



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 43 - 20th February 2018

Dear Readers,

Welcome to a new edition of our newsletter.

1. Withholding tax to be abolished?

According to the Myanmar Times (<https://tinyurl.com/ydhfkjv4>), the Inland Revenue Department is planning to stop levying withholding tax from 1 April 2018 in a bid to boost the economy.

The present withholding tax rates are as follows (reduced rates may apply if a double taxation treaty can be invoked):

- Payment for the domestic purchase of goods or services: 2% (payment to a resident) or 2.5% (payment to a non-resident)
- Royalties: 10% (payment to a resident) or 15% (payment to a non-resident)
- Interest: 0% (payment to a resident) or 10% (payment to a non-resident)

Furthermore, an importer has to pay 2% of the adjusted purchase price as an advance payment on his income tax liability. The 2% advance payment to be made by an exporter seems to have been abolished already last month.

Everything concerning the withholding tax and the advance payments is an awful hassle, and it would be a most welcome piece of news if this form of taxation were indeed to be abolished.

Employers have to withhold income tax from salary paid to their employees. We suppose that the government is not planning to abolish this withholding.

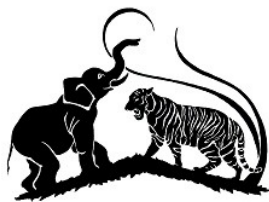
2. Draft Union Tax Law 2018 published - will it result in a buying spree?

The draft of the 2018 Union Tax Law was published on 13 February 2018. An English translation is available to our premium subscribers.

(a) Massive reduction of the income tax on hitherto undisclosed earnings

Most importantly, the draft provides for a massive reduction of the “income tax on hitherto undisclosed earnings”.

The present brackets are as follows:



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- 10% for undisclosed earnings of Ks. 1 to 30,000,000;
- 20% for undisclosed earnings of Ks. 30,000,001 to 100,000,000;
- 30% for undisclosed earnings of more than Ks. 100,000,000.

The draft proposes to reduce these rates to 3% if the earnings are disclosed after 31 March and before 1 October 2018 and to 5% if disclosure is made after 30 September 2018 and before 1 April 2019.

Examples:

- (1) *Someone purchases real estate in Yangon for Ks. 1 billion; he has not reported this money to the tax authorities so far. When registering his purchase, the following tax bill presently arises: 6% stamp duty plus (in aggregate) 28.85% income tax on the hitherto unreported earnings; in total Ks. 348,500,000. The draft of the Union Tax Law 2018 proposes to reduce this exposure to 6% plus 3% (in total: Ks. 90,000,000) if the purchase is made within the first six months and to 6% plus 5% (in total: Ks. 110,000,000) if the purchase is made within the second six months after the Union Tax Law 2018 has entered into force.*
- (2) *Someone wants to purchase a car for Ks. 20,000,000 and provides the car dealer with proof of taxes paid. The car dealer replies that he admires the customer's tax honesty, but will nevertheless add "15% tax" (Ks. 3,000,000) to the purchase price as it would "otherwise take months to extract the car from customs". The draft proposes to reduce this rate to 3% (Ks. 600,000) and, later, 5% (Ks. 1,000,000). More precisely, the draft actually proposes that there should be no tax at all as there are no unreported earnings, but things are not always straight-forward in practice.*

If the draft is enacted as planned, this could indeed boost the economy as it should become much cheaper to officially purchase items of high value. We understand that the Myanmar Licensed Contractors Association and other business organisations are staging events throughout the country in support of the change.

(b) Financial year of private businesses to remain as it is

According to the draft, the financial year of state-owned enterprises is to run from 1 October to 30 September in line with the new fiscal year of the state. However, the



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financial year of private businesses is to remain unchanged and to run from 1 April to 31 March.

How this can be reconciled with the new fiscal year of the state remains to be seen as there will be a six months gap between the availability of tax revenue data from private businesses and the state budget calculation.

(c) **Gold to be exempted from commercial tax**

According to the draft, ingots of pure gold will be exempted from commercial tax from 1 April 2018.

3. Opportunity for construction companies in Bago Region

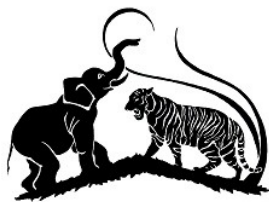
Construction companies interested in building a large number of school buildings and roads in Bago Region should please contact us.

4. Tax and compliance services

We recently got an e-mail from a long-standing client saying that “[... Bank] always suggest we use their lawyers but the fees are exorbitant”. We would like to take this cue to introduce, in no particular order, our services. This time: our tax and compliance services. Please do not hesitate to request a fee proposal; we are sure that we can offer you a monthly package deal in which you would not pay us more than what you would have to pay if you hired your own accountant.

Our tax and compliance services comprise in particular:

- Corporate secretarial services
- Payroll services; registration of labour contracts
- Bookkeeping, monthly reporting packages, preparation of financial statements, auditing (in cooperation with a local CPA)
- Corporate income tax, commercial tax, withholding tax and stamp duty compliance; assistance in tax disputes
- Customs: Registration as importer/exporter, negotiating with the Customs Department, preparing and filing appeals



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- Immigration: Reporting the arrival of foreigners (“form C”), obtaining visa extensions, foreigner registration certificates, stay permits and multiple re-entry visas, obtaining labour cards (MIC companies only)

A full list of our services can be found in our brochure: <https://tinyurl.com/y83qvvro>

5. Competition Rules

The Ministry of Commerce published the Competition Rules (by-laws implementing the Competition Law) on its homepage on 14 February 2018 (but they are dated 9 October 2017). An English translation is available to our premium subscribers.

The Rules set the procedures for establishing the Myanmar Competition Commission, investigation committees and task forces and prescribe how investigations are to be conducted. They do not define terms that are unclear in the Competition Law.

6. New export negative list

The Ministry of Commerce published a new list of items for which an export license is required if they are to be exported (<https://tinyurl.com/y93c3mnf> - scroll down for the list in English).

7. Large real estate tender in Mandalay

The Ministry of Construction and the Mandalay Regional Government are soliciting expressions of interest from real estate developers (local or foreign) for the construction, marketing and management of a 10,000 acres development (“New Mandalay Resort City”) consisting of industrial, commercial, residential, logistics, recreation and resort areas.

<https://tinyurl.com/y6u3eekw>

8. Tender winner for the “Yangon Central Railways Station Area Comprehensive Development Project” announced

This is a USD 2.5 billion project at Yangon Central Station, not to be confused with the former headquarters of the Burma Railway Company nearby which is presently being developed by FMI and foreign partners. FMI also bid for Yangon Central Station, but ultimately, the tender was won by a consortium composed of Oxley Holdings, Min Dhama Co., Ltd. and Sino Great Wall Co., Ltd. as Myanma Railways announced on 16 February 2018 in the Global New Light of Myanmar.

<https://tinyurl.com/y8sa6poz>



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9. Seminar: Forex control and lending; registration of lease and other agreements; trademark protection

Please send an e-mail to sebastian@lincolnmyanmar.com or nyeinchanzaw@lincolnmyanmar.com if you wish to attend the seminar on 27 February 2018. The seminar invitation can be found here: <https://tinyurl.com/ycse6b9n>

10. Electricity and energy news

- (a) Energy firms head for exit as offshore blocks hit hurdles: <https://tinyurl.com/yc65kwby>
- (b) Does Myanmar's LNG power plan stack up?: <https://tinyurl.com/y7cphu7l>

11. Market access and other news

- (a) Beijing to set up three commercial courts in China to resolve Belt and Road-related project disputes: <https://tinyurl.com/ycdl9aly> (This is, eh, interesting.)
- (b) Central Bank considering new interest structures: <https://tinyurl.com/y8zwe294> (Presently, banks usually grant loans secured by a mortgage of immovable property. The maximum interest rate allowed by the Central Bank is 13%. The Central Bank is apparently considering allowing a higher interest rate if a loan is secured by more volatile assets.)
- (c) Start-ups, SMEs call for greater access to loans by foreign banks: <https://tinyurl.com/y8gkoy7b>
- (d) State-owned enterprises hold approx. USD 9 billion in cash: <https://tinyurl.com/yc3vha77>
- (e) South Korea eyes Myanmar investments in manufacturing, infrastructure: <https://tinyurl.com/yd4f6k9k>
- (f) Fourth telco to start selling SIM cards in March: <https://tinyurl.com/ydg3sg38>
- (g) USD 10 billion deep sea port and industrial zone proposed in Ayeyarwaddy Region: <https://tinyurl.com/yaq7y3ua>
- (h) Plans to build a second airport in Chin State: <https://tinyurl.com/y7vztjlg>
- (i) Mandalay Chamber to focus on SME loan and Chinese investment: <https://tinyurl.com/y78wp4rg>



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- (j) **Kempinski to open this spring in Yangon:** <https://tinyurl.com/yb7bz8am> (attracts attention as the largest restoration project involving a heritage building)
- (k) **India's Exim Bank to facilitate investment in Myanmar's healthcare sector:** <https://tinyurl.com/y7396to9>
- (l) **First bonded warehouse in Myanmar:** <https://tinyurl.com/yaall2rs>

12. Tenders

- (a) **Myanma Timber Enterprise:** Sale of teak and hardwood round logs and sawn timber: <https://tinyurl.com/y8hhxhm6>
- (b) **Ministry of Education:** Construction of a workshop block, student dormitory and open shed in Lashio: <https://tinyurl.com/y9tjozyj>
- (c) **Myanma Oil and Gas Enterprise:** Purchase of various equipment: <https://tinyurl.com/yboo9lwu>
- (d) **Department of Medical Services:** Purchase of a 29 seater bus and forensic DNA laboratory equipment: <https://tinyurl.com/y9usxqga>
- (e) **Department of Highways:** Purchase of double cab project inspection vehicles: <https://tinyurl.com/y7m7pt7m>

We hope that you have enjoyed reading our newsletter and found it useful.

Sebastian Pawlita
Managing Director

Nyein Chan Zaw
Director