

Dear Readers,

Welcome to a new edition of our newsletter.

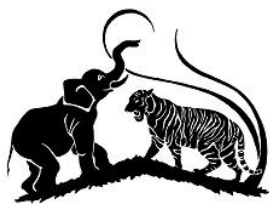
1. SAC issues Union Taxation Law 2024

The State Administration Council (“SAC”) issued the Union Taxation Law 2024 on 29 March 2024 ([English translation](#)). This is an annual law that affects with effect from 1st April, to the extent that it introduces changes, specific goods tax, commercial tax, capital gains tax and other income tax, and gemstone tax. This year’s changes are as follows:

(a) Specific goods tax

The price segments and specific goods tax rates of cigarettes, liquor and wine were changed as follows:

Sr.	Type of specific goods	Price segment (old)	Tax rate (old)	Price segment (new)	Tax rate (new)
1	(a) Various cigarettes	If the sales price is up to MMK 700 per pack of 20 cigarettes	MMK 10 per cigarette	If the sales price is up to MMK 800 per pack of 20 cigarettes	MMK 13 per cigarette
	...				
	(c) Various cigarettes	If the sales price is MMK 1,101 or higher per pack of 20 cigarettes	MMK 27 per cigarette	If the sales price is MMK 1,101 or higher per pack of 20 cigarettes	MMK 29 per cigarette
8	(a) Various types of liquor	If the price per litre is from MMK 200 to MMK 1,400	MMK 109 per litre	If the price per litre is from MMK 400 to MMK 2,000	MMK 237 per litre
	...				
	(m) Various types of liquor	If the price per litre is from MMK 18,101 to MMK 19,850	MMK 5,070 per litre	If the price per litre is from MMK 22,001 to MMK 24,000	MMK 5,745 per litre
	(n) Various types of liquor	If the price per litre is 19,851 or higher	60% of the litre price	If the price per litre is 24,001 and higher	60% of the litre price
10	(a) Various types of wine	If the price per litre is from MMK 1 to MMK 850	MMK 92 per litre	If the price per litre is from MMK 1 to MMK 1,400	MMK 176 per litre
	...				



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Sr.	Type of specific goods	Price segment (old)	Tax rate (old)	Price segment (new)	Tax rate (new)
	(l) Various types of wine	If the price per litre is from MMK 13,601 to MMK 16,600	MMK 3,724 per litre	If the price per litre is from MMK 19,101 to MMK 22,100	MMK 4,532 per litre
	(n) Various types of wine	If the price per litre is MMK 16,601 or higher	50% of the litre price	If the price per litre is MMK 22,101 or higher	50% of the litre price

(b) Commercial tax

Goods are now exempt from commercial tax if they are imported under the “repair and return” system after they were exported to be repaired abroad due to a defect.

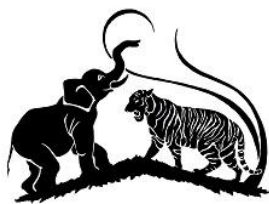
(c) Capital gains tax and other income tax

Previously, resident taxpayers paid capital gains tax and other income tax in MMK irrespective of whether they had foreign currency income. Now, resident taxpayers must pay tax in the type of currency received, in the same manner as non-resident taxpayers always had to. We understand that this turns back the clock to before the first Union Taxation Law in 2014 introduced the “MMK only” tax payment for resident taxpayers.

Income (except capital gains) that includes foreign currency revenue and/or expenses shall be calculated according to regulation 8 Income Tax Regulations (reproduced in an English translation below).

In essence, foreign currency revenue and expenses are converted to MMK at the Central Bank exchange rate and added to the MMK revenue and expenses, resulting in a total income in MMK. The tax amount (at this stage of the calculation still in MMK for both foreign currency and MMK income) is calculated based on this total income and then apportioned at the ratio of the original MMK revenue to the foreign currency revenue after conversion. The foreign currency tax portion is converted back from MMK to the foreign currency at the Central Bank exchange rate and shall be paid in this foreign currency.

The quarterly advance on the income tax also has to be paid in foreign currency to the extent that the taxpayer expects to have foreign currency income (regulation 8 (e)).



The Union Taxation Law 2024 does not address potential issues such as foreign currency revenue that is mandatorily converted by the bank to MMK upon receipt in the taxpayer's Myanmar bank account, restrictions on withdrawals and domestic bank transfers in foreign currency, and the availability (or non-availability) of foreign currency when the quarterly advance payment is due.

We understand that many taxpayers that originally had USD as their accounting currency have switched to MMK already. This trend may gain strength.

CONVENIENCE TRANSLATION - ACCURACY NOT GUARANTEED

The Republic of the Union of Myanmar
Ministry of Finance and Revenue
Minister's Office
Notification No. 103/2012
Nay Pyi Taw, 1373, 8th Waning Day of Tabaung
(15 March 2012)

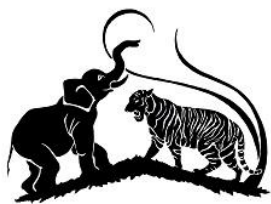
[...]

8. With respect to the taxpayer's total income and tax payable, if his revenue or expenses in the relevant income year are not only in kyats but also in foreign currency, or if he obtained only foreign currency:
 - (a) Foreign currency revenue and expenses shall be converted to kyats. After the conversion, each amount shall be added to the actual revenue and expenses in kyats. The total income in kyats shall be determined by deducting the total expenses from the total revenue, and the tax liability in kyats shall be determined in accordance with the existing provisions.
 - (b) The tax amount in kyats calculated according to sub-regulation (a) shall be divided proportionally between the amount to be paid in kyats and the amount to be paid in foreign currency after re-conversion. In such division, the division shall be made according to the ratio between the revenue amount in kyats only and the



kyat amount from the conversion of the actual revenue in foreign currency. After that, the kyat portion of the tax shall be paid in kyats, and the portion in kyats from the conversion of foreign currency shall be reconverted to the foreign currency and paid in this foreign currency.

- (c) In the calculation above, the exchange rate specified by the Central Bank of Myanmar shall be used. The conversion from foreign currency to kyats and from kyats to foreign currency shall be valued with the exchange rate on the day on which the money is received if the relevant revenue is made in a lump sum for the income year, and with the average rate from averaging the exchange rates on each day on which money is received if revenue is made more than once. The same shall be done with respect to expenses.
- (d) Proportionate tax in foreign currency calculated according to sub-regulation (b) shall be demanded in such foreign currency, and if there is a refund, the refund shall be made in such foreign currency. Proportionate tax in kyats calculated according to sub-regulation (b) shall be demanded in kyats, and if there is a refund, the refund shall be made in kyats.
- (e) The tax payments during the income year according to section 16 of the Law shall be made in foreign currency and kyats based on the taxpayer's estimate of the tax to be paid in foreign currency and in kyats.
- (f) The Ministry of Planning and Finance of the Union Government may determine the tax to be paid in foreign currency in respect of any person or type of person who has foreign currency revenue as a fixed percentage of the revenue made in foreign currency. If so determined, only the amount of tax charged at the fixed percentage shall be paid instead of the amount of tax to be paid in



foreign currency calculated according to sub-regulation (b). However, the kyat amount shall be proportionate.

- (g) Regarding the tax assessment of persons with foreign currency revenue and persons who have foreign currency expenses, remaining matters shall be carried out in accordance with the provisions of the Law. The Director General may, with respect to issues that are difficult in practice and special issues under the provisions of this regulation, issue directives on calculation methods and implementation methods.
- (h) The provisions of this regulation shall not apply to the revenue or income earned abroad by a non-resident citizen.
- (i) Merely because a fixed tax rate has been set for revenue according to sub-regulation (f), persons who have such foreign currency revenue shall not be deemed not to be covered by this regulation.

[...]

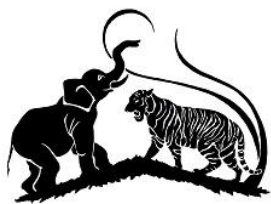
2. **Standard operating procedures to resolve and prevent the reoccurrence of illegal farmland use**

The Myanmar Gazette edition dated 29 March 2024 published SAC Notification 33/2024 dated 14 February 2024 containing “standard operating procedures to resolve the use of farmland in other ways without a permit and to exercise control to prevent re-occurrence”.

These standard operating procedures are rather convoluted but in essence provide for the following:

(a) **Starting date of the violation is important**

The SOP distinguish between violations that started (i) up until 31 August 2012 (enactment of the Farmland Law 2012), (ii) between 1 September 2012 and 18 August 2023 (order issued by the SAC to draft standard procedures), and (iii) thereafter. It appears that illegal use may only be legalised in case of (i) and (ii), and that in case of (iii), the offending structure must be dismantled.



(b) Important definitions

The SOP define “offender” as a person who uses farmland in other ways without having obtained a permit according to the Farmland Law and Rules, a person who violates specified terms, a person who uses farmland in excess of the rights granted, and a person to whom the farmland was transferred by such person, either by purchase or otherwise.

Among others, the SOP furthermore define classes of farmland (upgraded paddy land, paddy land that can be planted regularly, irrigated paddy land, fallow land, farmland other than paddy land that can be planted regularly, *ya* land).

(c) Role of the ground field inspection teams, working committees, and the Nay Pyi Taw Council and Regional and State governments

Ground field inspection teams shall classify the farmland used in the violation, divide the illegal use into the period up to 31 August 2012 and the period from 1 September 2012 up to 18 August 2023, verify whether the land is used as residential property, used by government departments or private organisations, used for commercial purposes, or used for religious purposes, and furthermore, depending on the use, verify whether there are attenuating or aggravating circumstances (e.g., whether the residential building lies within or outside of a township or village tract, whether the building owners are blacklisted, whether the commercial use was approved by the Myanmar Investment Commission or another government department, whether taxes were paid, etc.).

The relevant working committees shall verify the reports of the ground field inspection teams and pass them on to the Nay Pyi Taw Council or the government of the relevant Region or State which shall determine whether to allow or disallow the land use.

(d) Illegal use of farmland in a township or village tract started before 1 September 2012

If the illegal land use started before 1 September 2012 and the land is situated within a township or village tract and does not fall within the definition of farmland according to section 3 (a) Farmland Law, the use may in principle be allowed.

Converting the land to grant land requires, among others, confirmation from the Farmland Management Body at the level of the Nay Pyi Taw Council, Region or State that there are no aggravating circumstances and the payment of the fine specified in Table 1.



If the Nay Pyi Taw Council or the government of the relevant Region or State disallows the land use, this seems to ultimately result in the confiscation of the land (para. 12 (b) (3)).

(e) Illegal use of farmland started before 1 September 2012 (land is situated outside of a township or village tract) or in the period from 1 September 2012 up to 18 August 2023 (irrespective of the land location)

If the illegal use started before 1 September 2012 and the land is situated outside of a township or village tract, or if the illegal use started within the period from 1 September 2012 up until 18 August 2023, the use may be in principle allowed.

Converting the land to grant land (if the illegal use started before 1 September 2012) or obtaining a permit to use farmland in other ways (if the illegal use started in the period from 1 September 2012 up until 18 August 2023) requires, among others, confirmation from the Farmland Management Body at the level of the Nay Pyi Taw Council, Region or State that there are no aggravating circumstances, the relevant government's opinion into which township, ward or village tract the land shall be integrated (if the land is currently situated outside of a township or village tract), the approval of relevant Union ministries, and payment of the fine specified in Table 2, Table 3 or Table 4.

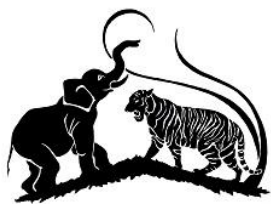
If the Nay Pyi Taw Council or the government of the relevant Region or State disallows the land use, the Township Farmland Management Body shall cause the offender to replant the land in the original way. If the offender is unable to do so, the Township Farmland Management Body shall impose a punishment according to section 19 Farmland Law and cause the offender to plant an appropriate crop type or revoke the farmland authorisation certificate (form 7).

(f) Illegal use of farmland started after 14 August 2023

The SOP do not provide for a procedure to legalise the illegal use of farmland that started after 14 August 2023.

(g) Measures to prevent illegal use of farmland

In order to prevent farmland from being used illegally, the SOP define ward or village tract administrators, staff in charge of ward or village tracts, and specifically set up monitoring and reporting teams as persons responsible for reporting. Persons responsible for reporting shall be given 10% of the fine as a reward if their report is correct.



As soon as a violation is known, the Administration Body (this is the SAC at the township level) shall immediately issue a local order for prevention. Furthermore, the Township Farmland Management Body shall issue an order according to section 19 Farmland Management Law and, in case of non-compliance, initiate prosecution and, together with the Administration Body, immediately evict the offender and dismantle the building.

The relevant Township and Village Tract Farmland Management Body must verify every sale of farmland.

(h) Urban and other planning

Within the context of urban planning, business planning and agricultural production planning, the relevant government may systematically change farmland into government-administered land and allocate it.

(i) Fines in Tables 1-4

Fines range from 5% to 100% of the land value according to “the farmland value published annually”, provided that the land value shall not be lower than the current market price.

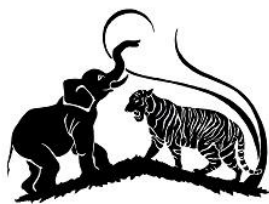
3. “Borders to allow entry and exit only with UID certificate”

Concerning the Unique Identity Number (UID), an effort by the Ministry of Immigration and Population under the SAC to collect and digitise individual data, and its ever-expanding propagation, the Global New Light of Myanmar on [6 April 2024](#) carried the following piece of news:

“Borders to allow entry and exit only with UID certificate

The Ministry of Immigration and Population has issued a notification that entry and exit are only granted with TBP [temporary border pass] or BP [border pass] certificates issued alongside the UID certificate (Unique Identity Number) at three border checkpoints in China, Thailand, and India.

TBP and BP certificates will be issued and allowed to cross the border only with the UID documents starting from 1 May. Applicants for TBP and BP certificates at the border are asked to bring UID documents along with citizenship scrutiny cards.



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The scheme aims to collect population statistics regarding entries and exits at the borders, as well as to control activities such as using fake citizenship scrutiny cards and unused cards when applying for permission to enter or exit from border crossings.

The Electronic Registration system Department under the Ministry of Immigration and Population collects and registers biographic data and biometric data of residents over the age of 10 through an electronic system and issues a 10-digit UID (Unique Identity Number).

When registering biographic and biometric data, it is necessary to bring a citizenship scrutiny card or any identity cards issued by the government. — TWA/MKKS”

We hope that you have found this information useful.

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Managing Director

Nyein Chan Zaw
Director

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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