



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 19 - 27 January 2017

Dear Readers,

Welcome to a new edition of our newsletter.

1. New withholding tax rates starting from 1st April 2017

There will be new withholding tax rates starting from 1st April 2017. Notification 2/2017 of the Ministry of Planning and Finance is an improvement over the present situation:

- (a) The withholding tax rate for interest payments remains unchanged at 15% if the interest is paid to a non-resident foreigner. As is the case already now, there is no withholding tax if the interest is paid to a citizen or a resident foreigner. From 1st April 2017, however, interest paid to the Myanmar branch of a foreign bank will no longer be subject to withholding tax.

A foreign company operating through a branch in Myanmar is non-resident for tax purposes and interest payments to such branch are therefore presently subject to 15% withholding tax. Notification 2/2017 introduces an exception, specifying that such interest payments are, from the next financial year on, no longer subject to withholding tax if the branch has its domestic income assessed for income tax purposes.

- (b) Notification 2/2017 now officially enshrines present practice of allowing a set-off of the withholding tax with the income tax assessed annually on the income of resident citizens, resident foreigners and branches of foreign companies.
- (c) Notification 2/2017 now officially enshrines present practice of treating the withholding tax as a final tax on the income of non-resident foreigners (with the exception of branches of foreign companies).
- (d) Presently, fees for services performed abroad are subject to withholding tax whereas the purchase price for goods acquired abroad is not. According to Notification 2/2017, there is no withholding tax on both the fees for services performed abroad and the purchase price of goods acquired abroad.
- (e) The withholding tax rate on the purchase price of goods bought domestically and fees for services performed domestically remains unchanged at 2% if the payment is made to a citizen or a resident foreigner. If the payment is made to a non-resident foreigner, the withholding tax rate is reduced from presently 3.5% to 2.5%.
- (f) Notification 2/2017 clarified that domestic rental fees are subject to withholding tax.



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- (g) The withholding tax rate on royalties for the use of licenses, trademarks, patent rights, etc. is reduced to 10% (down from presently 15%) if the royalties are paid to a citizen or a resident foreigner and to 15% (down from presently 20%) if the royalties are paid to a non-resident foreigner.
- (h) Notification 2/2017 exempts payments up to Ks. 500,000 per year and recipient from withholding tax.

An English translation of Notification 2/2017 is contained in our newsletter.

2. Our services

As not everybody seems to know it, we would like to take this opportunity to emphasize that we are a full-service legal and tax advisory firm that can be hired not only for purely legal advice, but also for the full range of tax and compliance work (and at very competitive rates at that), such as corporate secretarial services, accounting, payroll services, preparation of tax returns, customs compliance and immigration compliance.

A list of our most important services can be found here:

- Legal services: <http://tinyurl.com/gp9zgeb>
- Tax and compliance work: <http://tinyurl.com/hqvht7o>

3. Market access and tenders

- (a) **Two draft foreigner laws worry experts, expats:** <http://tinyurl.com/hcog6rh>

We reported on this one in one of our newsletters in December (<http://tinyurl.com/gucdhal>; contains also a translation of the draft of the Foreigners Law).

Although the two drafts (of a “Foreigners Law” and a “Foreign Workers Law”) are certainly unwelcome news, we would suggest to first wait and see what happens in reality before getting too excited about them. At best (or worst?), we expect it to be months from now before anything is implemented.

Furthermore, all countries have work permit systems, so why shouldn't Myanmar.

The Foreigners Bill would, if enacted as drafted, be indeed a nasty bit of legislation, but many members of the expat community would not be covered as they do not stay in



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Myanmar for more than 90 days in a row and, if they do, they would probably often be eligible for a permanent residence permit (which would place them out of the scope of application of the future Foreigners Law).

- (b) **Second draft of the new Myanmar Investment Rules is out:** <http://tinyurl.com/jrcex78>
- (c) **Viettel-backed joint venture to invest USD 2 billion in Myanmar:** <http://tinyurl.com/zqopd67>
- (d) **Tender:** Department of Rural Development: Supply of tablet computers for 17 townships (IDA funded): <http://tinyurl.com/gnqcp89>
- (e) **Tender:** Department of Rural Development: Supply of motorcycles low ground clearance (IDA funded): <http://tinyurl.com/z7x6r3q>

We trust that you will find this newsletter useful and hope that you will enjoy reading it.

Sebastian Pawlita
Managing Director

Nyein Chan Zaw
Director



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Press review (24 - 27 January 2017)

- Draft foreigner laws worry experts, expats: <http://tinyurl.com/hcog6rh>
- Overseas employment agencies could face 10-fold increase in required deposits: <http://tinyurl.com/hujltnc>
- Mingalar market design competition opens: <http://tinyurl.com/hc6zee6>
- Viettel-backed joint venture to invest USD 2 billion in Myanmar: <http://tinyurl.com/zgopd67>



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- CONVENIENCE TRANSLATION / accuracy not guaranteed -

**The Republic of the Union of Myanmar Government
Ministry of Planning and Finance
The Union Ministry
Notification
No. 2/2017
1378, Pyar Tho La San 13th
(10th January 2017)**

1. The Ministry of Planning and Finance, with the approval of the Union Government and under authorization of section 16, sub-section (b) of the Income Tax Law, issues and specifies that, in respect of the following types of payment except for monthly items, the person who is authorized to make payment shall, when making the payment, withhold [*literally: "extract and deposit"*] the required/payable percentages of income tax as specified below.

No.	Types of payment	Percentage to deduct as withholding tax	
		Citizen and resident foreigner	Non-resident foreigner
(a)	Interest payment for a loan, indebtedness, transaction of similar nature or savings	-	15%
(b)	Royalties for the use of licenses, trademarks, patent right, etc.	10%	15%



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(c)	Payment, for the domestic purchase of goods, work performed in the country, domestic supply of a service and domestic leasing, made by state organizations, state enterprises, development committees, cooperative societies, foreign companies, foreign enterprises and organizations, local companies and cooperative enterprises that are formed under any laws in force, under a tender, contract, price quotation or any other system (except for a payment under an item above in this table)	2%	2.5%
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2. When withholding the specified percentage of tax as prescribed in the above paragraph, it shall be deducted in kyats if payment is made to a resident citizen and a resident foreigner, and it shall be deducted in the given type of currency if payment is made to a non-resident foreigner; the amount shall be deposited in the bank account of the relevant revenue department in the name of the recipient or the name of the business.
3. Among the payment under paragraph 1, the tax which is withheld from a payment made to a non-resident foreigner shall be treated as deposited income tax of the non-resident foreigner after a final assessment. However, if a domestic business is performed through the branch of a non-resident foreigner that is assessed in accordance with the Income Tax Law, the withheld tax shall be deducted from the required/payable tax as assessed. Similarly, the amount withheld from a payment to a resident citizen and a resident foreigner shall be deducted from the required/payable tax as assessed.
4. If a non-resident foreigner shows a certificate of residence from the internal revenue department of the relevant country which has signed an agreement for the avoidance of double taxation and prevention of fiscal evasion with Myanmar, the amount to be withheld from the amount payable to this person shall be withheld in accordance with the percentage specified in the agreement concluded with the relevant country.
5. The person in charge of the withholding shall prepare three sets of the specified form of the Internal Revenue Department. The original shall be sent to the person whose tax is being deducted, one duplicate shall be sent to the revenue department where the tax is deposited, and another duplicate shall be kept by the *[first]* person.
6. When tax is withheld from a payment under paragraph 1:



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- (a) If the total amount of payments is not more than Ks. 500,000 in a year, no tax has to be withheld. If the total amount of payment is more than Ks. 500,000, withholdings from all payments shall be made at the specified tax rate.
 - (b) If multiple payments are higher than the specified amount within one year, tax shall be withheld in accordance with the specified percentages even if one payment is not higher than the specified amount.
 - (c) Withholdings from a payment to a non-resident foreigner or a payment in a foreign currency shall be made in accordance with the relevant tax rates as prescribed in the table.
 - (d) For all types of payment from which no tax was withheld, their records shall be sent to the revenue department.
7. However:
- (a) No income tax shall be withheld from payments among government organizations and payments to any government organizations and state departments.
 - (b) Among payments under paragraph 1, no income tax shall be withheld from an interest payment for a loan, indebtedness, transaction of similar nature or savings if this payment is made to the branch of a non-resident foreigner registered and established in Myanmar and the branch is being assessed on its domestic income.
 - (c) The Director General of the Internal Revenue Department can specify a method in order to avoid multiple taxes being paid for one operation even if they are types of payment provided for in paragraph 1.
 - (d) The payer shall not be exempt from withholding income tax at the source even if the recipient refuses to accept the withholding of income tax at the source.
8. Notification no. 41/2010 from 10th March 2010 and notification no. 167/2011 from 26th August 2011 of the Ministry of Finance and Revenue are repealed by this notification.
9. This notification shall be in force from the date of 1st April 2017.

Kyaw Win, Minister