

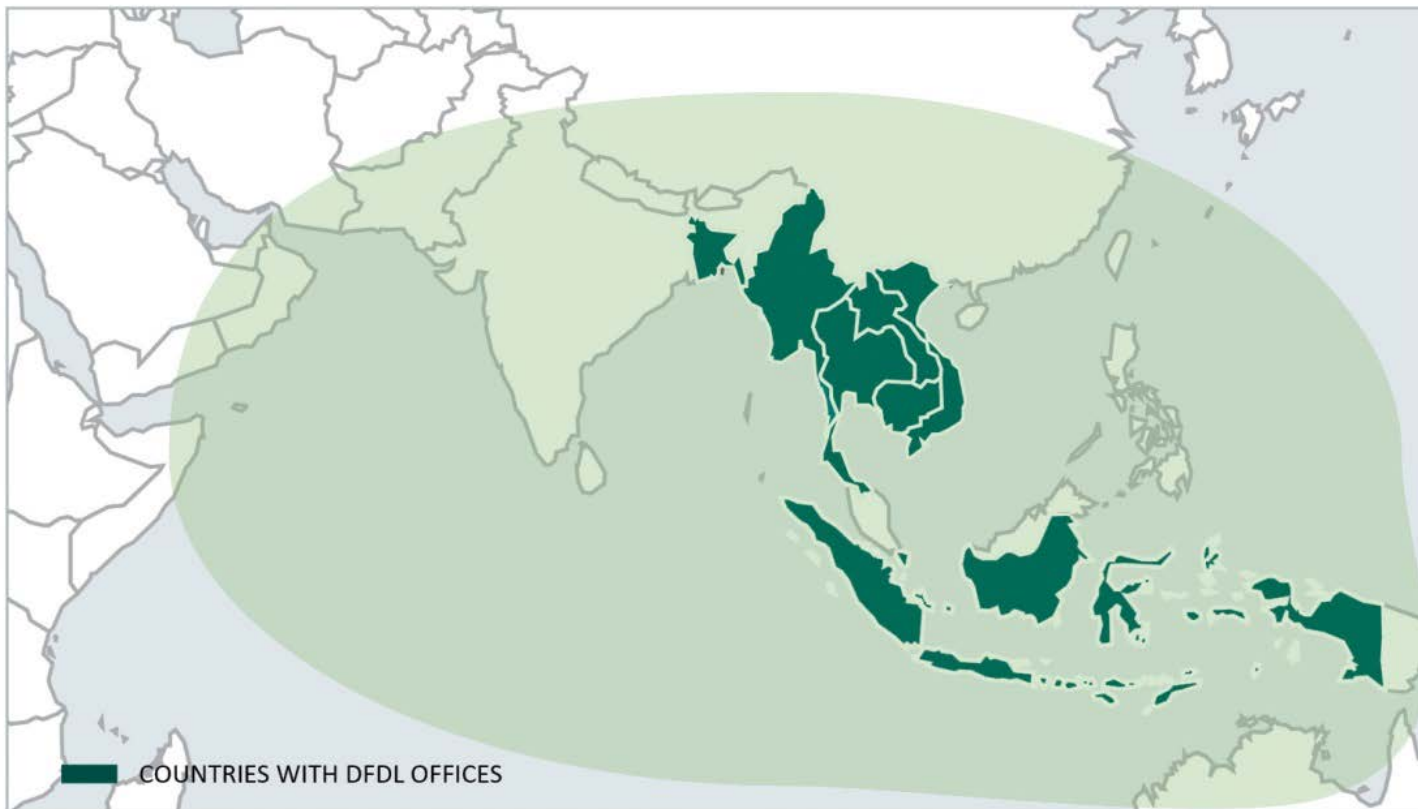


Myanmar Tax Updates

Bernard Cobarrubias

28 May 2014

From Southeast Asia and beyond



- **250 staff**
- **130+ advisers**
- **8 countries**
 - Bangladesh
 - Cambodia,
 - Indonesia*
 - Myanmar
 - Laos
 - Singapore
 - Thailand and
 - Vietnam
- **12 offices**
 - Dhaka
 - Phnom Penh
 - Yangon
 - Naypyidaw
 - Vientiane
 - Jakarta
 - Bangkok
 - Koh Samui
 - Phuket
 - Hanoi
 - Ho Chi Minh City
 - Singapore



Project Finance

Deal of the Year



Myanmar

Law Firm of the Year



Emerging Markets

Law Firm of the Year

- Changes in the general tax policies
- Then and now
 - ✓ Income tax – Corporate Income Tax; Personal Income Tax; Capital Gains Tax; Withholding tax
 - ✓ Commercial Tax – Manufacturing, trading in goods, services, importation
 - ✓ Stamp duties
- What's next
 - ✓ Taxpayer's calendar
 - ✓ The good, the bad, and the ugly
 - ✓ Taxpayer's wish-list

- **New laws passed**
 - Union Revenue Law of 2014
 - Amendments to the Income Tax Law (ITL)
 - Amendments to the Commercial Tax Law (CTL)
 - Amendments to the Stamp Duty Law (SDL)
 - Amendments to the Court Fee Law (CFL)

- **Old laws are still valid (for instance)**
 - The ITL of 1974 and implementing regulations
 - The Commercial Tax Law and CT regulations

Then	Now
<ul style="list-style-type: none">▪ Tax rates were found in various Notifications, i.e., the Minister of Finance determines the tax rate	<ul style="list-style-type: none">▪ Union Revenue Law of 2014 legislates (and amends) the tax rates, i.e. parliament determines the tax rate
<ul style="list-style-type: none">▪ The taxpayer is a mere “assessee” and assessment is done by tax officer alone	<ul style="list-style-type: none">▪ The amended ITL introduces the term “self-assessment” by the taxpayer, aside from assessment by the tax officer
<ul style="list-style-type: none">▪ Poor enforcement. Uneven experiences for taxpayers	<ul style="list-style-type: none">▪ Creation of Large Taxpayers division; greater focus on enforcement
<ul style="list-style-type: none">▪ Confusing use of foreign or local currency for tax payment	<ul style="list-style-type: none">▪ Confusing use of foreign or local currency for tax payment

Tax	Rule under Union Revenue Law	Conversion rate used
CIT and CT	Tax paid in MMK	Section 35 of Union Revenue Law refers to Section 8 of the Income Tax Regulations
Non-resident foreigner	Tax paid in foreign currency if the income is earned in foreign currency.	<ul style="list-style-type: none"> – If received in a single day, the conversion rate at the time of receipt. – If received over more than a single day, the average conversion rate of the period covered
Non-resident citizen	Income in foreign currency, tax paid in MMK	
Capital gains	Tax paid in MMK even if income is earned in foreign currency	Note that Section 35 states that it does not cover capital gains. But how are capital gains in foreign converted?



Comprises of:

1. Corporate income tax (CIT)
2. Personal income tax
3. Capital gains tax
4. Withholding tax

- Corporate Income Tax Rate: no changes in tax rate

Taxpayer	Tax Rate	Taxable income
Resident Company	25%	Worldwide income
Branch (FIL)	25%	Income within Myanmar
Branch (Non-FIL)	35%	Income within Myanmar
Foreign Contractor	WHT	Income within Myanmar

- Rules on deductibility of expenses: new rule on deductibility of donations which shall not exceed 25% of total income of the taxpayer
- Rules on depreciation: no change as provided by income tax regulations

Then	Now
<ul style="list-style-type: none"> ▪ Religious or charitable institution ▪ Local authority; ▪ Saving as prescribed by the Rules; ▪ Commutation of a pension; ▪ Compensation received for death or injury; ▪ Sum received in payment of insurance policy; ▪ Any casual, nonrecurring income 	<ul style="list-style-type: none"> ▪ All except “any receipt in respect of savings” ▪ And now includes: <ul style="list-style-type: none"> – xxx condolence payments [<i>which otherwise would have to be</i>] categorized under the heading “salary”; – Share of the after-tax profit of an association.
<ul style="list-style-type: none"> ▪ Any newly established economic enterprise or any class of newly established economic enterprises 	<ul style="list-style-type: none"> ▪ An exemption to newly established small- and mid-sized businesses for three consecutive years, including the starting year. Under Revenue Law, this applies if income does not exceed MMK 5,000,000

Then	Now
<ul style="list-style-type: none">Salary and capital gains are separately reported from “other heads of income”	<ul style="list-style-type: none">Income from salary, income from profession, income from property, income from business and income from other means are aggregatedOther heads of income like capital gains and income that has escaped assessment are separately reported
<ul style="list-style-type: none">Income from employment subject to 1-20% for residents; 35% for nonresidentsIncome from business , profession, property and other means subject to 2-30%Undisclosed income subject to 30%	<ul style="list-style-type: none">Income from employment, business , profession, property and other means subject to 0-25% for residents, 35% for non-residentsUndisclosed income subject to 3-30%

Assessment Income of after deduction of exemptions and relief		Rate of Assessment Income %
From	To	
1	2,000,000	0%
2,000,001	5,000,000	5%
5,000,001	10,000,000	10%
10,000,001	20,000,000	15%
20,000,001	30,000,000	20%
Above 30,000,001		25%

- Taxation of business individuals
- Taxation of professionals
- Income from property

Changes to Income Tax – Individuals

Relief	Then	Now
Personal	20% or 10,000,000	Same
Spouse	300,000	500,000
Child	200,000	300,000

Tax rate on non-residents	Then	Now
Non resident citizen	10% of income except foreign currency denominated income	10% of foreign source income
Non resident foreigner	35% of Myanmar source income	35% of Myanmar source income

Social Security	Then	Now
Employer	3% not exceeding 5 dollars	3% or 3% of 300,000
Employee	2% not exceeding 3 dollars	2% or 2% of 300,000

Rule	Then	Now								
When an individual purchases capital assets	If funds used are from “undisclosed income” (when he/she cannot account for how he/she has acquired the money)	If funds used are “income that has escaped assessment								
He shall be liable for an additional “income tax” of for first time purchase	30%	<table border="0"> <tr> <td>0 - 50,000,000</td> <td>3%</td> </tr> <tr> <td>50,000,001 - 150,000,000</td> <td>10%</td> </tr> <tr> <td>150,000,001 - 300,000,000</td> <td>20%</td> </tr> <tr> <td>300,000,001 and above</td> <td>30%</td> </tr> </table>	0 - 50,000,000	3%	50,000,001 - 150,000,000	10%	150,000,001 - 300,000,000	20%	300,000,001 and above	30%
0 - 50,000,000		3%								
50,000,001 - 150,000,000	10%									
150,000,001 - 300,000,000	20%									
300,000,001 and above	30%									
For subsequent purchase		30%								

Then	Now
10% for residents 40% for non-residents	10% for residents 40% for non-residents
Oil and Gas <ul style="list-style-type: none"> ▪ Up to USD 100 Million 40% ▪ USD 100 Million to 150 Million 45% ▪ Above USD 150 Million 50% 	Oil and Gas <ul style="list-style-type: none"> ▪ Up to 100 billion MMK 40% ▪ 100,000,000,001 - 150 billion 45% ▪ 150,000,000,001 and above 50%

- CT is imposed on:
 - Manufacture and trading of goods
 - Trading of goods
 - Sale of services
 - Importation (and export) of goods
- CT is an indirect tax meaning it is generally passed on to the buyer
- CT is borne by the importer

Goods or Services	CT Rate
Goods produced and sold in Myanmar (Section 11[a])	5%
Goods subject to a higher rate of CT (Section 11[b])	8-100%
Certain agricultural products if produced or imported into the country (Section 11[c])	0% or 5%
Certain products if produced or imported in the country (Section 11[d])	0%
Services (now includes all types of services except 26 services)	5%
Export of crude oil, natural gas, teak, jade rubies and jewelry	5-50%
Imported goods	Generally, 5%
Purchase from local entrepreneurs and local businesses	2%

Then	Now
Rates and list of goods based on the schedule issued by the MOFR	Based on the Union Revenue Law
Minimum proceeds to be covered by CT to be set by MOFR	Business covered include those with sale proceeds up to Ks. 15,000,000 within one financial year
Teak, hard woods and hard wood conversions were subject to 50% CT	25%
Jade and other precious finished products were subject to 30%	15%
CT on services limited to 14 types of services	CT on services is applicable to all types unless exempted (26 exempt services)

- Local entrepreneurs and state-owned enterprises get a break from CT.
- In order to encourage competition with imported goods, only 2% CT is levied on the proceeds from the sale of goods which are produced and sold by registered citizen entrepreneurs or production businesses owned by citizen entrepreneurs or state-owned enterprises.

1. House rental services
2. Car parking services
3. Life insurance services
4. Microfinance services
5. Health care services
6. Education services
7. Transportation of goods
8. Services of employment agencies
9. Banking services
10. Customs clearance services
11. Renting out objects such as tables, chairs or crockery for social functions
12. Licensed slaughtering of animals
13. Contract manufacturing
14. Funeral services
15. Container transport services
16. Child nursery services
17. Myanmar traditional massage/massage performed by a blind person
18. Moving services
19. Services for which a road toll is charged
20. Animal health care services
21. Services consisting in the provision of public toilets
22. Outbound air transport services
23. Services concerning culture and art
24. Information technology services
25. Technology and management consultancy services
26. Public transport services (bus, railway and ferry)

- Input credits are allowed under the CT regulations.
- The following can claim CT inputs:
 - ✓ The producer of goods may set-off the tax paid for the raw material or semi-finished goods
 - ✓ The person who carries out trading business for buying and selling of goods may set-off the tax paid at the time of importing such goods or buying such goods
- With the expansion of scope of CT to all types of services, will service providers be allowed to claim input CT?

- Stamp Duties are collected from the sale of judicial and non-judicial stamps.
- Judicial stamps are supplied for use in judicial proceedings while non-judicial stamps are for general purpose documents.
- Complaints, probates of a will, letters of administration, succession certificate, petitions, application for leave to sue, memorandum of appeal, bail-bond, etc.

Then	Now
<p>Documents in foreign currency subject to ad valorem duty shall be subject to 1% SD on their value</p>	<ul style="list-style-type: none"> ▪ Converted to MMK ▪ Rates as prescribed in the Schedule
<p>No additional charge</p>	<ul style="list-style-type: none"> ▪ Stamp duties charged by Articles 23, 33 and 40 (a) shall, in the case of instruments affecting immovable property be increased by an additional stamp duty of 2% for a consideration equal to the market value of the property so situated. ▪ 23 – Conveyance; 33 – Deed, 40(a) – Mortgage deed ▪ Except if located in NPT, Yangon and Mandalay

- Agreements or Memorandum of Agreement – **MMK 300 or 1% on the amount or value**. Maximum duty shall be MMK 150,000.
- Mortgage-deeds – **1.5%** if possession of property is not transferred or 3% if transferred.
- Lease agreements
 - Less than 1 year – **1.5% of total rent**
 - 1 to 3 years – **1.5% of average annual rent**
 - More than 3 years – **3% of average annual rent**
 - Indefinite term – **3% of average annual rent for first 10 years**
 - Perpetuity – **3% of one-fifth of the whole amount of the rents** which would be paid or delivered in respect of the first 50 years of the lease.
- Articles of Association – from MMK **50,000 to MMK 150,000**
- Bills of Exchange – **MMK 450 to MMK 650** plus MMK 650 for every additional MMK 10,000,000 or part thereof and excess of MMK 100,000,000
- Bonds – **1.5%** of value
- Deeds of Conveyance – **3%** of value

Fiscal Year: 1 April to 31 March

Type	Returns	Filing Deadline
Corporate Income Tax	Quarterly Annual Return	30 days after each quarter 3 months after FY (June 30)
Capital Gains Tax	Per transaction basis	1 month from transaction
Personal Income Tax (Employment)	Employer withholds No Annual Finalization	7 days after withholding (also monthly or quarterly)
Commercial Tax	Monthly Annual Return	10 th of each month 3 months after FY (June 30)
Withholding Tax	Per transaction basis	7 days after payment



GOOD

- Competitive tax rates
- One-tier level of taxation
- Simplicity of laws
- Availability of tax incentives
- DTA availability for key trade partners
- Efforts are made to reach out to business



BAD

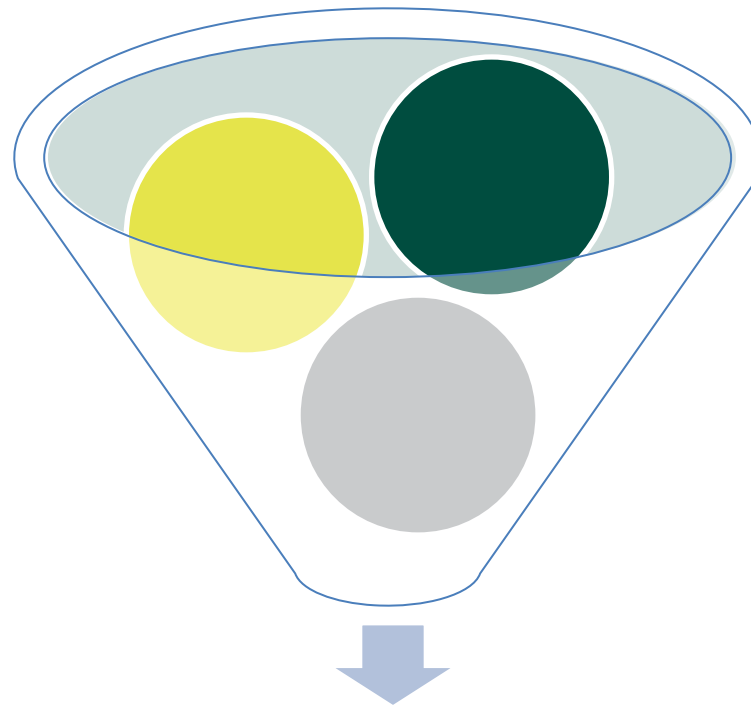
- Simplicity of laws
- High tax rates for non-residents
- Recourse against non-resident's property in Myanmar
- Taxation of offshore transfers
- Fraud is assumed



UGLY

- Poor enforcement
- Inexperience of the tax authority
- Discretion
- Uncertainty and undocumented practices
- Lack of precedents

- Single tax registration number
- More efficient tax payment process
- Availability of tax ruling/tax precedents
- Income tax
 - Withholding Tax regulations
 - ✓ Withholding tax on rental of property
 - ✓ Withholding tax on importation and export
 - Taxation of branch offices
 - Tax treaty relief process
 - Tax refunds
 - Taxation on INGOs
- Commercial Tax
 - Guidance to entities engaged in both CT and non-CT activities
 - Guidance on issuance of CT/non-CT receipts



Lets discuss our issues

Thank you



Bernard Cobarrubias

Tax Director

bernard.cobarrubias@dfd.com

Excellence · Creativity · Trust

Since 1994