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THE TAX POCKET GUIDE TO INVESTING IN MYANMAR

2013 EDITION

The Tax Pocket Guide To Investing In Myanmar

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The information provided in this guide is based on our understanding of publicly known Myanmar laws, regulations and official practices as of 21 November 2012 and may be affected by laws that are subsequently adopted by Parliament or notifications that are adopted by various ministries. There may also be instances where the unofficial practices applied by the Government authorities (including the tax authorities) are not in accordance with or even contradictory to Myanmar law. More importantly, as the decisions of the courts and tax authorities are not made publicly available, it is possible that the tax authorities or the courts will adopt an interpretation of Myanmar laws which is not in accordance with our interpretation. Furthermore, not all laws and regulations are published.

The information contained in this publication is provided for information purposes only, and is not intended to constitute legal and tax advice. Legal and tax advice should be obtained from qualified counsel for all specific situations.

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1. MYANMAR REGULATORY OVERVIEW

As Myanmar opens up to foreign investment, its tax and legal systems are undergoing changes at a rapid pace. The Government is making reforms in a number of key areas including taxation, foreign investment law, foreign exchange controls, labor law, trade dispute resolution and in areas such as telecommunications, agriculture and microfinance.

Myanmar's legal system is complex and reliant on some very old statutes. It is based on a combination of:

a) Colonial period laws (pre 1948);
b) Parliamentary laws (1948 – 1962);
c) Revolutionary Council laws (1962 – 1974);
d) People's Assembly laws (1974 – 1988); and
e) State Law and Order Restoration Council / State Peace and Development Council laws (1988 – 2011).

In addition to statute law, the courts of Myanmar continue to apply common law principles dating from the British colonial period.

In 1988, the Myanmar government implemented a market economy policy in order to attract foreign investment and revitalize the domestic private sector. It was in this context that the Union of Myanmar Foreign Investment Law of 1988 (the "MFIL") was enacted, and the Procedures relating to the Union of Myanmar Foreign Investment Law of 1988 were introduced to ameliorate foreign investment conditions. Until recently, foreign investment opportunities were limited. Since the regime change in March 2011, however, the new government has been pro-actively promulgating an open-door policy to foreign investment.

On 2 November 2012, Myanmar's President Thein Sein signed into law the highly anticipated new framework for investments in the Union of Myanmar. Referred to simply as the Foreign Investment Law (the "FIL"), the new legislation supersedes the MFIL.

The FIL is a law allowing foreign investors special benefits. In general, registration under the FIL is optional, except in the following cases:

- Investments that fall under the State-Owned Enterprise law of 1989
- Infrastructure projects
- Manufacturing

Investments approved under the MFIL will also be deemed as approved under the FIL.

Laws intended to promote foreign investment in special economic zones have been enacted. The Special Economic Zone Law of 2011 (the "SEZL") and the Dawei Special Economic Zone Law of 2011 enable foreign investors to undertake a range of business activities in designated "Special Economic Zones" and also offer various tax reliefs and exemptions to eligible investors.

The Myanmar Investment Commission (the "MIC") is the governmental agency, which administers the FIL and coordinates with various ministries and organizations to facilitate foreign investment in Myanmar. It is also responsible for reviewing foreign investment proposals.

2. SETTING UP BUSINESS IN MYANMAR

a) Commonly Used Business Forms

The following common entities are recognized and available for foreign investment/trade in Myanmar:

i) An Entity with 100% Foreign Equity: A foreign investor may:

- Incorporate in Myanmar a 100% foreign-owned company
- Establish and operate as a registered branch of a company incorporated outside of Myanmar
- If an individual, establish and operate as a sole proprietor

The FIL generally allows 100% foreign ownership of investments in such economic activities as may be prescribed by the government.

As with the MFIL, the list of economic activities will be guided by the principles of job creation, export promotion, local development, application of high technology and large investments, among others. The FIL includes a number of new key activities, including those relating to "import substitution" and the "development of a modern industry".

The FIL provides that the following sectors may be subject to limitations on foreign ownership:

a) Matters that can affect public health, natural resources and the environment;

b) Activities related to manufacturing and services reserved for Myanmar citizens which will be specified in the Foreign Investment Rules to be issued by the Ministry of National Planning and Economic Development (the "Rules"); and

c) Matters that involve agriculture, livestock farming or fisheries as will also be specified in Rules.

The exact limitations on these sectors, if any, will be set by rules promulgated within 90 days of the passage of the FIL. The rules will be made by the Ministry of National Planning with the approval of the Myanmar government. At the time of this writing, the rules have not yet been issued. We recommend that you keep in touch with DFDL for updates.

ii) Joint Venture: A foreign investor may:

- Incorporate in Myanmar a joint venture company
- Establish and operate under a contractual/unincorporated joint venture (i.e. a partnership)

Proposed joint ventures will need to be approved by the MIC under the FIL. The old provision under the MFIL requiring a foreign party to a joint venture to contribute at least 35% of the joint ventures equity has been abrogated. Instead, the FIL provides that minimum foreign investment requirements will be set by the rules mentioned above.

iii) Agency or Distribution Arrangements

A foreign entity may:

- Appoint a business representative/enter into an agency arrangement with a Myanmar citizen or 100% Myanmar owned company
- Sell to or buy from a Myanmar citizen/company

b) Main Legal Formalities for Formation of a Company or Registration of a Branch

i) The MIC Permit

A Foreign Company wishing to register under the FIL must submit a proposal in the prescribed form to the MIC. The MIC evaluates the foreign investment proposal and issues a MIC permit which stipulates certain terms and conditions.

For large scale projects, serious thought should be given to investing under the FIL which provides significant tax and other incentives. However, such investments must comply with a rigorous set of criteria and may be subject to significant conditions.

For smaller investments, or the foreign investor who does not wish to go through the FIL procedures, a company may be formed under the Myanmar Companies Act and Regulations (the "Companies Act") without securing a permit under the FIL and the investor may proceed directly to its application for a Permit to Trade.

ii) The Permit to Trade

Under the Companies Act, all foreign companies seeking to do business in Myanmar (even if the project it will be conducting is already approved under the FIL and has been issued a permit by the MIC) must obtain a 'Permit to Trade' (a "Trade Permit") from the Ministry of National Planning and Economic Development prior to commencing business in Myanmar. A "Foreign Company" includes companies incorporated in Myanmar which have at least one shareholder who is not a Myanmar citizen, but does not include a company in which the Government or a State-owned economic enterprise is a shareholder.

Currently, the application for a Permit to Trade is submitted, along with the application for incorporation of the Foreign Company, to the Registrar of the Companies Registration Office. Where an FIL Permit is being applied for, the Permit to Trade application and company incorporation steps are to be followed only after issuance of the FIL Permit.

A Permit to Trade is valid for three years from the date of issue and is renewable.

There are no express prohibitions against the setting up of foreign-owned trading companies in Myanmar. However, at present, no Permits to Trade for trading companies are being issued. This situation has evolved as a matter of practice, not of law.

iii) Capital Requirements

Every Foreign Company granted a permit is required to bring into Myanmar in foreign currency "Issued and Paid Up Capital" ("Capital") in the amount prescribed by the Capital Structure Committee of the Ministry of National Planning and Economic Development.

The FIL provides that the minimum investment of a foreigner is to be determined by the rules mentioned above.

The minimum Capital for investments outside the scope of the FIL for companies under the Companies Act is:

- USD 150,000 for an industrial company
- USD 50,000 for a services company

For company formation, at least 50% of the Capital must be deposited in a bank in Myanmar after the preconditions to issuance have been notified and prior to the issuance of the Permit to Trade. The balance of the Capital must be brought into Myanmar within the specified period; generally one to three years.

c) Requirements for Foreign Investors

A Foreign Company incorporated in Myanmar must:

1. Appoint an external auditor soon after incorporation;
2. Hold its first annual general meeting within 18 months of incorporation;
3. File an annual return with the Office of the Registrar of Companies Registration within 21 days of the company's annual general meeting, which is to include:
   i) a list of members and directors;
   ii) details of the capital structure of the company;
   iii) details of any mortgages over the company's property; and
   iv) a certificate to the effect that the company has not issued any invitation to the public to subscribe for shares;

4. Keep proper books of account and statutory records (such as a register of members, shareholders, share transfers, directors, mortgages, charges, etc.); and
5. Present the company's audited financial statements (in the prescribed form) for each accounting period to the members at the company's annual general meeting.

d) Currency/Monetary Restrictions

The Myanmar currency is known as 'Kyats' and is denominated as 'K' or MMK. The Central Bank of Myanmar (the "CBM") has floated the Kyats from 1 April 2012 and the average exchange rate is approximately MMK 850 to the United States Dollar. Prior to 1 April 2012, Myanmar had a two-tiered exchange rate regime involving an "official rate" and a "market rate".

Please see Section 7.p for a discussion on the restrictions on foreign currencies.

3. ACCOUNTING/FINANCIAL REPORTING FOR COMPANIES AND BRANCHES OF FOREIGN COMPANIES IN MYANMAR

a) Financial Statements

Financial statements must be prepared in accordance with Myanmar Accounting Standards ("MAS"). The MAS are based on the International Financial Reporting Standards and International Accounting Standards issued by the International Accounting Standards Board.

b) Audit Requirements

A corporate taxpayer is required to submit its audited financial statements together with its annual tax return. For the purpose of tax returns, the financial statements of companies must be audited by a Certified Public Accountant licensed by the Myanmar Accountancy Council.

c) Financial Year-end

The tax assessment year is from 1 April to 31 March and cannot be varied. This is mandatory even for branches of foreign companies that may have a different financial year-end.

d) Reporting Currency

The statutory reporting currency is in MMK.

4. THE FOREIGN INVESTMENT LAW

Under the FIL, the MIC may provide tax exemptions or reliefs from among the following list of exemptions/reliefs:

a) From the year of starting production or service activities including the starting years up to continuous five years of tax exemption, and if beneficial for the state depending on the progress of investment activities, additional tax exemption/relief for a suitable period;

b) If the FIL entity reinvests profit from its business or part of its reserve funds within one year, the tax exemption/relief may be extended to income from such reinvested profit or reserve funds;

c) A right to accelerate the depreciation rate for the machinery, equipment, building or other working capital and to claim the same as a deductible expense;

d) If the products of any production work are exported, then the tax exemption shall be allowed on up to 50% of the profit of the said exports;

e) Foreign employees have the right to declare personal income tax at the same rate as Myanmar citizens;

f) Expenses for research and development may be deducted from income;

g) A right to carry forward and set-off a loss up to three consecutive years from the year the loss is sustained if the loss is sustained within two years of exemption or relief from income tax becoming applicable;

h) A right to exemption/relief of duty, other internal tax or both on imported raw materials for three years after establishment;

i) A right to exemption or relief from duty, other internal tax or both on the imported machinery, equipment, tools machinery parts and accessories necessary for the expanded work with the approval of commission; and

j) Exemption and relief of commercial tax on the products manufactured for export.

Obligations and Rights of Investors

The FIL provides for various obligations and rights of investors. Rights include the ability to transfer or sell shares, to apply for expansion of the primary investment activities or the revision of the relevant project. Investors are also entitled to lawful settlement of grievances, possible additional benefits for the use of advanced technology, enhanced production, environmental protection and/or investment in difficult areas of the country.

Labor

For skilled positions and technicians, the FIL provides an obligation for the enterprise to increase the use of local Myanmar staff over time. The investor is required to achieve the following targets:

- At least 25% of its workforce to be Myanmar nationals during the first two years;
- At least 50% during the second two years; and
- At least 75% during the third two years.

For unskilled positions, the investor is required to employ only Myanmar citizens from the time the enterprise commences operations.

Land Use Rights

Land use rights of investors have been enhanced under the FIL. Foreign investors will have the ability to lease land for 50 years initially, increased from 30 years under the MFIL. The lease can thereafter be extended for two additional ten-year terms as opposed to the two 15-year extensions that were available under the MFIL.

5. SPECIAL ECONOMIC ZONE

The SEZ includes high-tech industrial zones, information and telecommunications technology zones, export processing zones, port area zones, logistics and transportation zones, scientific and technological research and development zones, service business zones, sub-trading zones and zones prescribed by the Government from time to time.

Activities in the SEZ may include investments in:

1. Production based businesses such as goods processing businesses, hi-tech production businesses, industries, agriculture, livestock breeding and fisheries, mineral produce businesses and forestry produce businesses;
2. Service businesses such as trading, logistics and transportation, storage, hotel and tourism, education and health, residential quarters, infrastructure supply and support centers, green areas which conserve and protect the natural environment, recreation and resort centers;
3. Infrastructure construction businesses such as roads, bridges, airports, ports, electricity, communication and water supply, environment conservation and protection and waste control; and
4. Other businesses determined by the Central Body of the SEZL with the approval of the Government.

The SEZL is aimed to encourage investors to operate the following works in the following order of priority:

1. High technology industries;
2. Businesses which will further promote the economic development of the State;
3. Businesses which will further promote trade and services;
4. Businesses which will further promote infrastructure development;
5. Businesses which will create more employment opportunities for Myanmar citizens;

6. Businesses which include investment in foreign investment businesses by Myanmar citizens;
7. Businesses focused on the conservation and protection of the natural environment; and
8. Other businesses prescribed by the Central Body of the MSEZ from time to time.

Investors who invest and operate in the SEZ may apply for the following exemptions and incentives:

a) An income tax exemption on the proceeds of overseas sales for the first 5-year period from the day of commencement of the production or service;

b) Fifty percent relief on the income tax rate for the second 5-year period on the proceeds of overseas sales;

c) After the expiry of the exemptions and relief for the first two 5-year periods, if exemptions and/or relief are not permitted again under the SEZL, the entity shall be subject to the income tax rate stipulated under existing law. However, 50% relief on the income tax rate stipulated under existing law may be applied for on a third 5-year period, if the profit obtained from export sales is re-invested;

d) After the expiry of the tax exemptions and relief period for goods processing businesses invested and operated in SEZ, income tax relief for that year may be applied for if the value of the export is:

1. Greater than 50% of the total value of products in *large scale investment business;
2. Greater than 60% of the total value of products in *medium scale investment business; and
3. Greater than 70% of the total value of products in *small scale investment business;

e) An exemption from Commercial Tax on exported items produced in the SEZ;

f) An exemption from customs duty and other fees applicable to the importation of raw materials and machinery and equipment for export-orientated processing enterprises established in the SEZ; and

g) Exemptions from customs duty and other fees for the first 5-year period from commencement of operations, and 50% relief for the next 5-year period, on the importation of machinery and motor vehicles, subject to stipulations, to be used in an investment enterprise.

* *Large, Medium and Small are not defined in the SEZL.*

6. OTHER COMPLIANCE REQUIREMENTS

a) Social Security

The Social Security Act of 1954 provides that private enterprises employing five or more workers must contribute 2.5% of their insured wages to a social security fund. The employee's contribution is 1.5%. Though no timetable has been announced, please note that Myanmar intends to overhaul its social security structure.

b) Work Permits/Visa

Myanmar does not have a work permit concept. Foreign nationals who need to reside for long periods for employment purposes must obtain a stay permit and a multiple-journey special re-entry visa.

7. TAXATION

a) Overview

The current tax laws include:

- The Income Tax Law (1974) (the "ITL"); and
- The Commercial Tax Law (1990) (the "CTL").

The ITL is supplemented by the Income Tax Rules, the Income Tax Regulations and Notifications issued by the IRD (defined below) from time to time.

The Internal Revenue Department ("IRD"), under the Ministry of Finance and Revenue ("MFR"), administers taxation in Myanmar.

b) Taxation of Companies

i) Taxable Presence

The taxation of a company is determined by its tax residency.

A resident company is:

- A company formed under the Myanmar Companies Act (the "Companies Act"); or
- A company formed under any other existing law of Myanmar, including the Special Company Act (company with State equity) and the FIL.

Residents are subject to tax on income accrued, or derived from, or received from any sources in and outside Myanmar. A non-resident foreigner is liable to pay tax only for Myanmar-sourced income.

Corporate Income Tax Rates

The tax rates, effective from 1 April 2012, are as follows:

Type of Entity/Company	Rate
Resident Company (FIL or non FIL)	25%
Non-resident Branch operating under FIL *	25%
Non-resident Branch not operating under FIL	35%

** Non-resident branches registered under the FIL will be subject to a rate of 25%. Non-resident branches not registered under the FIL will be subject to a rate of 35%.*

c) Taxation of Individuals

i) General

Income tax is levied on resident and non-resident individuals. Foreigners who reside in Myanmar for at least 183 days during an income year (1 April to 31 March) are considered resident foreigners.

Residents are subject to income tax on all income* derived from sources within and outside of Myanmar. Non-resident foreigners are taxed only on income derived from sources within Myanmar.

* Income is categorized as income from salary, professional, business, property, capital gains, other sources and undisclosed sources. Income from salary and capital gains (see Section 7.d.iv below) are assessed separately.

ii) Income from Employment – Resident Foreigner

Resident foreigners are exempted from income tax on salary if the total salary is less than MMK 1,440,000 in a tax year.

Effective from 1 April 2012, the income tax on salary of a resident foreigner received in local currency or foreign currency is determined in accordance with the following bands:

Annual taxable income net of allowances* (MMK)		Tax Rate
From	To	
1	500,000	1%
500,001	1,000,000	2%
1,000,001	1,500,000	3%
1,500,001	2,000,000	4%
2,000,001	3,000,000	5%
3,000,001	4,000,000	6%
4,000,001	6,000,000	7%
6,000,001	8,000,000	9%
8,000,001	10,000,000	11%
10,000,001	15,000,000	13%
15,000,001	20,000,000	15%
	> 20,000,001	20%

** Allowances include:*

- Basic relief of 20% of total income, up to a maximum of MMK 10,000,000;
- Spouse relief of MMK 300,000, provided the spouse has no assessable income;
- Life insurance payments on taxpayer and spouse;
- Child relief of MMK 200,000 per child for any unmarried child who is below 18 years of age. If a child is above 18 years of age, he must be receiving fulltime education.

iii) Income from Employment – Foreigner Engaging in Government Sponsored Project

A foreigner who derives income in local currency from a government-sponsored project is subject to income tax at a rate of 20% on gross income.

iv) Income from Employment – Non-Resident foreigner

A non-resident foreigner who derives income in local or foreign currency from employment is subject to income tax at a rate of 35% on Myanmar-sourced gross income.

A non-resident foreigner employed with an FIL company is taxed at band rates applicable to a resident.

v) Income from Employment – Perquisites and Benefits

Salary income also includes perquisites and any benefits; for instance, the rental value of free accommodation is usually calculated at 10 percent of the employee's gross salary or at 12.5 percent if the accommodation is furnished. If the employer pays the employee's tax, a tax on tax basis of assessment is adopted. Income tax is withheld monthly and paid within seven days to the tax office.

vi) Income from Employment – Withholding Tax

The employer is responsible for withholding and claiming deductions on the income tax on salary at the time of payment to employees. A statement of monthly deductions must be furnished to the revenue office within 7 days from date of deductions. The employer must also provide an annual finalization statement of salaries paid to employees.

d) Indirect and Other Taxes

i) Commercial Tax

There is no Value Added Tax ("VAT") system in Myanmar. However, there is a Commercial Tax ("CT") imposed on various items as set out in various schedules in the CTL. CT applies to goods produced in Myanmar, services rendered in Myanmar and goods imported into Myanmar that are listed in the CTL's schedules.

The current CT rates are as follows:

Type of goods and services	CT Rate
Items listed in Schedule 2 to Schedule 5 of CTL *These include containers, rice noodles, salted fish, sugar, sanitary products for women, bamboo and rattan products, charcoal stove, tooth-paste, shampoo, gold, platinum, concrete, computers, computer parts and accessories, etc.*	5%
Items listed in Schedule 6 of CTL *These include alcohol, fuel, jade, precious stones, natural gas, teak and luxury items, including cars.*	8% to 100%
Items listed in Schedule 7 of CTL *These include tourism services, motor vehicle maintenance including materials, insurance premium, printing, broking services, landscaping and renovation and building design services, advertising and filming services and legal and auditing services.*	5%

The CT is payable on a monthly basis before the 10th of the month following the month of the sale. A quarterly and an annual return for CT are to be filed within one month from the end of the quarter and within three months of the end of the year, respectively.

Commercial taxes also levied on imported goods based on the landed cost, which is the sum of CIF value, port dues calculated at the rate of 0.5% of CIF value of goods, and customs duties. Collection is made at the point of entry and time of clearance, along with customs duties.

While Commercial Tax is not a Value Added Tax with full credits available, there is a partial offset system for trading of goods and services, when the tax is shown on supplier invoices and other requirements are met.

ii) Stamp Duty

Stamp Duties are collected from the affixing of judicial and non-judicial stamps. Judicial stamps are for use in judicial proceedings while non-judicial stamps are for general purposes.

1) Judicial Stamp Duty

Judicial Stamp Duty is collected from the affixing of judicial stamps and represents fees payable under the Court Fees Act. The rates vary depending on the subject matter of the document. Taxable documents include complaints, probates of a will, letters of administration, succession certificates, petitions, applications for leave to sue, memoranda of appeal, bail-bonds, etc.

2) Non-Judicial Stamp Duty

Non-Judicial Stamp Duty is levied on various kinds of instruments, which are required to be stamped under the Myanmar Stamp Act. Instruments chargeable to duty and the corresponding rates are mentioned in the schedule annexed to the Act.

iii) Property Tax

Foreign companies are prohibited from owning immovable property in Myanmar, hence property tax would not be relevant to foreign investors.

Immovable properties (land and buildings) situated within the Yangon development area are subject to property tax as follows:

- General tax not exceeding 20% of annual value;
- Lighting tax not exceeding 5% of annual value;
- Water tax not exceeding 12% of annual value; and
- Conservancy tax not exceeding 15% of annual value.

The “annual value” pertains to the gross annual rent for which the land and building may be expected to be leased unfurnished. It also includes the value of result of a percentage determined by the Yangon City Development Committee from time to time on the value of property to be taxed.

iv) Capital Gains Tax

Pursuant to a Notification issued by the tax authorities in 2006, gains from the sale, exchange or transfer by any means of capital assets, in kyats or foreign currency, are taxed at the rate of 10%, if the proceeds of all assets disposed exceed MMK 5,000,000. In the case of a non-resident foreigner, tax at a rate of 40% is to be paid in the same currency as the disposal or transfer transaction.

Companies carrying on businesses in the oil and gas sector in Myanmar are taxed at a progressive rate from 40% to 50% on gains realized from the sale, exchange or transfer by any means, of any capital assets including shares, capital assets, ownership and benefits. The tax on capital assets is to be paid in the foreign currency of the disposal or transfer transaction.

Tax returns on capital assets must be filed within one month from date of disposition or transfer.

v) Withholding Tax

The following withholding taxes ("WHT") are applicable to:

1) Payments to Resident Citizens and Resident Foreigners

Nature of payments	WHT Rate
Royalties paid for the use of licenses, trademarks and patent rights.	15%
Payment for procurements within the country and work done under a contract or an agreement or any other forms of agreement for state organisations, development committees, cooperatives, partnerships, and companies and organisations formed and registered under any existing law.	2%
Payment for work done and procurements from the country under a contract or an agreement or any other forms of agreement for foreign entrepreneurs or foreign companies.	2%

The above withholding taxes are not final taxes, and can be credited against tax liability.

2) Payments to Non-resident Foreigners

Nature of payments	WHT Rate
Interest	15%
Royalties for the use of licenses, trademarks and patent rights.	20%

Nature of payments	WHT Rate
Payment for procurement within the country and work done under a contract or an agreement or any other forms of agreement for state organisations, development committees, cooperatives, partnerships, and companies and organisations formed and registered under any existing law.	3.5%
Payment for work done and procurement from the country under a contract or an agreement or any other forms of agreement for foreign entrepreneurs or foreign companies.	3.5%

The above WHT are final taxes.

There is no withholding tax on the payment of dividends to both residents and non-residents, and on interest payments to residents.

iv) Customs and Import Duties

In line with the latest Customs Tariff of Myanmar, customs duty is payable according to the tariff schedules based on assessable value. Rates range from 0% to 40%. Cars, luxury items, and jewellery are subject to the highest rates.

According to the FIL, exemption or relief from customs duties may be granted on machinery, equipment, components, spare parts, and materials imported for use during the construction period for a company receiving benefits under the FIL. Similar exemption or relief may be granted for such companies on raw materials imported in the first three years of commercial production. The Sea Customs Act, 1878, inter alia, makes provision for refunds. For example, it provides that ⅞ of the customs duty paid on goods will be refunded when such goods are withdrawn from the country again under a drawback facility.

e) Tax Administration

i) Tax Payment - Currency

Prior to 1 April 2012, tax payments were required to be made in the transactional currency (i.e. should a gain arise from exports denominated in USD, the income tax on those exports had to be paid in USD). This practice has now been limited to certain types of taxpayers (i.e. Foreign Branches without FIL status) and transactions (i.e. gains from disposal of capital assets by companies carrying on a business in the oil and gas sector) due to adoption of a single MMK exchange rate as discussed above.

ii) Tax Payment - Due Dates

An enterprise must pay tax in advance, on a monthly or quarterly basis, for income earned in a tax year. The tax in advance is based on projected income for the whole year.

The monthly or quarterly payments must be made within 30 days of each month or quarter. Any additional tax to be paid, as determined in the annual tax returns, must be paid within three months of tax year end.

Any credits are carried forward to be utilized for the following year's advance tax payments.

iii) Tax Returns – Due Dates

Individual and Corporate Annual tax returns must be filed with the IRD within three months of each tax year end (i.e. by 30 June).

If a business is discontinued, the tax returns are to be filed within one month from the discontinuation of the business.

Income tax returns on capital gains are to be filed within one month from the disposal of the capital assets concerned.

f) Tax Incentives

See Section 4 (Foreign Investment Law) and section 5 (Special Economic Zone).

g) Tax Losses

Tax losses from any source may be set off against taxable income accruing from any other source in that year, except where the loss is from capital assets or a share of loss from an association of persons.

Unutilized tax losses can be carried forward and set off against future taxable profits up to a maximum of three consecutive years.

Tax losses from capital assets or a share of loss from an association of persons cannot be set off against taxable gains from other sources, or carried forward.

It is unclear whether there are any restrictions where there is a change of ownership as there is no clear provision in the ITL.

h) Group Relief

There is no provision in the ITL for group relief.

i) Tax Audits

Tax audits are generally conducted annually.

j) Thin Capitalization

There are no thin capitalization rules in Myanmar.

k) Transfer Pricing Rules

There are no transfer pricing rules except for those contained in DTAs with other countries.

The ITL empowers the IRD to:

- Adjust for non-market value of capital assets sold, exchanged or transferred;
- Re-assess tax and disallow expenses that are extravagant or not commensurate with the type of business; and
- Tax and penalize on 'unreported income'.

l) Limitations of Deductible Expenses

There are certain limitations on the deductibility of expenses. The limitations include the following:

- Interest expenses:
  - on onshore loans are deductible up to the interest rate limit set by the CBM from time to time;
  - on offshore loans are deductible provided the loans are approved by the MIC and the CBM;
- Donations to approved charitable institutions are deductible up to a maximum of 25% of the total taxable income.
- Bad or doubtful debts related to taxable income are deductible only when written off.

m) Statutory Limitations

Taxpayers are required to maintain their records for a period of five years.

n) International Tax

Tax treaties have been concluded with Bangladesh, India, Indonesia, Lao PDR, Malaysia, Republic of Korea, Singapore, Thailand, United Kingdom and Vietnam, but only the treaties with India, Malaysia, Singapore, South Korea, Thailand, United Kingdom and Vietnam have been ratified.

Taxpayers need to apply administrative procedures for claiming a tax exemption based on a DTA within the Companies Circle Tax Office (the "CCTO") of the Internal Revenue Department (IRD). In practice, Myanmar tax authorities and MFR need to be consulted by the payer of the fee on a case-by-case basis in order to obtain tax treaty relief. The authorities will examine the contracts and the facts of the case before rendering its decision.

o) Anti-avoidance Rules

There are no anti-avoidance provisions in the ITL. The tax authorities can tax both direct and indirect transfers of capital assets.

Under the ITL, if it is found that there is a "fraudulent intention" to evade tax, the assessment or re-assessment of income tax can be made any time on the income that has escaped assessment of tax. Failure to file a return of income knowing that assessable income has been obtained, and failure to comply with the notice of the IRD to submit accounts and documents including the tax return and profit and loss accounts within the time prescribed, or submitting forged instruments and other documents, are included within the meaning of fraudulent intentions.

Taxpayers are required to fully disclose the facts within a specified time if the tax authorities find that the taxpayer has concealed income or particulars relating to income. In addition, the taxpayer must pay an additional penalty equal to 50% of the tax increase on account of the concealment. Should the taxpayer fail to disclose within the specified time or disclose less than the income concealed, the taxpayer will be subject to prosecution, in addition to paying the tax and penalty. If found guilty, the taxpayer may be imprisoned for a term of between 3 and 10 years.

p) Foreign Exchange Controls

A new Foreign Exchange Management Law (the "FEML") was recently enacted and is intended, among other things, to liberalize transfer payments relating to revenue account (e.g. trade, services and settlement of short-term bank loans) which are to be unrestricted and will also govern transfer payments relating to capital account capital, interest, dividends (which will remain subject to proof that the funds have actually been brought into the country). How this new law is applied in practice remains uncertain at this time.

Prior to enactment of the FEML, Myanmar and foreign citizens and companies in Myanmar need to obtain permission from the Foreign Exchange Management Department under the CBM, through the Myanmar Foreign Trade Bank or Myanmar Investment and Commercial Bank in connection with borrowing foreign exchange from abroad and repayment of principal and interest thereof, making a payment to any person abroad, opening accounts at foreign banks abroad and remittance of profits.

Foreign Exchange Authorized Dealer Licenses have been issued by the Central Bank of Myanmar on 25 November 2011 to eleven private domestic banks. Thus those private domestic banks can offer inward remittance services. The eleven private domestic banks are: i) Myawaddy Bank Ltd, ii) Co-operative Bank Ltd (Public), iii) Myanmar Oriental Bank Ltd, iv) Kanbawza Bank Ltd, v) Myanmar Industrial Development Bank Ltd, vi) Innwa Bank Ltd, vii) Tun Foundation Bank Ltd, viii) Asia Green Development Bank Ltd, ix) Myanmar Apex Bank Ltd, x) United Amara Bank Ltd and xi) Ayeyarwaddy Bank Ltd.

q) Special Exemptions

The MIC or the Central Body of the MSEZ may grant special exemptions, pursuant to the FIL and MSEZ, on a case-to-case basis should the investment project be of significant interest and in accordance with Myanmar's current government policies.

8. DFDL TAX SERVICES

DFDL is the first leading international law firm specialized in emerging markets with pan regional legal and tax expertise developed throughout the Mekong region (Cambodia, Lao PDR, Thailand, Myanmar, Vietnam), Singapore, Indonesia, Bangladesh and other developing markets, with a dedicated focus on other Southeast Asia jurisdictions, South Asia and the Middle East.

With a team of over 250 foreign and local lawyers, advisers and support staff working closely together within a fast growing network of 11 offices and practices in Asia, we provide personalized and cost-effective legal, tax and consulting services and solutions with particular expertise in:

- Taxation and Customs
- Energy, Mining and Infrastructure
- Real Estate and Construction
- Corporate and Commercial
- Mergers and Acquisitions
- English Law Governed Transactions

Founded in 1994, DFDL has acquired an outstanding reputation for providing seamlessly integrated and solutions-oriented legal and tax services to establish, structure and protect our clients' business interests. DFDL is also actively involved, in tandem with local jurisdiction stakeholders, in developing the legal and regulatory environment of the emerging markets in which we operate.

Our experts are committed to standard state of the art legal and tax solutions throughout the Mekong region, South Asia and beyond.

DFDL Tax Services

a) Our Services

i) Tax Advisory

- International tax planning and legal structuring;
- Corporate tax optimization solutions;
- Regional tax structuring of shareholding, financing, licensing services and other arrangements;
- Transfer Pricing Advisory;
- M&A and restructuring; and
- Real Estate tax and legal structuring.

ii) Compliance

- Preparation of monthly and annual tax returns;
- Personal income taxes; and
- Expatriate tax services.

iii) Customs & Free Trade Agreement

- Consulting with customs authorities on valuation, tariffs and exemptions;
- Advice on customs duties classifications and valuations;
- Strategic Free Trade Agreement planning, advice on rules of origin (ROO);
- Advice and government liaison services on market access, barriers to trade and protection of investors.

iv) Market Entry Advice

Research on market opportunities, restrictions, corporate intelligence and background checks.

v) Due Diligence

Our services include Tax Due Diligence on target companies in Myanmar covering all tax and customs issues and can be tailored to suit your needs. We highlight tax risks and opportunities in acquiring businesses or companies.

b) Our People

At DFDL, our most valuable assets are our people. We are dedicated to hiring, developing and retaining experienced and efficient advisers. Key people who comprise our Myanmar Team are:

JACK SHEEHAN
Regional Director,
Tax and Customs Practice Group, Myanmar

Jack is Regional Director of our Tax and Customs Practice Group. He specializes in providing international tax planning and consulting, cross-border tax advisory services, tax due diligence, corporate restructuring and reorganization and tax compliance services. His experiences in the region, and Myanmar in particular, include advising clients ranging from telecommunications, mining, manufacturing, banking and financial institutions and Government and aid funded projects. Jack is a regular speaker at external events in the region, including the European Chamber of Commerce, Chinese Chamber of Commerce, Japan Bank for International Cooperation, India Chamber of Commerce, Australian and New Zealand Business Association, Thailand Tax Forum, Singapore and Thailand In-house Counsel and various DFDL sponsored events. Prior to joining DFDL, he worked in a Big Four firm managing a team of tax specialists. Jack is a member of the Association of Chartered Certified Accountants in the United Kingdom.

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JAMES FINCH
Partner
Managing Director, Myanmar

James is a partner at DFDL and runs the firm's practice in Myanmar. His experience in the commercial legal field spans three decades and has taken him to the Middle East, Latin America and the Caribbean, where he practiced for extended periods. His work as a partner in the firm of Russin and Vecchi finally brought him to Asia, where he began in the Hanoi office of the firm. In 1996 he became managing partner of the firm's Yangon, Myanmar office. Since then he has had a varied and active practice in Myanmar, with extensive legal work in the energy, power, hard minerals, corporate, tax, aircraft leasing, hotel development, banking and finance fields, to name a few.

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WILLIAM D. GREENLEE, JR.
Partner
Deputy Managing Director, Myanmar
Head of China Desk

William's practice focuses on M&A, project finance and securities. Based in Yangon, he is involved in negotiating, structuring, documenting and managing large private equity and opportunity-fund companies and transactions. He holds a B.A. degree from the University of Oregon in Asian Studies with a minor in East Asian Literature and Juris Doctor from the University of San Francisco, California. William is a member of the State Bar of California, State Bar of Nevada, State Bar of California In ter-national Law Section and the Inter-Pacific Bar Association.

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The Essential, Up-To-Date Pocket Guide for Investors in Myanmar

Written by experts from DFDL with information on:

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