



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

COMPLIANCE CHECKLIST FOR AN INVESTMENT IN MYANMAR

(Excerpt: Tax compliance)

Taxation

Note: The Internal Revenue Department (“IRD”) has a “Large Taxpayers Office” (“LTO”) and three “Medium Taxpayers Offices”. Foreign-invested companies and branches are either administered by the LTO or the Medium Taxpayers Office 2 (“MTO-2”). The allocation criteria are laid down in [this IRD notice](#).

A. Opening and closing the business; changing its location and other details

Sr. no.	Obligation	Which authority?	When?	Potential penalty for non-compliance
1	<p>Opening the business</p> <p>(a) Registering the company for corporate income tax by filing the “business taxpayer registration form” with the LTO or MTO-2</p> <p><u>Remarks:</u></p> <ul style="list-style-type: none"> ▪ The company registration number shown in the company registration certificate issued by the Directorate of Investment and Company Administration (“DICA”) upon company incorporation now also serves as taxpayer identification number (TIN) for both corporate income tax and commercial tax (VAT) purposes. There used to be (i) no specific corporate income tax number and 	LTO or MTO-2	The form says that it has to be filed “no later than one month before commencing operation”.	10% of the missing tax if the failure to register in time resulted in an underassessment of taxes (section 65(a) Tax Administration Law “TAL”)

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	<p>(ii) a separate commercial tax number, but starting from the financial year 2020/21, DICA's company registration number has been uniformly used also for tax purposes.</p> <ul style="list-style-type: none"> ▪ There is currently a bit of a legislative gap as corporate income tax and commercial tax (VAT) filings have been shifted to an electronic filing / self assessment system for many taxpayers, but this shift is not yet fully reflected in the law. <p>(b) Obtaining commercial tax registration certificate by filing forms "Kathakha-1" and "Kathakha-3" with the LTO or MTO-2 (regulations 3(a), 6 Commercial Tax Regulations "CRT")</p> <p>(c) Obtaining specific goods tax registration certificate by filing form Ahtakha-1 with the LTO or MTO-2 if the company intends to manufacture, import or export certain goods (in</p>	<p>LTO or MTO-2</p> <p>LTO or MTO-2</p>	<p>Filing of Kathakha-1: "1 month prior to commencing operation"; Kathakha-3: "within 10 days after having commenced operation"</p> <p>Prior to commencing the business</p>	<p>10% of the missing tax if the failure to register in time resulted in an underassessment of taxes (section 65(a) TAL)</p> <p>MMK 5 million penalty for failure to register (section 22(a) SGTL)</p>

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	<p>particular, cigarettes, beer, wine, other alcoholic beverages, cars, fuel, natural gas); section 15(a) Specific Goods Tax Law (“SGTL”)</p> <p>(d) Appointing a “company secretary or other officer for keeping and maintaining books, accounts and records” (section 17(a) TAL)</p>	<p>The directors of a company are obliged to appoint the record keeper, but are not obliged to notify the tax authorities of this appointment.</p>	<p>The law does not specify when the record keeper has to be appointed.</p>	<p>The law does not specify a penalty for failing to appoint the record keeper.</p>
2	<p>Changing the business location and other details</p> <p>Notifying the LTO or MTO-2 in writing (there is apparently no specific form for it) of any “change in name (including business name or other trading name), address, place of business, or nature of the taxable activity carried on” (section 9(f) TAL) and any “transfer of ownership” (regulation 8(a) CTR)</p>	<p>LTO or MTO-2</p>	<p>Within 15 days from the change (section 9(g) TAL; regulation 8(a) CTR)</p>	<p>10% of the missing tax if the failure to notify the change resulted in an underassessment of taxes (section 65(b) TAL)</p>
3	<p>Closing the business</p> <p>Notifying the LTO or MTO-2 in writing (there is apparently no specific form for it)</p>	<p>LTO or MTO-2</p>	<p>Within 15 days from the closure (regulation 8(b))</p>	<p>10% of the missing tax if the failure to notify the</p>

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	<p>of the closure (regulation 15(b) CTR)</p> <p>Additionally, corporate income tax returns (regulation 6(a) Income Tax Regulations "ITR") and commercial tax (VAT) returns (regulation 31(a) CTR) have to be filed for the period from the start of the financial year until the date of termination.</p> <p>Theoretically, the deadline for filing these returns is 1 month (corporate income tax) or 15 days (commercial tax (VAT)) from the date of closure.</p>		CTR)	closure resulted in an underassessment of taxes (section 65(c) TAL)

B. Monthly filings and payments

Sr. no.	Obligation	Which authority?	When?	Potential penalty for non-compliance
1	<p>Commercial tax (VAT)</p> <p>Paying the commercial tax invoiced during the month</p> <p>There is no specific tax return form for this monthly payment. The company prepares a cover letter to LTO or MTO-2 and encloses copies of the invoices and, possibly, copies of forms "Kathakha-31"</p>	LTO or MTO-2	Within 10 days after the end of the month in which the invoices were issued (section 12(a) CTL)	Theoretically, 10% of the missing tax if the monthly payment is insufficient or too late (section 21(b) CTL). In practice, it appears that any missing commercial tax payments may be

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	<p>(see below). LTO or MTO-2 issues a receipt upon payment.</p> <p><u>Remarks:</u></p> <p>(1) Generally speaking, the sale of goods and the provision of services attract 5% commercial tax (VAT) on the turnover. The seller/service provider usually invoices the commercial tax (VAT) to its customer.</p> <p>(2) There is a set-off mechanism by which the recipient of an invoice may deduct the invoiced commercial tax (VAT) - the so-called "input tax" - from the commercial tax (VAT) he charges in his turn to his customers ("output tax").</p> <p>In order to enable this set-off, the issuer of an invoice</p> <ul style="list-style-type: none"> ▪ has to ensure that the invoice has the form and contents mandated by regulation 49 CTR; ▪ provide the original to the recipient of the invoice, keep a copy and provide a copy to LTO or MTO-2; ▪ provide a copy of the issuer's 			<p>made up until the due date of the annual commercial tax (VAT) return without any negative consequences.</p>

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	<p>commercial tax registration certificate (“Kathakha-2”) to the recipient of the invoice; and</p> <ul style="list-style-type: none"> ▪ fill in form “Kathakha-31”, provide the original to the recipient of the invoice, keep a copy and provide a copy to the LTO or MTO-2. <p>(3) Please note that not only the sale of goods and the provision of services, but also the import of goods usually attracts 5% commercial tax. The commercial tax on the import is not part of the monthly payment, but the importer pays it together with customs duty and the corporate income tax advance payment when clearing customs.</p>			
2	<p>Personal income tax of employees</p> <p>Declaring (with form “patakha (wanga) - 15”) and paying the personal income tax withheld from the monthly salary paid to the company’s employees to the LTO or MTO-2</p> <p><u>Remark:</u></p>	LTO or MTO-2	Within 10 days after the end of the month in which the salary was paid (according to the IRD’s internal guidelines)	10% of the missing tax if the company insufficiently or belatedly withholds personal income tax from the monthly salaries of the employees (section 74(d))

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	Employers are obliged to calculate and withhold personal income tax from the salary of their employees (section 16(d) ITL)			TAL)
3	<p>Specific goods tax</p> <p>If the company either (i) manufactures and sells domestically or (ii) exports certain goods (in particular, cigarettes, beer, wine, other alcoholic beverages, cars, fuel, natural gas), it has to pay specific goods tax within 10 days after the end of the month in which the goods are either sold domestically or exported (section 8(a)(2), (3) SGTL).</p> <p>The specific goods tax rates vary depending on the goods and the quantity; the rates are set annually in the Union Tax Law.</p> <p>There appears to be no specific tax return form for this monthly payment.</p>	LTO or MTO-2	Within 10 days after the end of the month in which the specific goods were sold or exported	10% of the missing tax if the monthly payment is insufficient or too late (section 22(d) SGTL)

C. Quarterly filings and payments

Sr. no.	Obligation	Which authority?	When?	Potential penalty for non-compliance
1	<p>Corporate income tax</p> <p>Filing form “Patakha (wanga)-18” and making quarterly advance payments on the annual corporate income tax liability to LTO or MTO-2 (section 16A(a)(1) ITL).</p> <p>According to IRD Notification 389/2021 dated 16th November 2021, the advance payment is in essence the corporate income tax of the previous year divided by 4. If the company expects less income in the current quarter, it has to file an application with LTO or MTO-2 to reduce the advance payment.</p> <p>The corporate income tax rate is 22% (section 23(a)(1) Union Tax Law 2022).</p>	LTO or MTO-2	Within 10 days after the end of the quarter (section 16A(a)(1) ITL)	Theoretically, 10% of the missing tax if the quarterly advance payment is insufficient or too late (section 16A(c) ITL). In practice, it appears that any missing payments may be made up until the due date of the annual corporate income return without any negative consequences.
2	<p>Commercial tax (VAT)</p> <p>Filing a quarterly commercial tax (VAT) return with LTO or MTO-2 (section 12(a) CTL)</p>	LTO or MTO-2	Within 1 month after the end of each quarter (section 12(a) CTL)	Penalty for late filing (section 67(a) TAL): the greater of (i) 5% of the owed tax plus 1% of the owed tax for each month in which the filing is

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				overdue, or (ii) MMK 100,000
3	<p>Specific goods tax</p> <p>If the company either (i) manufactures and sells domestically or (ii) exports certain goods, in particular cigarettes, beer, wine, other alcoholic beverages, cars, fuel, natural gas:</p> <p>Filing a quarterly specific goods tax return with LTO or MTO-2 within 10 days after the end of the quarter (section 16(a) SGTL)</p>	LTO or MTO-2	Within 10 days after the end of the quarter	Penalty of 10% of any missing tax as a result of a failure to file or late filing (section 22(e) SGTL)

D. Annual filings and payments

Sr. no.	Obligation	Which authority?	When?	Potential penalty for non-compliance
1	<p>Corporate income tax</p> <ul style="list-style-type: none"> ▪ Filing the annual corporate income tax return with LTO or MTO-2 ▪ If the company sold any capital assets during the year: filing the consolidated capital gains tax return with LTO or 	LTO or MTO-2	Within 3 months after the end of the financial year (section 17(a) ITL)	Penalty for late filing (section 67(a) TAL): the greater of (i) 5% of the owed tax plus 1% of the owed tax for each month

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	CTR)		prior its expiry (Regulation 3(b) CTR), i.e. within 1 month prior to the end of the financial year	resulted in an underassessment of taxes (section 65(a) TAL)
3	<p>Personal income tax</p> <p>Filing the annual salary statement (form “Patakha (wanga) -16”) with the LTO or MTO-2 (section 18 ITL)</p>	LTO or MTO-2	Within 3 months after the end of the financial year (section 18 ITL)	Penalty for late filing (section 67(a) TAL): the greater of (i) 5% of the owed tax plus 1% of the owed tax for each month in which the filing is overdue, or (ii) MMK 100,000
4	<p>Specific goods tax</p> <p>If the company manufactures and sells domestically, or imports, or exports certain goods (in particular, cigarettes, beer, wine, other alcoholic beverages, cars, fuel, natural gas), it has to renew its specific goods tax registration certificate annually (section 15(a), (c) SGTL)</p>	LTO or MTO-2	Prior to the expiry of the specific goods tax registration certificate (i.e., prior to the end of the respective financial year)	Penalty of MMK 5,000,000 for failure to renew (section 22(a) SGTL)

E. Event-driven filings and payments

Sr. no.	Obligation	Which authority?	When?	Potential penalty for non-compliance
1	<p>Importing goods</p> <p>Generally speaking, the following taxes have to be paid in order to obtain customs clearance:</p> <ul style="list-style-type: none"> ▪ Customs duty (rate depends on the goods and the country of origin; can be researched for each type of goods on the national trade portal); section 20 Sea Customs Act (“SCA”); ▪ Commercial tax (5%); section 4(b) CTL ▪ Corporate income tax advance payment (2%); Ministry of Planning and Finance Notification No. 38/2019 ▪ Specific goods tax (in particular if wine, other alcoholic beverages, cars, fuel or natural gas are imported) 	Customs Department/ LTO or MTO-2	Declarations and payments have to be made before customs clearance	<p>Without payment of customs duty and applicable taxes, the goods will not pass customs and cannot be imported legally into the country.</p> <p>The penalty for smuggling (i.e. concealing goods in transport or failure to cross the border at official customs stations) as such appears to be only three times the value of the goods and confiscation (section 167 no. 3 SCA; section 7(1) Land Customs Act “LCA”).</p> <p>However, making a false declaration at customs</p>

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				<p>carries a penalty of up to 3 years imprisonment and/or a fine (section 9(1) LCA; section 167 no. 72 SCA).</p> <p>Furthermore, the offender may theoretically be punished for evading commercial tax or corporate income tax which carries a penalty of imprisonment of up to 7 years and/or a fine (section 77 TAL)</p>
2	<p>Exporting goods</p> <p>Generally speaking, the following taxes have to be paid in order to obtain customs clearance:</p> <ul style="list-style-type: none"> ▪ 2% advance payment on corporate income tax (Ministry of Planning and Finance Notification 38/2019) <p>The export of goods is not subject to customs duty or commercial tax.</p>	Customs Department/ LTO or MTO-2	Declaration and payment have to be made before customs clearance	Without the advance payment on corporate income tax, goods cannot pass customs and cannot be exported legally out of the country.

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	<p>As an exception, commercial tax is due on the export of electricity (8%) and crude oil (5%), but there would be no customs clearance as electricity is exported through transmission lines and crude oil through a pipeline to China.</p> <p>The export of certain goods (in particular, cigarettes, beer, wine, other alcoholic beverages, cars, fuel, natural gas) is subject to specific goods tax, but this tax is apparently not be paid at the time of customs clearance, but within 10 days after the end of the month in which the goods were exported (section 8(a)(3) SGTL).</p>			
3	<p>Personal income tax</p> <ul style="list-style-type: none"> ▪ Notifying the LTO or MTO-2 in writing if an employee (i) is hired or (ii) resigns or is dismissed; ▪ collecting the tax booklet from the LTO or MTO-2 (in which the LTO or MTO-2 records and stamps personal income tax payments whenever a payment is made) when the employee is hired; giving the filled-in 	LTO or MTO-2	Until the 10 th day after the end of the month in which the employee is hired or the resignation or dismissal becomes effective	As such no penalty, but the employer cannot fulfill his obligation to withhold personal income tax from the employee's monthly salary if he does not notify the tax office of the beginning or end of

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	booklet to the employee when he leaves the company			employment.
4	<p>Withholding tax</p> <p>The company has to withhold income tax from certain payments other than salary, (section 16(a) ITL; Ministry of Planning and Finance Notification No. 47/2018):</p> <ul style="list-style-type: none"> ▪ Interest paid to a non-resident: 15% ▪ Fees for the use of licenses, trademarks and intellectual property rights - 10% if paid to a resident; 15% if paid to a non-resident ▪ Purchase price for goods or service fee paid to a non-resident: 2.5% <p>The company has to complete form “Pathaka (wanga) -17” and pay the withheld amount to the LTO or MTO-2; the procedure is explained in English (the text is slightly outdated) on the IRD's homepage.</p>	LTO or MTO-2	The withheld amount has to be reported and paid to the LTO or MTO-2 within 7 days from the date on which the company paid the interest, fee or purchase price (section 16(c) ITL, corresponding IRD notice)	Penalty for failure to report and pay the withholding tax in time: 10% of the underpaid tax (section 74(d) TAL)
5	<p>Stamp duty</p> <p>Almost any legal document is subject to</p>	Revenue-stamping may be done in most tax	Revenue-stamping to be done before or on the	Penalty for late stamping: 3 times the

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	<p>stamp duty.</p> <p>The duty rates are specified in Schedule I to the Stamp Act (“SA”) and range from nominal amounts to very substantial amounts, depending on the contents of the document.</p> <p>The document has to be taken to the IRD for revenue-stamping prior to or on the date of signing (section 17 SA).</p> <p>Unstamped or insufficiently stamped documents may be impounded (section 33(1) SA) and are not admissible as evidence in court (section 35 SA).</p>	<p>offices with certain exceptions (e.g., a lease agreement must be revenue-stamped in the Region or State in which the property is located).</p>	<p>date of signing of the document (section 17 SA)</p>	<p>duty amount (section 35(a) SA).</p>
6	<p>Capital gains</p> <p>If the company sells a capital asset: Filing of the transaction capital gains tax form and payment of the tax within 1 month from the sale (and an annual capital gains tax form within 3 months after the end of the financial year)</p> <p>The capital gains tax rate is 10% (section 27(b) Union Tax Law 2022).</p>	<p>LTO or MTO-2</p>	<p>Filing of the tax return within 1 month from the sale of the capital asset (rule 5(a) Income Tax Rules)</p>	<p>Penalty for late filing (section 67(a) TAL): the greater of (i) 5% of the owed tax plus 1% of the owed tax for each month in which the filing is overdue, or (ii) MMK 100,000</p>

F. Retention of documents

Sr. no.	Obligation	Which authority?	When?	Potential penalty for non-compliance
1	<p>The company is obliged to keep in Myanmar (i) records and accounts sufficient to record all transactions and to ascertain the gains and profits made or the loss incurred in respect of those transactions and (ii) source documents and underlying documentation utilised in the creation of the records and accounts (section 20(a), (b) TAL).</p> <p>The retention period is 7 years from the date of the transaction (section 20(c)(1) TAL).</p>	<p>The LTO or MTO-2 may request the company to produce the documents if needed (cf. section 25(d) TAL).</p>	<p>Documents are to be kept for 7 years from the date of the transaction (section 20(c)(1) TAL)</p>	<p>The penalty for failure to maintain documents ranges from MMK 5,000 to 100,000 per day, depending on the amount of the tax liability connected to the document (section 70(b) TAL).</p> <p>However, one would expect that the tax authorities would often not impose a penalty, but only disallow the deduction of expenses for which the taxpayer fails to produce vouchers.</p>

- Up-to-date as of 17th August 2022.
- COVID-19 related exemptions are not included as they are temporary in nature.

- Links provided are to English translations of laws for the benefit of readers who are not conversant in the Myanmar language. These English translations may not (i) be accurate and (ii) reflect recent amendments to the respective law. Recent amendments are, however, reflected in our comments.