



Tax and Labor Law Guidance for Expats in Myanmar

Presented by Diberjohn Balinas and Danyel Thomson

28 September 2016

What makes us unique?

“We are pioneers in emerging markets”



*DFDL collaborating firms

Our Regional Footprint: ASEAN and South Asia



Bangladesh (2011)

Country Partner: 1

Advisers: 5

Cambodia* (1995)

Sarin & Associates

Partners: 5

Advisers: 42

Lao PDR (1994)

Partners: 2

Senior counsel: 1

Advisers: 10

Indonesia* (2011)

Mataram Partners

Partner: 1

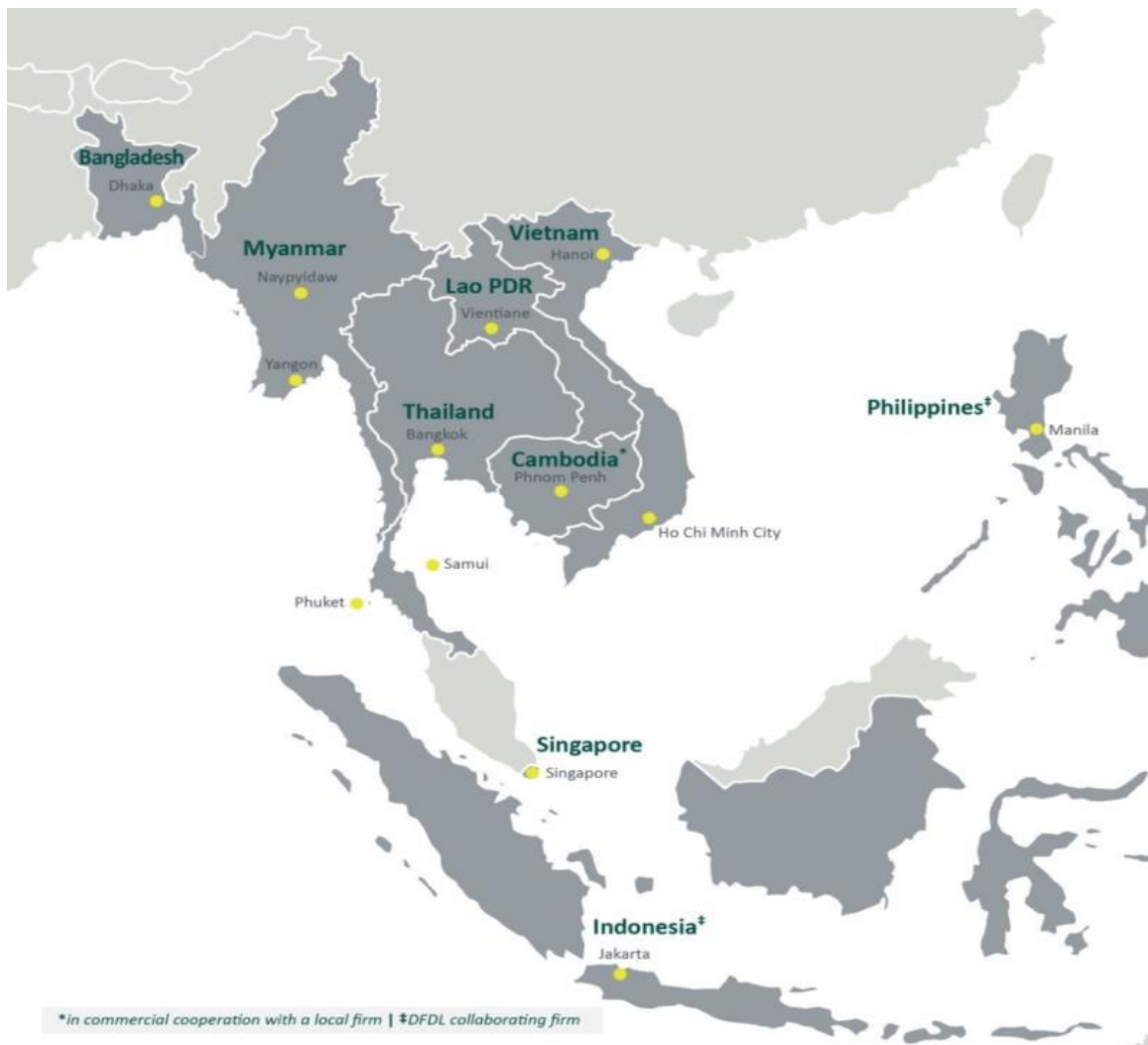
Advisers: 10

Myanmar (1995)

Partners: 2

Senior Counsel: 1

Advisers: 20



Philippines* (2015)

Ocampo & Suralvo Law Office

Partners: 3

Singapore (2010)

Partners: 2

Advisers: 3

Thailand (2005)

Partners: 4

Advisers: 28

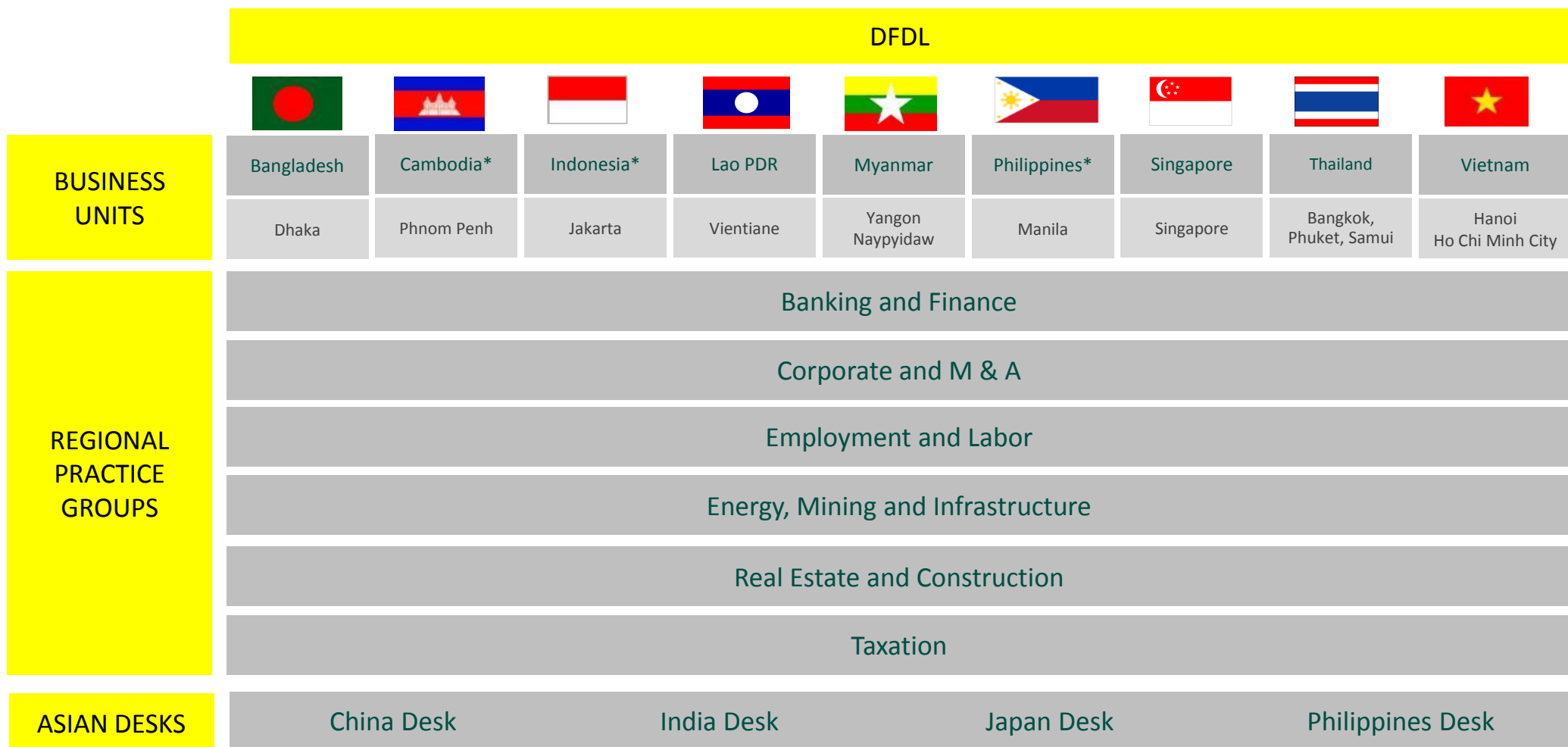
Vietnam (2006)

Partners: 4

Advisers: 17

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DFDL Organizational Chart



* DFDL collaborating firms



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Myanmar

Law Firm of the Year
(3 consecutive years 2014-2016)



Project Finance

Deal of the Year



Project Finance

Deal of the Year



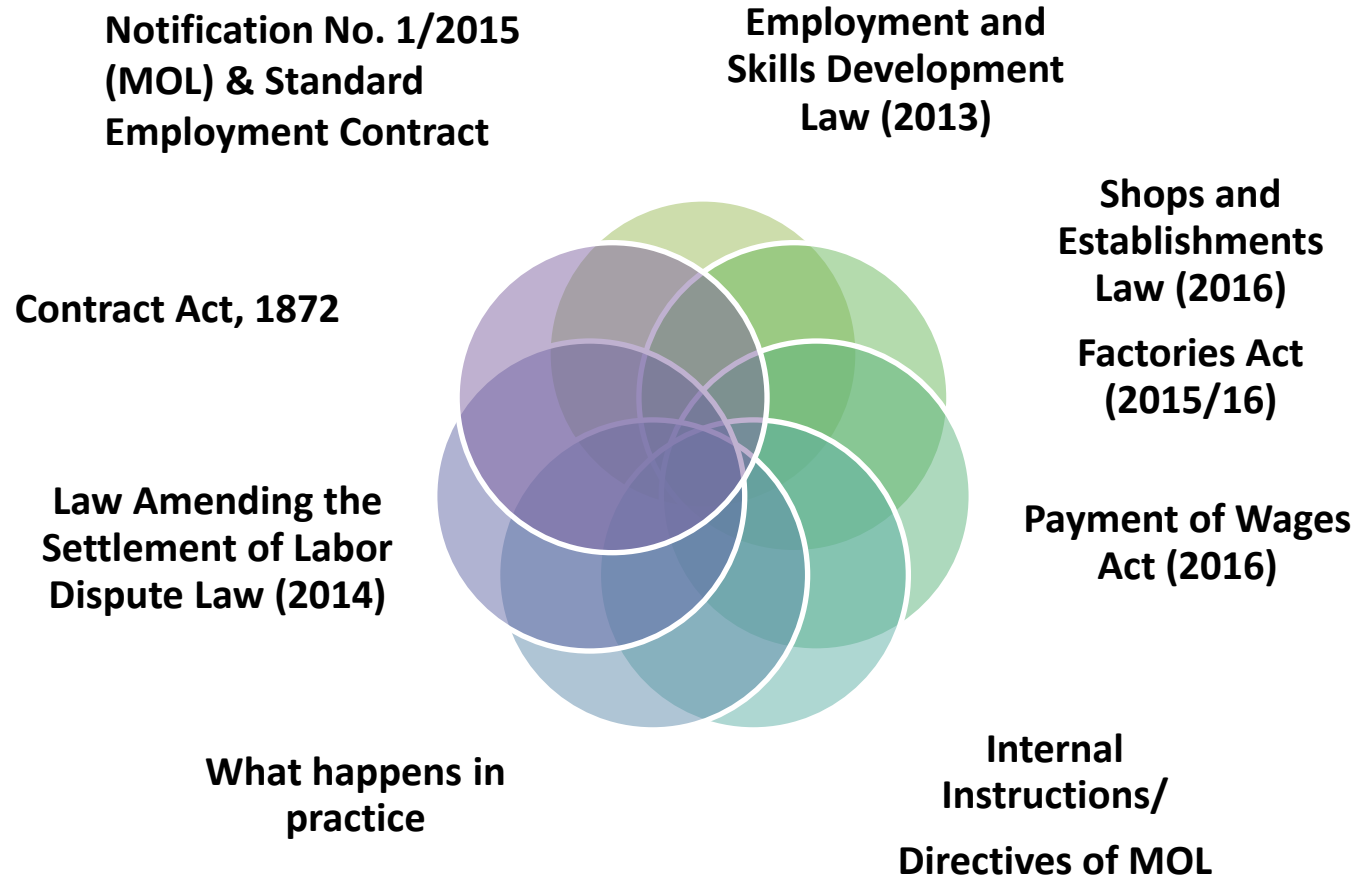
Legal Framework: Labor Legislation

Employment Restrictions on Foreigners

Status of Employment Contracts

Contracting – Options?

Consultants/Independent Contractors



Foreign Investment Law

- No list of jobs that foreigners cannot do, but foreigners cannot be hired for unskilled jobs
- Categories of business activities that 100% foreign-owned entities cannot do
- Foreign experts can be appointed into skilled jobs
 - Foreign companies have 6-year transitional period to employ local workforce.
 - Myanmar citizens: 25% of the total employees within the first 2-year period; 50% within the second; 75 % within the third period.

Future – When (???)

- **(Draft) Foreign Workers Law**

- May clarify prohibitions on foreigners working in certain sectors
- May set training requirements for local employees (same/different from ESDL)
- May set ratios for foreign/local employees (though not likely as new draft investment law takes out ratios)
- May be enforced

Employment Skills & Development Law

- Enter into contract within 30 days of employment
- Categories covered by contract
 - 21 topics, including all standard terms
 - Type, probation, salary, working hours, leave, overtime, termination, etc.
 - **Failure to sign an employment agreement in accordance with the law shall be punished with imprisonment for not more than six months or with a fine or with both.**

Standard Employment Contract

What should be: The standard contract of a parent company can be used, provided that the conditions of employment are in compliance with Myanmar law.

What is: Per Notification 1/2015 (MOL), employers must use the SEC and register contracts with the TLO.

ENTITLEMENTS

**Myanmar
employees**

Leave
Holidays
Working hours
Overtime

**Foreign
employees**

**No Distinction made, but foreigners
expected to comply with local law**

Issues with SEC

Using

Amending

Registering

- 1) Offshore only
 - Contract with parent/offshore
 - Payment of salary offshore
 - Risks (non-compliance, disputes, choice of law)
 - Tax considerations
- 2) Onshore only
 - SEC
- 3) Separate contracts
 - Not covered by law
 - Tax considerations
- 4) Independent Contractor
 - Not covered by law
 - Tax considerations

- 1) Non-exclusive relationship
- 2) Equipment/materials
- 3) Supervision/control
- 4) Sub-contractors
- 5) Variable payments
- 6) Expenses
- 7) Delegation

“Nothing in this Agreement shall be deemed to constitute an employment relationship between the Parties. The Contractor shall not be entitled to any rights or protections afforded by the Myanmar labor laws and related regulations. Nor shall this Agreement be deemed to establish any partnership between the Parties.”

- 1) Offshore only
 - Tax considerations
- 2) Onshore only
 - Tax considerations
- 3) Separate contracts
 - Tax considerations
- 4) Contractor
 - Tax considerations



Personal Income Taxation in Myanmar

28 September 2016



Sources of income

Residence

Tax rates and reliefs

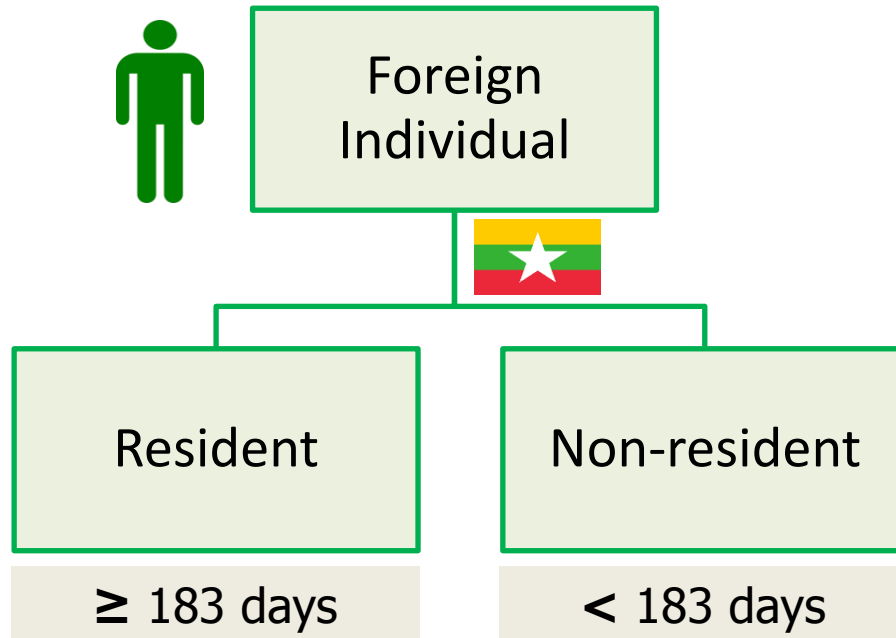
Double tax avoidance

Compliance requirements

Sources of taxable income under Income Tax Law (ITL)

1. **Salary***
2. Profession
3. Business
4. Rent of property
5. Capital gains
6. Other sources of income
7. Income that has escaped assessment

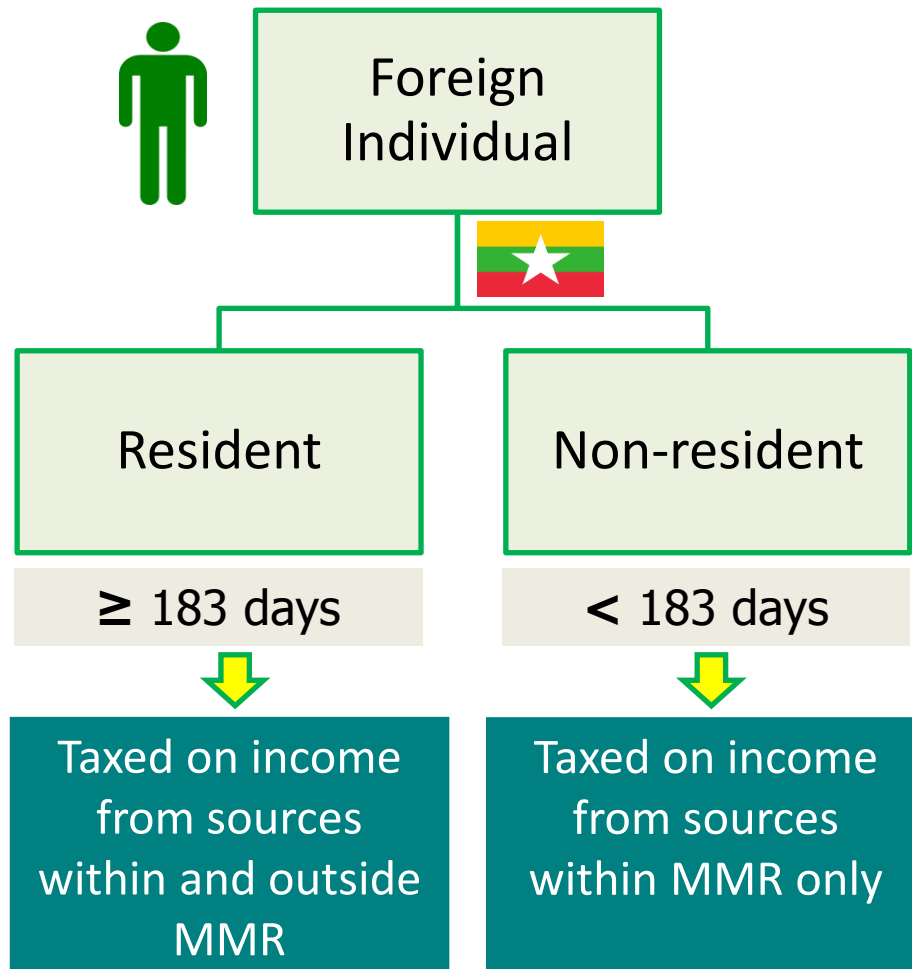
**“Salary” includes salary, wages, annuity, pension, gratuity, and any fees, commissions or perquisites received in lieu of or in addition to any salary and wages.*



Residence:

- **Resident foreigners** – stayed in Myanmar for 183 days or more during the income year*
- **Non-resident foreigners** – stayed in Myanmar less than 183 days during the income year

** Income year: from 1 April to 31 March of any given year*



Clarifications:

- For residents, source is not an issue because they are taxable on worldwide income.
- For non-residents, the “source” of the compensation does not pertain to the residence of the employer. It does not matter if the individual is paid by an offshore or a local employer.
- What matters is the compensation is paid in view of employment exercised in Myanmar.

Summary of PIT Rates

Source of Income	Resident	Non-resident
Within Myanmar		
Salary	0-25%	0-25%
Income from profession, business, other ordinary income (except rent of property)	0-25%	25% (no tax deduction)
Rent of property	10%	10%
Income that has escaped assessment	15% - 30%	15% -30%
Outside Myanmar		
Salary, income from profession, business, rent of property, other income	0-25%	Not Applicable
Income of a Myanmar citizen in foreign country (granted an exemption)	10% (not applicable to resident foreign)	Not Applicable

Taxation of certain benefits

- Examples of taxable employment income include salary, wages, commissions, bonuses, and allowances.
- Under **Directive No. 13/2015** from the Ministry of Finance, “the expression ‘benefit’ xxx no longer needs to include (in the tax calculation) house rent paid for living accommodations.”
- Reimbursable expenses for the benefit of the employer (e.g., expense for business trips, allowances and transportation to business meetings, telecommunication fees for business purposes) should not be treated as taxable benefits.

Income that has escaped assessment

- Includes amounts used for buying, constructing, obtaining any assets and establishing new business, expanding business which has not been previously taxed.
- If a taxpayer is unable to show the source of the money spent on the above, the following tax rates are imposed on such amounts spent:

Income (MMK)	Income tax rate
1 – 30,000,000	15%
30,000,001 – 100,000,000	20%
100,000,001 and above	30%

Taxable Income Bracket (in MMK)	Tax Rate
1 – 2,000,000	0%
2,000,001 – 5,000,000	5%
5,000,001 – 10,000,000	10%
10,000,001 – 20,000,000	15%
20,000,001 – 30,000,000	20%
> 30,000,000	25%

EXEMPTION

- If the person's (resident or non-resident) annual income from salary does not exceed **MMK 4.8 million**.
- If the annual income from salary exceeds this amount, the total taxable income will be subject to tax at graduated rates of 0-25%.



Subject to PIT if annual taxable income is at MMK 4.9 million? If yes, at what rate?

RELIEFS

Resident foreigners are able to deduct the following “allowances” or tax relief from their taxable income:

- ✓ **Basic relief:** 20% of total income (maximum of MMK 10,000,000)
 - ✓ **Spouse relief:** MMK 1,000,000
 - ✓ **Parents living with the taxpayer:** MMK 1,000,000 for each parent.
 - ✓ **Child relief:** MMK 500,000 per child (unmarried below 18 years of age). If >18, must be receiving fulltime education.
 - ✓ **Life insurance payments on taxpayer and spouse**
 - ✓ **Social security contributions**
- *Non-resident foreigners are not entitled to claim personal and dependent tax reliefs.*
 - *A non-resident foreigner employed with a MFIL company may be taxed as a resident.*

Social Security Contribution

- Applicable for employers that have five or more employees
- Calculation of contribution:

	Contribution rate	Maximum per month
Employee	2% of total salary	MMK 6,000
Employer	3% of total salary	MMK 9,000

- The employer must deduct the contribution from the employee's salary and remit the amount to the authorities.

- Myanmar has 8 existing DTAs – Lao, India, Malaysia, Singapore, South Korea, Thailand, the UK, and Vietnam

Independent personal services	Dependent personal services
Taxable in Myanmar if the individual: ■ Stays in Myanmar for 183 days or more; <u>OR</u> ■ Is paid by a Myanmar resident or by PE of the non-resident entity in Myanmar and the income exceeds a certain threshold	Exempt in Myanmar if the individual: ■ Stays in Myanmar for less than 183 days; ■ Salary is not paid by or on behalf of a resident of Myanmar; <u>AND</u> ■ The remuneration is not borne by a resident of Myanmar or a PE which the employer has in Myanmar

- Employers must withhold tax on the salary of employee. If employer is a non-resident, it can appoint an “agent” in Myanmar.
- There is no income tax (pre)registration requirement in Myanmar.
- Tax is reported monthly (within 7 days after date of payment) or quarterly (end of the quarter)
- Employers must provide an annual finalization statement of salaries paid to employees on or before June 30 (not to be filed with tax authority).
- Employees are generally not required to file annual return, unless they have other sources of income

- If the income is paid in foreign currency, the tax must be paid in local currency by residents, but in foreign currency by non-residents
- Social security payments are paid monthly (within 15 days)

- 1) Short term engagement for offshore company (no local presence)
- 2) Short term engagement for onshore company (local presence)
 - 6 months
 - 1 year
- 3) Individual going back and forth from Yangon to HK, Singapore (local presence)
 - Over 183 days
 - Less than 183 days
- 4) INGO – consultant
 - INGO established in MM
 - INGO not established in MM
 - Exemptions

In Conclusion

Employment contracts
Internal Rules/Regulations

Tax Advice
Registration – Tax, SS



DFDL
can assist you

Termination queries
Compliance issues

Visa & immigration
Visa/Permit Procedures

Thank you



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