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COLOMBO, SRI LANKA

TAX DIVISION UPDATE IN THE CONTEXT OF THE COVID-19 CRISIS

WFH is a new concept to the Sri Lankans and each government institution including the Inland Revenue Department (“IRD”) is responding differently to enable ensuring its daily services amidst the COVID-19 (“C-19”) pandemic.

This note seeks to clarify the impact of some recent changes to the tax related laws and the directive to WFH on taxation. We have also addressed some of the key concerns many of our clients have had in the past few weeks under the ‘Key concerns/FAQs’ below.

1. FUNCTIONS OF THE INLAND REVENUE DEPARTMENT

The IRD remains closed to date and has required that all payments and communication be via its portal.

Some deadlines for payments have been extended whilst others have not been extended as yet and remain effective (see *Annex A* below for more details).

Thus, at the moment, clients are only able to obtain assistance and advice with any tax queries that they may have and to perfect the applications and documents in order to enable submission, as soon as the IRD enables the same. Usage of the IRD portal for any submission of documentation, when due, is encouraged.

2. CURRENT LEGAL FRAMEWORK IN LIGHT OF C-19

A. Alternative Tax Payment System (ATPS)

Provision has been made to make tax payments through Online Fund Transfer Facility, with effect from 8th April 2020. The notice¹ sets out the designated banks and the instructions to be followed in making such payments.

¹ PN/PMT/2020-1 dated 08.04.2020 published in the IRD website. Please see the notice at http://www.ird.gov.lk/en/Lists/Latest%20News%20%20Notices/Attachments/232/PYMT08042020_E.pdf

B. Recent notifications on changes to Income taxes and Withholding taxes²

Whilst it is to be noted that a notification has been issued on changes to the income tax and withholding taxes (including PAYE, dividends etc), the matters set out in this notification, is not covered herein as it is beyond the ambit of this special note.

- The notice issued sets out proposed changes to the Inland Revenue Act³ (“IRA”), pending formal amendments to be made to the IRA
- These changes are to be implemented with effect from 1st January 2020, unless otherwise stated.⁴
- Although PAYE was removed under the notice dated 8th April 2020 and deduction of Advanced Personal Income Tax (APIT) replaced PAYE tax, unless specifically requested for by the employee, under the notice dated 15th April 2020, employers have been allowed to make the tax payment of employees for the period from 01.01.2020 – 31.03.2020, under the PAYE scheme, either by deducting from the remuneration of respective employees or by any other manner, with the consent of such employees.

C. Tax clearance certificates for outward remittances

A notice has been issued to all Commercial Banks, Authorized Dealers engaged in outward remittances and the persons who remit the money⁵ in consideration of the inability to issue Tax Clearance Certificates to the persons who make such outward remittances.

In limited instances, remittance of the full amount is permitted. These relate mainly to payments already approved, payments that are non-negotiable (such as subscriptions, fees, loans) or payments from personal accounts. In all other instances, the bank etc (authorizer of the remittance) acts as a withholding agent and is expected to withhold the specified sums and remit the same to IRD. (See **Annex B** below for details)

D. Notifications in relation to VAT

² PN/IT/2020-03 (Revised) dated 08.04.2020 and PN/PAYE/2020-01 dated 15.04.2020 published on the IRD website.

³ No. 24 of 2017

⁴ Previous notices/circulars/guidelines published on or after 1st January 2020 including the notice issued under the reference No. PN/IT/2020-03 (Amended) dated 18th February 2020 in this regard, consisting of any subject matter which is contrary to any subject matter referred to in this notice should be disregarded.

⁵ PN/TC/2020-03 dated 08.04.2020 published in the IRD website

According to the recent notifications⁶, the impact of the extended deadline has been further clarified and should be followed as detailed in **Annex C** below.

E. Other Notifications

See also details of other areas of taxation that should be considered, in **Annex D** below.

3. KEY CONCERNS/FAQs

In the last few weeks, many of our routine clients have reached out to us with various concerns in light of the prevailing situation. We have addressed a few of those key concerns below, hoping it will answer many concerns you may have been having too in the past few weeks:

1. Is the IRD functioning under the current conditions owing to COVID-19?

As stated above, the IRD is temporarily closed. However over the last few days they have notified alternative measures and ways of attending to certain matters as set out above.

2. Are we able to obtain the necessary clearances required for outward remittance?

Please see (C) above (under Section 2 of this note, titled Tax clearance certificates for outward remittances).

3. Am I able to obtain tax clearances enabling me to take my annual migration allowances?

There is no notification on the procedure to obtain these clearances at present.

However, the relevant Minister⁷ has recently issued a regulation⁸ imposing restrictions on the outflow of Foreign Exchange which, inter alia, provides the following:

- a. That the repatriation of funds under the migration allowance through Capital Transactions Rupee Accounts by the emigrants who have already claimed migration allowance under the general permission previously granted (i.e: annual migration allowance) are suspended.

⁶ PN/VAT/2020-03 dated 26.03.2020 and PN/VAT/2020-04 dated 02.04.2020 published in the IRD website

⁷ Minister of Finance, Economic and Policy Development

⁸ Extraordinary Gazette No.2169/3 dated 2nd April 2020 issued by the Minister of Finance, Economic and Policy Development

- b. That the eligible migration allowance for the emigrants who are claiming the migration allowance for the first time (i.e: initial migration allowance) is limited to a maximum of USD 30,000.

(Please see next page for Annexures)

ANNEXURE A

The apparent deadlines for filing returns and making payments up to the end of April 2020 as per the tax calendar and the extensions granted

Due date	The filing / payment due	Notified deadline
15 th March 2020	WHT Payment for February 2020	30 th April 2020 ⁹ <i>Note : payments made on or before April 30, 2020 for above periods shall be deemed as payments made on due dates and any penalty auto imposed by the system on late payments for above periods will be waived off</i>
20 th March 2020	VAT Payment for February 2020	30 th April 2020
31 st March 2020	VAT return for month of February 2020	30 th April 2020
1 st April 2020	Betting and Gaming Levy Payment -1st Quarter 2020/2021	
7 th April 2020	Betting and Gaming Levy Payment -10% of Turnover – March 2020	

⁹ PN/WHT/2020-04 dated 31.03.2020 published in the IRD website

15 th April 2020	WHT Payment for March 2020	30 th April 2020 Note : payments made on or before April 30, 2020 for above periods shall be deemed as payments made on due dates and any penalty auto imposed by the system on late payments for above periods will be waived off
15 th April 2020	WHT on Partnership Income – Year of Assessment 2019/2020	
15 th April 2020	Stamp duty compounded – payment and return – 1 st Quarter 2020	30 th April 2020 ¹⁰
20 th April 2020	VAT Payment for March 2020	30 th April 2020
20 th April 2020	Betting and Gaming Levy Return -4th Quarter 2019/2020	
30 th April 2020	VAT return for month of March 2020 & Quarterly (Jan-Mar 2020)	
30 th April 2020	WHT Annual Statement – year of assessment 2019/2020	
30 th April 2020	PAYE annual statement of employers 2019/2020	

¹⁰ PN/SD/2020-0103 dated 28.03.2020 published in the IRD website Circular No Sec/2018/03 dated 29th March 2018 has been suspended until further notice.

ANNEXURE B

- Remittance of the full amount due by recipient shall be allowed in relation to the following;
- i. Importation of any tangible goods
 - ii. Sale proceeds of quoted shares owned by non-residents in any company resident in Sri Lanka
 - iii. Dividends paid to non-resident shareholders if distributed on or after 01.01.2020
 - iv. Foreign investments made by resident companies of Sri Lanka in line with the guideline issued by the Central Bank of Sri Lanka (“CBSL”)
 - v. Payments receivable by a non-resident person who conducts a relevant transport business in respect of the carriage of passengers who disembark (in respect of inbound air travelers) or cargo, mail or other moveable tangible assets that are disembarked in Sri Lanka (in respect of imports of tangible articles).
 - vi. Pension payments received from the Government of Sri Lanka or from Government Department (other than in the case of pensioners who have left Sri Lanka permanently on or after 1st November 2015)
 - vii. Remittances by Export Companies in respect of registration of trademarks outside Sri Lanka
 - viii. Annual subscription for membership of professional bodies, or periodical subscriptions for journal, magazines and other publications
 - ix. Course fees, examination fees, enrolment fees, living expenses and payments of similar nature in respect of students
 - x. In respect of visa, medical, air travel expenses and expenses on hotel accommodation abroad
 - xi. Capital Repayments and Interest Payments on any loan granted to any person in Sri Lanka
 - xii. Payments relating to participation in foreign seminars, conferences and delegations including registration fees
 - xiii. Remittances made through Personnel Foreign Currency Accounts
 - xiv. Payment of Interest, discount or realization of any gain on any sovereign bonds denominated in local or foreign currency issued by or on behalf of Government in Sri Lanka or interest or discount from Sri Lanka Development Bonds issued by or on behalf of Government of Sri Lanka
 - xv. Payment of laboratory services or standards certification services.

- In the following instances the persons (banks etc) would be considered as Withholding Agents and is required to retain the due withholding taxes:

Nature of payment	Percentage of WHT (from the gross amount)
Payments to a non-resident person who conducts a relevant transport business in respect of the a. Carriage of passengers who embark in Sri Lanka or b. cargo mail or other movable tangible assets that are embarked in Sri Lanka (Payments made to a non-resident person for International Transport Service Charges in respect of outbound air travelers and exports of tangible articles)	2%
Payments to a non-resident person for Telecommunication services	2%
Interest or Discounts (other than the interest mentioned under item No. xi and xv above)	5%
remuneration to non-resident employees including directors of the company whether received or derived by them as cash or non-cash benefits from the employment in Sri Lanka	14%
<u>All payments other than the payments mentioned above, including payments of dividends to non-resident shareholders from the dividends distributed prior to 1st January 2020</u>	Same rate as determined prior (including zero rate applied in no tax direction)
If the Withholding Agent has already obtained a Tax Direction Certificate from the IRD for the remittance of similar payment to the same foreign party in a previous period after 1 st April 2018	14%

- The notification also covers the manner of calculation, the currency rate to be taken into account, requirement of record keeping and submission of reports on a monthly basis.

- The instructions on payment of Retained Withholding tax in relation to the outward remittances is to be issued by the IRD in due course.

ANNEXURE C

Special Factors relating to VAT

- Having allowed extended deadlines, the IRD states that the submission of VAT return on due dates remains possible via the IRD portal.
- The validity of the extension letters (which will expire before 30th April 2020) issued with regard to Credit Vouchers due against the VAT deferred under deferment facility have been extended by one month from the respective expiring date and if any Temporary VAT Registration issued and period of validity expires prior to 30th April 2020 as per the certificate, the validity period has been extended till 30th April 2020.
- Steps had been taken to extend the project periods in terms of the VAT Act for SVAT purposes and the registered persons are required to submit a request letter signed by the owner/partner/director of the company and scanned images of original of the first approval letter and original of the last issued extension letter to Senior Commissioner (Taxpayer Services) through siyaan.msm@ird.gov.lk.
- Registration for VAT to clear goods from the Customs.¹¹

ANNEXURE D

The submission date of the Transfer Pricing Disclosure Form (TPDF) for the year of assessment 2018/2019 has been allowed up to 30th April 2020, notifying the tax payers who have submitted

¹¹ Please see the notification PN/VAT/2020-04 dated 02.04.2020 for procedures and the contact details.

the Tax return through e-service to upload the system and others to email a PDF copy thereof to respective emails set out in the notice¹².

The validity period of all Temporary Tax Clearance Certificates relating to liquor licenses (which will be expired before 30th June 2020) issued by the Department to liquor license holders as extended until 30th June 2020.¹³

Temporary arrangements has been put in place to issue Tax Residency Certificates (TRC) where requests for such issuance are to be made to Commissioner-International Tax Policy.¹⁴

NOTE:

1. *Any reference to any laws and regulations/directives/circulars/government press releases etc are as at the date of the issue of this document.*
2. *Only references to any directives/circulars/government press releases etc which may have a bearing on taxation matters have been referred to herein.*
3. *The contents of this document should not be considered as legal advice and is provided for information purposes only. If you require legal advice on any specific matter for purposes of decision making, do feel free to contact us.*

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¹² PN/IT/2020-04 dated 20.03.2020 published in the IRD website

¹³ PN/TC/2020-01 dated 29.03.2020 published in the IRD website

¹⁴ PN/TC/2020-02 dated 06.04.2020 published in the IRD website