

A scenic view of the Bagan temples in Myanmar, with several hot air balloons floating in the sky. The image is overlaid with a dark green diagonal shape on the top left and a light green diagonal shape on the bottom right.

**MYANMAR TAX UPDATE**  
**NEW TAX ADMINISTRATION**  
**LAW ENACTED IN MYANMAR**

21 June 2019

On 7 June 2019, the Union Parliament (“**Pyidaungsu Hluttaw**”) enacted Law No. 20 otherwise known as the Tax Administration Law (“**TAL**”). This TAL is one of the major pieces of tax legislation being introduced in Myanmar as part of the Internal Revenue Department’s (“**IRD**”) tax reform program. This Law aims to modernize and provide guidance on the administrative procedures on tax-related matters in Myanmar.

The TAL covers administrative matters concerning the following: (1) the Income Tax Law; (2) the Commercial Tax Law; (3) the Special Goods Tax Law; and (4) other taxes over which the Director General (“**DG**”) of the IRD has authority vested in him or her under relevant laws.

Among the interesting provisions of the TAL are the inclusion of an advance ruling system, an Anti-Avoidance provision, and the imposition of interest on unpaid or overpaid taxes. Similarly, the TAL also clarified certain provisions under the existing tax laws with respect to tax filing and payment procedures, maintenance of documents, re-assessment of tax returns, changes to the appeal process, and the imposition of penalties, among others.

While the TAL was enacted in June, the Law will only enter into effect on 1 October 2019 or the start of the new financial year in Myanmar.

In this update, we highlight the salient features of the TAL.



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# MAJOR CHANGES INTRODUCED IN THE TAL

09/12/59 SWCA  
15/12/59 SWCA  
17/12/59 PRSD  
01/01/59 SWC

Jan =  
Feb =  
Mar =

973 450 = 35

## ▪ Issuance of public rulings and advance rulings

Under the TAL, the IRD may issue public rulings and advance rulings to individual and corporate taxpayers. A public ruling is issued by the DG of the IRD for the following reasons:

- To ensure consistent implementation of tax laws; and
- To provide guidelines to taxpayers and the general public on the practical interpretation of certain tax laws.

Meanwhile, advance rulings are issued by the IRD to a taxpayer upon request for a particular tax matter. Advance rulings issued by the IRD will be binding on both the taxpayer and the IRD provided that the taxpayer followed the provisions of the ruling based on applicable laws at the time of its issuance.

The DG of the IRD may revoke a particular ruling in full or in part depending on the circumstances of the case. However, such an amendment or revocation of an advance ruling will only have a prospective effect (i.e., no retrospective effect on past transactions) after the change has been made.

## ▪ Anti-Avoidance Provision

The TAL also introduced a section on Anti-Avoidance. This Anti-Avoidance provision aims to address aggressive tax avoidance schemes whereby the IRD can deny tax benefits on transactions that are either deemed fraudulent or lacking economic substance.

Under the TAL, the DG of the IRD during an assessment can exclude transactions that were deemed fraudulent or are created to reduce the tax liability of the taxpayer. In addition, the DG can disregard such transactions and assess the tax based on the taxpayer's economic substance and actual value of the transactions.

Prior to the TAL, there was no clear Anti-Avoidance provision under the existing tax laws. A similar provision under the Income Tax Law states that if it is found that there is a "fraudulent intention" to evade tax, the assessment or re-assessment of income tax can be made at any time on the income that has escaped tax assessment. The term "fraudulent intention" includes failure to file a return of income knowing that assessable income has been obtained, failure to comply with the notice of the IRD to submit accounts and documents including the tax return and profit and loss accounts within the prescribed timeframe, or submitting forged instruments and other documents. However, the new Anti-Avoidance provision has expanded the scope to include aggressive tax avoidance undertaken by taxpayers.

## ▪ **Maintenance of documents**

Under the TAL, taxpayers are now required to maintain 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.

These documents include purchase and sales invoices, price quotations, purchase orders and requisitions, receipts, invoices, financial statements, books of accounts, and all other documents related to the transaction, including all supporting documents from the Myanmar Customs Department for imports and exports. These documents must be maintained in the Myanmar or English language. In addition, for banks and financial institutions, the TAL also provides that they must properly keep record of their customer information for all transactions entered into with them.

The extension of the retention period seems to complement the new six-year period on re-assessment of tax returns. However, the new law does not provide any guidelines if the documents must be maintained in hard copy or if soft copy would be acceptable. Further clarification needs to be provided by the IRD in this regard.

Under this Law, failure to maintain proper records of the transactions is subject to penalty of MMK 5,000 to 100,000 (depending on the tax liability of the taxpayer) for each day of failure.

## ▪ **Re-assessment of tax returns**

The TAL has made a significant change with respect to the period of re-assessment of tax returns. Under the TAL, the IRD can now assess or audit a taxpayer within six years after the end of the relevant assessment year ('assessment year' is defined under the Income Tax Law as the year following the income year). In cases of fraud or incomplete information, the assessment can be made within 12 years after the end of the relevant assessment year.

This change in the assessment period extends the statute of limitation for income tax, commercial tax, and special goods tax, which is currently three years from the end of the relevant assessment year (or assessment quarter for special goods tax).

We note that the TAL does not provide clear guidelines as to how the six-year period on re-assessment will be applied during the transition period. The Law only states that the IRD can apply the provisions of the TAL to collect taxes due on unsettled cases before the Law becomes effective. As such, it is not clear whether prior years considered prescribed under the current tax rules (i.e. those years beyond the three year-period) but are within the new six-year period are still subject to re-assessment from the IRD. This should be clarified by the IRD in order to avoid confusion on how the re-assessment should be implemented.

## ▪ **Reconsideration and appeals**

The TAL modified the appeal procedures under the existing tax laws.

**First Appeal:** Under the TAL, if the taxpayer disagrees with the IRD's assessment, the taxpayer can apply for reconsideration with the DG of the IRD within 30 days upon receipt of the Assessment Order. The new Law did not mention that the taxpayer is required to pay the assessed tax before making a first appeal, which was previously a requirement under the existing tax laws. This would mean that taxpayers can now proceed with the first appeal without making any advance payment of the assessed tax.

If the taxpayer does not appeal within 30 days upon receipt of the Assessment Order, the Assessment of the IRD will be considered final.

**Second Appeal:** If the taxpayer is not satisfied with the decision of the DG of the IRD, the taxpayer can file an appeal with the Tax Tribunal (or Revenue Appellate Tribunal) within 90 days (previously 60 days) from the receipt of the decision. However, in cases where the DG of the IRD has not provided a decision within 90 days from the first appeal, the taxpayer can file a second appeal to the Tax Tribunal within 30 days after the 90-day period has lapsed.

The Tax Tribunal referred herein is a committee delegated by the Ministry of Planning and Finance that conducts comprehensive hearings on tax-related cases.

If a further appeal to the Supreme Court is required, such appeal must be made in line with the provisions of the Revenue Appellate Tribunal Law.

## ▪ **Shareholders' liability after liquidation**

The TAL provides a specific provision with respect to shareholder liability on account of liquidation of the company. Under the TAL, shareholders of the liquidated company can be liable for unpaid or deficient taxes (including withholding taxes) due by the company, for up to any amounts received by the shareholders (in money or assets) within one year prior to liquidation. In addition, the IRD may still seek payment of the taxes from previous shareholders if the liability (as determined during liquidation) arises from past transactions where they were still shareholders of the company.

The TAL, however, clarifies that the above will not apply if the company already secured a tax clearance certificate from the IRD at the time of liquidation.

This provision under the TAL may create conflict in so far as determining the liability of the company and the shareholders. From a legal perspective, companies have a separate legal personality that is distinct from the shareholders. Further, the shareholders' liability in the case of a limited liability company should generally be limited to the shareholder's capital in the company. There may be cases where the shareholders' liability can extend beyond the amount of contributed capital, for example, in the case of fraud. In such a case, the IRD can pierce the corporate veil of the company, subject to the provisions of Section 293 of the Myanmar Companies Law (with respect to liability as contributories of past and present members). However, the current provision in the TAL seems to potentially extend liability to shareholders in cases of unpaid taxes of a company at the time of liquidation.

Further clarification by the IRD is needed as to how this provision under the TAL will be applied in practice.

#### ▪ **Refund procedures and interest on overpaid tax**

Under the TAL, the taxpayer will be entitled to a refund of any excess tax payments during the year (after the assessment has been made during the assessment year). This includes interest paid to the IRD if it is found out that the taxpayer has no liability to make such payment.

In determining the amount of refund:

- 1) Any assessed tax, interest, or penalty will be offset on the claimable amount.
- 2) The remaining amount will be offset as an advance tax within the next 12 months.
- 3) Any excess amount after 1 and 2 can be refunded to the taxpayer within six years after the end of the relevant year.

To compensate the taxpayer for the time involved in actually receiving the refund, the IRD will pay interest (rate to be determined by the Ministry of Planning and Finance) to the taxpayer starting from the date the refund is determined (per item 3) until the actual date that the tax is refunded. This introduction of interest on overpaid tax (at the time of refund) is a new feature provided under this Law.

- **Interest penalty on unpaid or deficient taxes**

One of the key changes under the TAL concerns the imposition of interest penalties on unpaid or deficient taxes. Currently, only penalties (or surcharges) equal to 10% (at most 100% if on account of fraud or concealment) is imposed on unpaid or deficient taxes. However, effective 1 October 2019, the interest will be charged in addition to penalties imposed under the existing tax laws. This interest penalty will be calculated starting from the date when the taxpayer is liable to pay the tax (i.e. the tax due date) until the date when actual tax payment has been made.

Under the TAL, the Ministry of Planning and Finance will issue notifications with respect to the applicable interest rates.



A stack of several open books is shown from a top-down perspective, fanned out to reveal their pages. The pages are filled with dense, small text. A dark green circular overlay is positioned in the center-left of the image, containing the title text. A thin yellow horizontal line is located above the text within the circle.

**ADMINISTRATIVE  
PROCEDURES UNDER  
THE TAL**

▪ **Unified tax identification number (TIN) for taxpayers**

Under the TAL, the DG of the IRD will determine a unified TIN covering all type of taxes for each taxpayer. This unified TIN will be announced in an official publication and must be provided to each taxpayer or taxpayer group.

▪ **Requirement to inform the IRD on changes to business nature, company name, and location**

Under the TAL, the taxpayer must notify the IRD of any changes to the name (including business name), address, business location, or any change in business nature. The changes must be notified in writing within the following timeframe:

- Commercial Tax Matters: within 15 days after change.
- Special Goods Tax Matters: within 15 days after change.
- Income Tax Matters: Within one year after change.

Failure to register or to notify the IRD on the above changes will be subject to penalty equal to 10% of the tax due.

▪ **Issuance of a tax clearance certificate (upon request to the IRD)**

Under the TAL, taxpayers may request a tax clearance certificate from the IRD to confirm that they are cleared from any additional tax liabilities for the covered year. This tax clearance certificate can be issued as long as the taxpayer does not need to make any additional tax payment or is not involved in any tax dispute with the IRD for the relevant year.

Based on current practice, the tax clearance certificate (apart from the regular Notice of Demand or Confirmation for Self-Assessment) is issued only for the purposes of doing business, bidding, tendering or securing a business license from one of the ministries of Myanmar, or in cases of company closure.

▪ **New communication policies of the IRD to the taxpayer**

Under the TAL, the IRD may notify the taxpayer through a letter to be sent via registered mail (or post office) or email. The IRD will assume that the taxpayer has received the letter or notice as follows:

- If sent through registered mail (within Myanmar): within 21 days from the date of post.
- If sent through registered mail (outside Myanmar): within 30 days from the date of post.
- If sent through e-mail: at the date when the letter is sent.

## ▪ **Appointment of an agent or representative**

Under the TAL, a partnership business or a company must appoint a person for its tax compliance matters in Myanmar. In the case of a non-resident citizen or a non-resident foreigner, they must appoint a representative who is living in Myanmar to arrange and settle their tax obligations. This provision under the TAL can be associated with the requirement to appoint an agent or representative under Section 27 of the Income Tax Law and Rule 47 of the Commercial Tax Regulations.

An agent or representative can be a partner in partnership businesses, the head of the company, accountants, and authorized person of the non-resident, among others as stated in Section 41(a) of the TAL. Such an agent or representative will be required to perform the duties and responsibilities in respect to filing and payment of taxes as mentioned under the TAL.

## ▪ **Filing and payment procedures**

Under the TAL:

- A taxpayer can amend a tax return not later than six years from the date of initial filing of the return.
- If the filing date of tax returns falls on a public holiday, the deadline will be extended to the next day after the public holiday. Further, the deadline can also be extended provided that the taxpayer has secured approval from the IRD.
- The date of submission of the return or documents will be based on the date of the IRD's seal of acknowledgment. If the submission is made via post office, the filing date will be based on the date mentioned on the post office stamp. If the filing is made via email, the filing date will be based on the date when the email was received by the IRD (unless sent on a public holiday where it will be considered filed on the day after the public holiday).

A taxpayer is required to make payments in the following order: 1) on the penalties; 2) on the interest; and 3) on the basic tax due.

## ▪ **Imposition of penalties**

The TAL provides the list of penalties for each failure to comply with provisions of the Law. The penalties under the TAL are either based on fixed amounts or based on percentages (ranging from 10% up to 100%) depending on the type of offense committed. We provide herein the offenses and applicable penalties:

Offense	Penalty
1. Failure to register or to notify about changes regarding taxpayer information (including failure to apply for cancellation of tax registration)	10% penalty on the tax due
2. Failure to provide correct disclosures such as: <ul style="list-style-type: none"> <li>- Using fraudulent or incorrect TINs;</li> <li>- Issuing incorrect invoices or receipts;</li> <li>- Issuing incorrect receivables or payable records; and</li> <li>- Providing invoices, receipts receivables and payables not according to tax laws; or failure to provide.</li> </ul> <p><b>Note:</b> This will not apply if the taxpayer has acted in good faith based on the information provided by the purchaser of goods or service recipient.</p>	MMK 250,000 penalty
3. Failure to submit tax returns or other returns (including advance tax payments or tax due on installment) by the prescribed deadline.	Higher penalty between: <ol style="list-style-type: none"> <li>1) 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</li> <li>2) MMK 100,000</li> </ol>
4. Underpayment of tax on fraudulent cases.	If the underpaid amount is not more than MMK 100 million or the underpaid tax does not account to more than 50% of the actual tax due: 25% of the deficient tax.  If the underpaid amount exceeds MMK 100 million or the underpaid tax accounts to more than 50% of the actual tax due: 75% of the deficient tax.

Offense	Penalty
<p>5. Disclosure of inaccurate or misleading information to the tax officer</p> <p><b>Note:</b> This will not apply if the individual acted in good faith and does not know about the mistake or misleading information.</p>	<p>MMK 150,000 + higher penalty of the following:</p> <ol style="list-style-type: none"> <li>1) The difference between the tax liability which should have been paid and the actual tax paid; or</li> <li>2) The difference between the tax refund which should have been claimed and the actual tax refunded.</li> </ol>
<p>6. Failure to keep records or documents</p>	<p>This will depend on the amount of tax due of the taxpayer.</p> <ol style="list-style-type: none"> <li>1) For taxpayers whose tax due does not exceed MMK 500,000: MMK 5,000 per day of failure.</li> <li>2) For taxpayers whose tax due does not exceed MMK 5 million: MMK 50,000 per day of failure.</li> <li>3) For taxpayers whose tax due exceeds MMK 5 million: MMK 100,000 per day of failure.</li> </ol> <p><b>Note:</b> The DG, at its discretion, may provide exemption on penalty up to maximum of 30 days. Note, however, that the Law did not clarify how to categorize taxpayers based on tax due as well as the basis of when each day of failure will be counted.</p>
<p>7. Failure to follow the notice to third persons (per notice issued by the DG)</p>	<p>25% of the difference between the tax payable by a third person and the tax paid to IRD before the due date stated in the notice.</p>
<p>8. Failure to provide the work place arrangement or assist tax officers (upon request)</p>	<p>MMK 500,000</p>
<p>9. Failure to provide the requested information by the DG of the IRD</p>	<p>MMK 500,000</p>

Offense	Penalty
<p>10. Failure to make the payment on time:</p> <ul style="list-style-type: none"> <li>- Within 14 days after the date of the assessment or revised assessment.</li> <li>- For all or part of the advance tax payments (tax on installment) within the prescribed deadline.</li> <li>- On withholding taxes required to be withheld by the taxpayer.</li> </ul>	<p>10% penalty on the late payment.</p> <p>For withholding taxes, the taxpayer is also required to pay the amount of tax withheld in addition to the 10% penalty.</p>
<p>11. Tax evasion</p>	<ol style="list-style-type: none"> <li>1) Seven years imprisonment; or</li> <li>2) The higher of MMK 250,000 and 100% of the tax amount evaded; or</li> <li>3) Both 1 and 2.</li> </ol>
<p>12. For persons considered as creating ‘hindrances’ to the tax administration. In this context, the following activities that will be regarded as hindrances to the tax administration:</p> <ul style="list-style-type: none"> <li>- Failure to provide the documents or records as requested by the tax officer;</li> <li>- Failure to meet (or be present) when requested by tax office under the law;</li> <li>- Prevention of tax officers’ visits to the business premises or any residential area;</li> <li>- Failure to submit tax returns;</li> <li>- Using incorrect TINs;</li> <li>- Issuing incorrect invoices, receipts, receivable, payable records;</li> <li>- Providing invoices, receipts, receivables and payables not according to the tax laws; or failure to provide;</li> <li>- Preventing the DG from surveying the land or refusing to provide the maps, forms, agreements, or other records for their inspection; or</li> <li>- Preventing the tax assessment or tax collection by any means.</li> </ul>	<ol style="list-style-type: none"> <li>1) MMK 250,000; or</li> <li>2) One year imprisonment; or</li> <li>3) Both 1 and 2.</li> </ol>

- **Transitory provisions**

The TAL will supersede any existing tax laws not consistent with this Law's provisions.

Under the transitory provision of the TAL, appeals, legal prosecutions, and other prosecutions performed before 1 October 2019 will be covered by the provisions of the previous relevant law. However, the IRD can apply provisions of the TAL to collect taxes due on unsettled cases before the Law becomes effective.

Until such time as the IRD issues new regulations and procedures, all other provisions in the Income Tax Law, Commercial Tax Law, and Special Goods Tax Law (including their respective regulations and notifications) that are not defined and contrary to the provisions of the TAL will remain valid.



CONCLUSION



This TAL is a welcome development in Myanmar as it addresses several of the shortfalls of the current tax administration procedures. The enactment of this Law is in line with the tax reform plan of the Myanmar Government to modernize its existing procedures based on international best practices tailored to the needs of the country.

Although the Law provides clarification on the administration procedures, there are certain provisions under the TAL that need further clarity and guidance. It is unclear how the advance ruling system will work in practice and how the IRD will apply the new Anti-Avoidance rule. Furthermore, guidance is welcomed on the scope of “other taxes” covered by this Law, the transition rules on the re-assessment of tax returns and maintenance of documents, and the extent of shareholder liability in the case of liquidation, among others.

With these changes, the IRD should provide additional guidance as to how the new rules will be implemented. Clarifying these matters would help address the ambiguities on certain provisions of the Law and would help the IRD in properly administering tax procedures in Myanmar. Once enacted, taxpayers must exercise due caution in complying with the provisions of this new Law in order to minimize any tax exposure that may arise in the future.

We will provide additional updates on Myanmar tax reform once the new regulations and guidance are issued by the authorities.

We trust that you find the above helpful. As always, please let us know if you have any comments or questions.



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