequent periods up to a maximum of 10 (ten) years from the last day of the accounting period in which such amount was initially disallowed.
- (e) In the computation of taxable income for an accounting period, interest under subsections (b) and (c) shall be deducted in the following order:
- (1) The amount of interest disallowed (an earlier amount of interest disallowed shall be deducted before a later amount of interest disallowed).
 - (2) The amount of interest deductible in the computation of taxable income for that accounting period.
- (f) For the purposes of this Section:

- (1) "Interest" means interest on all forms of debt, payments economically equivalent to interest and expenses incurred in connection with the raising of finance, including arrangement fees and guarantee fees.
- (2) "Interest capacity" refers to 30% (thirty percent) of a person's tax-EBITDA in any given accounting period.
- (3) "Amount of interest disallowed" refers to the amount of interest that cannot be deducted under subsection (b) as a result of such amount exceeding the person's interest capacity.
- (4) "Debt" refers to any loan, financial instrument, finance lease, financial derivative, or arrangement that gives rise to interest, coupons, discounts or any other finance charges deductible in the computation of a person's taxable income.
- (5) "TAX-EBITDA" refers to the amount of profit or loss before the deduction of loss relief as pursuant to Section 33 of this Act, increased by the following amounts:
 - (i) amount of interest deductible, subject to Section 22 of this Act; and
 - (ii) capital allowance deductible under Section 25 of this Act.

CHAPTER 11: TAX CREDIT

72. Credit for foreign tax paid

- (a) Where any person resident in the Maldives has paid tax in a foreign country or territory on any part of the person's income which arises from a source outside Maldives and which is also chargeable to tax under this Act in any accounting period, that person shall be entitled to deduct from the amount of tax imposed under this Act an amount equal to the lesser of:
 - (1) the amount of foreign tax paid;
 - (2) tax payable in the Maldives from the net amount of foreign sourced income.
- (b) For the purposes of subsection (a):

- (1) "foreign tax" means tax imposed by the laws of a foreign country or territory which is of a similar character to income tax imposed under this Act.
 - (2) "Net foreign sourced income" means income derived from outside the Maldives in respect of which foreign tax has been paid, which is included in the person's total income, less any deductions allowed under this Act that relate exclusively to the derivation of that income. The manner in which this amount shall be computed, shall be prescribed in the Regulation made pursuant to this Act.
 - (3) "Tax payable in the Maldives" means tax payable by the person calculated in accordance with Section 7, 8 or 9 of this Act.
- (c) Subsection (a) shall be applied separately with respect to each type of income listed in Section 3 of this Act and each country or territory from which each type of income was derived.
 - (d) Any deduction allowed in accordance with subsection (a) for any accounting period shall be made not later than 2 (two) years after the end of that period.
 - (e) Where the amount of any deduction allowed to a person under this section is excessive or insufficient by reason of an adjustment of the amount of tax payable either in the Maldives or elsewhere, that person or the Commissioner General may amend the amount of the deduction within 2 years from the time when the adjustment to the amount of tax payable was made.
 - (f) Subsections (d) and (e) shall apply notwithstanding Section 46 of this Act.
 - (g) Tax credit applicable under any double tax avoidance agreement shall be deducted in accordance with the provisions of the Tax Administration Act (Law number 3/2010).

CHAPTER 12: GENERAL PROVISIONS

73. Non-monetary consideration

- (a) For the purposes of this Act, an amount of income or expenditure includes non-monetary amounts.

- (b) A non-monetary amount in respect of a transaction shall be valued at its open market value at the time of occurrence of the transaction.
- (c) For the purposes of subsection (b), the open market value of income or expenditure shall be calculated in the following manner.
- (1) The open market value of a good or service or benefit shall be the ordinary open market value of such good or service or benefit at the time it was acquired.
 - (2) Where the open market value of a good or service or benefit cannot be established under subsection (c)(1), the open market value shall be the price calculated based on the prices at which a similar good or service or benefit is available in the ordinary open market at that point in time while taking into account any differences in the good or service or benefit being compared.
 - (3) For the purposes of subsection (c)(2), whether or not a good or service or benefit is similar to another good or service or benefit shall be determined based on the quality, appearance, amount, functionality and reputation of the good or service or benefit, and the quality of the material used in the good or service or benefit.
 - (4) Where the open market value of a good or service or benefit cannot be established under subsection (c)(1) and subsection (c)(2), the open market value shall be calculated by using a generally accepted valuation method approved by the Commissioner General.

74. Proration

- (a) All references made in this Act to an accounting period is to a period of 365 (three hundred and sixty five) days, and the 29th day of February in a leap year shall not be counted in the determination of the length of an accounting period.
- (b) For the purposes of Section 54 of this Act, the number of days in a month shall be the number of days in that month of the Gregorian calendar. In counting the number of days in the month of February in a leap year, however, the 29th day shall not be included.

- (c) Where a specific amount is prescribed in this Act for an accounting period and such accounting period is longer or shorter than a period of 12 (twelve) months, that amount must be prorated for 12 months.

75. Act to be read together with Tax Administration Act

This Act shall be read together with the Tax Administration Act (Law Number 3/2010), and any word or expression in this Act shall have the same meaning as that is defined in the Tax Administration Act, unless the word or expression is defined in this Act or the context otherwise requires a specific, distinct meaning.

76. Administration of this Act and formulating Regulations

- (a) The provisions contained in this Act shall be administered by MIRA.
- (b) A Regulation shall be made pursuant to this Act by MIRA's Board to facilitate the efficient administration of this Act, to set out the rules to be followed by all persons within the scope of this Act, and to implement the provisions of this Act.
- (c) The Regulation made pursuant to this Act shall be made and publicised in the Government gazette before the commencement of taxation under this Act.

77. Delegation of powers of the Commissioner General

Where the Commissioner General is empowered to carry out any action under this Act, that action may be carried out by any staff of MIRA to whom the Commissioner General has delegated that power.

78. Commencement of Act and imposition of tax

- (a) This Act shall enter into force upon passing, ratification and publication in the Government Gazette of the Maldives.
- (b) Taxation under this Act shall commence on 1 January 2020.
- (c) Notwithstanding subsection (b), taxation on income specified in Section 3(a) of this Act shall commence on 1 April 2020.

79. Definitions

Unless the context of any word or phrase specified in this Act requires otherwise, the following words and phrases shall have the following meanings:

- (a) "Gift" means anything transferred from one person to another, at the person's own free will, in the form of money or otherwise, without any consideration.
- (b) "Charitable organization" means any body, association or public institution which satisfies the following conditions:
 - (1) the body, association or public institution is established for the promotion of Islam, relief of the poor, medical relief or education or any other object of similar general public utility prescribed in the Regulation made pursuant to this Act; and
 - (2) the body, association or public institution is not run for the financial benefit of a specific person.
- (c) "Accounting period" means the period determined in the Regulation made pursuant to this Act.
- (d) "Retirement benefit" means any payment received under a retirement scheme except money received as a pension under the Maldives Retirement Pension Scheme established in pursuance to the Maldives Pension Act (Law Number 8/2009).
- (e) "Royalty" means a payment of any kind received as a consideration for the following purposes:
 - (1) the use of, or right to use, a copyright, patent, plant variety right, trademark, design or model, plan, secret formula or process, or other similar property or right;
 - (2) extraction, removal or exploitation of, or the right to extract, remove, or otherwise exploit, any naturally formed mineral, oil, gas or any other recourse of similar nature;
 - (3) the use of, or the right to use, any:
 - (i) cinematograph film;
 - (ii) film, videotape or other electronic recording used for television broadcasting;
 - (iii) tape or other electronic recording used for radio broadcasting;
 - (iv) film, video or other electronic recording used for internet broadcasting.
 - (4) the supply of scientific, industrial, or commercial knowledge or information;

- (5) the use of, or the right to use, industrial, commercial or scientific equipment or information concerning industrial, commercial or scientific experience;
 - (6) transmission via satellite, cable, optic fibre or any other similar technology;
 - (7) the supply of assistance that enables the application or use of anything or any right specified in any of subsections (e)(1) to (e)(6);
 - (8) the total or partial forbearance of the use of, or the grant of a right to use, property or a right specified in any of subsections (e)(1) to (e)(3);
 - (9) the total or partial forbearance of the supply of knowledge or information specified in any of subsections (e)(4) to (e)(6).
- (f) "International transportation" refers to transportation by an aircraft or a vessel except transportation by an aircraft or a vessel from a place in the Maldives to another place in the Maldives.
 - (g) "Internationally recognised accounting standards" refers to International Financial Reporting Standards, International Financial Reporting Standards for Small and Medium sized Entities, International Accounting Standards issued by International Accounting Standards Board, and any other internationally recognised accounting standard approved by the Commissioner General.
 - (h) "Beneficiary income" means any amount paid by a trust to a beneficiary of the trust other than a distribution of the corpus of the trust.
 - (i) "Bank" refers to any financial institution which includes in its function, accepting of cash deposits that can be transferred from one person to another through checks.
 - (j) "Company" means a body corporate, wherever incorporated or registered, and includes a cooperative society but does not include a limited liability partnership.
 - (k) "Group of companies" refers to companies which are required under the Regulation made pursuant to this Act to submit consolidated financial statements to MIRA.
 - (l) "Control" means:
 - (1) the circumstance where a person or any of its associates (herein referred to as the first person) can be directly or indirectly required by another person (herein referred to as the second person) to act in accordance with the directions of the second

person, in which case the second person shall be treated as controlling the first person; or

- (2) in relation to any person and a company,
 - (i) the circumstance in which a person or any person controlling such person holds the majority share capital of the company or majority of the issued share capital of the company or possesses the majority of voting rights of the company, or hold the right to possess the majority of voting rights of the company; or
 - (ii) the circumstance in which a person or any person controlling such person manages the operations of the company or may directly or indirectly manage the operations of the company or holds the right to directly or indirectly manage the operations of the company; or
 - (iii) where the total income of the company is distributed amongst all shareholders of the company, the circumstance in which a person derives or obtains the right to derive the majority of the distributed income of the company based on the number of shares of the company's capital issued to such person, irrespective of any interest of such person in the company in respect of any loans that may have been issued to the company by such person; or
 - (iv) the circumstance in which a person acquires or obtains the right to acquire the majority of the capital of the company upon the dissolution of the company or in the event of any such occurrence.
- (3) in relation to any person and a partnership, the circumstance in which the person or any of its associates directly or indirectly possesses the majority of the voting rights with respect to decision making of the partnership or holds directly or indirectly an interest of more than 50% (fifty percent) of the capital of the partnership, in which case the person shall be treated as controlling the partnership;
- (4) For the purposes of this definition, the following rights and powers attributable to the first person shall be attributable to the second person:
 - (i) a right or power that another person possesses on behalf of the first person;

- (ii) a right or power that another person may be required to exercise at the direction of, or on behalf of, the first person;
 - (iii) a right or power of any company or companies controlled by first person or first person together with any associates;
 - (iv) a right or power of any associate or associates of the first person and of any associate of an associate of the first person;
- (5) For the purpose of this definition, a minor child shall be treated as being under the control of the child's parents or guardian.
- (m) "Capital allowance" refers to the amount attributable to each period when the capital expenditure incurred on an asset is apportioned over a specific period.
 - (n) "Capital Market Development Authority" refers to the Capital Market Development Authority established under Section 3 of the Maldives Securities Act (Law Number 2/2006).
 - (o) "Commissioner General" refers to the Commissioner General of Taxation appointed under the Tax Administration Act (Law Number 3/2010).
 - (p) "Cooperative society" means a cooperative society wherever incorporated or registered.
 - (q) "Appointed person" means a person who holds or does something for another person by acting for, and on behalf of the other person
 - (r) "Arm's length terms", means the terms on which a transaction or an arrangement would have been made, or might reasonably be expected to have been made, if it had been made between persons that are not associates and in comparable circumstances.
 - (s) "Arrangement" means any agreement, contract, plan, or understanding, whether legally binding or not, including all steps and transactions by which it is carried into effect.
 - (t) "Interest" means any payment (excluding the principal amount), under a debt security or loan or swap or derivative arrangement or a transaction in respect which a payment that is economically equivalent to interest is payable, and any commitment, guarantee or service fee paid in respect of a loan or swap or derivative arrangement, including discounts, premiums, passive interest and profit received in respect of any Islamic financial instrument.

- (u) "Remuneration" means, salary, wages, allowances and benefits derived by an employee or director or partner as consideration for services rendered by the employee or director or partner, and includes any compensation for loss of employment or service, restrictive covenant payment, and entry or exit inducement payment.
- (v) "Excessive compensation" means an amount which the Commissioner General considers is excessive in relation to the consideration provided for it where:
- (1) the person claims a deduction under this Act for the amount paid; and
 - (2)
 - (i) the payment is made to a relative of the individual; or
 - (ii) where the person is a company, the payment is made to a director or shareholder of the company, an associate of the company or an associate of a director or shareholder of the company; or
 - (iii) where the person is a partnership, the payment is made to a partner or an associate of the partnership, or an associate of a partner of the partnership.
- (w) "Employer" means a person that makes a payment of income referred to in Section 3(a) of this Act to an employee.
- (x) "Withholding tax" means, any tax required to be deducted from the income of a person by the payer of that income in accordance with this Act.
- (y) "Business" means any activity carried out with a view to make profit and includes:
- (1) trading of goods;
 - (2) manufacturing activity;
 - (3) professional, commercial, technical or personal services;
 - (4) granting rights in relation to movable or immovable property,
- but does not include any employment.
- (z) "Business income" means income derived from an activity within the definition of "business" specified in subsection (y) and includes payments derived as compensation under a "key person insurance" policy taken for any special employee of the business.
- (aa) "MIRA" means the Maldives Inland Revenue Authority established under the Tax Administration Act (Law Number 3/2010).