

MYANMAR

1. Overview

1.1. Government and Tax System

Prior to the nineteenth century, what is now the Republic of the Union of Myanmar (formerly Burma) was a monarchy, ruled by a number of successive dynasties. However, that system ended abruptly in 1886 when the British conquered and colonized the country through a series of wars. It was 62 years later, in 1948, that Myanmar achieved independence from Britain and adopted a parliamentary-based democracy. After decades of political adversity post-independence, efforts to stabilize the government made significant strides in the early twenty-first century.

Under its 2008 Constitution, Myanmar operates under a unitary parliamentary republic, which means that legislative power is shared between the *Pyidaungsu Hluttaw* (union parliament) and state and region *Hluttaws* (regional parliaments). Under Articles 12(b) and 96 of the 2008 Constitution, the *Pyidaungsu Hluttaw* is a bicameral body that has the power to enact laws for the entire union, or any part within, related to matters prescribed in Schedule 1 of the Union Legislative List.

Any union-level executive body has the power to submit bills to the *Pyithu Hluttaw* (lower house) or *Amyotha Hluttaw* (upper house) relating to matters which they administer under the Union Legislative List. However, bills relating to annual budgets, national plans, and taxation must be submitted exclusively to the *Pyidaungsu Hluttaw*. If there is a disagreement between the *Pyithu Hluttaw* and the *Amyotha Hluttaw* concerning a bill, the bill will be discussed and resolved in the *Pyidaungsu Hluttaw*.

If a bill initiated in the *Pyithu Hluttaw* or the *Amyotha Hluttaw* is approved by both *Hluttaws*, the bill is deemed to be approved by the *Pyidaungsu Hluttaw*. Such a bill will then be sent to be signed by the president. After reviewing the bill, the president must send it back to the *Pyidaungsu Hluttaw* within 14 days with his or her signature or any comments or suggested amendments. A bill that is signed by the president will be considered enacted and must be published in the official gazette.

The main legislative sources of taxation in Myanmar are the Commercial Tax Law, the Income Tax Law, the Myanmar Investment Law, the Myanmar Stamp Act, the Specific Goods Tax Law, and the Union Tax Law. The Union Tax Law is enacted before every fiscal year to lay out tax rates, tax collection procedures, lists of goods and services with regards to tax exemptions, tax reliefs, and allowances.

The Internal Revenue Department is responsible for all tax assessments related to Commercial Tax, Income Tax, Stamp Duty, and Special Goods Tax, and the Ministry of Planning and Finance is responsible for the administration of the major laws of the Myanmar tax regime. Other ministries are also responsible for collecting their respective taxes, such as excise tax, customs tariff, land revenue, embankment tax, water tax, fishery tax, oil and natural gas extraction tax, gratis tax, etc.

1.2. Currency

The currency of Myanmar is the kyat.

1.3. Membership of International Organizations

The Union of Myanmar is a member of the following international organizations:

- Asian Development Bank (ADB)
- Association of Southeast Asian Nations (ASEAN)
- Association of Southeast Asian Nations Regional Forum (ARF)
- East Asia Summit (EAS)
- Group of 77 (G77)
- International Bank for Reconstruction and Development (IBRD)
- International Development Association (IDA)
- International Finance Corporation (IFC)
- International Labor Organization (ILO)
- International Monetary Fund (IMF)
- United Nations Conference on Trade and Development (UNCTAD)
- United Nations Industrial Development Organization (UNIDO)
- World Customs Organization (WCO)
- World Federation of Trade Unions (WFTU)
- World Intellectual Property Organization (WIPO)
- World Trade Organization (WTO)

1.4. Official Websites

- Internal Revenue Department – www.irdmyanmar.gov.mm.
- President Office – www.president-office.gov.mm.
- Ministry of Foreign Affairs – www.mofa.gov.mm.
- Ministry of Home Affairs – <https://www.myanmar.gov.mm/en/ministry-of-home-affairs>.
- Ministry of Agriculture, Livestock and Irrigation – <https://www.moali.gov.mm/en>.
- Ministry of Transport and Communications – <https://www.motc.gov.mm>.
- Ministry of Natural Resources and Environmental Conservation – <http://www.monrec.gov.mm/>.
- Ministry of Labor, Immigration and Population – www.dop.gov.mm, www.mol.gov.mm, and www.mip.gov.mm/.
- Ministry of Commerce – www.commerce.gov.mm.
- Ministry of Planning and Finance – www.mopf.gov.mm.
- Central Bank of Myanmar – www.cbm.gov.mm/.
- Directorate of Investment and Company Administration, and Myanmar Investment Commission – www.dica.gov.mm/.

1.5. Automatic Exchange of Information

Myanmar is not a party to any agreement for the automatic exchange of information, including the Common Reporting Standard.

2. Corporate Tax Computation and Administration

2.1. Residence, Taxable Status, Entity Characterization

2.1.1. Residence

One of the bodies in Myanmar that influences tax issues for foreign business activities is the Myanmar Investment Commission, which is a government agency set up under the Myanmar Investment Law.

Corporate residence is assigned to a company that is formed under the Myanmar Companies Law or any other existing Myanmar law (e.g., under tax incentives that may be granted by the Myanmar Investment Commission under the Myanmar Investment Law).

Under Section 3(k) of the Income Tax Law, a resident foreigner is defined as follows:

1. a foreign individual who resides in Myanmar for at least 183 days during an income year;
2. a company formed under the Myanmar Companies Law or any other existing law with at least some foreign shareholders; or
3. an association of persons (other than a company) at least partially consisting of foreigners and where the control, management and decision-making of its affairs is situated and exercised from within Myanmar.

Under Section 23 of the Union Tax Law, the following types of taxpayer will be assessed at a 25 percent income tax rate on total net profit before deduction of exemption and reliefs: (i) a company that is registered and established in Myanmar under the Myanmar Companies Law or the Special Companies Act, (ii) a business that is operated with a permit from the Myanmar Investment Commission, (iii) nonresident foreigners except in relation to salary income, and (iv) state-owned enterprises.

Generally, overseas corporations are deemed to be "nonresident."

2.1.2. Taxable Status

In Myanmar, all companies are subject to income tax on their taxable income. Under the Income Tax Law,¹ a company means one as defined in the Myanmar Companies Law or in any other existing laws. This expression includes any foreign economic enterprise carrying on business in Myanmar which is treated as a company by the Union Government for the purposes of the Income Tax Law.

2.1.3. Legal Classification of Nonresident Entities

Any citizen of Myanmar who resides and earns income outside Myanmar during any time in a year of income is deemed nonresident.

Under Section 3(l) of the Myanmar Income Tax Law, foreigners other than those defined in Section 3(k) are defined as nonresident (see also Section 2.1.1 above).

¹ Income Tax Law, §3(o).

2.2. Corporate Tax Base

2.2.1. Resident Corporations

Resident corporations are obliged to declare and pay corporate income tax on their worldwide income at a 25 percent income tax rate on total net profit before deduction of exemption and reliefs.

2.2.2. Nonresident Corporations

Nonresidents, including overseas corporations registered under the Myanmar Companies Law, are only obliged to pay corporate income tax on their Myanmar-sourced income.

A nonresident corporation will be assessed the same income tax rate as that of a resident company—a flat rate of 25 percent of total net profit.

2.2.3. Non-Corporate Business Entities

2.2.3.1. Recognition

Non-corporate businesses such as partnerships and sole proprietorships are recognized under Myanmar laws; however, nonresidents are not allowed to operate such businesses in Myanmar.

Planning Point: Note that in practice, some nonresidents carry on business (e.g., restaurants) as a sole proprietorship or partnership with local citizens by acquiring a local business establishment license.

2.2.3.2. Tax Status

Partnerships and sole proprietorships are subject to income tax with progressive rates based on the personal liability of the partners or proprietors.

2.2.4. Permanent Establishments

2.2.4.1. Domestic Law Definition

The Income Tax Law does not include a definition for "permanent establishment."

Planning Point: Nonresidents are taxed on all profits arising from a trading activity within Myanmar, rather than on profits arising from a permanent establishment (PE) in Myanmar. Therefore, foreign businesses should carefully consider the scope of tax and resulting income tax on Myanmar trading activities.²

2.2.4.2. Treaty Definition

Myanmar's treaties generally follow the OECD Model Convention in their definition of PE.

² Income Tax Law, §§3(k), (l), (m), (n) (i) (ii) and (iii).

2.2.4.3. *Creation via Performance of Services*

There are no clauses on separate services for a PE in any of Myanmar's tax treaties.

2.2.4.4. *Creation via Customer Downloads or Website Access*

None of Myanmar's tax treaties mention taxation of a nonresident's income based on customer downloads or website access.

2.2.4.5 *Creation via Cloud Services*

There is no clear official guidance on the use of internet cloud services. Likewise, there is no clear guidance on whether cloud services give rise to PEs.

2.3. Taxable Year

2.3.1. Default Taxable Year

The Internal Revenue Department (IRD) issued Letter No. 5274 dated May 9, 2018, under the Large Taxpayer's Office (LTO), authorizing banks and financial institutions to submit accounts for a six-month transition period (from April 1 to September 30, 2018) in order to facilitate the adoption of a new financial year for reporting purposes in line with the Central Bank's new reporting requirements.³ In accordance with the new law, banks, financial institutions, and state-owned enterprises were required to adopt the new financial year, which started on October 1, 2018 and will end on September 30, 2019. Subsequently, the financial year for all companies will have the same start date—from October 1, 2019.⁴

2.3.2. Reference Year for Computation of Tax

Under the Income Tax Law and the Commercial Tax Law, the "year" means the financial year.

Under the Income Tax Law, "income year" means the year in which the income is received, and "assessment year" means the year following the income year.

Under the Commercial Tax Law, "assessment year" means the succeeding year to the year in which the proceeds of sales or receipts from the provision of services accrued.

Income tax must be paid either monthly or quarterly within the income year, while commercial tax is to be paid monthly, along with the submission of quarterly returns on commercial tax payable. Annual returns for income tax are to be submitted within three months from the end of income year,⁵ while annual returns for commercial tax need to be submitted within three months from the end of the respective financial year.⁶

³ See Letter no. 2224/KaKa(1)/535/2017–2018 of the Central Bank dated March 30, 2018.

⁴ In accordance with Section 41 of Union Tax Law 2018–2019 and with reference to Letter no. 5229 of IRD dated May 5, 2019.

⁵ Income Tax Law, §17(a).

⁶ Commercial Tax Law, §13(a).

2.4. Computing Taxable Income

2.4.1. General

Different types of income are included in "taxable income." The categories, according to Section 8(a)⁷ of the Income Tax Law, are as follows:

1. income from salary;
2. income from professional activities;
3. income from business;
4. income from property rental;
5. income from capital gains;
6. income that escapes assessment; and
7. income from any other sources.

Income from professional activities, business, and other sources is aggregated and an assessment is made on the total income, while other categories of income are assessed separately.

2.4.2. Exempt Income

Section 5(a)⁸ of the Income Tax Law specifies categories of income that are exempt from taxation as follows:

1. income received by a religious or charitable institution and applied solely for religious or charitable purposes;
2. income of a local authority;
3. a pension, lump sum received in commutation of a pension, or gratuity;
4. compensation received for death or injury;
5. a sum received from an insurance policy;
6. any receipt of a casual and nonrecurring nature, excluding (a) income from capital gains and (b) income from a business; and
7. dividends from an association of persons.

2.4.3. Inventory Valuation and Inventory Flow

There are no prescribed inventory valuation methods for tax purposes in Myanmar.

2.4.4. Depreciation or Capital Allowances

In Myanmar, buildings, machinery, plant or furniture may be depreciated in accordance with rates set out in Section 13(a) of the Income Tax Regulations.⁹

⁷ Income Tax Law, §8(a).

⁸ Income Tax Law, §5(a).

⁹ Income Tax Regulations, Chapter 11, "Depreciation Allowance." See also Income Tax Law, §§10(b) and 11(b).

2.4.5. Reserves

For investment companies under the Myanmar Investment Law, the law states that the Myanmar Investment Commission may grant exemption or relief from income tax if the profit obtained from the investment business that has obtained a permit or an endorsement is reinvested in such investment business, or in any similar type of investment, business within one year.¹⁰

2.4.6. Special Allowances

Section 6(c) of the Income Tax Law provides for a basic allowance in the case of an association of persons. Individuals are granted a basic allowance, as well as allowances for parents, spouse, and children who live with the assessee; premiums paid for the life insurance policy of the assessee and spouse; and contributions toward savings funds as prescribed by any other laws (such as for social security).

2.4.7. Special Provisions or Limits Applicable to Foreign Companies

Nonresident foreign companies are not eligible for tax exemptions and reliefs, such as deduction of donations from taxable income.

2.5. Intercompany Dividends

Intercompany dividends are generally exempt from income tax.

2.6. Special Tax Regimes

2.6.1. Economic Zones

Special Economic Zones (SEZs) are operated and established under the Special Economic Zone Law 2014. In an SEZ, investments are promoted and accepted for specific types of buildings and companies, including banks, department stores, hospitals, housing, insurance providers, manufacturers, recreational places, and schools. Typically, SEZs can be broken down into two main zones offering different benefits—Free Zones and Promotion Zones.

A Free Zone is considered to be situated outside the country. These areas are mainly focused on export-oriented markets and welcome companies in manufacturing, transportation, and wholesale. In a Free Zone, such companies are entitled to customs duty and other tax exemptions relating to the goods in the SEZ and goods imported into the SEZ.

- Companies operating in a Free Zone qualify for:¹¹
- income tax exemption for the first seven years from commencement of commercial operation;
- after seven years, 50 percent relief of income tax for the next five years;
- after 12 years, 50 percent relief of income tax on profit that is reinvested within one year as a reserve fund for the next five years;

¹⁰ Myanmar Investment Law §78(a).

¹¹ Special Economic Zone Law 2014 §§32, 44, 49.

- exemption from commercial tax (CT);
- exemption from customs duties and other relevant taxation on imports of raw materials for production, including machinery, instruments, and necessary spare parts for production; and construction material for building factories, warehouses, offices, and motor vehicles;
- exemption from customs duties and other relevant taxation on the import of trading goods, consignment goods, motor vehicles, and other materials that are essential for a business's free-tax wholesale trading, export trading, and services of provision and transportation; and
- the option for an investor in the Free Zone to apply for an exemption on import tax or CT for goods imported from the local area or Promotion Zone to a Free Zone.

Promotion Zones are defined as the internal taxation area situated within the SEZ and other activities which are not the activities of Free Zone and are mainly based on the domestic market and the particular market in the SEZ itself. Promotion Zones generally promote and welcome investment in banks, department stores, hospitals, housing, insurance companies, manufacturers, recreational places, and schools. Such operations qualify for the following benefits:

- income tax exemption for the first five years from commencement of commercial operation;
- after five years, 50 percent relief of income tax for the second five years;
- after 10 years, 50 percent relief of income tax for profit that is reinvested within one year as a reserve fund for the next five years.
- for the first five years, exemption from customs duties and other relevant taxation on the import of equipment and instruments not for sale and any necessary replacement parts; construction materials for building the business's facilities, such as factories, warehouses, and offices; and motor vehicles and other materials which are essential for the business;
- for the next five years, 50 percent relief of the customs duties and other taxation on the resources listed above;
- an option to apply for a refund of customs duties and other taxation paid for the importation of raw materials and other goods for production, if the goods they help produce are exported abroad or into a Free Zone; and
- exemption of CT during the relevant relief period provided in the Special Economic Zone Law 2014.

2.6.2. International Finance or Holding Companies

Myanmar does not have any specific provisions or a special tax regime for international finance or holding companies.

2.6.3. Research and Development Companies and Activities

Myanmar does not have any specific provisions or a special tax regime for research and development companies or activities.

2.6.4. Other Special Regimes

Section 75(a) of the Myanmar Investment Law 2016 states that the Myanmar Investment Commission can grant income tax exemptions to investment businesses in Zone 1 (less developed regions) for a period of seven years, in Zone 2 (moderately developed regions) for a period of five years, and in Zone 3 (developed

regions) for a period of three years. These periods include the year that commercial operations commence.¹² Classification of the development areas is made by the Notification No. 10/2017 of Myanmar Investment Commission: Designation of Development Zone.

2.7. Double Taxation Protection

2.7.1. Mechanics

For relief to be granted under the applicable double taxation agreement (DTA), taxpayers must submit their arguments together with related evidence to the Internal Revenue Department (IRD) for review before their income tax is due or the date of the tax assessment.

2.7.2. Treaty or Statutory Priority

Section 31¹³ of the Income Tax Law acknowledges that tax treaty terms take precedence over provisions in the Income Tax Law.

2.7.3. Source of Interpretation

Myanmar's DTAs do not follow any specific guidelines or model.

2.8. Returns and Filing Dates

2.8.1. Filing Deadline

- Annual returns have customarily had to be filed by June 30 at the latest, which is three months from the end of the financial year.¹⁴ However, this is subject to change with the implementation of the new financial year on October 1, 2019 (see Section 2.3.1). Annual returns will continue to be due three months after the end of the new financial year, which will put the filing deadline at December 31.
- Personal Income Tax (PIT) must be calculated and deducted monthly and settled in an annual filing by June 30. With the onset of the new financial year on October 1, 2019 (see the first item in this list and Section 2.3.1), the annual filing deadline will be changed to December 31.
- Corporate income tax (CIT) must be filed quarterly, within one month of the end of each quarter, and annually, before June 30 of each year. With the onset of the new financial year on October 1, 2019 (see the first item in this list and Section 2.3.1), the annual filing deadline will be changed to December 31.

CIT is pre-assessed and paid quarterly. Local entities are required to submit their annual tax returns within three months from the end of every financial year (i.e., before June 30, or December 31 under the new system described in Section 2.3.1). If necessary, adjustments can be made after submission, and overpayments can be carried over to the following fiscal year. After corporate tax is filed, a CIT identification

¹² Myanmar Investment Law 2016, §75(a).

¹³ Income Tax Law, §31(a).

¹⁴ Income Tax Law, §17(a).

number will be issued. If additional payment is requested, the taxpayer has the option of appealing to the IRD within 30 days. If, on the other hand, they decide to pay the additional tax, the IRD will issue a Certificate of Tax Clearance.

If the local entity is registered as a branch office without taxable income, tax registration is not required. A withholding tax (WHT) certificate must be filed within seven days of the date of deduction.

2.8.2. Filing Method

- Large taxpayers can file online;
- Some medium taxpayers may file online, depending on income level; and
- Small taxpayers are to file in person or through a representative such as an auditor, company representative, etc.

2.8.3. Extensions

Generally, no filing extensions are granted.

2.8.4. Penalties

The penalty for not paying taxes or filing a return by the relevant dates is 10 percent of the total tax payable.¹⁵

2.9. Payment Mechanics

2.9.1. Internal Withholding on Resident Companies

The Ministry of Planning and Finance issued Notification No. 47/2018¹⁶ implementing new changes to the withholding tax scheme in Myanmar.¹⁷

With effect from July 1, 2018, no withholding tax (WHT) applies to payments to resident companies for the purchase of goods, work performed, or supply of services within Myanmar. This means that business-to-business ("B2B") payments to resident taxpayers will not be subject to WHT. However, there is a qualification that if payment is made by Union-level organizations, Union Ministries, Naypyidaw Council, regional or state government, state-owned enterprises, or municipal organizations for the purchase of goods, work performed, and supply of services within Myanmar under a tender, auction, quotation, contract, agreement, or any other modes, 2 percent WHT on payments to resident taxpayers will still apply.

Royalties for the use of licenses, trademarks, patent right, etc., paid to resident companies are subject to a WHT of 10 percent.

¹⁵ Income Tax Law, §46(a).

¹⁶ Ministry of Planning and Finance Notification No. 47/2018.

¹⁷ This supersedes Notification No. 51/2017 of May 22, 2017.

2.9.2. Schedule for Tax Payments or Deposits

Tax payments or deposits are to be paid quarterly.

2.9.3. Electronic Payments

In April 2019, the IRD issued a notice regarding the implementation of the Integrated Tax Administration System (ITAS), an electronic system that aims to modernize and streamline the tax administration process in Myanmar. It is planned to start in the 2019–2020 tax year. The purpose of the ITAS is to implement an electronic-based system that will administer the tax processes and improve the accuracy of taxpayer data and to maintain confidentiality of the information.

2.9.4. Interest and Penalties

The penalty for not paying taxes or filing a return by the relevant dates is 10 percent of the total tax payable.¹⁸

For commercial tax (CT), the late penalty is 10 percent of CT due and 10 percent of annual CT payable levied on annual total revenue.¹⁹

2.10. Statute of Limitations

For assessment of income tax, if there was no intention to defraud in order to evade tax, assessment or re-assessment must be made within three years from the end of the time that (i) income chargeable to income tax has escaped assessment, (ii) income has been under-assessed, (iii) assessment has been made at a low rate, or (iv) relief in excess of the amount actually allowable has been allowed.²⁰

3. Corporate Tax Rates

3.1. National Taxes

3.1.1. Corporate Tax Rates

A Corporate Income Tax (CIT) rate of 25 percent is assessed on the total net profit, although companies listed on the Yangon Stock Exchange benefit from a reduced CIT rate of 20 percent.²¹ Resident corporations are obliged to declare and pay CIT on their worldwide income, while nonresident companies (i.e., those which are not formed under Myanmar law or any other existing law wholly or partly with foreigner shareholders), and foreign companies investing under the Union of Myanmar Investment Law, are taxed only on their Myanmar-sourced income.

¹⁸ Income Tax Law, §46(a).

¹⁹ Commercial Tax Law, §21.

²⁰ Income Tax Law, §21(b).

²¹ Ministry of Planning and Finance Notification No. 76/2017.

3.1.2. Alternative Tax Regime

There is no alternative tax regime provision in Myanmar.

3.1.3. Special Reduced Rates or Regimes

There are no special reduced rates or regimes.

3.1.4. Special Additional Taxes or Levies

Customs duty is levied on imported goods at rates ranging from 0 percent to 40 percent. A company registered under the Myanmar Investment Law will be eligible for exemption or relief from customs duty and other internal taxes on machinery, equipment, instruments, machinery components, spare parts, construction materials unavailable locally, and materials used in the business, which are imported as they are actually required, during the construction or expansion period or during the preparatory period of the investment business, and on the importation of the raw materials and partially manufactured goods conducted by an export-oriented investment business for the purposes of the manufacture of products for export.²² These exemptions and reliefs do not apply to businesses operating in SEZs, which have their own exemptions and reliefs (see Section 2.6.1).

3.2. State, Cantonal, Provincial or Other Local Taxes

3.2.1. Main Rates

There is no separate corporate income tax at the local level.

3.2.2. Reduced Rates

There is no separate corporate income tax at the local level.

3.2.3. Income Tax Base

There is no separate corporate income tax at the local level.

3.2.4. Income Tax Deductions

Expenses incurred only for the purpose of generating income are typically deductible for tax purposes. A company cannot deduct capital expenditure, personal expenditure, expenditure not commensurate with the volume of business or any payments made to a member of an association of persons other than a company or a cooperative society.

Provisional expenses and reserves, such as provisions for bad debts or stock obsolescence, are not tax-deductible until they are actually realized. Depreciation in excess of the prescribed rate is also not deductible.

²² Myanmar Investment Law 2016 §77.

3.2.5. Incentives

Section 75(a) of the Myanmar Investment Law 2016, states that the Myanmar Investment Commission can grant income tax exemptions to investment businesses in Zone 1 (less developed regions) for a period of seven years, in Zone 2 (moderately developed regions) for a period of five years, and in Zone 3 (developed regions) for a period of three years. These periods include the year that commercial operations commence.²³

3.2.6. Non-Income Taxes in States

Subject to approval from the Union government and the concerned ministries, associations and nongovernmental organizations (NGOs) may sign a Memorandum of Understanding with the responsible ministry to operate and register as an NGO or international NGO (INGO) and secure tax exemptions.

3.3. Taxes Imposed as a Penalty

- If corporate income tax is not paid by the relevant date and is not filed by three months after the end of the financial year (see Section 2.3.1), the company will be subject to a late payment penalty of 10 percent of the total tax payable.
- If personal income tax is not paid monthly and the annual filing is not submitted by three months after the end of the financial year (see Section 2.3.1), the taxpayer will be subject to a late payment penalty of 10 percent of the total tax payable.
- Commercial tax and special goods tax should be paid monthly within 10 days after the end of each month, with annual filings due by three months after the end of the financial year (see Section 2.3.1). If these deadlines are missed, the company will be subject to a late payment penalty of 10 percent of total tax payable.
- Capital gains tax should be paid within 30 days of the capital asset being sold, exchanged or transferred. Missing this deadline will incur a late penalty of 10 percent of the total tax payable.

4. Corporate Tax Capital Gains, Losses, Group Treatment

4.1. Taxation of Corporate Capital Gains

Under Union Taxation Law 2018–2019, capital gains of individuals or groups will be taxed in kyats or in foreign currencies at a rate of 10 percent.²⁴ If the taxpayer is a nonresident, the tax will be assessed in the type of currency earned. However, for oil and gas companies, the tax is 40 percent on gains of up to the equivalent of 100 billion kyats, 45 percent on gains from 100 billion kyats up to 150 billion kyats, and 50 percent on gains above 150 billion kyats (as specified in Union Taxation Law 2018–2019).²⁵

²³ Myanmar Investment Notification No. 10/2017: Designation of Development Zone.

²⁴ Union Taxation Law 2018–2019, §27(b).

²⁵ Union Taxation Law 2018–2019, §27(a).

4.2. Definition of Corporate Capital Gains

Capital gains tax is levied on gains from the sale, exchange or transfer of capital assets. Capital assets include land, buildings and their rooms, vehicles, and work-related capital assets (although it should be noted that foreign companies are generally prohibited from owning immovable property in Myanmar). The expression also includes shares, bonds, securities, and similar instruments. Capital gains tax is applicable to both resident and nonresident taxpayers deriving a profit from the sale, exchange, or transfer of capital assets in Myanmar.

4.3. Computation

The Income Tax Rules supporting the Income Tax Law provide for the computation and assessment of capital gains. The following are deductible in computing capital gains:

- the net value remaining after deducting depreciation allowances from the sum total of the original cost to the assessee and any expenditure of a capital assets nature actually incurred by him or her for making any addition thereto; and
- expenditure incurred in the procurement of the capital asset and in respect of the sale, exchange or transfer of the same.²⁶

If the township revenue officer believes that an assessee is liable to pay capital gains tax, he may send a notice to that person to file a return of income for such gains.²⁷

If the township revenue officer is of the opinion that the value stated by the assessee in respect of the sale, exchange or transfer of the capital asset is, without sufficient reason, less than the market value prevailing at the time of the transaction, he has the power to substitute that value with the prevailing market value. If the original cost actually incurred by the assessee in the procurement of the capital asset cannot be ascertained, or if the capital asset was acquired by inheritance or by way of a gift, the market value prevailing at the time of acquisition is deemed to be the original cost to the assessee.²⁸

The tax will be assessed in the respective income year—calculated using the tax rates for that year—on the person who received the capital gains.²⁹

4.4. Corporate Combinations and Divisions

4.4.1. Mergers

Mergers can be included in capital gains under the Income Tax Law.

²⁶ The Ministry of Finance and Revenue Minister's Office Notification No. 102/2012 (Income Tax Rules), §5(c).

²⁷ The Ministry of Finance and Revenue Minister's Office Notification No. 102/2012 (Income Tax Rules), §5(b).

²⁸ The Ministry of Finance and Revenue Minister's Office Notification No. 102/2012 (Income Tax Rules), §5(d), 5(f).

²⁹ The Ministry of Finance and Revenue Minister's Office Notification No. 102/2012 (Income Tax Rules), §5(c).

4.4.2. Transfers of Corporate Property

Transfer of property is also included in the definition of capital gains under the Income Tax Law.

According to Section 3(q), capital gain means any profit realized from the sale, exchange or transfer of any capital asset. Any inheritance, gift without consideration and donation shall not be included within the meaning of the term transfer.³⁰ There is no separate transfer tax, except for stamp duty.

4.4.3. Share Transfers

Share transfers are also included in the definition of capital gains under the Income Tax Law.³¹ There is no separate transfer tax, except for stamp duty.

4.4.4. Divisions or Separations

There is no provision on corporate divisions or separations.

4.5. Position of Losses From Business Operations

4.5.1. Definition

There is no definition of operating loss in the Income Tax Law.

4.5.2. Treatment

If there is any loss from a source of income, except loss in respect of capital assets and the share of loss from an association of persons, that loss can be set off against the income from the remaining sources of income of that financial year. Any remaining losses that cannot be set off against sources of income within that financial year may be carried over for up to three consecutive years.³²

4.5.3. Losses After Change in Ownership

Further to Section 4.5.2, when a person assumes ownership of a business, and there is difficulty communicating with the previous owner, the successor shall be treated as the agent of the previous owner, and income tax shall be assessed for (a) the period in the income year of succession within which the previous owner carried on the business; and (b) the income year preceding the income year of succession.³³

4.6. Group Treatment

4.6.1. General Rule

The Income Tax Law does not provide any treatments or assessments for groups of companies. Each

³⁰ Income Tax Law, §3(q).

³¹ Income Tax Law, §3(q).

³² Income Tax Law, §20.

³³ Income Tax Law, §25.

company is assessed separately in Myanmar.

4.6.2. Definition of Group

There is no definition of "group" in the Income Tax Law.

4.6.3. Special Aspects

Myanmar does not provide any special aspects for corporate tax purpose.

5. Corporate Withholding Taxes on Nonresident Corporations

5.1. Dividends

Dividends are not subject to withholding tax.³⁴

5.2. Interest

The withholding tax rate on interest for nonresidents is 15 percent.³⁵

5.3. Royalties

The withholding tax rate on royalties for nonresidents is 15 percent.³⁶

5.4. Services

The withholding tax rate on services for nonresidents is 2.5 percent.³⁷

5.5. Other Withholding Taxes

The withholding tax rate on goods (locally purchased goods and not imported goods) for nonresidents is 2.5 percent.³⁸

The withholding tax rate on leases for nonresidents is 2.5 percent.³⁹

5.6. Special Tax Havens Rates

There are no special tax havens rates in Myanmar.

³⁴ Ministry of Planning and Finance Notification No. 47/2018.

³⁵ Ministry of Planning and Finance Notification No. 47/2018.

³⁶ Ministry of Planning and Finance Notification No. 47/2018.

³⁷ Ministry of Planning and Finance Notification No. 47/2018.

³⁸ Ministry of Planning and Finance Notification No. 47/2018.

³⁹ Ministry of Planning and Finance Notification No. 47/2018.

6. Personal Taxes

6.1. Domicile and Residency Requirements

Resident foreigners are those individuals who stay in Myanmar for at least 183 days during an income year (see also Section 2.1.1).⁴⁰ In addition, foreigners working on Myanmar Investment Commission projects and in Myanmar for any length of time are also considered resident foreigners.

6.2. Income Tax Base

6.2.1. Tax Base for Residents

Residents of Myanmar (both citizens and foreigners) are taxed on worldwide income after prescribed allowances and reliefs are deducted.

6.2.2. Tax Base for Nonresidents

Nonresidents are taxed only on their Myanmar-sourced income and are not eligible for allowances or reliefs.

6.2.3. Personal Income Subject to Income Tax

Types of income subject to income tax include salary income; income received from leasing land, buildings or apartments; and capital gains received through the sale of assets. Additionally, tax must be paid on buying and constructing vessels, motor vehicles, buildings, real estate and share purchases if the source of income from these activities cannot be shown.

Employees' personal income tax is withheld by employers. Employers are required to submit annual salary statements together with income tax returns of employees within three months after the end of the tax year (i.e., by June 30, or December 31 under the new financial year described in Section 2.3.1).

6.2.4. Deductions and Allowances

Salary income up to 4.8 million kyats per year is exempt from income tax under the Union Tax Law 2018–2019. The term "salary" includes (a) salary, wages, annuities, bonuses, awards; and (b) any fees, commissions or perquisites (e.g., employee benefits) received in lieu of or in addition to any salary and wages.⁴¹

A basic allowance of 20 percent of an individual's income is allowed for Myanmar citizens and resident foreigners, up to a maximum of 10 million kyats of income within an income year.

Allowances in respect of parents, spouse and children of an individual are as follows:

- 1 million kyats for each parent living with the individual (this includes in-laws);
- 1 million kyats for a spouse living with the individual (provided spouse is not earning assessable income); and

⁴⁰ Income Tax Law, §3(k).

⁴¹ Income Tax Law, §9.

- 500,000 kyats for each child living with the individual who is under 18 years old (or over 18 and in full-time education), not earning assessable income, and unmarried.

6.3. Main Rates and Bands

6.3.1. Individual Tax Rates

Personal income tax (PIT) is calculated at progressive rates based on the estimated yearly income, as follows:

- from 1 kyat up to 2,000,000 kyats, at 0 percent;
- from 2,000,001 kyats up to 5,000,000 kyats, at 5 percent;
- from 5,000,001 kyats up to 10,000,000 kyats, at 10 percent;
- from 10,000,001 kyats up to 20,000,000 kyats, at 15 percent;
- from 20,000,001 kyats up to 30,000,000 kyats, at 20 percent; and
- from 30,000,001 kyats and above, at 25 percent.

For resident taxpayers, the rates are applied on assessable income after deducting personal exemptions and reliefs, while for nonresidents, the PIT rates are applied on their Myanmar-sourced salary income without any deduction.

6.3.2. Individual Returns, Filing Dates, and Payment

These are due within three months from the end of the financial year on March 31 (i.e., by June 30 or December 31 under the new financial year described in Section 2.3.1).

6.4. Dividends

6.4.1. Domestic Corporations

Dividends received from a company or other association of persons are exempt from income tax in the hands of shareholders.⁴²

Dividend distributions are not subject to withholding tax.⁴³

6.4.2. Foreign Corporations

Currently no taxes are collected for dividends received from any corporations, including foreign corporations.

Dividend distributions are not subject to withholding tax.⁴⁴ However, tax clearance is required as evidence to transfer or remit dividends to foreign shareholders.

⁴² Income Tax Law, §5(a)(7).

⁴³ Ministry of Planning and Finance Notification No. 47/2018.

⁴⁴ Ministry of Planning and Finance Notification No. 47/2018.

6.5. Interest

6.5.1. Domestic Borrowers

Interest paid to resident recipients is not subject to withholding tax.⁴⁵

6.5.2. Foreign Borrowers

Interest paid to nonresident recipients is subject to withholding tax at the rate of 15 percent.⁴⁶

6.6. Social Security/National Insurance Payments

6.6.1. Employer Tax or Contribution

According to the Social Security Board (SSB) under the Ministry of Labor, employers must contribute to the Social Security Fund at a rate of 3 percent, which is applied to employee income. The maximum monthly contribution is 9,000 kyats.

6.6.2. Employee Tax or Contribution

The SSB requires employees to contribute to the Social Security Fund at a rate of 2 percent of the employee's income, with a maximum monthly contribution of 6,000 kyats.

6.6.3. Employee Tax Collection Mechanism

Employers are obliged to deduct the monthly tax amount and to withhold the employee's contributions from their salaries.

6.7. Royalties and Rents

6.7.1. Domestic Licensors

Individual taxpayers' income from lease of land, buildings, or apartments for individual taxpayers is subject to income tax at a rate of 10 percent under Section 19(d) of the Union Tax Law 2018–2019 (after deduction of reliefs and allowances).

Royalties are subject to 10 percent withholding tax payable to domestic (resident) licensors, though this can be set off against the final assessment of total income.⁴⁷

Under the existing Myanmar law, there is also a land use premium subject to 10 percent withholding which only applies to Myanmar citizens or companies, as the right is based on a land permit that is only available to local citizens or companies.

⁴⁵ Ministry of Planning and Finance Notification No. 47/2018.

⁴⁶ Ministry of Planning and Finance Notification No. 47/2018.

⁴⁷ Ministry of Planning and Finance Notification No. 47/2018.

6.7.2. Foreign Licensors

Royalties are subject to 15 percent withholding tax payable to nonresident licensors.⁴⁸

7. Transfer Pricing Policies

7.1. Application

There are currently no formal transfer pricing regulations in Myanmar. However, the Income Tax Law does provide for an arm's-length assessment (see also Section 4.3).

7.2. Permissible Pricing Methods

There is no provision on permissible pricing methods.

7.3. Penalties for Improper Pricing

Improper pricing may be subject to penalties for tax evasion or fraud, such as those prescribed by the Income Tax Law.⁴⁹

7.4. Advance Rulings or Pricing Agreements

There is no provision on advance rulings or pricing agreements in Myanmar.

7.5. Documentation

There are currently no formal transfer pricing regulations in Myanmar.

8. Anti-Avoidance Provisions

8.1. General Anti-Avoidance Provisions

There is currently no specific provision regulating anti-avoidance rules.

8.2. Thin Capitalization/Other Interest Deductibility Rules

This can be applied in the same manner as transfer pricing.

8.3. Controlled Foreign Company (CFC) Rules

There is no provision regulating CFC rules in Myanmar at the moment.

⁴⁸ Ministry of Planning and Finance Notification No. 47/2018.

⁴⁹ Income Tax Law, §§21(a), 47.

9. Other Taxes

9.1. Payroll Taxes

The employer must deduct income tax due from employees' salaries at the time of payment to employees. The employer must also pay this amount to the Township Tax Office within seven days from the date of deduction.⁵⁰

9.2. Capital Taxes (Capital Duties)

A newly incorporated private company limited by shares is required to pay registration fees of 250,000 kyats, which includes registration of share capital to the Directorate of Investment and Company Administration via its public registry Myanmar Companies Online (MyCO). A company that wishes to increase its authorized share capital is required to pay registration fees of 10,000 kyats.⁵¹

Planning Point: On share subscriptions, please note that the IRD frequently follows up with shareholders to show sources of income on large amounts of share purchases/subscriptions by individuals. They will be deemed as "income that has escaped assessment" if proper sources of income cannot be shown.

9.3. Property Taxes

9.3.1. Transfer Taxes, Including Real Property Transactions

Sales of immovable property are subject to stamp duty of between 3 percent and 6 percent. The seller is subject to 10 percent capital gain tax on profit, while the buyer is subject to income tax (however, no tax is due if the purchase is made with taxed income).

9.3.2. Real Property Taxes

Special property taxes, such as general tax, lighting tax, water tax, and conservancy tax, are only applied to certain land and buildings in metropolitan areas with respective city development committee laws, such as Yangon and Mandalay. In other areas of Myanmar, property tax is administered in accordance with relevant local regulations and may vary from place to place.

Planning Point: Note, however, that foreign companies are generally prohibited from owning real property in Myanmar, so this should be taken into consideration.⁵²

9.3.3. Taxes on Movable Property

Buying movable (or immovable) properties or assets with so-called "white money" (i.e., money that is earned legally, or on which the necessary tax is paid) is not subject to tax. However, if such white money cannot be shown, tax will have to be paid at a special rate. In other words, the taxpayer must be able to identify the

⁵⁰ Income Tax Law, §16 (a).

⁵¹ Myanmar Companies Law, §§6, 429.

⁵² Transfer of Immovable Property Restriction Act (1987).

sources of income(s) owning the properties in question; otherwise, such properties will be assessed in accordance with the rules in support of the Income Tax Law.⁵³

9.3.4. Fixed Asset Taxes

There are no specific fixed asset taxes in Myanmar. Buying or owning fixed assets is subject to income tax.

9.4. Miscellaneous Taxes

Although there is no VAT in Myanmar, commercial tax is generally imposed at the rate of 5 percent. It is levied on four types of activities:⁵⁴

- local production and sale of goods;
- importation of goods;
- trading; and
- provision of services.

Myanmar levies special tax on cigarettes, tobacco (and betel chewing preparation), cigars and cheroots, beer, alcohol, wines, wood logs and wood cuttings, jade, gemstones and jewelry, vehicles, and fuels and natural gas under the Special Goods Tax Law 2016 and the Union Tax Law 2018–2019. The Special Goods Tax Law imposes taxes on imports into Myanmar (from 5 to 50 percent of the landed cost).

Myanmar also imposes customs duties, excise duties (levied on alcoholic drinks), and stamp duties.

10. Special Industries

10.1. Oil, Gas and Mineral Extraction

Capital gains from the sale, exchange, or transfer of fixed assets of a company in the oil and natural gas sector are subject to progressive tax rates ranging from 40 percent to 50 percent.

10.2. Banking and Finance

Banking and financial services operating with permission of the Central Bank of Myanmar are not subject to commercial tax under Section 14(d) of the Union Tax Law. Furthermore, the financial year for banks, financial institutions, and state-owned enterprises has been changed from April 1–March 31 to October 1–September 31. This change was announced by the IRD in LTO letter No. 5274 dated May 9, 2018, in order to adopt and align with the Central Bank of Myanmar (see Section 2.3.1).

⁵³ Income Tax Law, §14, Income Tax Rule §6.

⁵⁴ Commercial Tax Law 1990.

11. About the Authors

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