

OVERVIEW OF RULES ON SERVICE CHARGE

Type:	Primary and Subordinate legislation	Citation no.:	Law No. 22/2020 Regulation No. 2021/R-41. Law No. 2/99
Authority:	Labour Relations Authority, Maldives Inland Revenue Authority	Topics:	<ul style="list-style-type: none">• Levying of service charge• Records maintenance• Penalties for non-compliance
Keywords:	Tourism, service charge <ul style="list-style-type: none">• Distribution of service charge• Records submission		

LEVYING OF SERVICE CHARGE

- Levying of service charge is now regulated by the Employment Act (Law No. 2/2008 (as amended) and the Regulation on Service Charge (Regulation No. 2021/R-41).
- Prior to the Sixth Amendment to Employment Act (Law No. 22/2020), under Section 52 of the Employment Act, it was a discretion of the employer to levy service charge. However, if the employer levies service charge, it was still required for the employer to distribute service charge among all employees.
- Section 52 of the Employment Act was extensively amended by the Sixth Amendment to Employment Act (Law No. 22/2020) and levying of service charge is now mandatory for services provided by businesses operating in the tourism industry.
- Additional rules and changes regarding levying of service charge under the Sixth Amendment of Employment Act came into force from 1st of January 2021.
- Procedures on levying of service charge was detailed out on the Regulation on Service Charge which came into force on 16th March 2021.
- Levying of service charge is mandatory for every tourist facility (hereinafter, “**Tourist Facility**”) operating under a permit granted pursuant to the Tourism Act (Law No. 2/99), namely:

- all tourist resorts, tourist hotels, tourist guest houses, training resorts, transit hotels, city hotels, tourist vessels, yacht marinas, integrated tourist resorts and private islands.
- The following establishments are also obligated to levy service charge:
 - Diving schools, diving centres, spas, water sports facilities, excursion activities, cafés/restaurants/canteens, and any other establishment providing any service on the Tourist Facility, **even if the provision of such service is outsourced.**
- Even where any of the foregoing facilities or establishments are operating without having obtained the requisite permits, such facilities or establishments are obligated to levy service charge.

Who is not obligated to levy service charge?

- It is not compulsory to impose or levy service charge from the following businesses/transactions:
 - Shops operated at a Tourist Facility for the sale of goods, provided that the only or main business activity of the outlet is sale of good(s), and not provision of a particular service.
 - Cafés, restaurants or canteens established on a Tourist Facility to cater for the employees of that Facility.
 - Lease rent taken from long term lease of villas or rooms at a Tourist Facility on strata basis under the Tourism Act.
 - Price for transfer of business rights under the regulations made pursuant to the Tourism Act.

What is the minimum rate of service charge?

- Every service provided at a Tourist Facility is subject to a service charge of not less than 10%.
- Where the entire Tourist Facility or a part of it (a particular area, room(s) or a house) is leased for a specific amount for a particular period, service charge will be imposed on the total lease amount.
- Service charge will also be imposed on the total chartered rate of a chartered tourist vessel.
- Any transaction subject to service charge must specify the amount imposed as service charge.

DISTRIBUTION OF SERVICE CHARGE

Determining the time of receipt of service charge

- The time of receipt of service charge will be considered as the time at which the consumer received the service even if:
 - the total payment or part payment for the service was paid by the consumer prior to obtaining the service; or
 - the total payment is settled on instalment basis as arranged under an agreement.

Distribution of service charges taken from different business activities

- The service charge levied from various businesses conducted by the employer on the same premises must be computed and distributed together.

- Service charge levied from businesses conducted by the employer at different premises shall not be combined for computing and distribution.
- Further, the service charge levied by the outsourced business on the employer's premises must not be combined for computing and distribution with the service charge levied from the employer's own businesses.

Distribution of service charge to employees

- Service charge must be distributed among all the employees who are directly or indirectly involved in provision of a service by the employer.
- No one except an employee of the employer should be included in the distribution of service charge.

Can the employer retain any amount from service charge?

- One percent (1%) of the total amount received as service charge in a given month can be retained by the employer as an administrative fee. The retained amount cannot exceed more than one percent (1%) under any circumstances.

Calculation and payment of service charge

- The amount of service charge entitled by each employee per month shall be a daily rate calculated from that month's service charge, for the days he has provided service for the employer.
- To calculate the daily rate, the total amount of service charge to be distributed should be divided by the total number of days of service by the employees who provided the services in a given month.
- Any paid leaves or rest days entitled to the employee under Law No. 2/2008 (Employment Act) should not be deducted when calculating his days of service.
- Service charge of the previous month should be paid to all the employees before the end of the current month.

MAINTAINING MONTHLY RECORDS OF SERVICE CHARGE

What information must the employer provide to employees?

- Information about the total amount of service charge received by the employer during the previous month and the amount payable per employee must be made available to all the employees before the end of the ongoing month.

What information must be recorded by the employer?

- The below mentioned information must be recorded by the employer monthly:
 - Total income received as service charge each month;
 - Amount retained as administrative fee from the total service charge;
 - The total amount entitled to employees from the total income received as service charge;
 - Details of the employees who have provided their service during a given month (including their name, identity card or passport number and the designation);
 - Number of days of service of each employee;
 - Daily rate of service charge entitled to each employee who worked during a given month;
 - Total amount of service charged paid to each employee during a given month.

- All the records required to be maintained pursuant to this Regulation must be maintained in English or Dhivehi language.

SUBMISSION OF SERVICE CHARGE RECORDS TO RELEVANT AUTHORITIES

Registration

- In order to submit information under this Regulation, all the parties levying service charge must be registered through a system established by the Labour Relations Authority (hereinafter “**LRA**” or the “**Authority**”), as per the instructions of the Authority.
- Changes to any information submitted to the LRA must be communicated to the Authority no less than 7 (seven) days from the date of change, as per the requirements of the Authority.
- Any notifications sent to the employer under this Regulation shall be deemed to have been delivered upon emailing the same to the email address registered with the Authority.

Submission of records

- All the records maintained under this Regulation must be sent to LRA and Maldives Inland Revenue Authority (hereinafter “**MIRA**”).
- Records must be submitted in a manner where monthly details can be identified.
- The records of the first 6 (six) months of the calendar year must be submitted before 1st of October.
- Records of the last 6 (six) months of the year must be submitted before 1st April of the following year.
- The records must always be made available if requested by an officer of the LRA during an inspection. It also must be submitted to LRA if the Authority requests it in relation to any ongoing investigations.

How will LRA confirm the accuracy of the records?

- Maldives Inland Revenue Authority is obligated to confirm to LRA the accuracy of the information submitted to LRA by the employer if the employer is a party required to file tax returns under law no. 2/2019 (Income Tax Act).

PENALTIES FOR NON-COMPLIANCE

- After considering the size of the business, a penalty not exceeding MVR100,000.00 (Maldivian Rufiyaa One Hundred Thousand) will be imposed:
 - If service charge is not taken from the services provided by the businesses conducted in the tourism industry as per section 3 of the Regulation; or
 - If any employer taking service charge fails to comply with chapter 3 of this Regulation which provide for the distribution of the service charge among the employees.
- Those who are obligated to take service charge under this Regulation and those levying service charge fails to maintain service charge records as per section 12(a) and (b), or fails to comply with any orders given under section 12(c) of this Regulation will face:
 - a penalty not exceeding MVR 10,000.00 (Maldivian Rufiyaa Ten Thousand) on first instance; and
 - a penalty not exceeding MVR 50,000.00 (Maldivian Rufiyaa Fifty Thousand) for every repeated instance.

- If a party taking service charge fails to submit information relating to service charge on dates specified under section 14 of the Regulation:
 - On first instance, a notice of 7 (Seven) days will be given to submit the information.
 - If information is not submitted within 7 (Seven) days, a penalty not exceeding MVR 25,000.00 (Maldivian Rufiyaa Twenty-Five Thousand) will be imposed.
 - On the second instance for non-submission of information and thereafter for every repeated failure, a penalty not exceeding MVR 50,000.00 (Maldivian Rufiyaa Fifty Thousand) will be imposed.

- Penalties under this Regulation will be imposed by LRA. The penalty amounts should be paid to MIRA or any other authority designated by MIRA.

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