A BRIEF OVERVIEW OF THE KEY TAXES IN MYANMAR

Myanmar's tax system is principally administered by the Internal Revenue Department (**IRD**) (other government agencies manage sector or activity specific tax and duties, such as customs duties). The structure of the country's tax system remains, at this stage, relatively straightforward – in large part because the overall economy is still modernising and growing in sophistication. However, tax compliance activities can be challenging due to difficulties in obtaining clear, consistent and efficient responses from the IRD. Work has begun on implementing an online self-assessment tax filing system, which should improve efficiency and consistency of tax assessments once introduced.

The following comments set out a brief overview of some of the key forms of taxes applicable to businesses in Myanmar.

Corporate Income Tax

Corporate Income Tax (**CIT**) is set at a flat rate of:

- 25% for both resident and non-resident companies; or
- 20% for companies that are listed on Yangon Stock Exchange.

Resident companies are officially taxed on their worldwide total taxable income. Non-resident companies are taxed only on their Myanmar-sourced income.

Certain expenses are non-deductible, including capital expenditure and personal expenditure. The IRD also has a broad discretion to deem expenditure as being not commensurate with the volume of business and reduce the allowable amount of deduction accordingly.

Depreciation is allowable at fixed rates that vary depending on the type of relevant asset.

Commercial Tax

Commercial Tax (**CT**) is a turnover tax that is largely equivalent to a value-added tax or goods and services tax. CT applies to both goods and services produced within Myanmar and those imported into the country. It is generally levied at a rate of 5%, although different rates apply to certain specific goods/services and some categories of goods/services are entirely exempt. Businesses with an annual revenue of less than MMK50,000,000 are exempt from CT payments.

Subject to certain criteria, CT levied on business inputs can be offset against the CT due on outputs. CT payments must be made to the IRD on at least a monthly basis.

Special Good Tax

Special Goods Tax (**SGT**) is essentially a form of excise tax levied when importing, exporting and manufacturing alcohol, cigarettes, rough sawn timber, jade and gemstones, certain types of vehicles, fuels and natural gas. Goods subject to SGT remain liable to CT, with CT generally being levied on the SGT-inclusive price/value of the goods.

Capital Gains Tax

Capital Gains Tax (**CGT**) in Myanmar applies to gains from the sale, transfer or exchange of a capital asset within Myanmar where the total value of the asset exceeds MMK10,000,000. The current CGT rates are:

- 10% for individual and company gains; and
- 40-50% for gains arising from disposals of oil and gas assets (depending on the value).

The IRD has discretion to assess gains at asset values based on market rates if it believes the values stated by the taxpayer are less than market values (without justification). There are no express indirect transfer rules in Myanmar, although the CGT provisions of the income tax laws are arguably broad enough to capture indirect transfers.

Withholding Tax

Withholding Tax (**WHT**) must be withheld and remitted by the payer in relation to purchases of goods from, and supplies of services by, non-resident companies at a rate of 2.5% (effectively as the income tax levied on the purchase/supply).

WHT otherwise applies at 15% on interest payments and royalties for the use of licenses, trademarks, and patent rights where paid to a non-resident; and 10% for royalties payments to a resident.

Stamp Duty

Stamp duty is payable on most types of written instruments in Myanmar. The rates range from nominal amounts to a percentage of the transaction size/value, depending on the type of instrument in question. Duty should be paid on or before the date of execution of the instrument. However, an instrument can be presented to the stamp duty authorities within one month after execution, with duty then paid at the assessed rate. Failure to pay stamp duty results in the relevant instrument being ineligible to be used in evidence in court proceedings. Late stamp duty payments are possible, but incur a penalty rate of ten times the duty originally payable.

Tax Incentives

The Myanmar Investment Commission (**MIC**) has discretion to grant tax incentives to approved investments, principally in the form of exemptions from CIT, customs duties and other internal taxes. The MIC has published a "promoted investments list" stipulating the industries and types of investments for which it will grant tax incentives (with the implication that, in practice, any investment that does not fall within the list will not be granted tax incentives).

To promote investment in less developed areas, every township in Myanmar has been categorised into one of three zones, from least developed in zone 1 to most developed in zone 3. Eligible investments in zone 1 can receive a CIT exemption for seven consecutive years; investments in zone 2 for five consecutive years; and those in zone 3 for three consecutive years.

Investors in designated Special Economic Zones (**SEZ**) are eligible for tax incentives that are broadly similar to those available from the MIC, but which are granted and administered by the management committee of the relevant SEZ.

Transfer pricing, thin capitalization and anti-avoidance

There are no formal and express rules on any of transfer pricing, thin capitalisation and anti-avoidance in current Myanmar income tax regulations. However, note that:

- the IRD has a wide discretion to consider whether royalties, service fees and interest charged are reasonable (and to vary assessments where the basis is deemed not reasonable);
- loans from offshore lenders require prior approval from the Central Bank of Myanmar, which generally applies benchmark debt/equity ratios in assessing approval applications;
- if a company or person is unable to show the source of income used for buying, constructing, or obtaining any assets or establishing a new business, that income will be subjected to an additional tax at progressive rates ranging from 15-30%; and
- concealment of, or failure to disclose, information can constitute an offence under income tax laws punishable by a fine or imprisonment.

Tax Residency

Foreign natural persons are deemed to be Myanmar tax residents if they reside in Myanmar for at least 183 days in a given calendar year.

Companies that are incorporated or registered under the Myanmar Companies Law 2017 (or any other Myanmar law) are Myanmar tax residents, along with any association whose control, management and decision making is situated and exercised wholly in Myanmar.

Personal Income Tax

Personal Income Tax ("**PIT**") in Myanmar takes the form of a progressive marginal income tax scheme, levied at rates from 0 to 25%. Individuals with a total annual income of MMK4,800,000 or less are exempt from PIT. For those with an income of over MMK4,800,000 per annum, PIT applies to their entire income at the progressive rates.

Myanmar residents are officially liable to pay PIT on all worldwide income, with income earned outside Myanmar attracting a flat rate of 10%. Non-residents are taxed only on income earned within Myanmar.

Based in Yangon, Livingstons Legal is an independent corporate legal practice focusing on enabling the burgeoning Myanmar investment market. Our firm is staffed by local lawyers familiar with the business environment, laws, regulations and practices of Myanmar as well as international lawyers with expertise in inbound investment and cross-border transactions.

We offer a broad service commercial capability across industries, with a focus on market entry, investment, development and finance activities. Our senior lawyers have significant in-house experience, which gives Livingstons Legal a valuable commercial and practical perspective on providing legal services to both foreign and domestic businesses

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