



Dear Readers,

Welcome to a new edition of our newsletter, this time focused on tax and tariff developments.

### 1. Law Amending the 2022 Union Tax Law

SAC Law 48/2022 dated 17 November 2022 ([English translation](#)) -

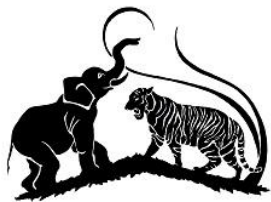
- exempts electric battery vehicles and their batteries from specific goods tax and commercial tax, effective from October 2022 to 31 March 2023; and
- increases the income tax rate for companies engaged in oil and gas exploration and production from 22% to 25%, effective from 1 April 2022 to 31 March 2023.

### 2. Defining “tax avoidance”, “fraudulent or negligent underpayment of tax”, “false or misleading statements”, “tax evasion”

The Tax Administration Law ([English translation made available by the IRD](#)) provides for the following sanctions for -

- **tax avoidance:** replacement of the value stated by the taxpayer with the market value;
- **fraudulent or negligent underpayment of tax:** Penalty of 75% of the underpayment (50% if the underpayment does not exceed MMK 100,000,000 or 50% of the taxpayer’s tax liability);
- **false or misleading statements:** Penalty of MMK 150,000 plus 100% of the underpayment; and
- **tax evasion:** fine of MMK 250,000 or 100% of the underpayment if higher, and/or imprisonment up to 7 years.

The IRD’s Public Ruling 3/2022 ([English translation](#)) dated 16 November 2022, to take effect from 1 January 2023, defines these expressions and provides many examples. Of note is the reference to transfer pricing concepts in the definition of tax avoidance (although Myanmar does not have specific transfer pricing regulations that would oblige taxpayers to create and maintain transfer pricing documentation):



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### *"Tax avoidance*

6. *If any person who understands the tax laws and violates tax compliance practices in order to avoid taxes due reduces the taxable income or the amount of tax to be paid, this shall be considered tax avoidance. Tax avoidance also includes the following -*
  - (a) *Failure to value a right, asset, service or benefit at the market price;*
  - (b) *making non-arm's length transfers in cross-border transfer pricing;*
  - (c) *allocation of income between the taxpayer and associated enterprises for the purpose of reducing the total tax payable on the income;*
  - (d) *modifying the structure of an association of persons in order to obtain tax benefits;*
  - (e) *tax avoidance by abusing tax treaties concluded between states."*

### **3. Tariff developments**

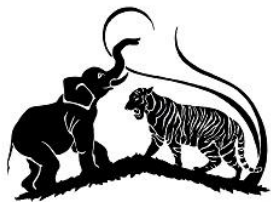
- With effect from 1 October 2022, the Ministry of Planning and Finance overhauled its [tariff schedule](#). Such overhauls take place every 5 years. This schedule provides customs duty rates only for imports from outside ASEAN. Imports from ASEAN countries are covered by [Annex 2 to the ASEAN Trade in Goods Agreement \(ATIGA\)](#). [Reduced rates](#) may also be available for imports from Australia and New Zealand, China (including Hong Kong), India, Korea, and Japan due to free trade zones created with ASEAN.

Customs duty rates can be researched on the [National Trade Portal](#), but the new schedule does not seem to have been incorporated yet, and reduced rates (if any) for imports from free trade zones created with ASEAN do not show up.

- Ministry of Planning and Finance Notification 90/2022 dated 2 November 2022 ([English translation](#)) exempts electric battery vehicles and their accessories and parts from customs duty, effective from 2 November 2022 to 31 March 2023.
- Ministry of Planning and Finance Notification 85/2022 dated 17 October 2022 ([English translation](#)), effective from 18 October 2022, provides (new) lists of medicaments to which customs duty rates of 0% or 5% apply; the import of other medicaments from outside ASEAN attracts 1.5% customs duty.

### **4. Tax refunds**

The IRD's Public Ruling 1/2022 dated 7 October 2022 ([English translation](#)) explains how tax refunds are to be set off against tax liabilities. Of note, the ruling presumes that the taxpayer will incur tax liabilities in the next 12 months following the refund in the same amount as he incurred in the year preceding the refund, and these fictional liabilities (referred to as an



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“advance tax”) are used to set off the refund if any of it remains after having been set off with actual tax liabilities.

#### **5. Withholding tax on service fees**

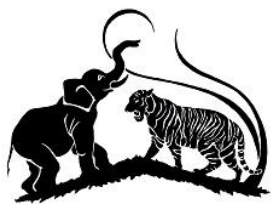
According to Ministry of Planning and Finance Notification 47/2018, service fees paid to a non-resident foreigner are subject to a withholding tax of 2.5%, but this rate may be reduced to zero if the recipient of the fees resides in a country with which Myanmar has an avoidance of double taxation agreement (ADTA) which prohibits Myanmar from taxing this service fee.

However, taxpayers are supposed to obtain approval from the tax office prior to refraining from withholding the tax on account of an ADTA. For service fees up to an amount of USD 100,000, IRD Directive 2/2020 allowed taxpayers to refrain from the withholding without obtaining prior approval, but this is now revoked by IRD Directive 1/2022 ([English translation](#)) dated 9 June 2022.

We hope that you have found this information useful.

Sebastian Pawlita  
Managing Director

Nyein Chan Zaw  
Director



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### About Lincoln Legal Services (Myanmar) Limited

Lincoln Legal Services (Myanmar) Limited provides the full range of legal and tax advisory and compliance work required by investors. We pride ourselves in offering result-oriented work, high dependability and a fast response time at very competitive prices. Please do not hesitate to contact us:

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