

# LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

## NEWSLETTER 103 - 12 February 2023

**Dear Readers,**

Welcome to a new edition of our newsletter.

### **1. Expansion of the tax base in the oil and gas sector**

Myanmar's "oil and natural gas exploration and production sector" is subject to higher income tax rates than the rest of the economy:

- An [amendment](#) to the Union Taxation Law 2022 dated 17 November 2022 increased the income tax rate from 22% to 25%; and
- the capital gains tax rate is not 10%, but 40%-50%.

It was assumed that the higher tax rates applied (only) to the operators and investors involved in a production sharing contract (PSC) with Myanma Oil and Gas Enterprise (MOGE) and the pipeline operators. However, the SAC's Ministry of Planning and Finance clarified in Notification 11/2023 dated 2 February 2023 ([English translation](#)) that it interprets the expression "oil and natural gas exploration and production sector" as covering:

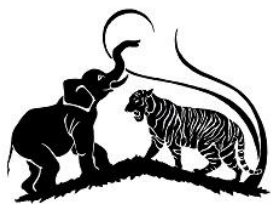
- activities under any production sharing contract; and
- additionally, the exploration, drilling and production of oil and natural gas by oneself or by obtaining the services of another person, the business of exploration, drilling and production, and of transporting oil and natural gas by pipeline or cross-country, and oil and natural gas exploration, drilling and production services.

This suggests that businesses offering products and processes that support the upstream oil and gas industry are also subject to the higher income tax rates.

The Notification takes effect from the 2023-2024 assessment year, i.e., it covers income that was achieved in the 2022-2023 (1 April 2022 to 31 March 2023) financial year.

### **2. Payment of taxes in foreign currency**

Non-resident foreigners are subject to Myanmar income tax if they have "income received from within Myanmar" (section 3(n)(iii) Income Tax Law). If they receive this income in foreign currency, they have to pay Myanmar income tax in foreign currency (section 30 Union Taxation Law 2022), although we understand that for practical reasons, taxpayers have so far paid in MMK.



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Often, the Internal Revenue Department collects Myanmar income tax from non-resident foreigners with the help of others: A person from Myanmar paying, e.g., a service fee to a non-resident foreigner must, prior to making the payment, deduct a specified percentage from this service fee and forward the deducted amount to the Internal Revenue Department. These withholding tax rates are shown in the red box in the table below. Again, the law requires tax payment in foreign currency and not in MMK.

No.	Type of payment	Withholding tax rate if the recipient of the payment is ...	
		... resident in Myanmar	... not resident in Myanmar
1.	Interest payment	0%	15% (*) (**)
2.	Fees for the use of a license, trademark or copyright	10%	15% (**)
3.	Payment by the government and state-owned enterprises for the purchase of goods and services from the private sector	2%	2.5% (**)
4.	Payment by the private sector for the purchase of goods and services	0%	2.5% (**)
5.	Salary payment	0% - 25%	0% - 25% (**)

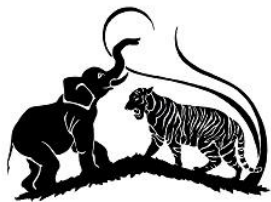
(\*) 0% if the interest is paid to the Myanmar branch of a foreign bank

(\*\*) Relief may be available according to an avoidance of double taxation agreement

With Directive 2/2023 dated 25 January 2023 ([English translation](#)), the Central Bank obliges banks to assist with ensuring that Myanmar tax on the income of non-resident foreigners is being collected in foreign currency (and, maybe, stored abroad) and not in MMK. Although the wording is a slightly ambiguous in this respect, we suppose that the Directive covers both the scenario where a non-resident foreigner pays income tax himself, and the scenario where a person in Myanmar deducts withholding tax from a payment to a non-resident foreigner.

More precisely,

- private banks have to transfer the tax payable by their customers in foreign currency through overseas correspondent banks to state-owned Myanma Economic Bank (MEB), which will pass on the corresponding MMK amount to the Internal Revenue Department;



- state-owned Myanma Foreign Trade Bank (MFTB) and Myanma Investment and Commercial Bank (MICB) have to pass on the MMK amount of the tax payable in foreign currency by their customers to the Internal Revenue Department;
- private partners in joint venture projects with the government have to pay the tax on income in foreign currency to a foreign currency account of MFTB or MICB abroad; MFTB or MICB have to pass on the corresponding MMK amount to the Internal Revenue Department; and
- banks shall collect the SWIFT charges arising from the additional transfers from their customers.

### 3. Extension of e-visas

The SAC's Ministry of Immigration and Population [announced](#) that "from 1 February 2023" (the date is shown in the Burmese text, but not in the English text), foreigners having entered the country with an electronic business visa may extend it online for up to 1 year on <https://estay.moip.gov.mm/>.

More precisely, the extension is split into two components, (i) a "stay permit" that allows the foreigner to be in the country, and (ii) a single or multiple "re-entry permit" that allows the foreigner, if he so wishes, to leave the country and come back again before his stay permit expires.

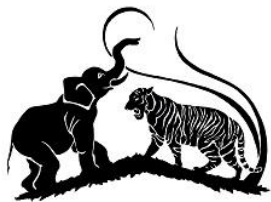
[Terms and conditions](#) apply.

### 4. Public procurement / sale and lease of state-owned assets

Already in April 2022, the official gazette published Directive 1/2022 dated 17 March 2022 of the SAC's Office on "public procurement, and on the disposal and lease of state-owned assets" ([English translation](#)), which to a large extent overwrites corresponding directives of the previous civil administration.

In the weeks and months that followed, many departments and other state organisations set up tender committees, floor price committees, tender acceptance committees, and quality inspection and acceptance committees. These committees seem to be set up anew every financial year.

As previously, the Directive distinguishes between (i) procurement of construction work, goods, and services, and (ii) the sale or lease of state-owned assets.



#### (a) Procurement of construction work, goods, and services

As a general rule, departments and other state organisations have to conduct procurement by calling for price proposals or open tenders as follows:

- **For purchases below MMK 20 million:** Soliciting price proposals from at least 3 reliable companies;
- **for purchases from MMK 20 million to MMK 200 million:** announcing an invitation for open tenders at least 7 days before the tender opening date on the notice boards of the relevant ministry, the General Administration Department, the District Administration Office, and the Township Administration Offices; and
- **for purchases above MMK 200 million:** announcing an invitation for open tenders on the relevant ministry's webpage and at least twice in state-owned newspapers, at least 14 days before the tender opening date.

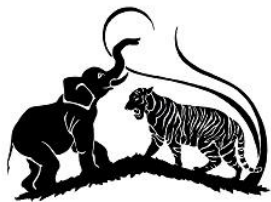
In complicated projects, departments and other state organisations may first solicit a technical proposal, screen the tenderers and their submissions, and solicit price proposals from those that passed the first stage ("two-stage tendering").

Furthermore, the Directive allows departments and other state organisations in many cases to select suppliers and contractors from a small circle (restricted tendering or direct procurement). However, this has to be approved by the ministry's (or equivalent top level) management committee or, if the purchase exceeds MMK 100 million, by the chairman of the SAC or the Union government.

#### (b) Sale or lease of state-owned assets

The Directive distinguishes between:

- **"Assets owned by a department":** storage equipment, tools and accessories, and the department's inventoried and surplus goods, irrespective of whether inanimate or animate, if they are controlled or owned by a department or other state organisation;
- **"fixed assets owned by a department":** buildings, factories, workshops, machinery, furniture and equipment, and the like items, if they are controlled or owned by a department or other state organisation; and



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- **“state-owned assets”**: assets owned by a department, fixed assets owned by a department, movable or immovable assets, land, buildings, intellectual property rights, and other assets legally owned by the state.

**(aa) Sale or lease of assets / fixed assets owned by a department**

A department or other state organisation wishing to sell or lease out “assets owned by a department” or “fixed assets owned by a department” may do so either by inviting tenders or by direct sale or lease. The Directive provides some guidelines when the department should do the former and when the latter.

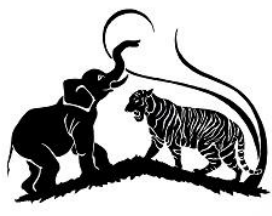
If the department opts for tendering, its tender committee shall announce the tender invitation 7 days in advance on the notice boards of the relevant ministry and the General Administration Department and its district and township offices if the floor price (sales price or annual rent) is less than MMK 20 million. If the floor price is MMK 20 million or more, the announcement shall be made on the ministry’s webpage and at least twice in state-owned newspapers, at least 14 days before the tender opening date.

If the department opts for a direct sale, it needs the approval of the ministry’s (or other top level) management committee or, if the sales price exceeds MMK 100 million, of the chairman of the SAC or the Union government.

The lease of fixed assets owned by a department shall comply with “directive no. 3/2018 to be followed when leasing, transferring, or having a joint venture involving, state-owned land and buildings” of the President’s Office. Unfortunately, this directive is difficult to source online.

**(bb) Sale or lease of other state-owned assets**

State-owned assets that are not “assets owned by a department” or “fixed assets owned by a department” - we suppose that this may in particular be empty land - may be sold or leased after the department called an auction or solicited price offers (provided that the department made corresponding announcements on the ministry’s webpage and in state-owned newspapers at least twice, at least 14 days in advance), or with the approval of the chairman of the SAC or the Union government.



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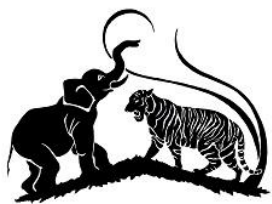
**(cc) Privatisation Commission**

It should be noted that state-owned property is often not sold to the private sector by the respective department itself, but by the Privatisation Commission. The first Privatisation Commission was established in 1995 and subsequently reconstituted by each new government, the last time by SAC Notification 41/2021 dated 8 March 2021.

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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