

Tax

Tax Update 2019

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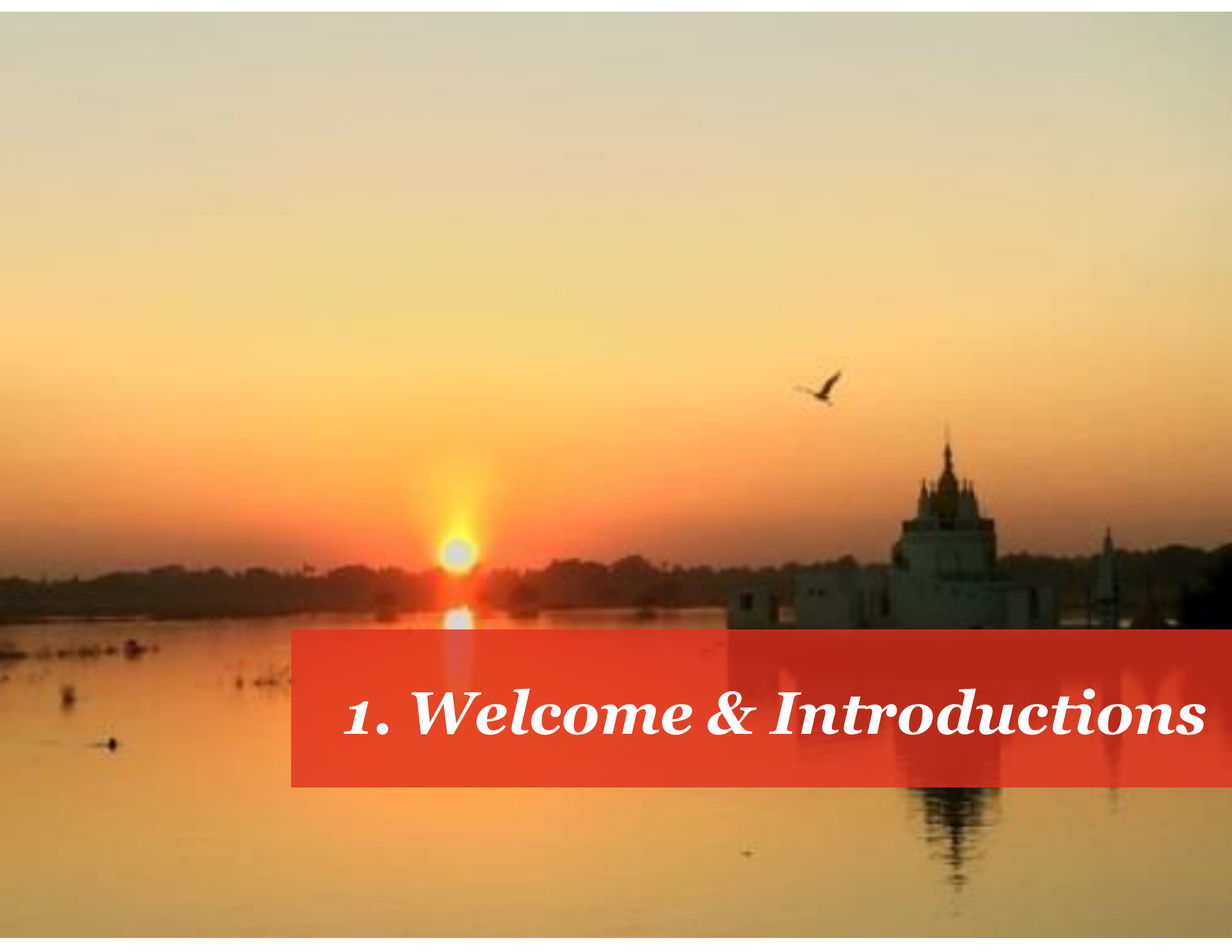
27 August 2019

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Agenda

- Welcome & Introductions
- Tax Administration Law (TAL) 2019
 - ✓ New key features of TAL
 - ✓ TAL's provisions relating to tax administration
 - ✓ TAL's provisions relating to penalty
 - ✓ Further clarifications required from Internal Revenue Department (IRD)
- Tax Assessment and Collection Procedures during Transitional Financial Year
- 2019 Union Taxation Bill
- Q&A

A scenic sunset over a body of water. The sun is low on the horizon, creating a bright orange and yellow glow. A church spire is visible on the right side of the frame, and a bird is flying in the sky above it. The water reflects the sunset colors.

1. Welcome & Introductions

Key taxation in Myanmar

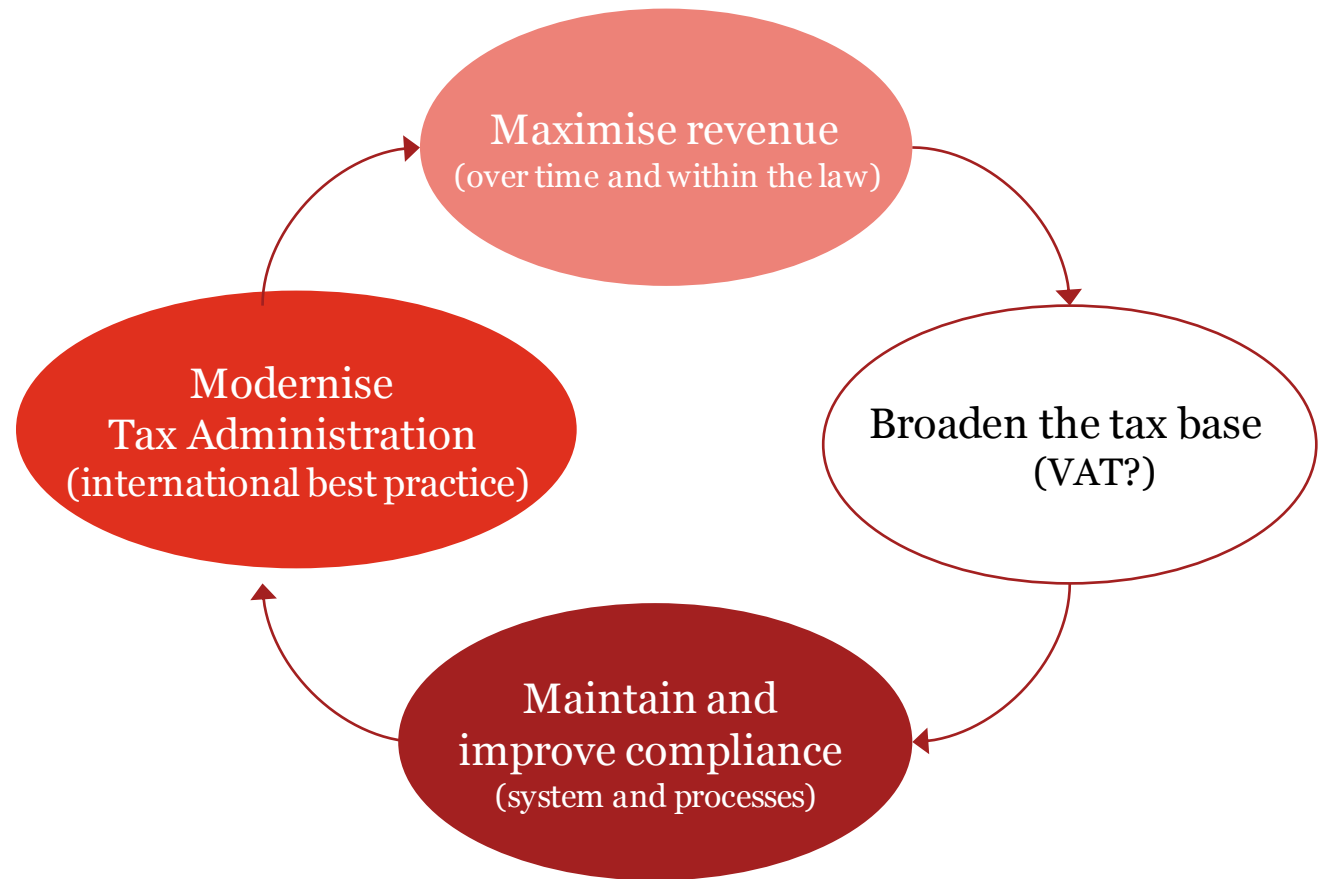
Direct taxes	Indirect taxes	Other taxes
1. Corporate income tax – 25%	6. Commercial tax – 0% to 8%, with a standard rate of 5%	9. Stamp duty
2. Personal income tax – 0% to 25%, 25%, 10%	7. Specific goods tax – 5% to 80%	10. Property tax
3. Capital gains tax – 10% (40% to 50% for oil and gas sector)	8. Customs duty – 0% to 40%	11. Social Security Contribution
4. Withholding tax – 2% to 15% depending on the nature of payments and tax residency status of recipients		
5. Undisclosed source of income – 15% to 30%		



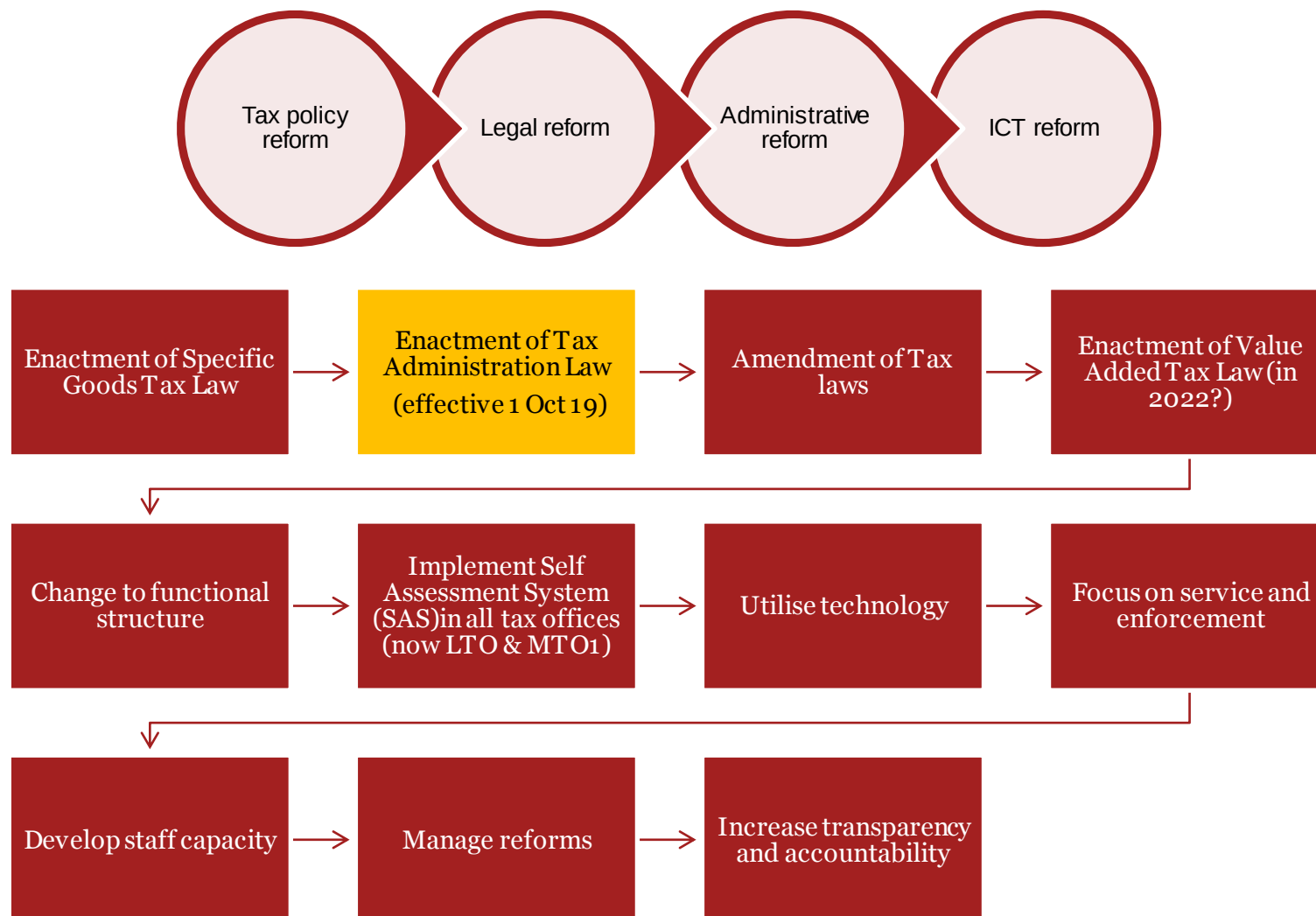
Government and IRD Strategic Outcomes

Government Economic Outcome

**To establish
an effective
and fair tax
system in
order to
increase the
country's
revenue by
enacting tax
laws and
procedures**



Strategic Tax Reform and Journey



Enactment of TAPL as part of Tax Reform

	Tax revenue (% GDP)
Singapore	13.4
Malaysia	14.8
Indonesia	10.9
Thailand	16.5
Philippines	13.6
Myanmar	7.9
Cambodia	13.4
Lao PDR	15.5
Vietnam	18.2

Data based on [Heritage Foundation, 2017 Macro-economic Data](#).

- Goal → To increase tax to Country GDP ratio through modernisation of tax administration
- Objectives of TAL include:
 - To maintain consistency in the administration of various tax laws;
 - To collect tax efficiently;
 - To define the rights and obligations of the taxpayers and IRD accurately;
 - To make self-assessment system (“SAS”) more efficient and comprehensive for taxpayers.

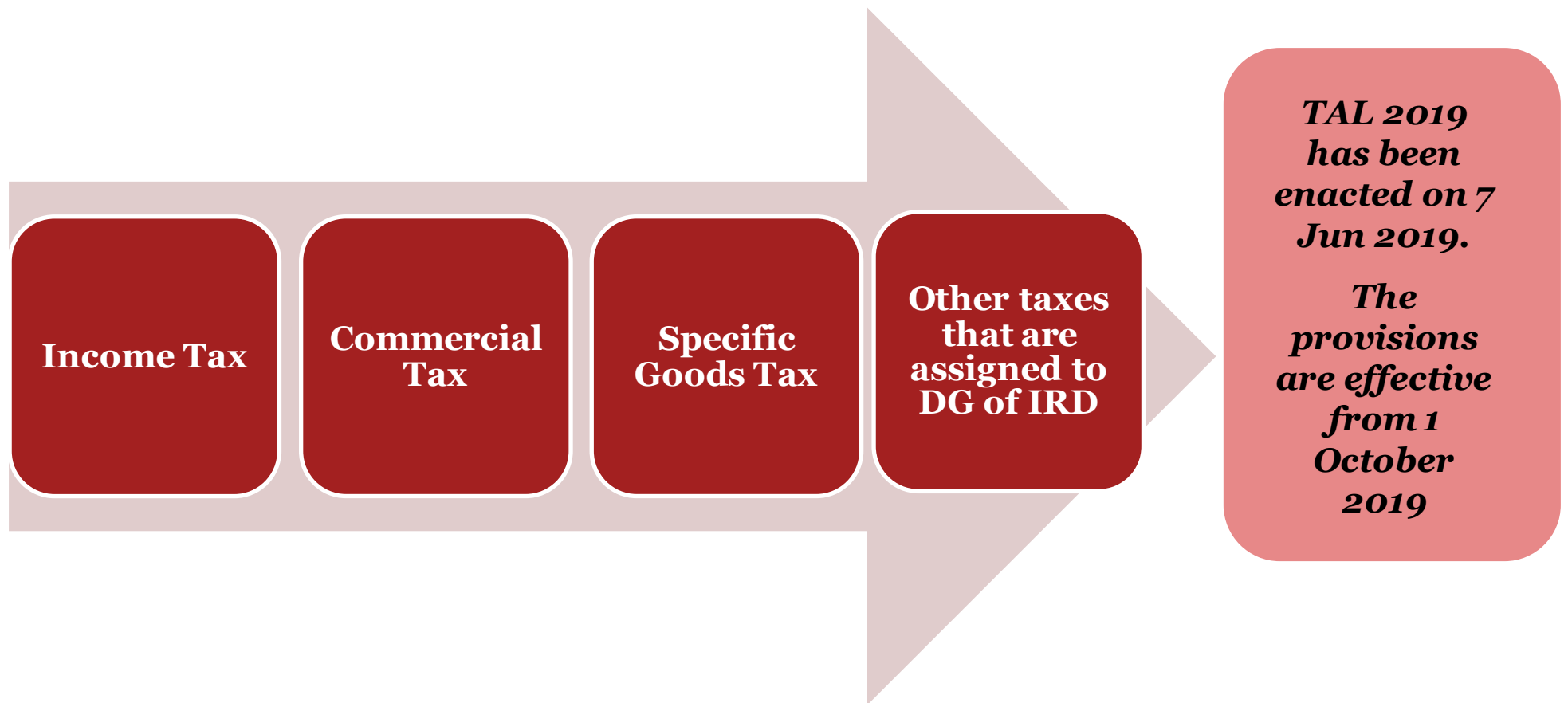


Tax reform and reinforcement activities equipped with **Integrated Tax Administration System** to be developed will help improving tax collection significantly



2. Tax Administration Law 2019

Tax Administration Law (TAL) 2019 (effective from 1 October 2019)



Effective Date and Transitory Provisions

- TAL shall be effective from 1 October 2019 (“Effective Date”).
- Under the transitory provisions of TAL, any legal proceeding, appeal or other prosecution started before the Effective Date shall be governed by the provisions of the relevant laws.
- However, IRD can collect tax from the taxpayers for unsettled cases from the periods before TAL being in force, under the provisions of TAL.
- The rules, regulations, notifications, order, directives and procedures issued under Income Tax Law, Commercial Tax Law and Specific Goods Tax Law shall be applicable until the required rules and procedures are issued for TAL.

Overview of TAL

- Part A – New key features of TAL
- Part B – TAL's provisions relating to tax administration
- Part C – TAL's provisions relating to penalty
- Further clarifications required from IRD
- Please refer to our website for our Tax Newsletters

<https://www.pwc.com/mm/en/publications/tax-updates.html>



<https://pwc.to/2I7ONc5>



Part A - Key New Features

What's new?

- ✓ Public and advance rulings
- ✓ Anti-avoidance of tax and tax evasion
- ✓ Appointment of representatives/ agents
- ✓ Communication
- ✓ Assessment and re-assessment
- ✓ Administrative review and appeal
- ✓ Maintaining records and accounts

Public Rulings and Advance Rulings

Public rulings

- Clarification statements
- Binding on the IRD but not on the taxpayers
- Subject to change/ revocation by the Director General (DG) with a prospective effect
- Interpretation and practice statements issued by the IRD from October 2018 for consistent implementation of tax laws and to provide guidance to the tax officers and taxpayers

Advance rulings

- Interpretation of the tax law for a particular matter of a taxpayer
- Subject to change/ revocation by the DG with notice to the taxpayer with a prospective effect
- Binding on the taxpayer and fee may be applicable
- Taxpayers may wish to update their existing rulings

General Anti-Avoidance Rules (GAAR)

- DG can deny transactions with fraudulent or without economic substance in order to avoid arising taxable income
 - ❖ Penalties:
 - ✓ 25% of underpaid tax if the underpaid tax is less than MMK 100 million or less than 50% of the tax payable;
 - ✓ 75% of underpaid tax if the underpaid tax is more than MMK 100 million or more than 50% of the tax payable;
- Tax evasion – intentional act in order not to get tax assessed or pay tax or get tax collected or get tax refund
 - ❖ Penalties:
 - ✓ Imprisonment for up to seven years; or
 - ✓ The higher of MMK 250,000 and 100% of tax amount evaded; or
 - ✓ Both of the above

Assessment and Reassessment

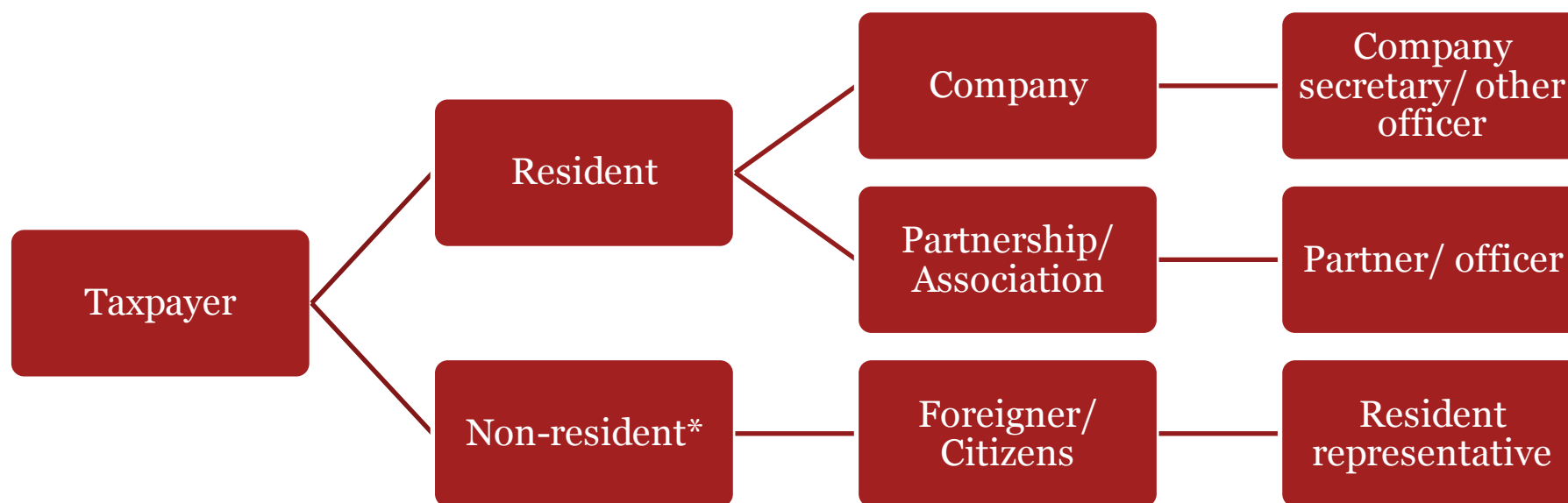
- Tax returns filed by the taxpayer (i.e. tax return of the taxpayers under SAS) is regarded as the DG's assessment.
- DG can make a new assessment or re-assessment within **6 years** after assessment year
- If the assessment is made based on the incomplete information provided by the taxpayer or if the assessment is made on the incorrect information due to intentional negligence or fraudulent act of a taxpayer, the statute of limitation is extended to **12 years**

Note: Currently, statute of limitation is 3 years after the assessment year under current income tax law and no limitation in case of fraud.

Prescribed Representatives under TAL

Person who does not have legal capacity	• Benefiting guardian • Benefiting manager
Company	• Principal responsible person
Partnership	• Partner
Trust	• Trustee
Association of persons other than company and partnership	• Person responsible for recording receipts and payments
Union Government	• Person responsible for recording receipts and payments
Nay Pyi Taw Council, Regional or State Government	• Person responsible for recording receipts and payments
Foreign Government, foreign embassy or consulate office	• Person responsible for recording receipts and payments
Non-resident foreigner or citizen	• Manager or person responsible for operations in Myanmar

Appointment of Agents/ Officers by Taxpayers



**What criteria/situations will trigger the requirement for income tax (e.g. under section 27 of Income Tax Law) and commercial tax (e.g. under section 47 of Commercial Tax Regulations)?*

Communication

- IRD and taxpayer can communicate either other via personal delivery, registered mail or electronic means such as fax, email, etc.
- Electronic communication is deemed as delivered on the same day
- Registered mail will be regarded as delivered on 21st day from the date of postage within Myanmar and on 30th day outside Myanmar
- The taxpayers must notify DICA and the IRD if there is any change in business address in order to avoid the situation where the IRD send the notice to the address that is no longer in use but deemed delivered.
- It is important to keep contact information updated at the IRD

Administrative Review and Appeal

- Taxpayer can request an administrative review from the DG within (30) days from the date of receipt of notice
- DG will communicate his decision in writing with the reason to the taxpayer
- Taxpayer can file an appeal at the Revenue Appellant Tribunal within (90) days from the date of decision of the DG
- Taxpayer still can file an appeal within (30) day after the expiry of the (90) day period from the date on which an administrative review is requested.
- An application can be made to the Union Supreme Court if the decision from the Revenue Appellant Tribunal is not satisfactory.

Maintaining Records and Accounts

- Taxpayers are required to maintain records and accounts to support their taxable income for inspection by the IRD for **seven (7) years** from the date of transaction
- **Financial institutions** are required to maintain their records and accounts as well as the identity (including TIN) and transactions of the client
- Financial records and accounts shall be maintained in **Myanmar or English**, the IRD shall request for translation into Myanmar or English at the cost of taxpayer if they are maintained in other languages

*Part B - Tax Administration
Provisions*

Tax Identification Number (TIN)

- Every taxpayer will have a unique identification number (TIN)
- Person or entity who is responsible to withhold and make tax payment will also have a TIN
- Any changes for commercial tax registration purpose shall be informed within (15) days and any changes for income tax purpose shall be informed within (1) month
- PwC's remark: TIN for company or associations is intended to be the same as registration number at DICA and for individuals their NRC number. However, there is no such provision in the TAL.

Tax Clearance Certificate (TCC)

- Under the Income Tax Law 1974, only people leaving Myanmar require a TCC
- Under TAL, taxpayers can request TCC from the DG. Situations that require TCC will be prescribed in the Regulations
- DG will issue TCC only when there is no outstanding tax and the tax in dispute is paid or the reliable arrangement for payment of tax liabilities is made

Rights and Duties of Taxpayers

- Right to receive information on tax payment and a copy of tax return
- Right to request extension of due date for tax return filing and tax payment
- Right to request for an administrative review and file an appeal
- Right to receive notice on any change in advance rulings
- Right to request tax refund
- Right to receive interest on the refund entitlement
- Duty to inform any changes
- Duty to appoint a representative or an officer to discharge tax obligations
- Duty to act in bona fide

Tax Return Filing, Tax Payment, Due Dates and Extensions thereof

- Timely filing of tax returns either on prescribed time and place or as per instruction of the DG
- Revised tax return can be filed within (6) years from the due date of original tax return
- DG may grant extension of due dates upon request from the taxpayer
- Due date falling on a public holiday will be extended to the following working day
- Taxpayer shall be regarded as a defaulter if he or she does not pay tax within (30) days from the due date on the notice.
- Taxpayer can request extension of tax payment due date from the DG if he or she needs extension. If the DG does not respond within (30) days, extension request is deemed to be granted.
- Tax in dispute are required to be paid unless the extension is granted

Tax Payment

- Tax payment must be in MMK unless otherwise provided in the tax law
- Order of tax payment:
 - ❖ Penalties
 - ❖ Interest
 - ❖ Principal tax due

Tax Refund

- Taxpayer can request tax refund or offset within (6) years from the end of assessment year
- Tax refund will be made on the excess tax payment after offsetting against the following:
 - ❖ Assessed tax, interest or penalty payable by the taxpayer; and
 - ❖ Tax liability of the taxpayer within next (12) months

Interest on Late Payment of Tax and Tax Refund

- Interest is payable on the tax payable from the date of tax due till the date of actual payment
- Interest is computed on the additional tax payment from the new assessment or re-assessment from the date of original tax due date.
- Interest on the refund is computed from the date refund is confirmed till the date the refund is made.
- Interest will not be computed on the offsetting amount
- Rate of interest will be determined by the MoPF

Inspection and Search

- Purposes:
 - ✓ To collect information in order to decide on amount of tax liability
 - ✓ To collect information in order to collect tax
 - ✓ To collect information relating to tax investigation or prosecution
- Inspection in the premise of the taxpayer or a public place can be done without prior notice or warrant (within normal working hour or time period permitted by the Court)
- Inspection in the other premises such as resident of taxpayers requires:
 - ✓ Consent of taxpayer; or
 - ✓ Ways permitted in writing by the Magistrate
- Inspection or search or measurement or valuation requires:
 - ✓ Consent of taxpayer; or
 - ✓ 24 hour notice (minimum)

Advanced Tax Assessment due to Risk of Non-Collection

- Applicable if the collection of tax is at risk
- Assessment is made by DG before the prescribed period of assessment.
- Taxpayers may request for administrative review or appeal for jeopardy assessment
- Appeal can also be made at the Revenue Appellant Tribunal if:
 - ✓ Excessive tax is assessed; or
 - ✓ There is reliable situation indicating no advance tax assessment necessary

Recovery of Tax

- Tax recovery proceedings shall commence within (6) years from the date the taxpayer was declared as a defaulter
- Seizure and sale of property of taxpayer

Control, Seizure and Sale of Asset

- If the taxpayer fails to pay the tax within the specified period, the DG has the right take lien on the assets of the taxpayer that have an equivalent value for tax payable from the midnight of the payment due date to the actual settlement date
- The DG shall seize the asset of the taxpayer within a period of thirty (30) days from the date of notice of seizure for failure to pay tax and commence the seizure within a period of six (6) years from the date the taxpayer was declared as a defaulter
- The DG may sell the seized asset through an auction if the DG does not see any situation in which the seized assets are returned
- Seized assets except the perishable or those that the taxpayer requests to sell otherwise shall not be sold within 14 days from the date of the seizure of the asset

Shareholders' Liabilities

- All the shareholders who received dividends **in a year before winding up** of the company shall be responsible to pay back up to the amount equivalent to the dividend received either in cash or in-kind
- In case of different shareholders, the shareholders that had shares in the period of which tax shall be liable
- If **the tax clearance certificate** is received at the time of winding up, there shall be no tax liabilities of those that are liable for tax under s (42)

Part C - Penalties under TAL

	Breach	Penalty
1	- Failure to register - Failure to inform any changes - Failure to deregister	10% of tax payable
2	- Using wrong TIN - Issuing incorrect invoice or sales memo - Issuing incorrect debtor ledger or creditor ledger - Failure to provide or providing invoices, receipts, debtor ledger or creditor ledger, not in accordance with a tax law	Up to MMK 250,000
3	Failure to file a tax return	The higher of: 5% of tax payable** and 1% of tax payable for each month or proportion of the month that the taxpayer fails to file up to the time of assessment - MMK 100,000 ** tax payable include tax payable in instalments

	Breach	Penalty
4	Underpayment of tax and either due to negligence or intentionally submitting wrong information, with an intention to cheat	• A penalty of 25% of the underpaid tax shall be paid; • A penalty of 75% of the underpaid tax shall be paid, if the underpaid tax is more than MMK 100 million or if the underpaid tax exceeds 50% of the tax payable
5	Tax evasion and concealing or providing incorrect information	MMK 150,000 and the higher of: • Difference between correct tax due and the tax assessed • Difference between correct amount of refund and the refund made ** If it is reasonable to assume that the person must not have known that it is incorrect or misleading, no penalty shall be imposed For Tax Evasion cases • Seven years of imprisonment; or • The higher of MMK 250,000 and 100% of the tax amount evaded; or • Both of above

	Breach	Penalty
6	Failure to maintain records	The following penalty shall be paid: • MMK 5,000 per day of failure for taxpayers with tax due of up to MMK 500,000 • MMK 50,000 per day of failure for taxpayers with tax due of up to MMK 5,000,000 • MMK 100,000 per day of failure for taxpayers with tax due in excess of MMK 5,000,000 ** The DG may grant relief from penalty up to (30) days
7	Failure to comply by third party	25% of the difference between the tax payable as a third party and the tax already paid on the date specified on the demand notice

	Breach	Penalty
8	Failure to provide space, accessory and assistance	Up to MMK 500,000
9	Failure to comply with notice of requesting information	Up to MMK 500,000
10	Late payment: • Tax assessed or reassessed • Instalment payment of tax • Withholding tax	A penalty equivalent to 10% of the tax payable** shall be paid ** Not applicable for those who get extension for tax payment.
11	For persons deliberately trying to deter the tax administration.	Over and above the penalty described below, the activities regarded as deterrence have penalties described above: • MMK 250,000; or • One year imprisonment; or • Both of above.
12	Abetment	Same penalty as the offender
13	Failure to keep as confidential	• Imprisonment of up to one year; or • Up to MMK 200,000

*Part D - Clarifications Required from the
IRD*

Clarifications Required from the IRD

- Procedures including forms to be completed for obtaining TIN from the IRD by each taxpayer
- Detailed procedures relating to the application for advance ruling from the IRD, including the timeline and whether the outcome of advance ruling is capable of appeal
- How the changes introduced under the TAL (e.g. statute of limitation, penalties, period of reassessment and maintenance of accounts/records) will apply to the period prior to the Effective Date
- Whether all the tax offices including Large Taxpayers Office, Medium Taxpayers Offices 1 to 3, Township Revenue Offices will apply the TAL consistently and what will be the efficient resolution platform if what applied in practice differs from what is enacted in the Law
- Whether the provision relating to “deemed assessment” by the DG on tax returns and computations submitted by taxpayers shall apply to both SAS and OAS
- What will be interest rates applicable to overpayment and underpayment of tax

Clarifications Required from the IRD

- For the requirement to appoint a local representative by a non-resident foreigner, what criteria/situations that will trigger this requirement, e.g. income tax under section 27 of Income Tax Law, commercial tax under section 47 of Commercial Tax Regulations and specific goods tax purposes and what are the procedures to follow
- For tax appeal cases, who will be formed part of the Administrative Review and Tribunal Revenue Committee for hearing tax appeal cases
- Given the tax judiciary is still developing and there is limited number of court cases in the Country, whether the Government will introduce a tax skilled judiciary to hear tax cases and whether the Committees and Supreme Court will make reference to legal precedent set in tax court cases in other countries

Businesses are continuously learning and surviving in the constant changing tax landscape



A scenic background image featuring a sunset over a body of water. The sun is a bright yellow-orange orb on the horizon, with its reflection visible in the water. To the right, a church spire with multiple pointed roofs is silhouetted against the sky. A single bird is captured in flight in the upper right portion of the frame. The sky transitions from a pale yellow at the top to a deep orange near the horizon.

3. Tax Assessment and Collection Procedures for Transitional Financial Year

Relevant Period

- 01 April 2019 to 30 September 2019
- 6 month period

Specific Goods Tax and Commercial Tax

- Domestically produced tobacco leaf, cigar, cheroot
 - ✓ 2 x Domestic sales revenue > MMK 20 million → subject to SGT
- Domestic manufacturing of goods, trading and services that are not exempted under the UTL 2018-2019
 - ✓ 2 x Total revenue > MMK 50 million → subject to CT

Income Tax for Individuals, Partnerships and basic cooperatives – Salary Income & Rental Income

- Salary income
 - ✓ 2 x total salary income for six month > MMK 4.8 million
 - ✓ Income Tax = applicable rates x {(Total salary income for the six month period x 2) – Basic allowances under s (6) of the Income Tax Law}
 - ✓ Assessable income tax = $\frac{\text{Income Tax}}{2}$
- Rental income
 - ✓ If rental period < 1 year
 - Income tax due = $\frac{\text{average annual rent} \times 10\% \times \text{number of months rented}}{12}$
 - ✓ If rental period > 1 year
 - Income tax due = total rental income x 10%

Income Tax for Individuals, Partnerships and basic cooperatives – Professional, Business and Other Sources

- Net income = (Total income – expenses) x 2
- Taxable income = Net income – basic allowances under s (6) of the Income Tax Law
- Income tax = $\frac{\text{Taxable income} \times \text{relevant tax rates}}{2}$

Income Tax for Companies, Businesses with MIC Permits, Other Cooperatives

- Taxable Income = {2 x (Total income – Expenses)} – Depreciation expenses under Income Tax Rules – Actual interest paid – Donation expenses under s (6) (a) of the Income Tax Law
- Income tax =
$$\frac{\text{Taxable income} \times \text{relevant tax rates}}{2}$$

Income Tax – Capital Gains & Undisclosed Sources of Income

- Capital Gains Tax
 - ✓ Total capital gains for six month period $\leq$ MMK 10 million $\rightarrow$ not subject to capital gain tax
- Undisclosed Sources of Income
 - ✓ Assessable with the rates in UTL 2018-2019

Income Tax – Non-resident Citizens

- Salary income in foreign country → not subject to income tax
- Other income → subject to income tax at the rate of 10%

Income Tax on SMEs First Three Years from the Date of Commencement of Business Falls in Transition Period

- Taxable income = Net income x 2
 - ✓ First MMK 10 million → exempted from the income tax
 - ✓ Income tax = $\frac{(\text{taxable income} - 10 \text{ million}) \times \text{income tax rate}}{2}$

Income Tax – Resident Foreigners

- 2 x Number of days in Myanmar $\geq$ 183 days
- Subject to income tax in the same way as citizens

Income Tax – Non-Resident Foreigners

- Salary income
 - ✓ Taxable income = total salary income x 2
 - ✓ Basic allowances under s (6) and donation expenses under s (6) (a) are not entitled
 - ✓ Income tax =
$$\frac{\text{Taxable income} \times \text{tax rates under s (19) of UTL 2018–2019}}{2}$$
- Other income
 - ✓ Basic allowances under s (6) and donation expenses under s (6) (a) are not entitled.
 - ✓ Taxable Income = {2 x (Total income – Expenses)} – Depreciation expenses under Income Tax Rules – Actual interest paid
 - ✓ Income tax =
$$\frac{\text{Taxable income} \times \text{relevant tax rates}}{2}$$

Offsetting Losses under s (20) of Income Tax Law

- Losses can be carried forward to three consecutive years to offset with future available profit
- Six month transition period is regarded as one year if three years fall into this

Tax Filing

- Due on three months after the end of the transition period i.e., end of December 2019
 - ✓ Income tax return under s (17) of the Income Tax Law
 - ✓ Annual salary statement under s (18) of the Income Tax Law
 - ✓ Commercial tax return under s (13) of the Commercial Tax Law

A scenic sunset over a body of water. The sun is a bright yellow-orange orb on the horizon, reflecting on the water. To the right, the silhouette of a church with a tall spire is visible. A single bird is in flight in the orange-hued sky.

4. 2019 Union Taxation Bill

Types of Tax

- Specific goods tax
- Commercial tax
- Income tax
- Gems tax
- Other taxes

Specific Goods Tax – Changes

Cigarette	Value (MMK)	2018-2019	2019 (Bill)
Tier 1	1 – 600	MMK 6	MMK 8
Tier 2	601 – 800	MMK 14	MMK 17
Tier 3	801 – 1,000	MMK 19	MMK 22
Tier 4	1,001 & above	MMK 21	MMK 25

	2018-2019	2019 (Bill)
Cheroot	MMK 0.50	MMK 0.75

Liquor	Value (MMK)	2018-2019	2019 (Bill)
Tier 1	400 – 1,000	122	198
Tier 2	1,001 – 2,000	366	424
Tier 3	2,001 – 3,000	609	707
Tier 4	3,001 – 4,000	853	990
Tier 5	4,001 – 5,000	1,097	1,273
Tier 6	5,001 – 6,000	1,341	1,555
Tier 7	6,001 – 7,000	1,706	1,838
Tier 8	7,001 – 8,000	1,706	2,121
Tier 9	8,001 – 9,000	2,194	2,404
Tier 10	9,001 – 10,000	2,194	2,686
Tier 11	10,001 – 11,000	2,681	2,969
Tier 12	11,001 – 12,000	2,681	3,252
Tier 13	12,001 – 13,000	3,169	3,535
Tier 14	13,001 – 14,000	3,169	3,817
Tier 15	14,001 – 15,000	3,778	4,100
Tier 16	15,001 & above	60% of value*	60% of value

Commercial Tax – Changes in Exemption

- CT exempted goods
 - ✓ Goods procured by the government with the fund received through donation or aids from local and international organisations
 - ✓ Goods exempted from tax through notification by the Union Government with the agreement from the Pyidaungsu Hluttaw due to the requirement of the Union
- CT exempted services
 - ✓ Services procured by the government with the fund received through donation or aids from local and international organisations
 - ✓ Services exempted from tax through notification by the Union Government with the agreement from the Pyidaungsu Hluttaw due to the requirement of the Union

Commercial Tax – Changes in Gold Jewellery

- Commercial tax paid at the time of importation or procurement in the Union shall not be offset against the commercial tax payable on the domestic sales or export
 - Reason: CT on gold jewellery is reduced to 1% already and offsetting is not allowed.

Income Tax – Change on Undisclosed Source of Income

2018-2019 UTL

No.	Income (MMK)	%
1	1 – 30 m	15%
2	30m+1 – 100m	20%
3	Above 100m	30%

2019 UTL Bill

No.	Income (MMK)		%
	From	To	
1	1	100m	3%
2	100m+1	300m	5%
3	300m+1	3b	10%
4	Above 3b		30%

Gems Tax

No	Type of Gem	%
•		
1	Rough jade	15%
2	Rough gemstone such as ruby, sapphire and others except diamond and emerald	10%
3	Cut gemstone such as ruby, sapphire and others except diamond and emerald and jewellery made with cut gemstone such as ruby, sapphire and others except diamond and emerald	5%
4	Things made with gemstones	5%

A serene sunset scene over a body of water. The sun is a bright, glowing orb on the horizon, casting a long, shimmering reflection on the water's surface. The sky is a gradient of warm colors, from deep orange near the horizon to a pale yellow at the top. A single bird is captured in flight, its wings spread, against the orange sky. In the background, the dark silhouette of a church with a prominent spire is visible on the right side. The water in the foreground is calm, reflecting the colors of the sky and the sun. A semi-transparent red banner is positioned across the lower third of the image, containing the text "5. Q&A" in white.

5. Q&A

Please contact us should you have any questions



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