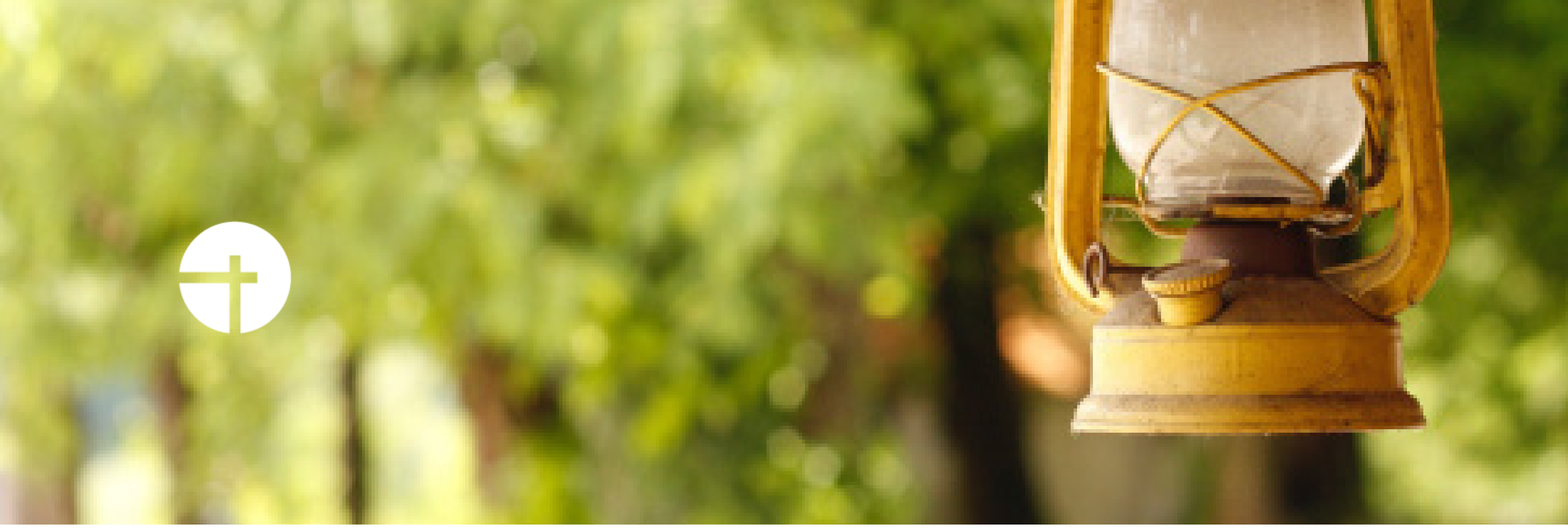


Tax Alert

15 October 2019

SECOND AMENDMENT TO THE TAX ADMINISTRATION ACT

Executive Summary

This issue covers the major changes that came into force with the ratification of the Second Amendment to the Tax Administration Act[1] on 12 September 2019. These changes include:

- ◊ Imposition of a statutory limitation period to conclude an audit;
- ◊ Imposition of a statutory limitation period to make a decision on objections filed;
- ◊ Changes to the tax appeal process;
- ◊ Changes to the powers and jurisdiction of the Tax Appeal Tribunal; and
- ◊ Scope of Tax Rulings.

What changed?

1. MIRA must conclude its audits within 2 years

As per the Amendment, the MIRA must now conclude an audit and issue a Notice of Tax Assessment within 2 years from the date of the Audit Notice. An Audit Notice is a document issued by the MIRA, under Section 30 of the Tax Administration Act, informing the taxpayer that the MIRA ‘intends’ to conduct an audit in order to make a determination on the amount of tax payable for a particular period.

How does the limitation period apply to Audit Notices served prior to the Amendment?

If you have received an Audit Notice prior to the enactment of the Amendment, the law now requires the MIRA to conclude your audit before the later of the end of the following periods:

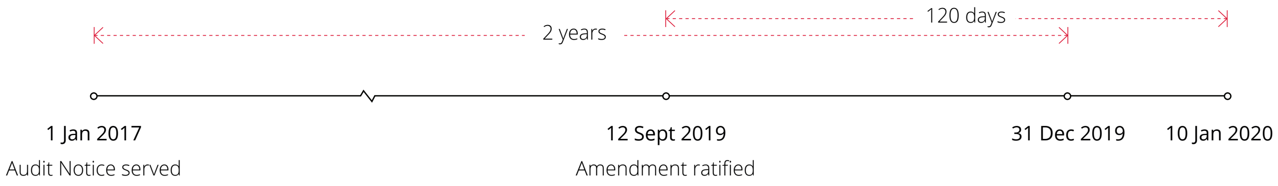
- ◊ 2 years from the date of the Audit Notice, or;
- ◊ 120 days from the ratification of the Amendment (that is, by 10 January 2020)[2].

This is further illustrated in Figure 1.

[1] Law Number 3/2010

[2] For an explanation, see “Our comments”

Figure 1: Audit Notice issued to taxpayer on 1 January 2017



As illustrated in Figure 1, if you have received an Audit Notice, for example, on 1 January 2017, the MIRA must now conclude your audit and issue a Notice of Tax Assessment by 10 January 2020.

Effectively, the Amendment gives MIRA at least 120 days from the date of ratification of the Amendment, to complete all ongoing audits, even though 2 years have elapsed since the date of Audit Notice. However, all audits conducted pursuant to Audit Notices issued after the ratification of the Amendment must be concluded within 2 years.

2. MIRA given a statutory period of 120 days to make a decision on objections

Prior to this Amendment, there was no specified time frame for the MIRA to make a decision on the objections filed. However, with the Amendment, a decision must be made on all objections filed with the MIRA, within 120 days from the date of filing the Notice of Objection.

In the case where the MIRA fails to make a decision within the said time frame, the Act states that it will be deemed that the MIRA has decided that their tax assessment made in the audit in question is incorrect.

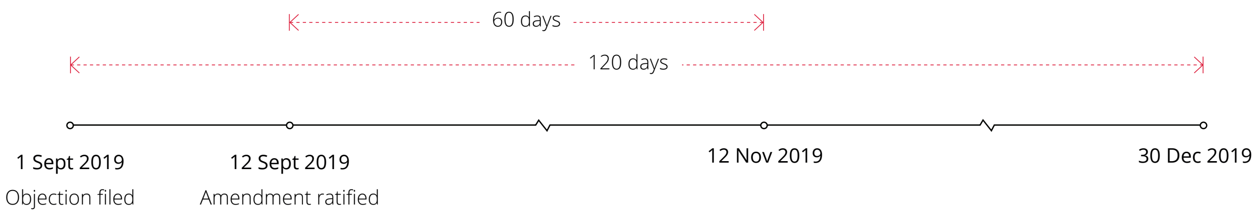
How does the limitation period apply to objections filed prior to the Amendment?

With regard to the objections filed prior to the Amendment, Section 43(a) of the Act now obligates the MIRA to make a decision on the objections before the later of the end of the following periods:

- ◊ 60 days from the date of ratification of the Amendment (that is, by 12 November 2019)[3] or;
- ◊ 120 days from the date of filing the Notice of Objection

This is further illustrated in Figure 2.

Figure 2: Objection filed with the MIRA on 1 September 2019



[3] For an explanation, see "Our comments"

As illustrated in Figure 2, if you have filed an objection, for example, on 1 September 2019, the MIRA must now make a decision on the objection by 30 December 2019, since its later of both dates.

3. Tax appeal process eased for taxpayers

If a taxpayer is in disagreement with a decision made by the MIRA (i.e. with regard to an objection), the taxpayer is no longer required to pay all outstanding dues to the MIRA before proceeding with an appeal - rather, Section 44 (b) of the Act now gives the taxpayer the right to appeal to the Tax Appeal Tribunal after settling 30% of the amount in dispute.

In computing the 30% of the amount in dispute, interests and fines arising from the amount in dispute are not considered. Prior to this Amendment, taxpayers were required to pay all the outstanding taxes and fines (including payments outstanding in respect of other tax types) before proceeding with any appeal at the Tribunal.

For instance, the MIRA has made an assessment of MVR 100,000 but you only disagree and wish to dispute MVR 45,000 of the assessed amount. In such a case, payment of MVR 13,500 (i.e. 30% of MVR 45,000) will grant you the right to file an appeal with the Tax Appeal Tribunal. You will not have to pay any fines or late payment fees before proceeding to the appeal.

The part of the assessment that is not under dispute, MVR 55,000 in this case, will be due and payable as per the usual rules on payment of tax. The MIRA may even take enforcement measures to recover the undisputed amount.

4. Powers and Jurisdiction of the Tax Appeal Tribunal expanded and clarified

Section 54(b) of the Act now makes it clear that the decision of the Tax Appeal Tribunal is final and binding unless on appeal, an appellate court reverses the decision or suspends the operation of the judgment.

In addition to this, Section 54(d) of the Act now gives the Tax Appeal Tribunal the discretion to issue an Interlocutory Injunction Order or an Interim Injunction Order, where it believes the arguments presented in an appeal calls for one.

5. Scope of Tax Rulings explained

Section 84(a) of the Act gives the Commissioner General the power to issue tax rulings for the purpose of administering the Taxation Acts and Regulations. Tax Rulings generally are advice issued by the tax authorities to explain an application of law to taxpayers. The Amendment clearly states that the MIRA must fully comply with its tax rulings, meaning that a taxpayer who relies on a ruling cannot later be penalised, even if the view expressed in the ruling is later found by a Court to be incorrect. The Amendment also states that for a ruling to take effect a 30-day period must be given from the date of publication of the ruling.

Further to this, the Amendment also extends to clarify the scope of the tax rulings-Section 84(b) makes it unequivocally clear that a ruling issued by the MIRA, cannot, in any way, be wider than the Taxation Acts or Regulations and it must be issued solely for establishing tax principles required for the implementation of Taxation Acts and Regulations or for the purpose of explaining the tax treatment with regard to specific transactions.

6. Other notable changes

Noted below are some of the other changes brought by the Amendment.

1. Assigning a 5-year service period, with a term limit of two terms, for the position of Commissioner General of Taxation and Deputy Commissioner General of Taxation. A new appointment to the position of Commissioner General and Deputy Commissioner General is required to be made within 30 days of the ratification of the Amendment;
2. Restructure the composition of the MIRA's Board to include a representative of the Ministry of Finance, who will be the Chairperson of the Board. The Commissioner General remains as a member of the Board, but as a non-voting member. Under the new structure the Deputy Commissioner General is not a member of the Board.
3. Requiring all members of the Board, Commissioner General and Deputy Commissioner General to publish annual asset declarations as instructed by the Auditor General.
4. Inclusion of an "exchange of information" clause embracing the latest international developments in the area of tackling tax evasion and achieving global tax-cooperation.
5. Grant power to the MIRA require multinational enterprises operating in the Maldives to submit Country-by-Coury (CbC) Report which includes information on business operation and management of companies in the greoup. This is a requirement under the inclusive framwork on BEPS (Action 13), to which the Maldives is a member.

Our comments

The Amendment is a move towards a fairer and more transparent system of tax administration. It introduces fundamental changes to the way the MIRA may exercise their powers and responsibilities with regard to audits and objections.

The Amendment also addresses critical concerns of taxpayers with regard to disputing tax matters, especially the requirement to make the full payment of assessed tax as well as fines and other unrelated outstanding payments. This harsh requirement has now been replaced with a more reasonable requirement which is more in line with international best practices.

Introduction of the statutory limitation period for concluding of audit will ensure that the MIRA cannot abuse the audit process by issuing 'bulk audit notices' - securing the much needed certainty for taxpayers. The statutory limit for making decision on objections should also be noted along the same lines.

The Amendment itself does not prescribe how limitation periods should be counted. However, as Section 35 of the Interpretation Act[4] states that periods shorter than 7 days should be counted excluding public holidays, it is logical to calculate the statutory limitation periods stated in the Amendment including public holidays.

Tax Rulings issued by MIRA has so far been interpreted as binding on taxpayers. However, with the Amendment, Tax Rulings will only be binding on the MIRA which is in line with international best

[4] Law Number 4/2011

practice. Taxpayers can always challenge these Rulings at the Tribunal and Courts if they are of the view that the MIRA's interpretation or application of the law is incorrect.

From a governance and tax policy perspective, a representative of the Ministry of Finance being the Chairperson of the Board, supposedly will help better align tax administration with the fiscal policy.

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About us

CTL Strategies LLP is a multi-disciplinary law firm that provides comprehensive legal solutions to both local businesses operating globally and foreign businesses with interests in the Maldives. Our team is comprised of corporate and tax lawyers, tax advisors and chartered accountants.

We are ranked by Asia Law Profiles as a highly recommended firm in the areas of litigation and disputes.

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