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Myanmar Tax Law—Regulations and Enforcement in Transition

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Myanmar's long process of opening up to the world, and developing its economy accordingly, continues apace. We therefore offer you an overview of its tax system, taking into account recent legislation.

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I. Political and Economic Overview

Myanmar currently finds itself in a time of fundamental political change. The resounding results of the election, leaving the Nobel Peace Laureate Aung San Suu Kyi's National League for Democracy party (NLD) as undisputed winner with an absolute majority of votes, are seen as a strong and positive indicator of the ongoing change towards democracy. The transition phase leading to the eventual installation of the new government lasted until March of this year. So far all participating parties have been working together harmoniously which will benefit both the social and economic development of Myanmar and could potentially lead the way to a full-fledged democracy.

The most important steps during this phase were the meetings between Aung San Suu Kyi and former President Thein Sein as well as the commander-in-chief Min Aung Hlaing. The latter meeting was of particular significance since the constitution holds the military eligible for 25% of unelected parliament seats regardless of election results. According to all parties, talks were held "in the spirit of national reconciliation," with the main goal being a peaceful transition that reflects the results of the election and works toward enhancing the economic and political stability of the country, the rule of law and unity of the state.

The economic development that has been targeted by the former government of ex-president Thein Sein will continue to be targeted by the current administration, according to official statements. The new government welcomes foreign investment, with only the stipulation that such investment be promising in terms of sustainability, creating jobs and training of employees.

The economic development of Myanmar in FY 2014/15, with a growth rate of 8.3%, can be regarded as positive even though it was slightly weaker than previously expected. One explanation for the slightly weaker growth rate can be found in the extensive flooding which caused significant damage across large parts of the country—especially negatively impacting the agricultural sector. In addition to this, the national elections led to grave insecurities on the part of investors, slowing down new investments as a result.

It is to be expected that economic growth during FY 2015/16 will be comparable to that of last year. It is still to be seen how a strengthened feeling of political and economic security will affect foreign investors following the elections and the process of democratization.

To date, nine foreign banks have received licenses for Myanmar, opened offices and will expand operative business in FY 2016/17, with financing foreign projects in Myanmar being one of their key business objectives. The new government is willing to support this trend and has promised to give out more licenses to other foreign banks primarily from countries not yet involved with the banking sector in Myanmar.

The opening of the Yangon Stock Exchange ("YSE") at the end of 2015 has, so far, proven to be mostly symbolic, but nonetheless, it supports the new spirit and direction of development that Myanmar has been taking since its opening in 2012. Regarding the YSE, two companies have enlisted and the total volume of trades per day ranges from 10,000 to 100,000 for the time being; it is expected that two more companies will join by the end of this year.

The political transition of the country is accompanied by broad legal reforms, especially the sectors tax, and commercial and corporate law. The following will give you an overview of the current situation and changes in the field of tax law in Myanmar, as well as its application and common practice by the tax authorities.

II. Myanmar's Tax System

Myanmar's tax system has been improving steadily, especially since the opening up of the country in 2012. In recent years, the tax law has been updated annually and tax authorities have been raising awareness about the necessity of paying tax. As a result, more and more companies are aware of the relevant tax payments and are starting to comply with the respective regulations. This climate is underpinned by the implementation of enforcement mechanisms by the authorities. In addition to the regular monitoring systems, the government continues to invent more creative solutions for implementing understanding and acknowledgement for the tax sector.

For example, finder's fees are offered to those who find shops or restaurants not adding the necessary tax stamp on their receipts and invoices. Also, the Large Tax Office, responsible for tax payments of larger corporations, announced the names of companies that made the highest payments to the state in the fiscal year 2015. To promote responsible business, the top payers will be honored with an awards ceremony.

Although the regulations are changing and adapting at a fast pace, a properly regulated and stable tax law is on the horizon. However, many areas have not been completely regulated so far, and the practical application of the laws and regulations by an officer in charge can, from time to time, be very different from the letter of the laws and regulations. As a result, in practice there are many areas that still need to be clarified in detail with the respective tax department.

A. Corporate Income Tax ("CIT")

The introduction of "The Tax Law of the Union 2016" marks the continuation of the annual tax law revision. The revision in 2015 had already introduced an income tax cut for foreign companies' branch offices from 35% to 25% and a capital gains tax cut for foreign companies from 40% to 10%.

The Corporate Income Tax rate for companies established in Myanmar domestically owned or as 100% Foreign Direct Investment (FDI) will stay at the same rate as the previous year.

The CIT rate in Myanmar is a flat tax rate of 25% on the total income (income after deduction of all costs and expenditures of the company) of the company, payable by the end of the fiscal year to the Tax Authorities. Unutilized tax losses can be carried forward and set off against future taxable profits up to a maximum of the next three consecutive years.

B. Commercial Tax ("CT")

Myanmar doesn't have a VAT System but instead has a revenue-based Commercial Tax. The Commercial Tax has to be declared to the Tax Office monthly or quarterly, depending on the industry and the turnover. In practice, the tax officers accept quarterly declarations and payment for the time being. A new company needs to register initially before starting to conduct business and invoice customers.

The CT rate differs depending on goods imported or produced and services conducted in Myanmar. The basic rate is 5%, but there are exemptions depending on the goods or the scope of business.

The following goods and services are exempted from CT according to the Tax Law of the Union 2016:

Table 1: Goods

Sr.no	Description of Goods
1.	Paddy, rice, split, bran, rough bran, paddy husk
2.	Wheat grain, flour, smooth and rough flour
3.	Maize and other cereals, powder maize and other powder cereals
4.	Various types of pulses, chick peas, pea flour
5.	Groundnuts, peanuts
6.	Sesame seeds, sesame flower
7.	Mustard seeds, sunflower seeds, tamarind seeds, cotton seeds
8.	Oil Palm
9.	Various cottons
10.	Jute and like fibres
11.	Garlic, onions
12.	Potatoes

13.	Cassava plants, cassava flour
14.	Spices (leaves, fruits, seeds, bark), prepared spices
15.	Various fresh fruits
16.	Vegetables
17.	Sugarcane
18.	Mulberry leaves
19.	Herb plants
20.	Reeds, thatch, part of reeds, 'dani' and such agricultural products not elsewhere specified
21.	Wood, bamboos
22.	Live animals, fish, prawns
23.	Silk cocoons
24.	Cane, finished and unfinished
25.	Honey and beeswax
26.	Lac
27.	Residue of groundnuts, sesame, cotton seeds, rice bran, etc.
28.	Detergent and rough soap
29.	Bleaching substances (of oil residue)
30.	Coir yarn, charcoal from coconut husk
31.	Preserved tea leaves, dried tea leaves
32.	Stamps all sorts (including revenue marks)
33.	Sealing wax and sticks
34.	Slate, slate pencils and chalk
35.	Various kinds of sauces (Ngan-pya-ye)
36.	Cake, meal and residue of groundnuts, sesame, sunflowers, soya, rice bran
37.	Fresh fish, fresh prawns, meat
38.	Dry fish, Dry prawns
39.	Pickled fish, pickled prawn
40.	Prawn powder, fish powder
41.	Value added goods based on fishery products
42.	Milk and milk powder.
43.	Chilli, chilli powder
44.	Turmeric, turmeric powder
45.	Ginger
46.	Various kinds of fish paste
47.	Ripe tamarind
48.	National flags
49.	Rosary (all sorts)
50.	Various rulers, erasers, pencil sharpeners
51.	Brushwood substitute fuel stick
52.	Coconut oil (not palm oil)
53.	Eggs (all sorts)
54.	Pumpkin seeds, watermelon seeds, cashew nuts
55.	Religious cloths (saffron robes of Buddhist monks)
56.	Oil dregs
57.	Various salts
58.	Rubber
59.	Betel nuts
60.	Fertilizers
61.	Insecticides, pesticides, fungicides, etc.
62.	Farm equipment, farm machines and machine parts
63.	Animal feed (raw material, finished goods)
64.	Animal, fish and prawn medicine
65.	Animal breeds used in hybrids
66.	Solar panels, solar charger controllers and solar inverters
67.	Xray films and plates and other Xrays, medicinal or pharmaceutical apparatus and equipment
68.	Bandages, gauze, other surgical dressing material, hospital and surgical outfit and sundries
69.	Pharmaceuticals and other medicines (except medicine restricted by rules and regulations)
70.	Raw materials for pharmaceutical drugs
71.	Textbooks, exercise and drawing books of various kinds and papers for the production of such books and all sorts of pencils for schools, universities and college
72.	Graphite for the production of pencils
73.	Condoms
74.	Defense and military arms and ammunition, auxiliary goods, motor vehicles, machinery, equipment and parts
75.	Various kinds of gunpowder, various kinds of dynamite and accessories thereto used by the civil departments
76.	Crop hybrid seeds, nursery plants
77.	Fire Trucks and Hearses
78.	Duty free goods to be sold in foreign currency at the departure places to passengers departing for overseas
79.	Imported goods and construction services for the staff of foreign embassies and consulates
80.	Goods purchased for the consumption of the armed forces if the expenses are in the budget of the Ministry of Defense
81.	Cutting, Manufacturing and Packing goods, packing material for such goods
82.	Fuel sold to foreign embassies, UN organizations and foreign diplomats by the Ministry of Energy
83.	Cash donations or goods purchased with financial aid from local or foreign organizations
84.	Jet fuel for international flights
85.	Machines, spare parts, tools and these parts for plane or helicopter
86.	Tax exemption goods defined by the Pyithu Hluttaw as having national importance

Table 2: Services

No.	**Kind of Service**
1	Services consisting in renting out houses
2	Services consisting in renting out car parks
3	Life insurance services
4	Micro finance services
5	Health care services (not including body beauty care)
6	Education services
7	Services consisting in the transportation of goods
8	Services of employment agencies
9	Investment marketing services
10	Banking services
11	Customs clearance services

12	Renting out objects such as tables, chairs or crockery for social functions
13	Contract manufacturing
14	Funeral services
15	Child nursery services
16	Myanmar traditional massage / massage performed by a blind person
17	Moving services for household properties
18	Services for toll collection
19	Animal health care services
20	Services consisting in the provision of public toilets
21	External air transport services
22	Services concerning culture and art
23	Public transport services (bus, railway and ferry boat)
24	License fees paid for Government organizations
25	Printed services of the Ministry of Defense relating to defense
26	Services for the staff of foreign embassies and consulates
27	Services to the nation using local and foreign donations or aid
28	Tax exempted services defined by the Pyithu Hluttaw as required by the nation
29	Services between the President, Union of Government, Pyihtaungsu Hluttaw, Pyithu Hluttaw, Amyothar Hluttaw, Supreme Court of the Union, Court of Constitution, Union Election Commission, The Attorney-General of the Union, The Auditor-General of the Union and Union Civil Service Board, Naypyitaw Council, Union of Ministries Departments, Central Bank of Myanmar, Social security board, Region or State Governments, or the head organizations of the selfadministered divisions or regions. (Providing services to or receiving services from State-owned enterprises is not included)

It is also possible to offset Commercial Tax in a larger process of services or a production line, if Commercial Tax accumulates twice for the same result during the process.

The threshold for CT is 20,000,000 Myanmar kyat within one financial year.

In addition, the new tax law was replenished with the "Special Commercial/Commodity Tax Law" which regulates the taxation of special goods such as alcohol, cigarettes, and different kinds of fuels or gems.

C. Withholding Tax

The withholding tax system is one of the regulations that are under discussion for change but is still in place due to lack of a replacement.

In general, withholding tax applies under various circumstances to services and sales. It can be split into withholding tax for domestic service providers and withholding tax for foreign service providers. For domestic service providers, the customer needs to withhold 2% on the service fee and pay it to the tax authorities as an advance on the invoicing party's Corporate Income Tax. In practice, the declaration of this tax is widely neglected and has, to date, been tolerated by respective tax officers. This is because the implementation of this declaration is a complex issue and the payment is an advance payment of the contractual partner's CIT, which would have to be paid in full in the case of domestic service providers.

For foreign service providers a withholding tax of 3.5% applies irrespective of whether the service has actually been performed. In practice, this tax is often not declared by the responsible party, nonetheless, in comparison to the abovementioned domestic withholding tax, the tax authorities are starting to focus on this kind of tax evasion and enforce the filing of this tax in practice.

D. Personal Income Tax ("PIT")

Myanmar has a functioning and widely enforced Personal Income Tax system. The employer is responsible for withholding and declaring the PIT and claiming deductions for income tax on salary at the time of payment to its employees.

PIT is paid on a monthly or quarterly basis. Therefore, monthly or quarterly interim returns are also filed. If a business is discontinued, the tax returns are to be filed within one month from the discontinuation of the business.

A statement of monthly deductions must be provided to the IRD office within seven days from the date of deduction. In practice, the tax office allows the quarterly filing of returns in some cases where a company only has a limited number of employees. The employer must also provide an annual finalization statement of salaries paid to employees.

The PIT System is, by law, applicable to Myanmar citizens and Resident Foreigners (foreigners with an annual stay in Myanmar over 183 days) on the basis of their worldwide income. In practice, the tax authorities usually do not inquire about the income of foreigners earned outside of Myanmar. However, this practice is supposed to change in the future.

Nonresident Foreigners also have to pay PIT based on the below schedule for income generated in Myanmar. Reliefs applicable to the tax of Myanmar citizens and resident foreigners do not apply to nonresident foreigners.

The threshold for PIT according to the Tax Law of Union 2016 is a salary of 4,800,000 kyat (approx. $4,000) per year.

The PIT rates are as follows:

Sr.no	Assessment Income of after deduct exemptions and reliefs annually		Rate of Assessment Income %
	From	To	
	Kyat	Kyat	
a	1	2,000,000 (approx. $1,700)	0%
b	2,000,001	5,000,000 (approx. $4,200)	5%
c	5,000,001	10,000,000 (approx. $8,400)	10%

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d	10,000,001	20,000,000 approx. $16,800)	15%
e	20,000,001	30,000,000 (approx. $25,000)	20%
f	Above 30,000,001		25%

The most interesting reliefs applicable to PIT for resident foreigners and Myanmar citizens are:

- A 20% relief for basic allowance. The limit of the basic allowance is 10,000,000 kyat (approx. $8,400) per year.
- A relief for spouse, if she/he doesn't have income her/himself: 500,000 kyat (approx. $420) per year;
- A relief for each child under 18: 300,000 kyat (approx. $250) per year. Children who are over 18 but still receiving education are also eligible for a relief.

E. Social Security

Employers are also responsible for the registration of their employees at the Social Security Board and for the payment of Social Security contributions if the company has more than five employees. The contribution will partly be deducted from the employee's salary and remitted to the authorities on a monthly basis.

The following rates on the income must be paid by the employer or the employee respectively:

- Employer: three percent of the total salary (including benefits); two percent for social security insurance system and one percent for employee injury insurance system
- Employees: two percent of the total salary (including benefits); two percent for social security insurance system

Please note that currently 300,000 kyat (approx. $250) is the maximum salary amount for the calculation of the Social Security contribution. Although there are no signals yet that this will change, this amount could be adjusted, as it is no longer representative of actual salaries. This being said, a general improvement in the Social Security System would be necessary to support such change.

Therefore, the employer pays a maximum of 9,000 kyat (approx. $7.50) and the employee pays a maximum of 6,000 kyat (approx. $5) per month as a Social Security contribution.

Although registration with the Social Security Board is only mandatory for companies with more than five employees, some smaller companies register to provide said benefits to their employees. The most appealing coverage under social security for most employees is free basic healthcare—up to a certain extent.

III. Conclusion

The ongoing economic and political development of Myanmar creates very favorable investment conditions with the potential to become more and more attractive for foreign investment. A steady opening of new business fields as well as a step-by-step adoption of equal laws for foreign investment in parts of the tax law, reflect the government's efforts to create an investor-friendly atmosphere. The focus of the current administration on sustainable foreign investments and a steady yearly growth rate between eight and nine percent supports this outlook.

The development of a working infrastructure and a functioning banking system will create the necessary conditions in the medium term.

With Nobel Peace Laureate Aung San Suu Kyi at the helm of the political transition process, it is expected that foreign investment in Myanmar will continue to rise if the shift of power continues to progress as positively as it has so far. One crucial component in supporting greater foreign investment will be the development of a completely functioning and predictable tax law and enforcement system, which create a space of legal certainty for companies and employees in Myanmar.

The status quo on this matter, though still open to improvement, shows, that Myanmar has a working tax system in place, which covers regulations for the main taxes. A next step has to be to sharpen awareness and support enforcement of this system. On a second level, trust in the tax system must be created by implementing a common practice through all tax offices countrywide. Alongside these changes, regulations from an older time have to then be changed accordingly.

All things considered, the existing tax law is not the worst point to start from, and the steps being taken for further enforcement of the law are going in the right direction. With the new government, it can be expected that the implementation of common tax practice with all necessary enforcement will be the standard in the near future.

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