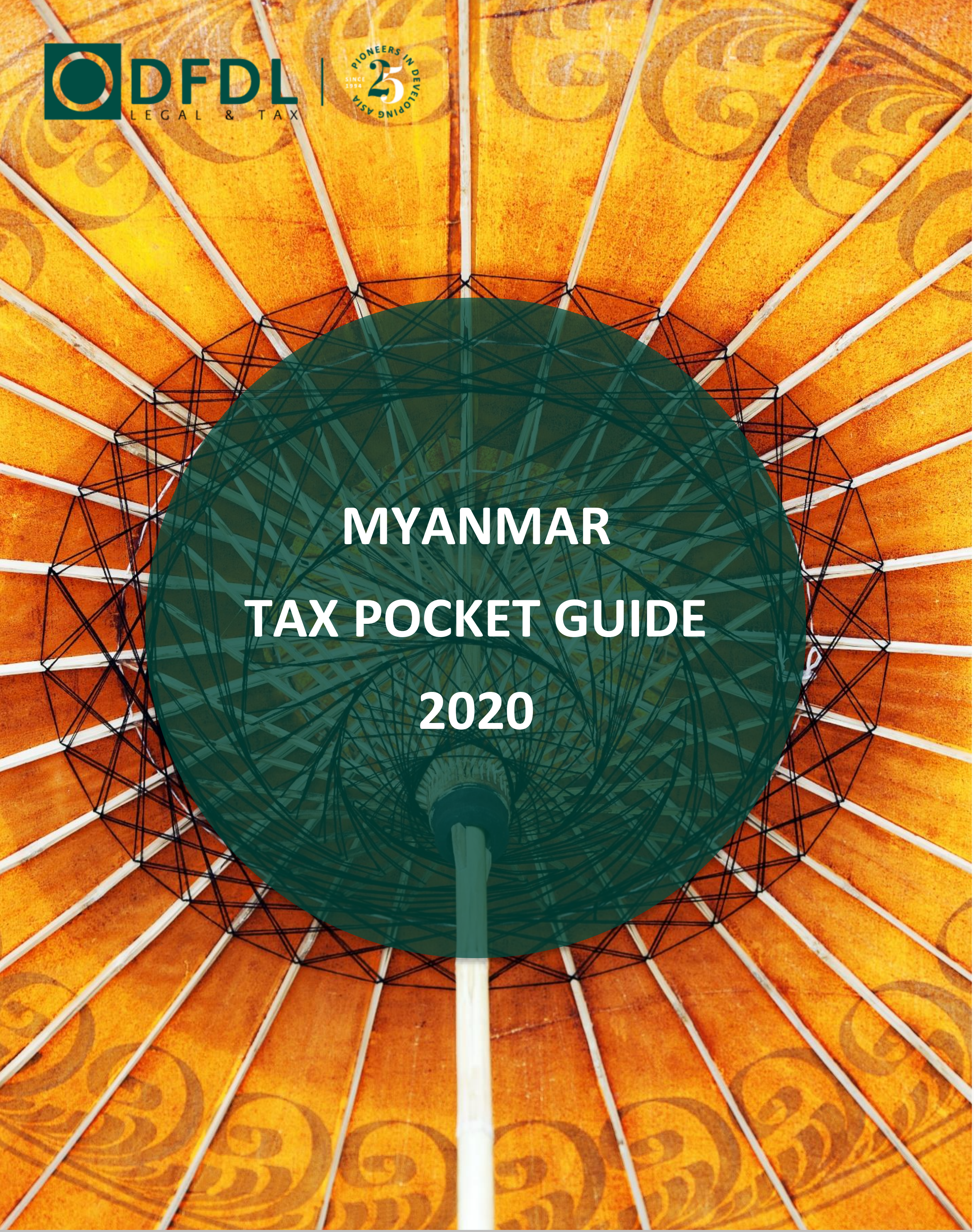

MYANMAR TAX POCKET GUIDE 2020

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MYANMAR I 2020 Edition

THE DFDL TAX POCKET GUIDE TO MYANMAR

Contents

The information provided in this guide is based on our understanding of publicly known Myanmar laws, regulations, and official practices as of 1 December 2019 and may be affected by laws that are subsequently adopted by Parliament or notifications that are adopted by various ministries. There may also be instances where the unofficial practices applied by the Government authorities (including the tax authorities) are not in accordance with or even contradictory to Myanmar law. More importantly, as the decisions of the courts and tax authorities are not made publicly available, it is possible that the tax authorities or the courts will adopt an interpretation of Myanmar laws which is not in accordance with our interpretation. Furthermore, not all laws and regulations are published.

The information contained in this book is provided for information purposes only, and is not intended to constitute legal and tax advice. Legal and tax advice should be obtained from qualified counsel for all specific situations.

For more information, please email us at
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1. OVERVIEW

The major tax laws in Myanmar include:

- The Union Tax Law ("**UTL**");
- The amended Income Tax Law of 1974 (the "**ITL**");
- The amended Commercial Tax Law of 1990 (the "**CTL**");
- The amended Specific Goods Tax Law of 2016 ("**SGTL**");
- The amended Myanmar Stamp Act; and
- The Tax Administration Law of 2019 ("**TAL**").

The UTL is a yearly tax law that supplements the exemptions, relief, and other benefits granted under the ITL, CTL, and SGTL. The ITL is supplemented by the Income Tax Rules, the Income Tax Regulations, and Notifications periodically issued by the Internal Revenue Department ("**IRD**"). The CTL and SGTL are also supplemented by implementing regulations and notifications. The Myanmar Stamp Act is supplemented by a schedule detailing the documents subject to stamp duty and the applicable rates. The TAL is a newly enacted law that provides a uniform tax administration procedures for income tax, commercial tax, and specific goods tax effective 1 October 2019.

The IRD, under the Ministry of Planning, Finance and Industry (previously referred to as Ministry of Planning and Finance or "**MoPF**"), administers taxation in Myanmar.

2. CORPORATE INCOME TAX ("CIT")

a. Tax Residency

The taxation of a corporate entity is determined by its tax residence. Under the Income Tax Law, a resident company is a company, a company formed under the Myanmar Companies Law ("**MCL**") or any other existing Myanmar law. Further, resident entities also include associations formed wholly or partly with foreigners and where the control, management and decision making of its affairs is situated and exercised wholly in Myanmar.

Entities that do not fall in the above definitions are considered non-residents.

Myanmar resident entities are subject to tax on income accrued, derived from, or received from any sources within and outside Myanmar. Non-resident entities are liable to pay tax only on Myanmar-sourced income.

b. CIT Rate

Resident and non-resident entities are generally subject to a 25% CIT rate. For companies listed on the Yangon Stock Exchange, the CIT rate is reduced to 20%.

For primary cooperative societies which are registered and established under the Cooperative Society Law, income tax will be assessed under the graduated income tax rates (generally applicable to individuals).

c. Taxable Income

As a general rule, CIT is charged on the total taxable income or net profit obtained within the tax year.

d. Tax Exempt Income and Relief

Income tax does not apply to the following types of income:

- Income received by a religious or charitable organization and used exclusively for religious or charitable purposes;
- Fees charged by a local authority;
- Insurance proceeds;
- Income of a casual and non-recurring nature except for capital gains and income from an enterprise;

- Share of the after-tax profits of an association; and
- Income received by newly established small and mid-sized enterprises during their first three years from commencing operations, if their income does not exceed MMK 10 million for three years in a row.

Additionally, the Government has the right to grant exemptions or relief from income tax or other benefits related to tax on the following types of income:

- Income obtained from donations for social, religious, health or educational causes in the country from domestic or foreign donors or international organizations;
- Aid provided to the country by domestic or foreign organizations;
- Interest paid on concessional loans or official development aid loans;
- Donated property or donations provided by domestic or foreign organizations in the event of natural disasters; and
- Matters related to the development of securities market.[1]

Furthermore, exemptions from income tax are also granted if stipulated under any Law relating to the United Nations, Diplomats, Counselors, International Organizations, Investment and Special Economic Zones, and other laws relating to income tax.

e. Non-deductible Expenses

Under the ITL, the following expenses are not deductible for CIT purposes:

- Capital expenditure;
- Personal expenditure;
- Expenditure not commensurate with the volume of business;
- Inappropriate expenditures incurred for purposes other than earning such income; and
- Payments made to a member of an association of persons other than a company and a cooperative society, provided that payments made for professional services will be deducted.

[1] Modified from "income of public companies listed on the Yangon Stock Exchange" under the 2018-2019 UTL.

f. Depreciation

Depreciation is deducted pursuant to the MoPF Notification No. 19/2016 with respect to buildings, plant and machinery, furniture, vehicles, and other capital assets:

Type of asset	Depreciation rate (percentage of original value or price)
A. Buildings	
i. First class substantial building constructed with selected materials and reinforced concrete	
- Factories	2.5
- Other Buildings	1.25
ii. Second class building of less substantial construction	
- Factories	5
- Other Buildings	2.5
iii. Wooden building with tile or corrugated iron roofing	
- Factories	10
- Other Buildings	5
iv. Buildings with bamboo and thatch	Replacement costs allowed as revenue expenditure
B. Furniture and fittings installed in buildings	
i. Cups, glassware, cotton, and plastic cloth	5
ii. Furniture and fittings, silverware, and kitchen equipment used in hotels, cinemas, boarding and guest houses	6.25
iii. Musical instruments used in hotels, theatres and cinemas	10

Type of asset	Depreciation rate (percentage of original value or price)
C. Machinery and Plant	
i. General	5
ii. Machinery, equipment, and various machine tools	2.5-20
D. Vehicles	
i. Aircraft	12.5
ii. Waterway transport	5-10
iii. Road transport vehicles	12.5-20
E. Miscellaneous items	
i. Office equipment and weighing machines apparatus	10
ii. All other items mentioned in the Notification	5-20

Tools, apparatus, and appliances or other capital assets not included in the MoPF Notifications are depreciable at the rate of 5% per annum based on the original cost.

Tax depreciation, using the rates prescribed in the Notification, may be claimed for the whole year irrespective of the date of the asset purchase.

g. Losses

Tax losses may be offset against taxable income. Unutilized tax losses can be carried forward and offset against future taxable income for up to a maximum of three consecutive years.

Tax losses from capital assets or a share of loss from an association of persons (including companies and partnerships) cannot be offset against taxable gains from other sources or carried forward.

h. Donations

Contributions to religious or charitable institutions sponsored by the state or recognized by the MoPF may be deducted, but deductions are limited to 25% of the taxable income. Further, the Practice Statement 2/2018 dated 14 November 2018 provides qualifications for the deduction of donations:

- Donations made by individual cannot be used as deduction in the company’s taxable income.
- The 25% threshold on donation is based on the net profits before the donation was made. No deduction on donations will be allowed if the company is operating in a loss position.
- The donor is required to secure certification of the donation from religious or charitable institutions in order to claim the tax deduction.

3. PERSONAL INCOME TAX ("PIT")

a. Tax Residency

Myanmar citizens who are living in Myanmar and foreigners who reside in Myanmar for at least 183 days during an income year from 1 October to 30 September of the following year (previously 1 April to 31 March) are considered residents for Myanmar tax purposes. For the transition year of reporting for the period 1 April to 30 September 2019, the tax residency is determined based on the actual number of days spent in Myanmar during the six-month period multiplied by two.

Residents are subject to income tax on all income derived from sources within and outside of Myanmar.

Non-resident citizens are subject to tax on all income except on salary earned abroad. Non-resident foreigners are taxed only on income derived from sources within Myanmar.

b. PIT Rate

Income tax is levied at the following progressive rates on salary received by residents and non-resident foreign nationals in Myanmar Kyats ("**MMK**") and foreign currency, after deductions of exemptions and relief:

Taxable Income				Marginal rate (%)
In MMK			In USD (estimate)*	
Up to		2,000,000	up to 1,333	0
2,000,001	–	5,000,000	1,334 – 3,333	5
5,000,001	–	10,000,000	3,334 - 6,666	10
10,000,001	–	20,000,000	6,667 - 13,333	15
20,000,001	–	30,000,000	13,334 - 20,000	20
Over 30,000,000			Over 20,000	25

**Using estimated exchange rate of USD 1 = MMK 1,500*

An individual who derives income from the leasing of land, buildings and apartments is separately subject to 10% PIT. Furthermore, a non-resident citizen is subject to 10% PIT in foreign currency, on total income earned abroad (except income on salary earned abroad).

c. Income not subject to tax

An individual is exempt from income tax if his or her total income is less than MMK 4.8 million in a year. Additionally, the following types of income are not subject to PIT:

- Pensions, income converted from pensions or gratuities;
- Compensation for death or physical injury;
- Insurance proceeds;
- Share of the after-tax profits (including dividends) of an association;
- Rewards received from the Union (including awards for the seizure of illegal material);
- Lottery winnings received from the Aung-bar-lay State lottery;
- Remuneration awarded by the State on finding ancient artefacts; and
- Income from salary received in foreign currency by a citizen residing abroad.

d. Relief and Allowances

A personal allowance of 20% of each class of income but not exceeding MMK 10 million may be deducted from taxable income. In addition, the following allowances for dependents may be deducted:

- Parent: MMK 1 million per parent;
- Spouse: MMK 1 million; and
- Children: MMK 500,000 per child.

To claim relief, the parents must be unemployed and living with the taxpayer. Spouse relief is available if the spouse is unemployed. Child relief is available for every child who is unmarried, not earning assessable income, and under 18 years of age, or if above, receiving full-time education.

e. Benefits other than salaries

Perquisites received in lieu of or in addition to salary and wages are included in the definition of salary, and thus subject to income tax. There is no precise definition of "perquisite" in the tax legislation.

Housing allowances paid in cash, transportation allowances and personal use of motor vehicles and other benefits are considered perquisites. The use of housing facilities by employees where the lease is signed in the name of the employer is non-taxable.

PIT borne by an employer on behalf of an employee is regarded as a perquisite of the employee, and must be added to the employee's gross salary.

f. Employer's Responsibility

The employer is responsible for withholding and reporting the income tax on salary at the time of payment to employees. Please refer to related discussion in the *Tax Administration* section.

g. Social Security

The Social Security Act of 2012 provides that private enterprises employing five or more workers must contribute 3% of their insured wages (maximum of MMK 9,000) to a social security fund per month. Meanwhile, the employees' level of contribution is 2% of their insured wages (maximum of MMK 6,000) per month.

4. CAPITAL GAINS TAX ("CGT")

a. In general

Capital gains are assessed and reported separately from ordinary income. CGT is levied on gains from the sale, exchange, or transfer of capital assets if the total value of the assets sold, exchanged, or transferred during the year is more than MMK 10 million. It is assessed in Myanmar Kyats or the foreign currency in which the transaction was made.

b. CGT rate

Under the 2019 UTL, the CGT rate is 10% of the capital gain by individuals and companies. If the company is participating in Myanmar's oil and gas exploration (upstream sector), CGT shall be assessed at the graduated rates below:

Gain	Tax Rate
Up to the equivalent of MMK 100 billion	40%
From the equivalent of MMK 100 billion+1 to 150 billion	45%
Equivalent of MMK 150 billion+1 and above	50%

In computing capital gains, the following may be deducted:

- The net value remaining after depreciation allowances (applicable to business assets only);
- Any expenditure of a capital nature actually incurred for making any additions to the asset; and
- Expenditures incurred in the procurement of the asset and in regard to the sale, exchange, or transfer.

If the IRD is of the opinion that the value stated by the taxpayer in respect of the sale, exchange, or transfer of the capital asset is, without sufficient justification, less than the market value prevailing at the time of the transaction, the IRD has the power to adjust such a value to be at the prevailing market rate. If the original cost actually incurred by the taxpayer in the procurement of the capital asset cannot be ascertained, or if the capital asset was acquired through inheritance or by way of a gift, the market value prevailing at the time of the acquisition is deemed to be the taxpayer's original cost.

5. INCOME THAT HAS ESCAPED ASSESSMENT

A tax on "income that has escaped assessment" is imposed on a company or a citizen that is unable to show the source of income which was used for buying, constructing, or obtaining any assets, and establishing a new business.

The 2019 UTL introduces an income tax amnesty for citizens of Myanmar with undisclosed incomes or "income escaped from assessment." The amnesty tax rates will be as low as 3% for unassessed income up to MMK 100 million, 5% for income between MMK 100 million to MMK 300 million, 10% for income between MMK 300 million to MMK 1 billion, 15% of income between MMK 1 billion to MMK 3 billion, and 30% for income exceeding MMK 3 billion. Prior to the introduction of the 2019 UTL, undisclosed sources of income were taxed at the range of 15% to 30%.

The following tax rates will apply:

Income (MMK)			Income tax rate (%)
Up to		100,000,000	3
100,000,001	–	300,000,000	5
300,000,001	–	1,000,000,000	10
1,000,000,001	–	3,000,000,000	15
3,000,000,001		and over	30

Taxpayers can only avail this tax amnesty within one year starting from 1 October 2019 until 30 September 2020.

6. WITHHOLDING TAX ("WHT")

The MoPF enacted a new WHT Notification No. 47/2018 on 18 June 2018 outlining the rules on payments to resident and non-resident taxpayers in Myanmar. This Notification is effective from 1 July 2018 and supersedes the WHT Notification No. 51/2017 that was issued last 22 May 2017.

The major change in Notification No. 47/2018 is the removal of 2% WHT on payments to residents for services rendered, goods purchased, and leases within Myanmar. Effective 1 July 2018, the WHT rates are as follows:

	Type of payment	Rate if paid to a resident	Rate if paid to a non-resident
a.	Interest Payments.	N/A	15%
b.	Royalties for the use of licenses, trademarks, and patent rights.	10%	15%
c.	Payments by Union level organizations, Department of Union Ministries, the Naypyitaw Council, Regional or State Governments, State-owned enterprises, or Municipal organizations for the purchase of goods, work performed, or supply of services within the country under a tender, bid, quotation, contract, agreement or other modes.	2%	2.5%
d.	Payments by enterprises carried out jointly with the State on a mutual-benefit basis, joint ventures, partnerships, companies, associations of individuals, organizations, or associations registered and organized under existing laws, cooperatives, foreign companies, foreign enterprises for the purchase of goods, work performed, or supply of services within the country under a contract, agreement, or other modes.	Exempt (previously 2%)	2.5%

There is no WHT on dividends, whether paid to a resident or a non-resident.

WHT on payments to residents and to Myanmar branches of a foreign company is not a final tax and can be credited against the resident's or the Myanmar branch's income tax liabilities for the year. Meanwhile, WHT on payments to non-residents (excluding Myanmar branches of a foreign company) is deemed final.

Notification No. 47/2018 also provides WHT exemptions on payments by government and state-owned enterprises for the purchase of goods and services from the private sector if the amount does not exceed MMK 1 million per supplier per year. This also applies to payments between government and state-owned enterprises, and interest payments to a branch of a foreign bank in Myanmar.

Payments to non-residents may be entitled to a WHT exemption or reduction under Double Tax Agreement ("**DTA**") between Myanmar and another country. Currently, Myanmar has DTAs with eight countries: India, the Lao PDR, Malaysia, Singapore, South Korea, Thailand, the United Kingdom and Vietnam. Please refer to related discussion in the *Tax Administration* section.

7. COMMERCIAL TAX ("CT")

a. In general

Commercial tax, similar to Value Added Tax, is a tax imposed on goods produced and services rendered in Myanmar, and also on goods imported into the country.

CT Rate

CT at 5% is generally imposed on goods produced and sold as well as services rendered within the country, based on the sales proceeds. Lower CT rates apply on the sale of buildings (after being constructed) and the sale of gold jewelry.

CT is also levied on imported goods based on the landed cost.

CT is generally not imposed on the export of goods except for the export sale of electricity and crude oil, which are subject to CT at rates of 8% and 5%, respectively.

b. CT Exempt Goods and Services

Various items are listed as CT exempt goods (42 imported or domestically produced items). These generally consist of agricultural and other essential products. Similarly, there are 32 types of services exempt from CT. The CT-exempt services include education services, life insurance services, microfinance services, and intra-government services, among others. Effective 1 October 2019, the CT exemption also covers postal services provided by the Union Government.

Taxpayers whose revenue does not exceed MMK 50 million during the next twelve-month period are exempt from the payment of CT.[2]

The 2019 UTL provides that the Government may approve CT exemption or relief with respect to work carried out through donations, aid, or loans by local and domestic organizations.

c. Input CT Credits

A CT-registered taxpayer may offset input CT against output CT. In case of local purchase, a CT Certificate (known as a Form 31) must be secured from the supplier

[2] Prior to 1 October 2019, the CT exemption threshold applies will be based on revenue received during the relevant financial year.

in order to support the input CT claim. Input CT paid on fixed and capital assets and those related to damaged and unsold goods may not be offset against output CT.

The 2019 UTL provides that CT paid on the purchase of gold jewelry (whether at the time of importation or local purchase) is not allowed to be offset with the output CT on domestic or export sales.

d. CT of a Non-resident Service Provider

Non-residents who provide services in Myanmar are required to be registered for CT pursuant to MoPF Notification No. 180/2015. In this case, the person deemed as the service provider’s representative in Myanmar under Regulation 47 of the CT Regulations should register for CT on behalf of the service provider. Such a representative can be:

- a person delegated, by any means, by the person residing overseas or in the country relating to his or her work in the country;
- a person who has an economic connection with the person residing overseas or in the country; or
- a person who obtains income on account of the person residing overseas or in the country.

The representative will be required to register and pay the CT to the IRD on behalf of the non-resident. In the event that the representative is its local payer, the local payer will withhold the CT from its payments to the non-resident and remit the same (on behalf of the non-resident) to the IRD.

8. SPECIFIC GOODS TAX ("SGT")

a. In general

SGT (equivalent to excise tax) became effective on 1 April 2016 and is a tax imposed on importers, exporters, manufacturers, and storage providers of tobacco, alcohol, wood, cars, fuel, and gemstones.[3]

SGT is levied on:

- the higher value between landed cost or the value as determined in advance by the Management Committee of the IRD in the case of importation;[4]
- the higher value between the sales proceeds or the estimated selling price set by the tax authorities in the case of locally produced goods (unless covered by specific notifications from the IRD);[5] or
- the cost incurred until the time of loading in the case of the export of specific goods.

SGT is imposed under the following rates:

Types of Specific Goods	Rates
Various kinds of cigarettes and tobacco products	Various
Various kinds of alcohol products	Various
Wood logs and wood cuttings (referred to as "Rough Sawn")	5% (10% upon export)

[3] Gemstones were previously subjected to SGT until 30 September 2019.

[4] Landed cost refers to the aggregate cost including the value specified by the customs law for imported Specific Goods, customs duty levied on them and cargo discharging expenses.

[5] The 2019 UTL provides that the Management Committee of the IRD shall set the prescribed price for locally-manufactured specific goods similar to the value of the landed cost upon importing such goods.

Types of Specific Goods	Rates
Vehicles above 1500 CC such as vans, saloon cars, sedans and estate wagons, coupe vehicles (except double cab four door pickup trucks)	10%-50%
Kerosene, Petrol, Diesel, Jet fuel (octane)	5%
Natural gas	8%

Both CT and SGT will be charged when importing, manufacturing, or exporting the specific goods. Previously, exports of gemstones, logs and conversions, and natural gas are subject to SGT. However, effective 1 October 2019, only the export of logs and conversions is subject to export SGT.

CT will be paid on the sales proceeds inclusive of SGT or on the determined value inclusive of SGT if imported at the 5% tax rate.

b. SGT Exempt Goods

Under the SGT Law, the following specific goods are exempt from this tax:

- Specific goods which are exported, sold by duty free shops to travelers, or sold onboard an outbound plane or ship (except those subject to export SGT under the UTL);
- Specific goods which are imported into the country for temporary use and later re-exported to the original country in the original quantity and condition in accordance with customs regulations;
- Specific goods which are imported or produced in the country by local or foreign donors and are meant to be donated to the country for social, religious, health, and education purposes;
- Specific goods which are imported by those who enjoy the exemption under international law, international or diplomatic conventions; and
- Fuel to be used for aircraft flying abroad.

9. GEMSTONE TAX

a. In general

The importation, manufacture, and export of gemstones were previously subjected to SGT. However, effective 1 October 2019, the imposition of SGT on gemstones will be replaced by the Gemstone Tax.

The tax for the import of gemstones will be based on the landed cost of the imported items. Meanwhile, the tax on the sale of gemstones will be based on the higher of the actual sales value or the value as determined by the Myanmar Gems Enterprise.

Effective 1 October 2019, the following are the tax rates applicable to the importation, sale, and export of gemstones:

Types of Gemstones	Rates
Raw Jade	11%
Raw Rubies, Sapphires, and other precious stones (excluding diamonds and emeralds)	9%
Processed Jade, Rubies, Sapphires and other precious stones (except diamonds and emeralds), and jewellery with Jade, Rubies, Sapphires and other precious stones (excluding diamonds and emeralds)	5%
Products made with gemstones	5%

10. TAX INCENTIVES

a. In general

The government may grant tax exemptions, relief, or other benefits with respect to any taxpayer or class of taxpayers, or any income or class of income under the ITL, IT Rules, and IT Regulations.

b. Entities registered with the Myanmar Investment Commission (“MIC”)

Foreign investors doing business under the Myanmar Investment Law 2016 (“**MIL**”) that have obtained permits or endorsements from the MIC may be entitled to special tax incentives, including the following:

- Income tax holidays (“**ITH**”) - The less developed regions are designated as Zone (1), moderately developed regions as Zone (2), and developed regions as Zone (3). The MIC will, with the approval of the Government, issue a notification and may grant income tax exemptions to:

  - Investment activities in Zone (1) for a period of seven consecutive years including the year of commencement of commercial operations;

  - Investment activities in Zone (2) for a period of five consecutive years including the year of commencement of commercial operations; and

  - Investment activities in Zone (3) for a period of three consecutive years including the year of commencement of commercial operations.

  MIC Notification No. 10/2017 provides the designation of Zones while MIC Notification No. 13/2017 provides the promoted sectors entitled to income tax exemption.

- Relief from customs duty and other internal taxes:

  - Exemptions or relief from customs duty, or other internal taxes, or both, 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 period or during the preparatory period of the investment;

- Exemptions or relief from customs duty, or other internal taxes, or both, on the importation of raw materials and partially manufactured goods conducted by an export-oriented business for the purposes of manufacturing products for export;

- Reimbursement of customs duty, or other internal taxes, or both, on imported raw materials and partially manufactured goods which are used to manufacture products for export; and

- If the volume of investment is increased and the original investment is expanded during the permitted period of investment, further exemptions or relief may be granted from customs duty, or other internal taxes, or both. These may apply on machinery, equipment, instruments, machinery components, spare parts, materials used in a business, and construction materials unavailable locally, which are imported as they are actually required for use in a business which is being expanded.

▪ Others

  - Exemptions or relief from income tax may be available if the profits generated from an investment that has obtained a Permit or an Endorsement are reinvested into the same registered investment or in any similar type of investment activities within one year;

  - Right to depreciation for the purpose of income tax assessment, after computing such depreciation from the year of commencement of commercial operation based on a depreciation rate which is less than the stipulated lifetime of the machinery, equipment, building or capital assets used in the investment; and

  - Right to deduct from assessable income, expenses which are incurred for research and development related to investment activities carried out within Myanmar, and actually required for the economic development of Myanmar.

The MIC issued Notification No. 84/2017 on 10 October 2017 that expands the criteria of Myanmar entities which can qualify for MIC endorsement benefits under the Myanmar Investment Law. In this case, MIC endorsement benefits are now being extended to: 1) existing companies which have not previously sought MIC benefits and 2) companies holding MIC endorsement approval that did not previously seek tax exemptions on importation. The Notification states, however, that investors can apply for relief on customs duties and internal tax, but not ITH relief.

Similarly, MIC issued Notification No. 87/2017 on 20 November 2017 that allows 100% export-oriented investments (i.e. investors who supply all of their finished goods and semi-finished goods manufactured locally to investment businesses which are 100% export oriented) to apply for relief on customs duty and tax on importation.

Note that the MIC will not automatically grant these exemptions. Most of the exemptions and relief must be sought by submitting a request to the MIC.

c. Incentives under the Special Economic Zone Law ("SEZL")

A Special Economic Zone (SEZ) includes zones designated for high-tech, information and telecommunications technology, export processing, port areas, logistics and transportation, scientific and technological research and development, service businesses, and sub-trading industries. Currently, there are three SEZs in Myanmar: 1) Thilawa; 2) Kyaukphyu; and 3) Dawei.

Foreign investors and developers carrying out business in the SEZs may be granted the following tax exemptions or relief:

For investors

- ITH for the first seven years for investors in the Free Zone,[6] or for the first five years for investors in a Promotion Zone[7] starting from the date of commercial operation;

[6] Free Zone is mainly focused on export-oriented markets

[7] Promotion Zone is mainly focused on domestic market and the market in SEZs

- Reduction of 50% income tax for the next five-year period for investors in the Free Zone and a Promotion Zone;
- For the following five-year period, a 50% income tax relief on profits of the business if they are maintained for reinvestment in a reserve fund and reinvested therein within one year after the reserve is put in place;
- Exemption from import duty on certain goods;
- For investors in the Free Zone, an exemption on customs duty and other taxes for raw materials, machinery and equipment, and certain types of goods imported for investors in free zones;
- For investors in a Promotion Zone, an exemption on customs duty and other taxes for the first five years in respect of machinery and equipment imported that are required for construction starting from the date of commercial operation, followed by 50% relief on customs duty and other taxes for a further five years; and
- Carry forward of losses for five years from the year the loss is sustained.

For Developers

- ITH for the first eight years from the commencement of business operations;
- 50% relief on income tax for the second five year period;
- 50% relief on income tax for the third five year period on profits earned from the business if they are reinvested within one year in the business as a reserve fund;
- Exemptions from customs duty and other taxes for raw materials, machinery, and equipment and certain types of imported goods; and
- Carry forward losses for five years after they were sustained.

11. STAMP DUTY

Stamp duty is collected from the affixing of judicial and non-judicial stamps. Judicial stamps are for use in judicial proceedings while non-judicial stamps are for general purposes.

a. Judicial Stamp Duty

Judicial Stamp Duty is collected from the affixing of judicial stamps and represents fees payable under the Court Fees Act. The rates vary depending on the subject matter of the document. Taxable documents include complaints, probates of a will, letters of administration, succession certificates, petitions, applications for leave to sue, memoranda of appeal, bail-bonds, and so on.

b. Non-Judicial Stamp Duty

Non-Judicial Stamp Duty is levied on various kinds of instruments, which are required to be stamped under the Myanmar Stamp Act. Instruments chargeable for duty and the corresponding rates are mentioned in the schedule annexed to the Act. Common instruments subject to stamp duty include the following:

Types of Instrument	Rates
Conveyance of immovable property	2%[8]
Lease of immovable property	0.5%-2% (based on the term)
Bonds (including mortgage deeds)	0.5%
Transfer of shares	0.1%
Agreements relating to joint venture agreements, production or profit sharing contracts, construction agreements or other similar contracts	1% of the value (maximum of MMK 150,000)

[8] Additional 2% surcharge and municipal charges may apply depending on the location of property

The stamp duty is generally the liability of the person as stated in the agreement. In case the agreement is not clear on who will be liable to pay the duty, Section 29 of the Myanmar Stamp Act states the person who will be liable to pay the duty on certain types of instrument. If the type of instrument does not fall within the list per Section 29 of the Act, the tax can generally be charged to either party.

Stamp Duty must be paid before or upon execution of the contract if executed within Myanmar. Meanwhile, documents executed abroad must have the duty paid within 90 days of the document being received or brought into Myanmar. The penalty for late payment of stamp duty is reduced to three times (previously ten times) of the deficient or unpaid amount starting 26 November 2019.

12. PROPERTY TAX

Property tax applies to Immovable property (land and buildings) situated within Myanmar and are payable by Myanmar citizens or a Myanmar local company. In the Yangon development area, the following are the applicable property tax:

- General tax not exceeding 8% of annual value;
- Lighting tax not exceeding 5% of annual value;
- Water tax not exceeding 3.25% of annual value (depending on the township); and
- Conservancy tax not exceeding 8.5% of annual value (depending on the township).

The "annual value" refers to the gross annual rent for which the land and building may be expected to be leased unfurnished, including any additional amount as periodically determined by the Yangon City Development Committee, or local development committee on the value of property to be taxed.

Property taxes are imposed by local development committees, and thus may vary from place to place within the country.

13. CUSTOMS AND IMPORT DUTIES

In line with the latest 2017 Customs Tariff of Myanmar, customs duty is payable according to the tariff schedules based on assessable value. Rates range from 0% to 40%. Cars, luxury items, and jewelry are subject to the highest rates.

According to the MIL, exemption or relief from customs duties may be granted on machinery, equipment, components, spare parts, and materials imported for use during the construction period for a company receiving benefits under the FIL. Similar exemptions or relief may be granted to such companies on raw materials imported in the first three years of commercial production.

The Sea Customs Act of 1878, among other things, makes provision for refunds. For example, it provides that seven eighths of the customs duty paid on goods will be refunded when such goods are withdrawn from the country again under a drawback facility.

Myanmar is committed to respecting the reduced tariff rates under Free Trade Agreements ("**FTAs**"). A consideration for the possible reduction of tariffs is whether the "country of origin" of the imported goods is a jurisdiction with which Myanmar has an existing FTA. Myanmar's FTAs include the ASEAN FTA and the companion FTAs with China, Japan, South Korea, Australia, New Zealand, and India.

In addition to Customs Duties and CT on importation, advance income tax on importation (equivalent to 2% of customs value) is levied on imported goods. The WHT may be offset against the final assessment of CIT, and the excess WHT will be refunded to the taxpayer.

The advance income tax will not apply to:

- Goods imported or exported using the budget allowance by the ministry, departments, and state-owned enterprises;
- Motor vehicles imported by individuals after returning the permit for old vehicle;
- For MIC-registered enterprises, machines, equipment, and spare parts imported to be used during the construction period and raw materials imported within the first three years after the construction period;
- Goods imported with donation of local or foreign organizations;

- Fire engines, funeral engines, ambulance (except hospital vehicles imported by private businesses);
- Raw materials imported for contract-manufacturing services; and
- Goods imported under draw-back system or under temporary importation.

Previously, goods exported by taxpayers who are under self-assessment system at the Large Taxpayers Office and Medium Taxpayers Office No. 1 are also covered by the advance income tax exemption. However, this exemption was removed by the MOPF effective 1 May 2019.

14. TAX ADMINISTRATION

a. Tax Registration

Tax registration is processed only after the company has successfully registered its business with the Directorate of Investment and Company Administration ("**DICA**") or relevant government authorities in Myanmar. The IRD evaluates the classification of the taxpayer and determines the relevant tax office that will be assigned to the company (normally based on the taxpayer's company registration with DICA).

Once processed, the relevant tax office will issue the taxpayer identification number ("**TIN**") or an ordinary tax registration number to the taxpayer. The issuance of a TIN or ordinary tax registration number will depend on whether the taxpayer is registered under the Self-Assessment System or Office-Assessment System of the IRD.[9]

In general, the company registration number as issued by DICA is the TIN to be used by the taxpayer. However, the TAL provides that the IRD will issue a unified TIN to be used by taxpayers for all types of tax. Such a unified TIN will be announced by the IRD in an Official Gazette.

After securing the TIN or registration number from the relevant tax office, the taxpayer is required to register its business for CT and SGT (as applicable). The CT registration must be done by the taxpayer at least one month before the start of its commercial operations. Meanwhile, the SGT registration must be done by the taxpayer at least three months before the start of commercial operations. Both CT and SGT registrations are subject to renewal on an annual basis.

b. Tax Year

Effective 1 October 2019, the taxable period of companies and businesses is its financial year (income year), which is from 1 October to 30 September of the following year (previously 1 April to 31 March). This change in the tax year of reporting was first adopted by state-owned enterprises and certain financial institutions on 1 October 2018 in order to align with the change in Myanmar's

[9] As of 1 November 2019, the Self-Assessment System applies to taxpayers under Large Taxpayers Office and under Medium Taxpayers Office No. 1.

budget year. Thus, all taxpayers other than state-owned enterprises will have to adopt this new taxable period effective from 1 October 2019.

The 2018-2019 UTL specifically provides that private companies and businesses will follow a 6-month transition period from 1 April 2019 to 30 September 2019, and that they will be required to adopt the new financial year beginning 1 October 2019.

c. Tax Payments

Prior to 1 April 2012, tax payments were required to be made in the transactional currency (i.e. should a gain arise from exports denominated in USD, the income tax on those exports had to be paid in USD). This practice has now been limited to certain types of taxpayers (i.e. Foreign Branches without MIC status) and transactions (i.e. gains from the disposal of capital assets by companies carrying on a business in the oil and gas sector) due to the adoption of a single MMK exchange rate as discussed above.

Starting in February 2018, the IRD implemented an online payment system through which taxpayers can easily submit their due taxes. This online system aims to reduce delays resulting from manual filing and the clearing of checks with local banks, and to streamline tax payment procedures with the Myanmar Economic Bank.

d. Due Dates

Individual and Corporate Annual Tax Returns must be submitted to the IRD within three months of each fiscal year end. For the six-month transition period ending 30 September 2019, the annual income tax return must be filed on or before 2 January 2020.

If a business is discontinued, the tax returns must be submitted within one month from the discontinuation of the business.

Income tax returns on capital gains must be submitted within 30 days from the disposal of the assets concerned.

Tax	Tax Liability	Deadline
Corporate Income Tax	25% Quarterly Payment (advance tax)	10 days after end of the quarter.
	25% Annual CIT Return	3 months from the end of the fiscal year. An RO is required to file a nil CIT return.
Commercial Tax	Annual Registration	Registration must be performed one month prior to commercial operations (annual registration is now required at least one month before the expiration of the CT certificate).
	Monthly CT Payment	10 days after the end of the month.
	Quarterly CT Return	30 days after the end of the quarter.
Commercial Tax	Annual CT Return	3 months from the end of the fiscal year.
	Generally, 5% on importation.	Upon importation.
Personal Income Tax	0-25% advance PIT on salary (on account of employment)	7 days after payment.
	Annual Salary Statement	3 months from the end of the fiscal year.
Withholding Tax	Required to be withheld on payment	7 days after payment.
Other Taxes	Monthly Social Security	Within 15 days from the end of each month.
	Specific Goods Tax	If imported, before the release of specific goods from customs. If exported or manufactured domestically, monthly payment within 10 days after the

Tax	Tax Liability	Deadline
		end of the month when the goods are manufactured or exported. A quarterly SGT return must also be filed to the tax office within ten days after the close of the quarter.
	Import Taxes	Before the release of the goods from customs.
	Capital Gains Tax	Within 30 days from the disposal of the capital asset. For consolidated CGT filings, an annual return must be filed within 3 months from the end of the fiscal year.
	Stamp Duty	Payable before or at the time that an agreement is executed. If executed abroad, stamp duty must be paid within three months of being brought into Myanmar.

e. Penalties

The TAL introduces a comprehensive list of penalties for non-compliance. Penalties can be fixed or based on a percentage of the tax due, ranging from 10% up to 100% of the tax due depending on the type of offense, such as the following:

1) If the taxpayer fails to file a tax return on time, the penalty will be the higher between:

    - 5% of the tax due + additional 1% of the tax due for each month (or the proportionate amount if less than a month) from the due date of the return until the date of the IRD assessment; or

    - MMK 100,000.

The above penalties will not apply for stamp duty, where the penalty for late payment is three times (previously ten times prior to 26 November 2019) of the basic tax due.

2) If the taxpayer fails to make the advance tax payments, including WHT, on time: 10% penalty on the late payment.

3) If the taxpayer deliberately provides an incorrect statement or intentionally omits a key matter that result to a reduction of the taxpayer's tax liability, the following penalties will apply:

   - 25% of the underpayment if the amount of underpayment is less than MMK 100 million or not more than 50% of the tax payable; or

   - 75% of the underpayment if the amount of underpayment is more than MMK 100 million or 50% of the tax payable.

4) If the taxpayer fails to register or to notify about changes regarding taxpayer information (including failure to apply for cancellation of tax registration): 10% of the tax due.

5) If the taxpayer deliberately fails to provide correct disclosures such as: a) using fraudulent or incorrect TINs; b) issuing incorrect invoices or receipts; c) issuing incorrect receivables or payable records; and d) providing invoices, receipts receivables and payables not according to tax laws: a MMK 250,000 fixed penalty will apply.

f. Tax Audits

Tax audits are performed on a case-by-case basis. Normally, a pre-tax assessment review is conducted by the relevant tax office after submission of annual tax returns to confirm the tax payments made by the taxpayer during the relevant tax year. Once confirmation of tax payments is determined, the relevant tax office will issue a Notice of Demand or Confirmation for Self-Assessment at the time of assessment (during the "assessment year" or the year following the income year). Despite receiving such Notice or confirmation, taxpayers may still be subject to further tax audits within three years after the assessment year.

Based on the internal guidelines from the IRD, taxpayers will be selected based on the following criteria:

- The taxpayer's current economic status or regulatory compliance;
- Substantial decrease in tax payments;
- Unusual particulars mentioned in the tax returns;
- Documentary evidence in fulfilling tax payment obligations;
- The IRD's assumption that the tax returns provided by the taxpayer are incorrect (after obtaining other facts and information);
- Substantial amounts of net loss;
- Regional information available via the media or unusual wealth; and
- Random selection as determined by the IRD.

Under the TAL, the IRD can also conduct an advance assessment on a taxpayer before the tax is due. The IRD can make an advance tax assessment based on relevant information received prior to the periods in which the tax shall be due. The taxpayer may appeal if the amount is significant or there is a valid reason to justify that no advance assessment should occur.

g. Statutory Limitations

Effective 1 October 2019, the IRD can re-assess or audit a taxpayer for up to six years (previously three years) after the end of the relevant assessment year.[10] In cases of fraud, the period will be extended to 12 years.

h. Retention Period of Maintaining Documents

Effective 1 October 2019, taxpayers are now required to retain documents for seven years (previously three years) from the date of the transaction. There can be cases where the IRD may request the taxpayer to maintain documents longer than this period if the transaction (or the duration of the contract) will exceed seven years.

[10] Assessment year is defined as the year following the taxable period.

The extension of the retention period of documents to seven years is in line with the new period in cases of re-assessments of tax returns by the IRD.

i. Transfer Pricing Rules

There are no transfer pricing rules yet in Myanmar. However, based on the draft of the new Income Tax Law, the Director General of the IRD will have the right to apportion or allocate income or deductions between the parties to the transaction to properly reflect the income or deductions that would have been realized in an arm's length transaction.

j. Thin Capitalization Rules

There are no thin capitalization rules yet in Myanmar. However, the draft of the new Income Tax Law provides a benchmark of 2:1 average debt to equity ratio. Interest payments relating to debts in excess of this ratio can be disallowed.

k. Double Tax Agreements

Myanmar currently has DTAs with eight countries: India, the Lao PDR, Malaysia, Singapore, South Korea, Thailand, the United Kingdom, and Vietnam.

Taxpayers need to apply administrative procedures for claiming tax relief based on a DTA with the IRD. In practice, the Myanmar tax authorities and the MoPF need to be consulted by the payer on a case-by-case basis to obtain tax treaty relief. The authorities will examine documents including contracts, certificates of residency, and the facts and the circumstances of the case before rendering their decision.

l. Anti-Avoidance Rules

The TAL introduces a new Anti-Avoidance provision stating that "*The Director-General may, in conducting an assessment, disregard an act or series of acts which were fabricated or fraudulently created to reduce the tax. Moreover, the Director General may conduct an assessment based on economic substance without considering such a false act or series of acts*."

Prior to the introduction of the TAL, there were provisions in the Income Tax Law for dealing with cases of tax evasion but not for tax avoidance. The new anti-avoidance provision provides that the Director General of the IRD can disregard an act or series of acts where it can be shown that the acts were fabricated or fraudulently created to reduce tax and that the Director General may conduct an assessment based on ‘economic substance’. However, the new law provides no clear definition of economic substance and no guidance as to what may constitute a case of tax avoidance.

15. ACCOUNTING AND FINANCIAL REPORTING

a. Financial Statements

Financial statements are currently prepared in accordance with Myanmar Accounting Standards (“**MAS**”) and Myanmar Financial Reporting Standards (“**MFRS**”). The MAS and MFRS are based on the International Financial Reporting Standards (“**IFRS**”) issued by the International Accounting Standards Board.

The Myanmar Accountancy Council issued Notifications in July 2018 requiring Public Interest Entities (“**PIEs**”), which include banks, insurance companies, and public companies, and Small and Medium Enterprises (“**SMEs**”) to prepare their financial statements in accordance with the IFRS or the IFRS for SMEs starting from 2022-2023 financial year.

Financial statements can be prepared in English or Myanmar.

b. Financial Year-end

The financial year is the same as the tax year. For private companies and businesses, the financial year will be from 1 October to 30 September effective 1 October 2019. This financial year of reporting is mandatory and cannot be varied.

c. Reporting Currency

The statutory reporting currency is Myanmar Kyats (MMK).

d. Audit Requirements

A corporate taxpayer is required to submit its audited financial statements to the DICA and to the IRD if the taxpayer is under the Office Assessment System of the Medium Taxpayers Office. If the corporate taxpayer is under the Self-Assessment System of the IRD, the submission of audited financial statements to the IRD is not required.

The financial statements for submission to the DICA or to the IRD (as applicable) must be audited by a Certified Public Accountant licensed by the Myanmar Accountancy Council.

Note: Under the new MCL, which took effect from 1 August 2018, small companies are not required to submit their audited financial statements to the DICA. A small company is a private company that has 30 or fewer employees and had annual revenue of less than MMK 50 million in the previous financial year.

16. ABOUT DFDL

DFDL was established in 1994 and built on a unique vision: to create an integrated legal, tax and investment advisory firm, with in-depth knowledge of the jurisdictions we work in, providing technical excellence across our core areas of expertise.

With a team of over 170 local and foreign lawyers and advisers in 11 offices in Asia and three collaborating firms in Cambodia, Indonesia and the Philippines, we provide personalized and cost-effective legal, tax and consulting services with particular expertise in:

- Banking, Finance and Technology
- Compliance and Investigations
- Corporate, Mergers and Acquisitions
- Employment and Labour
- Energy, Mining and Infrastructure
- Real Estate and Construction
- Taxation and Accounting

17. DFDL TAX SERVICES

Tax Advisory

- International tax planning and structuring services
- Tax treaty planning and tax treaty relief assistance
- Market entry tax advisory
- Domestic tax optimization advisory
- Tax due diligence, M&A, and restructuring services
- Transfer pricing advisory and compliance
- Tax review of contracts and transactions
- Assistance in obtaining tax rulings

Tax Compliance

- Corporate tax compliance review
- Preparation and review of tax returns
- Personal income tax compliance, review and related expatriate tax services

Customs and Free Trade Agreements

- Assistance in obtaining advance rulings from customs authorities on valuation, tariff and exemption
- Customs duty valuation advisory
- Strategic Free Trade Agreement planning, advice on rules of origin (ROO)
- Advice and government liaison services on market access, barriers to trade and protection of investors

Tax Controversy

- Assistance in tax audits
- Litigation on tax and customs

Public Sector Advocacy

- Government consultancy
- Tax policy advocacy

18. OUR PEOPLE

At DFDL, our most valuable assets are our people. We are dedicated to hiring, developing and retaining experienced and efficient advisers. Key people who comprise our Myanmar Team are:

Jack Sheehan

Partner, Head of Regional Tax Practice

Jack is a Partner and the Head of the Regional Tax Practice. He specializes in providing advice on structuring inbound and outbound investments in Asia, corporate and international tax planning, mergers and acquisitions, transfer pricing and supply chain structuring and tax controversy. He has also assisted in advocacy for tax policy at a Government level in a number of South East Asian countries.

Jack is listed as a leading tax adviser for 2019 by the Legal 500 and was nominated as Asia Tax Leader 2019 by International Tax Review. He is regularly a speaker and writer on tax matters in Asia. Jack holds a Master's Degree in Tax Law from the Law School at the University of Oxford and is a Fellow of the Association of Chartered Certified Accountants.

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Diberjohn Balinas

Senior Tax Manager

Diber is a Senior Tax Manager based in our Yangon office. He has previously worked for a "Big Four" firm and a leading bank in the Philippines before joining DFDL. His practice focuses on tax advisory, tax compliance, tax due diligence, market entry advisory, and corporate restructuring for clients in various sectors ranging from telecommunications, oil and gas, manufacturing, banking and finance, and information technology. Diber holds a Bachelor of Science Degree in Accountancy and is a Certified Public Accountant (CPA). He also holds a Master's Degree in Business Administration, majoring in Finance.

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