



CAS & Associates

Doing Business in Myanmar

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PART A – THE BUSINESS ENVIRONMENT

1. General Information

1.1 Geography

The Republic of the Union of Myanmar is situated in Southeast Asia and is bordered on the north and northeast by China, on the east and southeast by Laos and Thailand, on the south by the Andaman Sea and the Bay of Bengal and on the west by Bangladesh and India.

1.2 History and Government

On 4 January 1948, Burma achieved independence from Britain, and became a democracy based on the parliamentary system. In 1962, the Republic of the Union of Myanmar established a nominally socialist military government.

Military rule ended during year 2010, general elections were held under the new constitution. Since the elections, the government has embarked on a series of reforms toward liberal democracy, mixed economy, and reconciliation although the motives of such reforms are still debated.

The name of the country has been changed from “The Union of Myanmar” to “The Republic of the Union of Myanmar” after democracy government was elected.

The country is divided into seven states and seven regions.

1.3 Population and Language

The Republic of the Union of Myanmar has a population about 60 million (estimated). The Republic of the Union of Myanmar is made up of 135 national races, of which the main national races are Kachin, Kayah, Kayin, Chin, Bamar, Mon, Rakhine and Shan.

Burmese is the official language in the Republic of the Union of Myanmar, but there is also a wide variety of language spoken by ethnic minorities. However, English is the secondary language used.

1.4 Currency

The unit of currency in the Republic of the Union of Myanmar is Kyat. US Dollars, Foreign Exchange Certificate (FEC) and Myanmar Kyat are used as currency of corporate business in the Republic of the Union of Myanmar.

1.5 Time, Weight and Measures

Time in the Republic of the Union of Myanmar is six and a half hours ahead of Greenwich Mean time. The metric system of weights and measures is used in the Republic of the Union of Myanmar.

2.0 Business Entities

2.1 Forms of Business Enterprise

The principal forms of business organisation are:

- Sole Proprietorship
- Partnership
- Companies limited by shares
- Companies with share contribution of the State
- Foreign Companies (100% foreign owned or joint venture with the State or Myanmar citizen)
- Foreign Branch/Representative Office

The most common form of organisation when setting up business in the Republic of the Union of Myanmar are limited liability company and foreign branch/representative office.

2.1.1 Sole proprietor and Partnerships.

A sole proprietorship is not required to register with Companies Registration Office (CRO).

Two or more than two of individuals may enter into partnerships in order to carry on a business. The partnership's rights and obligation are based on the agreements between the partners and the Partnership Act of 1932. In accordance with the Act, the number of partners is limited to twenty (20). A partnership firm may be registered, but registration is not compulsory. All partnerships formed in the Republic of the Union of Myanmar are unlimited liability.

2.1.2 Limited Liability Company

Limited Liability Companies are governed mainly by the Myanmar Companies Act (MCA), 1914.

The owners' liability for the obligation of the company is limited to the amount fully paid-up for the shares.

	Private Companies	Public Companies
1. Transfer of shares	Restricted	No restriction
2. Number of shareholders	Limited to 50 (at least 2)	Unlimited (at least 7)
3. Sources of fund	Private	Public

Company Formation

The company name search is conducted to check whether the name coincides with or is similar to any existing registered company. A statutory minimum 2 members are required for private companies. A statutory minimum 7 members are required for public companies.

The Memorandum of Association and Articles of Association (MOA & AOA) may include special voting rights and other minority shareholder protection. On the registration of the MOA & AOA, a Permit under Section 27 (A) of the MCA and Certificate of Incorporation will then be issued to the Company. For Public Companies, the company must file a prospectus (in case the shares are sold to the public) or a statement in lieu of prospectus (in case the shares are not sold to the public) with CRO.

At present, foreigners are not allowed to set-up a public company. Capital Market will be implemented in the Republic of the Union of Myanmar in 2015.

2.1.3 Foreign Company

A foreign company is governed under the MCA, unless the company is a State-Owned enterprise or involves the Government, in which case it must be incorporated under the Special Company Act, 1950. In case of large investment such as services, manufacturing, hotel and construction activities, Investment Permit must be applied to Myanmar Investment Commission (MIC) in accordance with the FIL.

Under Myanmar Companies Act, a foreign company, whether a hundred percent owned, or joint-venture with Myanmar citizen or a branch/representative office is required to obtain a Permit to Trade (Permit under Section 27 (A)) and Incorporation/Registration Certificate from the Directorate of Investment and Company Administration (DICA) under the Ministry of National Planning and Economic Development.

Permit to Trade

Permit to Trade are currently renewable every three years. A Joint Venture company with a State entity, formed under the Special Company Act 1950 and/or Foreign Investment Law is exempted from obtaining a Permit to Trade. The MIC issues an "Investment Permit" to such companies.

After obtaining a Permit to Trade, foreign company must remit (inject) capital into Myanmar in foreign currency in an amount determined as minimum capital in cash for each category as follows:

US\$ 500,000 for industrial/hotel/construction company
US\$ 300,000 for a service company

50% of capital must be remitted to the Myanmar Foreign Trade Bank (MFTB) or the Myanmar Investment and Commercial Bank (MICB) or other licensed private banks in in the Republic of the Union of Myanmar. The remaining 50% must be remitted within one year after registration. The capital brought in may be kept in US\$ accounts, and exchanged into Myanmar Kyat at official money changers at reference exchange rates daily notified by the Central Bank of Myanmar (CBM) after withdrawing FEC from the bank account.

MIC Permit

The minimum amount of foreign capital required to be eligible under Foreign Investment Law may be determined by MIC depending on type of business with the approval of the Union Government.

Foreign capital may be brought in the following forms:

- Any foreign currency acceptable to the MFTB or MICB or other licensed private banks
- Machinery, equipment, machinery components, spare parts, instruments, etc
- License, trademarks, patent rights and other rights which can be evaluated
- Technical know-how
- Re-investment out of profits accrued to the enterprise from the business or from share of profit.

3.0 Labour Relations and Working Conditions

3.1 Availability of Labour

According to the 1998/99 estimates, the population of the Republic of the Union of Myanmar was 47.25 million. Of that figure, 33.3% were below 14 years of age, 59% were between 15 and 59 years of age and 7.65% were over 60 years of age. Also at that year the population of the cities of Yangon and Mandalay were 4 million and 0.7 million respectively. The Republic of the Union of Myanmar has a high literacy rate, so its labour force is fairly well-trained. Every year, more than 30,000 students graduate from schools and academic institutions of higher learning, and about 80,000 trainees from vocational training schools. Most of them are proficient in Myanmar and English language.

3.2 Labour

Existing labour laws in the Republic of the Union of Myanmar include: Employment and Training Act (1950), Employment Restriction Act (1959), Employment Statistics Act (1948), Factories Act (1951), Labour Organization Law (2011), Leave and Holidays Act (1951), Minimum Wages Act (2012) (enacted), Oilfields Labour and Welfare Act (1951), Payment of Wages Act (1936), Shops and Establishments Act (1951), Workmen's Compensation Act (1923), and two recent laws, Labour Dispute Settlement Law (2012) and Social Security Act (2012) (enacted but not yet in force). These laws govern labour relations problems and deal with such subjects as working hours, holidays, leaves of absence, woman and child labour, wages and overtime, severance pay, workmen's compensation, social welfare, work rules and other matters. There is a minimum wage only in certain fields (i.e. agricultural workers and factories). A social security act established a fund with contributions by employers, employees and the government.

The Ministry of Labour has issued an outline of Myanmar Labour Law booklet, which summarizes above labour laws. Attached to these laws is a model employment contract which should be used when appointing Myanmar citizen employees in projects of specific completion period.

The Myanmar Special Economic Zone Law (MSEZ) (2011), Dawei Special Economic Zone Law (2011), and the new FIL has been promulgated on 2-11-2012 and Foreign Investment Rules has been promulgated on 31-1-2013 which prescribe special rules applicable to foreign employees, work permits, and minimum percentages of employees which must be citizens. The new MSEZ Law will be promulgated soon and the previous SEZ Laws will be abolished by the new MSEZ Law when it is promulgated.

Myanmar has been a member of the ILO since 1948. A Myanmar tripartite delegation comprising with the representatives of Government, Employers and workers attend the ILO conference held in Geneva annually.

3.3 Working Conditions

3.3.1 Wages and Salaries

As per local media report the minimum wages suggested by the Labour Department is Kyat 70,000 per month for salaried employees, but the minimum wage only applicable to certain field works. Kyat 2,000 per day for daily wages labours and supplemented by various subsidies and allowances.

3.3.2 Social Security Contributions

The Social Security Act, 2012 requires an employer with five workers and more to provide Social Security Scheme benefits to his workers, such as general benefit insurance and insurance against employment related injuries.

The current rates of social security contribution by employees and employer are 1.5% and 2.5% of the total salaries and wages respectively. The social security contribution may be in Kyats or in US Dollars, depending on the currency in which the employee is paid.

Social security contribution are not deductible by the employee for tax purposes. The employer is obligated to withhold the employees' contributions from their salaries.

3.3.3 Working Hours and Paid Holidays

Typical working hours are as follows:

Shops, companies, trading centres, service enterprises, and entertainment houses: 8 hrs a day, 48 hrs a week. Factories, oil fields, and mines: 8 hrs a day, 44 hrs a week. Factories engaged in continuous process 48 hrs a week. In underground mines 8 hrs a day, 40 hrs a week.

The Workmen's Compensation Act stipulates for compensation to be paid by the employer if a worker not covered by the Social Security Act, 2012 suffers injury resulting in temporary or permanent disability or death in the course of performing his duties.

Workers in a private enterprise are granted the following leaves and holidays: 6 days per year as casual leave, 30 days per year as medical leave, 10 days per year as earned leave, and 26 public holidays in a year with wages. In addition, women workers in private enterprises covered by the Social Security Act, 2012 are granted maternity leave with paid wages.

4.0 Residence and Work Permit

Foreigners require a work permit for employment or business in the Republic of the Union of Myanmar.

There are two types of work permit:

- The Stay Permit; and
- The Multiple Journey Special Re-Entry Visa

The Stay Permit allows the holder to work for either three months or one year without re-entry into the Republic of the Union of Myanmar.

The Multiple Journey Special Re-Entry Visa allows the holder to work in the Republic of the Union of Myanmar for 3 months/6 months/1 year with periods of international travel during its validity. It is important to note that holders of the Multiple Journey Special Re-Entry Visa must also have a valid Stay Permit.

Both Stay Permits and Multiple Journey Special Re-Entry Visa are renewable.

Applicants for Stay Permits or Multiple Journey Special Re-Entry Visa must be able to provide evidence that they are company directors, managers, or consultants and need to obtain a “Recommendation Letter” from the relevant Government Department.

The processing time for work permits in Myanmar is currently about two months.

If foreigners stay more than 90 days continuously in the Republic of the Union of Myanmar, they also need to apply for and obtain Foreigner Registration Certificate (F.R.C) from the Immigration Department.

PART B – INVESTMENT

1.0 Foreign Investment

The new FIL has been promulgated on 2-11-2012 to encourage foreign investment in Myanmar with the objectives of exploitation of the abundant resources of the country with a view to catering to the needs of the nation in the first instance and exporting whatever surplus available; job creation for the people in line with the progress and expansion of work; developing human resources; developing infrastructure such as banking and financial institutions, highways roads, national electricity and energy works; developing high-tech industries, including modern data collection technology and further develop communication networks; develop an international standard railway, maritime and airway transport throughout the entire country; to encourage the citizens to be able to compete with foreigners and to develop investment work in line with international standards. The new FIL defines ‘investment’ as, “various kinds of property supervised by the investor within the State’s territory in accordance with the Law (FIL), and is to include;

1. the right to be mortgaged and right to mortgage in accordance with the FIL in relation to moveable and immovable property;
2. shares, stock and debentures of the Company;
3. financial rights or activities under a contract determined as a value related to finance;
4. intellectual property rights in accordance with existing laws;
5. functional rights granted by the relevant law or contract, including the right of exploration and extraction of mineral resources.

The FIL covers many business activities with the exception of those businesses reserved for the State under the State-owned Economic Enterprises Law (SEE Law). However, if a foreign investor is interested in an activity not specified in a notification or defined in the SEE Law, the investor can apply to MIC stating its interest and demonstrating that such an enterprise would be beneficial to the State. Upon satisfaction, MIC may approve the application and issue Investment Permit.

The FIL offers a large range of incentives and guarantees to foreign investors. An enterprise permitted by the FIL enjoys a tax holiday period of consecutive five years; inclusive of the year the enterprise commences commercial operation.

In addition, MIC may grant one or all of the following exemptions and reliefs upon application:

1. exemption or relief from income tax on the profits of the business if they are maintained in a reserve fund and reinvested in the business within one (1) year after the reserve is made;
2. Right to deduct depreciation in respect of machinery, equipment, building or other capital assets used in the business for the purpose of income-tax assessment;
3. relief from tax on up to 50% of the profits accrued from the export of goods produced in Myanmar;
4. right to pay foreign employees' income tax at the rates applicable to the Myanmar citizens;
5. right to deduct from assessable income, expenses incurred in respect to necessary research and development carried out within Myanmar;
6. carry forward and set off losses up to three (3) consecutive years after the year in which the loss was sustained;
7. exemption or relief from customs duty or other internal taxes or both on the import of approved machinery, equipment, instruments, machinery equipment, spare parts and materials during the initial period/period of construction; and
8. exemption or relief from customs duty or other internal taxes or both on raw materials imported within the first three years of commercial production following start up/completion of construction.
9. exemption or relief from customs duty or other internal taxes or both on the import of machinery, equipment, instruments, machinery equipments, spare parts and materials used in the business, which are imported for the expansion of the business during the originally permitted period after increase of the investment capital with the approval of MIC.

1.1 Restriction and Prohibition under the Foreign Investment Law (FIL)

The MIC was formed in order to oversee and administer the FIL. In order to provide more specific guidance to foreign investors, the new FIL explicitly lists 11 prohibited activities. These activities are;

1. Business that cause damage to the traditional culture and customs of the national races within the State;
2. Business which can affect public health;
3. Business which can affect the environment and eco-system;
4. Importation of hazardous or poisonous wastes into the State;
5. Business or factories which produce or use hazardous chemicals as prescribed by international agreements;
6. Manufacturing or service activities affordable by citizens as notified by the Rules;
7. Business which may bring in any technologies, medicines or commodities without relevant permits, or not designated for use;
8. Farming and long and short terms agriculture affordable by citizens;
9. Livestock breeding affordable by citizens as notified by the Rules;
10. Marine fishing affordable by citizens within Myanmar territorial sea as notified by the Rules;
11. Foreign investment activities within 10 miles from boundary/borders lines between neighbouring nations of Myanmar, except in State economic zones approved by the Myanmar Government as Economic Zones.

The MIC has the power to grant permission to foreign investors to engage in activities include in the prohibited/restricted list with the approval of the Union Government, if doing so would be in the best interest of the Nation. The MIC must request approval from the Union Parliament through the Union Government for any project which poses a significant impact on the security of the State and people, the economy, environment or socio-economic wellbeing.

2.0 Right to Transfer Foreign Currency

A person who has brought in foreign capital can transfer the following:

- foreign currency entitlement of the person
- net profit after deducting all taxes and provisions

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- foreign currency permitted for withdrawal by the MIC which may include the value of assets on the winding up of business.
 - a foreign employee can transfer its salary and lawful income after deducting taxes and other living expenses incurred domestically

3.0 Land Laws

Foreigners are not allowed to own immovable property (land and/or building) in the Republic of the Union of Myanmar. However, a 50 year initial lease period may be permitted which may be extended for another 10 years twice depending on the type of business, industry and the amount of investment.

Generally, land in Myanmar is owned by the State. Land administration is assigned to various government departments. While a foreign investor may not own land, land use rights can be obtained in either one of the following 2 ways:

- obtaining land use rights under a lease, from either the government or private citizens, approved by the government; or
- land use rights are contributed to a joint venture by a government agency

Foreign investors may, however, invest in property development on a Build, Operate and Transfer (BOT) basis. The project can be a 100% wholly foreign owned project or a joint venture with a government partner. Many of the projects approved by the MIC are under BOT system.

4.0 Accounting and Audit Requirements

4.1 Statutory Requirements

The financial statements of a company/branch must be audited at least once a year by an approved company Myanmar citizen auditor in accordance with Myanmar Standards on Auditing (MSA). The company's directors have a duty to prepare its financial statements. An appointed auditor must prepare an audit report on the financial statements for the shareholders of the company.

The financial statements must be prepared in compliance with MFRS (Myanmar Financial Reporting Standards) or MFRS for SMEs (Myanmar Financial Reporting Standards for Small and Medium-sized Entities). The language can be in either English or Myanmar or both.

PART C – BANKING AND FOREIGN EXCHANGE REGULATIONS

1. Financial Sector of the Republic of the Union of Myanmar

The financial sector of the Republic of the Union of Myanmar is made up of state owned banks, private banks, finance companies and representative offices of foreign banks. A new banking law license allows 19 domestic private banks to operate and permits 28 foreign banks to open representative offices in Myanmar.

The Central Bank of Myanmar has also issued licenses to 11 local private banks out of a total of 19 local private banks to operate foreign currency accounts.

2. State owned banks

The following banks are the state owned banks operating in the Republic of the Union of Myanmar:

- 1) Myanma Foreign Trade Bank (MFTB);
- 2) Myanma Economic Bank (MEB);
- 3) Myanma Investment and Commercial Bank (MICB);
- 4) Myanma Agriculture and Development Bank (MADB);

3. Representative offices of foreign bank.

These are some of the representative offices of foreign banks:

- 1) United Overseas Bank Ltd (UOB Bank)
- 2) Overseas-Chinese Banking Cooperation Ltd (OCBC Bank)
- 3) Maybank, Malaysia
- 4) Bangkok Bank Public Company Limited
- 5) National Bank Ltd
- 6) Brunei Investment & Commercial Bank
- 7) First Overseas Bank Limited
- 8) CIMB Bank Berhad
- 9) AB Bank Ltd
- 10) Industrial & Commercial Bank of China Ltd
- 11) United Bank of India Ltd
- 12) Mizuho Bank
- 13) Standard Chartered Bank
- 14) Sumitomo Mitsui Banking Corporation
- 15) The Bank of Tokyo Mitsubishi, UFJ Ltd

4. Interest rates

The following represents the interest rate (as at 18 Nov 2012).

Central Bank Rate	10% per annum
Maximum Bank Deposit Rate	8% per annum
Maximum Bank Lending Rate	13% per annum

5. Exchange control

Foreign exchange is regulated by the Foreign Exchange Regulation Act 1947 and re-enacted in 2012 (FERA), and the Central Bank of Myanmar Law empowers the Central Bank of Myanmar (CBM) to administer FERA. Foreign exchange control is managed by the CBM's Foreign Exchange Management Department and the Foreign Exchange Management Board (FEMB), in accordance with FERA and instructions of the Ministry of Finance and Revenue.

“Foreign exchange” is defined in FERA as including “foreign currency and all deposits, credits and balances in any foreign country or payable in any foreign currency, and any documents or instruments expressed or drawn in Myanmar currency but payable in any foreign currency”.

The CBM Law also defines “foreign exchange” as including foreign bank notes and coins; deposits in intergovernmental financial institutions, central banks, treasuries and commercial banks abroad; foreign-currency-denominated securities of, and instruments issued or guaranteed by, foreign governments, foreign financial institutions and intergovernmental financial institutions; and instruments used for the international transfer of funds.

In general, citizens, foreigners and companies in Myanmar must obtain permission of the FEMB in all of their practical dealings with foreign exchange in connection with borrowing foreign exchange from abroad and repaying the principal and interest thereof, making any payment to persons abroad, opening accounts in foreign banks abroad and the remittance of profits. However, MFIL companies are permitted to repatriate investment and profits in the foreign currency in which such investment was made upon approval of MIC and CBM.

FERA includes prohibitions on payments made in foreign currency to any person resident outside Myanmar, as well as the export of any currency or foreign exchange without the permission of the CBM. Except with the prior approval of the CBM, all persons must transact with an authorised money changers in respect of the buying/borrowing, selling/lending, transfer or exchange of any foreign exchange.



Dealings in foreign exchange are only permitted at the prevailing reference exchange rates notified daily by the CBM.

Any contract or agreement made by any person that would directly or indirectly evade or avoid in any way the operation of any provision of FERA or of any rule, direction or order made there under will be rendered void, unless permission is obtained from the CBM. Thus, the use of, and payments and dealings in, foreign exchange are all subject to the provisions of FERA and permission or authorisation is required from the FEMB in connection with foreign exchange dealings.

PART D – TAX

1.0 TAX STRUCTURE

Myanmar tax structure comprises fifteen different taxes and duties under the four major heads, namely:

1. Taxes levied on domestic production and public consumption - excise duty; licence fees on imported goods; state lottery; taxes on transport, commercial tax and sale proceeds of stamps;
2. Taxes levied on income and ownership-income tax;
3. Customs duties; and
4. Taxes levied on utility of State-owned properties-taxes on land; water tax, water tax and embankment tax; taxes on extraction of forest products, minerals, rubber and fisheries.

2.0 CORPORATE TAX

2.1 Scope

Resident foreign companies are taxed on a worldwide basis, and as such, income from sources outside and within the Republic of the Union of Myanmar is taxable. A resident company is a company as defined and formed under the MCA, 1914 or any other existing law of the Republic of the Union of Myanmar. MFIL companies are treated as resident companies. However, MFIL companies are not taxed on their income received outside the Republic of the Union of Myanmar.

Non-resident foreign companies are taxed only on income derived from sources within Myanmar. A non-resident company is a company that is not formed under the MCA, 1914 or any other existing law of Myanmar. Generally, foreign branches are deemed to be non-resident companies. Income received from any capital assets within the Republic of the Union of Myanmar and from any source of income within Myanmar is deemed to be income received within Myanmar. The income is generally subject to tax under the normal rules for residents, except that different tax rates apply.

Newly MFIL companies are entitled to enjoy exemptions and relief from taxes granted under FIL.

A partnership is taxed as an entity and not on the individual profit share of the partners. Partnership income is not taxed in the hands of the partners.

2.2 Tax rates

Corporate tax rates vary depending on the type of taxpayer and broadly, nature of income.

Type of Tax payer/Income	Tax rate
Companies incorporated in Myanmar under Myanmar Companies Act	
Trade/Business Income	25%
Rental Income from movable or immovable property	25%
Enterprises operating under MFIL	25%
Foreign organisations engaged under special permission in State-sponsored projects, enterprise or any undertaking	25%
Non – resident foreign organisations such as a foreign branch	35%
Capital gains tax (except transfer of shares in an oil and gas company where the rates ranging from 40% to 50% will apply on gains)	
Resident companies	10%
Non – resident companies	40%

2.3 Administration

2.3.1 Taxable period

The taxable period of a company is the same as its financial year (income year), which is from 1 April to 31 March of the following year. Income earned during the financial year is assessed to tax in the assessment year, which is the year following the financial year.

2.3.2 Tax returns and assessment

In general, income tax returns must be filed within three months from the end of the income year, i.e. on or before 30 June after the end of the income year. Tax returns for capital gains must be filed within one month from the date of disposal of the capital assets. The date of disposal refers to the date of execution of the deed of disposal or the date of delivery of the capital assets, whichever is earlier.

If a taxpayer discontinues his business, returns must be filed within one month from the date of discontinuance of business. The failure of a taxpayer to file income tax returns, knowing that assessable income has been obtained, is deemed to have “fraudulent intention”.

2.3.3 Payment of tax

Advance payments are made either in monthly or quarterly instalments before end of the fiscal year (31st March) based on the estimated total income for the year. The

advance payments and any taxes withheld are creditable against the final tax liability. The date for settling the final tax liability is specified in the notice of demand by the Inland Revenue Department (IRD).

2.3.4 Time limitation

The time limitation to make re-assessment is three years after the year of completion of tax assessment. The statute of limitation does not apply in case of fraud default. Mere filing of the income return and payment of advance tax in time will not constitute a final tax assessment.

2.4 Taxable profits

Income is categorised as income under the heads of salary, profession, business, property, capital gains other sources and undisclosed sources. Income under the heads of salary and capital gains are assessed separately.

Income from movable property is treated as business income. Interest income is also treated as business income, even if it is not derived from a business source. Tax is levied on total income, after deduction of allowable expenditure and depreciation.

Dividends received from an association of persons are exempt from tax.

The Ministry of Finance and Revenue with the approval of the government may, by notification, prescribe, amend and add assessable income and rates of income tax for each class of income in Kyats and in foreign currency.

2.4.1 Deductions

In respect of business income, deductions are allowed for expenditures incurred for the purpose of earning income, and depreciation allowance.

Income from movable property is considered business income, and a depreciation allowance can be deducted. Income from immovable property is generally computed in the same way as business income, except that no depreciation allowance can be deducted.

Non-deductible items include capital expenditure, personal expenditure, expenditure that do not commensurate with the volume of business, payments made to any member of an association of persons other than a company or a cooperative society, and inappropriate expenditure.

2.5 Capital gains

Income tax is levied on gains from the sale, exchange or transfer of capital assets. Capital gains are calculated based on the difference between sale proceeds and the cost of assets and any additions, less tax depreciation allowed. For the purpose of income tax, “capital asset” means any land, building, vehicle and any capital assets of an enterprise, which include shares, bonds and similar instruments.

If intangibles fall within the definition of capital assets, capital gains arising from such assets would also be taxable.

Capital gains from the sale, exchange or transfer of capital assets in the oil and gas sector are taxed at different rates from those in other sectors.

2.6 Withholding Tax

The Ministry of Finance and Revenue issued Notification No. 41/2010 dated 10 March, 2010 prescribed a withholding tax regime and issued Notification No. 167/2011 dated 26 August, 2011 for amendment regarding withholding tax. Effective 1 April 2010, persons responsible for disbursement of the following types of payments, other than under the head “salaries” must withhold the tax when the payment is made and remit tax withheld in the same currency the disbursement is made, at the rates below:

1. Interest paid to non-resident foreigners: 15%
2. Royalties: 15% on payments to residents, 20% to non-resident foreigners.
3. Payments for purchase of goods and services rendered in the Republic of the Union of Myanmar: 2% on payments to residents, 3.5% on payments to non-resident foreigners.

3.0 PERSONAL INCOME TAX

3.1 Scope

Resident nationals are taxed on all income derived from sources within and outside Myanmar.

Resident foreigners are taxed on all income derived from sources within and outside Myanmar. Foreigners who reside in Myanmar for at least 183 days during an income year are considered as resident foreigners.

Expatriates working for MFIL companies are treated as resident foreigners regardless of their period of stay in Myanmar. However, resident foreigners working for MFIL companies and investing in the Republic of the Union of Myanmar are not taxed on their personal foreign income not arising out of Myanmar.

Non-resident foreigners are taxed only on income derived from sources within Myanmar. Foreigners who reside in Myanmar for less than 183 days during an income year are considered as non-resident foreigners.

3.1 Taxable income

3.1.1 Employment income

The definition of taxable employment income is broad and includes salary, wages, bonus, annuity, pension, benefits in kind, gratuity, and any fees, rent-free accommodation, commissions or perquisites received in lieu of or in addition to any salary and wages.

Resident foreigners are subject to a monthly deduction of tax on salary as prescribed by the Myanmar Income-tax Law.

There are no deductions available for costs related to employment income.

3.1.2 Non-employment income

Taxable non-employment income includes:

- business income (e.g. income from moveable properties, royalties and interest)
- income from a profession. "Profession" means the rendering of a service with one's skill for fees, and includes services rendered by doctors, nurses, lawyers, engineers, architects, film stars, theatrical artists, writers, painters, sculptors, accountants, auditors, astrologers and teachers
- capital gains from the sale of capital assets
- other income from investments, except dividends received from an association of persons which are exempt from income tax.

If non-employment income is not more than MMK 1,200,000 per year (except salary and capital gains), no income-tax is liable. In the case of capital gains, no income-tax is liable if the sales proceeds of one or more capital assets are not more than MMK 5,000,000 per year.

Type of Tax payer/Income	Tax rate
Foreigners engaged under special permission in State-sponsored projects, enterprises. Received in Kyats	20%
Foreigners working for MFIL companies	Progressive rates from 1% to 20%
Foreign working for non-MFIL and companies: <ul style="list-style-type: none"> - Resident foreigners - Non-resident foreigners & resident citizens 	35% Progressive rates from 1% to 20%
Other Income	
Nationals	2% to 30%
Resident foreigners	35%
Capital gains tax	
- Resident	10%
- Non – resident	40%

Note: No tax is payable if total income under the head of salaries does not exceed MMK 1,440,000 per year.

3.2 Administration

3.2.1 Taxable period

The taxable period of an individual is from 1 April to 31 March of the following year. Income earned during the financial year is assessed to tax in the assessment year, which is the year following the financial year.

3.2.2 Tax returns and assessment

In general, income tax returns must be filed within three months from the end of the income year, i.e. on or before 30 June after the end of the income year. Tax returns for capital gains must be filed within one month from the date of disposal of the capital assets.

If a taxpayer discontinues his business, returns must be filed within one month from the date of discontinuance of business.

3.2.3 Payment of tax

Advance payments are made either in monthly or quarterly instalments before end of the fiscal year (31st March) based on the estimated total income for the year. The advance payments and any taxes withheld are creditable against the final tax liability.

The date for settling the final tax liability is specified in the notice of demand issued by the IRD.

An employer is responsible for deducting income tax due from salaries at the time of payment to employees, and must pay the amount within seven days from the date of deduction. If the employer fails to deduct and pay the tax, he is deemed to be a defaulter and held responsible for such payment. In addition, the employer is also responsible for filing of the annual salary statement within three months after the end of the income year and the failure of filing within stipulated deadline may be imposed 10% penalty of the amount of tax to be deducted on annual salaries.

4. Commercial Tax

There is no Value Added Tax (VAT) in the Republic of the Union of Myanmar. Commercial tax is levied as a turnover tax on goods and services. The commercial tax is an additional tax upon certain commercial transactions, but it has not been expanded to the concept of a VAT. It applies only to the specific transactions listed in the Commercial Tax Law.

The tax is imposed on a wide range of goods and services produced or rendered within the country, based on the sales proceeds. The tax is also levied on imported goods, based on the landed cost which is the sum of the Cost, Insurance and Freight (CIF) value, port dues calculated at the rate of 5% of the CIF value of goods, and customs duties. Collection of these taxes is made at the point of entry and the time of clearance.

Commercial tax ranges from 0% to 100%, depending on the nature of the goods and services described in the schedules appended to the Commercial Tax Law.

Services such as trading, transport, entertainment, insurance, printing, etc are subject to commercial tax at 5% of the total receipts.

No commercial tax is imposed if the amount of sales or receipt from services for a financial year is not more than MMK 10,000,000 per year.

Commercial tax is exempt on all exports of goods except for five natural resource items which are natural gas, crude oil, jade, gem stones and wood.

The commercial tax that a business charges and collects is known as output tax which has to be paid to the tax authorities. Commercial tax incurred on business purchases and expenses are known as input tax except 18 items of special goods as per Schedule 6 of the Commercial Tax Law. Businesses which are commercial tax registered can claim input tax if conditions for claiming are satisfied.

5.0 AVOIDANCE OF DOUBLE TAXATION AGREEMENT (DTA)

The Avoidance of Double Taxation Agreements (DTA-Tax Treaties) executed between the Republic of the Union of Myanmar with the United Kingdom, Singapore, Malaysia, Vietnam, South Korea, India, Lao and Thailand have been effective.

The DTA with Lao relating to withholding tax came into effect on 1 April 2011 and relating to other income came into effect on 1 April 2012.

The DTA with Thailand relating to withholding tax came into effect on 1 April 2012 and relating to other income came into effect on 1 April 2013.

However, DTA executed between the Republic of the Union of Myanmar with Indonesia and Bangladesh are not yet effective since certain formalities need to be fulfilled.