

LEGAL ALERT

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Myanmar Implementing Integrated Tax Administration System

Tax administration is an important part of every country's tax reform system. With an aim to modernising the tax administration system and providing guidance on administrative tax procedures in Myanmar, Phyidaungsu Hluttaw enacted the Tax Administrative Law ("TAL") on 7 June 2019 which will come into force in 1 October 2019. The objectives of TAL is to improve tax collection by implementing a Self-Assessment System that will improve the accuracy of taxpayer data and clarifying the functions and powers of the Internal Revenue Department ("IRD"). It will help to maintain and improve the compliance of taxpayers through an improved tax system and process. TAL covers administrative matters for the following taxes:

- income tax;
- commercial tax
- special goods tax; and
- other taxes on which authority is vested to the Director General of the Internal Revenue Department ("DG") under the relevant laws.

Key changes under TAL are as follows:

Taxpayer registration

Every person who is liable to pay tax shall do so within the period stipulated under any tax law. However, the taxpayer may apply to the DG for an extension of time. Under TAL, the DG shall specify a registration number (tax identification number or TIN) for each taxpayer. Once the registration number has been officially issued in the Gazette, the exclusive taxpayer registration number for individual taxpayer or prescribed group of taxpayers shall be used for all tax purposes. Where there is a change in circumstances, the taxpayer must notify the IRD of any changes to the name (including business name), address, business location, or any change in business nature, within 15 days for commercial tax and special goods tax related matters and one year for income tax related matters. Failure to register or deregister shall result in a penalty equivalent to 10% of the tax payable.

Tax clearance certificate

Under TAL, the taxpayer may also request the DG for a tax clearance certificate ("TCC") to confirm that they are cleared from any additional tax liabilities during that year. In order to issue TCC to a taxpayer, the DG will ensure that there are:

- no outstanding taxes; and
- any disputes in tax have been paid or the arrangement have been made for the DG to believe that the outstanding tax will be paid and the taxpayer has made the instalment payments when they are due.

The regulations may prescribed required conditions in the issuance of TCC.

Issuance of public rulings and advance rulings

TAL allows for the issuance of public rulings and advance ruling to individuals and corporate taxpayers. They are issued in order to provide consistency in the implementation of tax laws.

Public Rulings	Advance Rulings
Clarification statement issued by the DG to serve as a guideline for taxpayers and the general public on the interpretation of tax laws.	Issued by the IRD on a particular tax matter upon the request of the taxpayer.
Binding on the IRD but not on the taxpayer.	Binding on both the IRD and taxpayer.
Can be amended by the DG, however only on a prospective basis.	The DG has the right to amend or revoke part of the ruling or the entire ruling, but such amendment or revocation will not have retrospective effect.

Communications with taxpayers

The DG has the right to issue the notice, announcement, statement, form, schedule and other document, which will be stipulated or issued by the IRD. Any communication issued will only be considered valid if the duty and function are legally assigned to the DG, it is in writing, signed by a tax officer and delivered to the relevant taxpayer or person addressed to. The notice will be deemed to be delivered on:

- sent by way of registered post within Myanmar: 21 days from the date of posting;
- sent by way of registered post outside of Myanmar: 30 days from the date of posting; and
- sent by way of electronic means: at the date when the notice was sent.

It is important that the taxpayer ensure that they have registered the correct mailing address as the DG shall send the notice to the current known address. Any notice is deemed to be delivered to the taxpayer if it is sent to the address registered with the IRD. It is the obligation of the taxpayer to inform the IRD of any change in the business address to ensure that the notice is sent to the correct address.

Priority right

The tax payable shall, being the debt to be paid to the Government, be preferred over debts payable to other debtees. If the taxpayer fails to pay the tax within the prescribed period, DG has the right to take any assets of the taxpayer which is equivalent to the tax payable including any interest, penalty and collection expenses associated with the unpaid tax. Nonetheless, this right shall not affect the interest of those who have acquired the asset by way of purchase or lien before the DG sends the letter of objection on the registration to the concerned government agency and before he knows that the property has been retained by lien where such person has possession in accordance with the law.

Refund

If the tax payment exceeds the assessable amount, DG shall refund the excess tax after setting off the assessed tax, interest or penalty payable the taxpayer, and the tax liability of the taxpayer within the next 12 months. The request for tax refund can be made within a period of six years from the relevant assessment year. Please note that under TAL, all tax payments and refunds, unless specified in any tax law, shall be in Myanmar kyat (MMK).

Interest rate for underpayment and refund

With the approval of the Union Government, the Ministry of Planning and Finance may specify and amend the interest rate regarding reduced payments and refund by way of notification.

Penalties for non-compliance

TAL provides comprehensive penalties for breaches of tax and administration law. Sections 64 to 74 of TAL provides for the penalties for failure to comply with the law such as failure to register or to inform the alternation of taxpayer information, inaccurate statement of invoice, receipt, debtor note and debtee note, late furnishing of return, payment of tax by reducing in negligence or dishonest intention, and etc. TAL also introduces scale of penalties depending on the gravity of the offence. The liability of a person to pay such penalty arises from the time of the assessment made by the DG. However, the DG has the right to cease or allow exemption over all or part of the penalty if the taxpayer can submit sufficient grounds for why the taxpayer was non-compliant.

Limitation period under TAL

Recovery of Tax	Six years commencing from the date of notice specifying the taxpayer as a defaulter.
Assessment of penalty	Seven years after the breach that caused the penalty and 12 years for giving inaccurate information by cheating or negligence of the taxpayer
Prosecution	<ul style="list-style-type: none">• 12 years after carrying out of the accused offence• where the offence relates to failure to follow any liability, 12 years from the date of such failure or three years from the date when it is known to the DG• three years after the final confirmation of accurate tax liability of such person
Assessment and Reassessment	<ul style="list-style-type: none">• Six years after the expiration of the relevant tax period• 12 years after the expiration of the relevant tax period for failure to furnish tax;• 12 years if the DG finds any evidence of inaccuracy in the original assessment
Application for refund	six years after the expiration of the relevant tax period in respect of the assessment for request or the DG carry out in finding within such period
Shareholders' liability after the liquidation of the company	Shareholders can be liable for unpaid or deficient taxes for up to any amounts received by the shareholders (in money or property) within one year prior to the liquidation
Submission of Appeal	<ul style="list-style-type: none">• 30 days from the date of receiving the notice relating to DG's tax decision• 90 days from the date of receiving DG's decision of the appeal• If there is no response from the DG within 90 days, the taxpayer can file an appeal to the Revenue Appellate Tribunal within 30 days of the expiry of the 90 days from the date the review was requested



Settlement of offences

With the exception of failure to maintain confidentiality and offences of revenue staff relating to corruption, the DG may apply for the settlement of offences by way of levying the highest fine. The order of the DG is final and conclusive and no appeal is allowed. After the settlement of the offence by the DG, the offender shall not be prosecuted again in relation to that offence.

Transitory provisions

As TAL will only come into force on 1 October 2019, any legal proceedings, appeal or other prosecutions that are performed before then shall be governed by the provisions of the previous relevant laws. However, the IRD can apply the provisions of the TAL to collect taxes from unsettled cases before the effective date. Any rules, regulations, notifications, orders and directives issued under the previous tax laws remain applicable until such time when the required rules and procedures are issued under TAL.

In summary, the change of the new fiscal year will affect all taxpayers including stated-owned enterprises from 1 October of each year to September of the following year. This is as TAL comes into force on 1 October 2019. As tax compliance is a key point for the country, it should be protected from evasion, corruption with strong penalties for non-compliance. With the passing of TAL, there is now a more effective self-assessment system. Nonetheless, in order to encourage taxpayers to comply with their tax-paying responsibilities, it is important that the tax administration assists them in understanding their responsibilities so as to comply with their tax obligations in the proper manner. By issuing public and advance rulings, taxpayers will have more awareness on the tax systems and their rights and obligations. However, although TAL has been passed, further clarifications and instructions are required to ensure effective implementation of the tax reform.

If you have any questions or require any additional information, please contact [Thuzar Tin](#) or the ZICO Law Myanmar partner you usually deal with.

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