



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

CONVENIENCE TRANSLATION - ACCURACY NOT GUARANTEED

**Government of the Republic of the Union of Myanmar
Ministry of Planning and Finance
Internal Revenue Department**

Public Ruling No. 3/2022

**1384, 9th Waning Day of Tazaungmon
(16 November 2022)**

Determining the practice regarding tax avoidance, underpayment of tax, misrepresentation of tax information and tax evasion

Introduction

1. Exercising the authority conferred by section 11, sub-section (a) Tax Administration Law, the Director General of the Internal Revenue Department hereby issues this public ruling in order to clarify for the public the meaning of the expressions tax avoidance, underpayment of tax, misrepresentation of tax information and tax evasion, and to let the public know what actions will be taken against these activities.
2. This public ruling is binding on the Internal Revenue Department pursuant to section 11, sub-section (b) Tax Administration Law.

Topics

3. Clarification how the Internal Revenue Department interprets the expressions, and takes action against, tax avoidance, underpayment of tax, misrepresentation of tax information and tax evasion.

Affected persons

4. This public ruling applies to all those who avoid taxes, underpay taxes, misrepresent tax information and evade taxes.

Applicable legislation

5. This public ruling is subject to the provisions in sections 32, 68, 69 and 77 Tax Administration Law.



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.

Negligent or fraudulent underpayment of tax

7. Any person who, when filing a tax return, negligently or fraudulently understates the tax due shall be considered to have negligently or fraudulently underpaid tax. Such negligent or fraudulent underpayment of tax also includes the following cases -
- (a) Deliberate failure to submit returns for a long time;
 - (b) understatement of income, receipts and sales;
 - (c) fraudulently claiming reliefs;
 - (d) dishonestly claiming depreciation;
 - (e) presenting wrong accounting vouchers,
 - (f) incorrectly claiming a credit for input tax;
 - (g) withholding output tax;
 - (h) no tax seal on specific goods that are designated for affixation of tax seals;
 - (i) occurrence of mistakes when making entries into the accounts, either because of a person or a device.



False or misleading statements

8. If any person submits a false or misleading statement to a tax officer in order to reduce tax or deliberately avoid the collection of tax or payment of tax or to receive a refund to which he is not entitled, and the tax officer assumes this information to be correct, this shall be considered a false or misleading statement of tax information if the assessment is likely to result in less tax being paid than would have been due, or the refund being higher than would have been due. False or misleading statements of tax information also include the following -
- (a) Deliberate omission of income, receipts and sales;
 - (b) writing incorrect information in the tax return;
 - (c) presenting incorrect information upon an oral enquiry or written request by a tax officer;
 - (d) maintaining or presenting inaccurate accounting tables and documents;
 - (e) illegal import or export of goods;
 - (f) transferring assets to avoid tax collection;
 - (g) concealing the opening of bank accounts;
 - (h) maintaining more than one financial statement.

Tax evasion

9. If any person, among others, knowingly and willfully violates the tax laws, or repeatedly commits any of the offences in paragraphs 7 and 8 above, or causes a large amount of tax revenue to be lost to the state due to any tax non-compliance, this shall be considered tax evasion and the person shall be subject to criminal proceedings and the imposition of fines for tax evasion offences according to section 77 Tax Administration Law.

Prosecution under the Anti-Money Laundering Law

10. Those who commit tax evasion will be prosecuted under the Tax Administration Law according to paragraph 9 above and may also be prosecuted under the Anti-Money Laundering Law.
11. For greater clarity, this public ruling is illustrated with the following examples.



Example 1

- (a) **Case:** Company “A” is a company that manufactures and sells various types of alcohol locally, and in the income year 2020-2021, it submitted an income tax return stating that it produced and sold 500,000,000 kyats worth of alcohol. During the company’s tax audit for this income year, it was found that company “A” sold to its affiliates with which it shared an interest at a reduced factory price, and sold to other companies with which it shared no interest at a factory price that reflected the market price.
- (b) **Application of the public ruling:** This is considered tax avoidance as company “A” violates tax compliance practices and reduces the tax due by not using the market price among affiliates that share an interest.

Example 2

- (a) **Case:** Company “B” engaged in the business of importing and selling goods and submitted an income tax return for the 2020-2021 income year stating that it had earned 100,000,000 kyats. During the company’s tax audit for this income year, it was found that the sales revenue was understated in the income tax return, and the actual sales revenue was 120,000,000 kyats.
- (b) **Application of the public ruling:** Company “B” is considered to have negligently or fraudulently underpaid tax as it fraudulently understated the amount of its sales so as to underpay tax.

Example 3

- (a) **Case:** Company “C” is engaged in the business of manufacturing and selling goods and filed a commercial tax return for the 2021-2022 financial year, stating that it is to receive a refund of 120,000,000 kyats. During the company’s tax audit for this financial year, it was found that the commercial tax paid for the raw materials imported by the company for use in production had already been deducted from the commercial tax paid monthly, and that there is no claim for a refund.
- (b) **Application of the public ruling:** These are considered to be false or misleading statements as upon examination of the evidence, it was found that company “C” had deliberately submitted false or misleading statements to request a refund to which it had not been entitled in order to avoid paying taxes.



Example 4

- (a) **Case:** Company “D” is a manufacturing company and submitted an income tax return stating that it had 500,000,000 kyats of production income and 200,000,000 kyats of refunds in the 2020-2021 income year. During the company’s tax audit for this income year, it was found that the company had withheld production income, dishonestly claimed depreciation, presented inaccurate accounting tables, and fraudulently claimed refunds to which it had not been entitled.
- (b) **Application of the public ruling:** This should be considered tax evasion as company “D” was found to have intentionally withheld income to reduce taxes, dishonestly claimed depreciation, and presented inaccurate accounting tables [*“fraudulently claiming refunds” not mentioned*].
12. This public ruling shall take effect from 1 January 2023.
13. I hereby sign and publish the public ruling.

(Signed)
Min Thut
Director General

Letter no. 1 (1) / U Sa-1 / Pa Ta Kha / 2022 (968)

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Distribution list: *[Omitted.]*



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