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Myanmar News

Notification No. 51/2017
on Withholding Tax

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Notification No. 51/2017 on Withholding Tax

On 10 January 2017, the Ministry of Planning and Finance issued Notification No. 2/2017 with updated rates and regulations in respect of withholding tax on interest payments, royalties for the use of licenses, trademarks and patent rights, and payments for the purchase of goods, for services performed and the leasing/hiring of property. The applicable withholding tax should be withheld, filed and paid by the person making a payment as stipulated in the notification – regardless of whether the payment recipient has agreed to the deduction or not.

Notification No. 2/2017, which clarified previous ambiguities on the application of withholding tax to payments for offshore services and lease agreements, came into effect on 1 April 2017, superseding Notification No. 41/2010 dated 10 March 2010 and Notification No. 167/2011 dated 26 August 2011.

On 4 April 2017, the Ministry of Planning and Finance followed up with Notification No. 37/2017, introducing new thresholds for the imposition of withholding tax for tax payers under the new self-assessment tax system.

Less than two months later, on 22 May 2017, the Ministry of Planning and Finance issued Notification No. 51/2017, which replaced both Notification No. 2/2017 dated 10 January 2017 and Notification No. 37/2017 dated 4 April 2017 and came into effect retrospectively from 1 April 2017.

The most important change from Notification No. 2/2017 is the introduction of new thresholds for the imposition of withholding tax. (For all other matters related to the new withholding tax regulations, please refer to our March 2017 – News Alert).

New Minimum Thresholds

Pursuant to Notification No. 51/2017, the imposition of withholding tax shall not be required for payments to resident tax payers, if the following thresholds are not met:

(i) If the person making the payment is a large or medium tax payer subject to the new self-assessment tax system:	MMK 1,500,000
(ii) For any other person making the payment:	MMK 500,000

For the avoidance of doubt, the thresholds do not apply for payments to non-resident foreigners.

A further change from the previous Notification No. 2/2017 is that the new thresholds will apply with respect to each payment. The previous requirement to impose withholding tax if a sum of cumulative payments exceeds the threshold has been deleted. Such payments not exceeding the threshold shall, however, still be notified to the relevant tax office.

Annex

Unofficial Translation

The Government of the Republic of the Union of Myanmar
Ministry of Planning and Finance
Office of the Union Minister
Notification No. 51/2017
22 May 2017

1. In exercising the powers conferred by Section (16) sub-section (b) of the Income Tax Law, the Ministry of Planning and Finance, with the approval of the Union Government Cabinet, hereby issues the following rates of withholding tax in respect of the following categories of non-salary payments:

Sr.	Category of Payment	Withholding Tax %	
		For Resident Citizens and Resident Foreigners	For Non-resident Foreigners
a.	Interest payments for a loan or indebtedness or a transaction of similar nature or savings	-	15.0
b.	Royalties for the use of licenses, trademarks, patent rights, etc.	10.0	15.0
c.	Payments by State organizations, State enterprises, development committees, co-operative societies, foreign companies, foreign enterprises and organizations, local companies, and partnership firms registered and established under any existing law for the purchase of goods, for works performed, supply of services and hiring [leasing/renting] within the country under a tender, contract, quotation or other mode (other than the services mentioned in above items of this table.):	2.0	2.5

Tax shall be withheld at the rates prescribed in the above paragraph, and deposited to the bank account of the relevant tax office under the name of the individual or entity receiving the payment.

2. The withholding tax in paragraph 1 in respect of a non-resident foreigner shall be deemed as the income tax paid under the final assessment in respect of said non-resident foreigner. Provided that the withholding tax shall be offset from the income tax assessed on business carried out within the country as a branch office of the non-resident foreigner.
3. Upon presentation of a Certificate of Resident (sic) of the non-resident foreigner from the internal revenue department of the relevant country which is party to an Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion (Tax Treaty), withholding tax shall be processed at the rates prescribed in such Tax Treaty concluded with the relevant country.

4. In processing withholding tax as per paragraph 1:
 - a. the person (payment maker) responsible to disburse the payment:
 - (1) shall not impose withholding tax for payments up to a maximum amount of Kyats 15-lakhs in case of large tax payers and medium tax payers subject to the new self-assessed tax scheme, and impose withholding tax at the corresponding rate for payments in excess of Kyats 15-lakhs.
 - (2) shall, in case of businesses other than those as per above sub-paragraph (1), not impose withholding tax for payments up to maximum amount of Kyats 5-lakhs. If the payment exceeds Kyats 5-lakhs, withholding tax shall be imposed at the corresponding rate.
 - b. In case of payments to non-resident foreigners or payments in foreign currency, withholding tax shall be imposed on all payments at the corresponding rates in the table.
 - c. For all categories of payment, a list of payments which do not reach the prescribed [threshold] amount for imposing withholding tax shall be submitted to the relevant tax office.
5. However:
 - a. No withholding tax shall be imposed on payments between government organizations, payments to government bodies and State-owned enterprises.
 - b. No withholding tax shall be imposed on interest payments for a loan or indebtedness or a transaction of similar nature or savings, if the branch office of the non-resident foreigner is registered within the country and if it undergoes domestic tax assessment.
 - c. Refusal of the receiver of payment to agree to the imposition of withholding tax shall not relieve the payment maker from his duty to impose withholding tax.
6. In order to implement this Notification effectively, the Director General of the Internal Revenue Department shall:
 - a. have the authority to prescribe procedures related to withholding tax, necessary interpretation of meanings, and [standard] forms;
 - b. have the authority to notify the person responsible for imposing withholding tax to refrain from doing so, in order to avoid multiple taxation for a single transaction, and to prevent imposition of income tax although exempted under any prevailing laws, rules or notifications, even if the payments are of categories specified in above paragraph 1.
 - c. have the authority to delegate the powers under above sub-paragraph (b) to the heads of the departments of the Large Tax Payer Offices and Medium Tax Payer Offices, Region/State Revenue Officers, and Nay Pyi Taw Council Revenue Officers.
7. This Notification is issued with the objective of providing clarifications to and facilitating of persons responsible for imposing withholding tax, and for granting the Director General of the Internal Revenue Department the authority to issue procedures for the effective implementation of conditions related to the imposition of withholding tax, as prescribed in this Notification. Therefore, this Notification rescinds Notification No. 2/2017 (dated 10 January 2017) and Notification No. 37/2017 (4 April 2017) of the Ministry of Planning and Finance.
8. This Notification shall apply with effect from 1 April 2017.

Kyaw Win
Union Minister

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Alexander Bohusch
Rechtsanwalt/Attorney-at-law (Germany)
Luther Law Firm Limited
Myanmar
Phone +95 1 513 307
alex.bohusch@luther-lawfirm.com



Fabian Lorenz, M.A.
Rechtsanwalt/Attorney-at-law (Germany)
Luther Law Firm Limited
Myanmar
Phone +95 1 500021
fabian.lorenz@luther-lawfirm.com



Nicole Schwiegk
Rechtsanwalt/Attorney-at-law (Germany)
Luther Law Firm Limited
Myanmar
Phone +95 1 500021
nicole.schwiegk@luther-lawfirm.com



Fanny Tatin
Avocat/Attorney-at-law (France)
Luther Law Firm Limited
Myanmar
Phone +95 1 500021
fanny.tatin@luther-lawfirm.com

Imprint

Luther Rechtsanwaltsgesellschaft mbH, Anna-Schneider-Steig 22,
50678 Cologne, Phone +49 221 9937 0, Fax +49 221 9937 110,
contact@luther-lawfirm.com

Editor: Alexander Bohusch, Rechtsanwalt/Attorney-at-law (Germany),
Luther Law Firm Limited, Luther Corporate Services Limited, Uniteam Marine Of-
fice Building, Level 8, Unit #1, 84 Pan Hlaing Street, Sanchaung Township
11111 Yangon, Myanmar, Phone +95 1 500 021, Fax +95 1 502 852,
HP (MM): +95 9 425 0136 00, HP (SG): +65 9 829 1829, alexander.bohusch@
luther-lawfirm.com

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contact@luther-lawfirm.com

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