

**The Government of the Republic of the Union of Myanmar**

**Ministry of Planning and Finance**

**Internal Revenue Department**

**Public Rulings**

**No. 3/ 2022**

**The 9<sup>th</sup> Waning Day of Tazaungmone, 1384 M.E., Nay Pyi Taw**

**(16 November 2022 )**

**Public Rulings for Tax Avoidance, Underpayment of Tax, False or Misleading Tax Information and  
Tax Evasion**

**Introduction**

1. In exercise of the power conferred by subsection (a) of section 11 of the Tax Administration Law, the Director General of the Internal Revenue Department issues this public rulings in order to know the meaning of expressions such as tax avoidance, underpayment of tax, false or misleading tax information and tax evasion and to take measures on these matters as the public.
2. This public rulings is binding on the Internal Revenue Department under subsection (b) of section 11 of the Tax Administration Law.

**Related Matters**

3. This is a clarification on how the Internal Revenue Department is going to interpret the expressions such as tax avoidance, underpayment of tax, false or misleading tax information, and tax evasion and to take measures on it.

**Applicable Persons**

4. This public rulings shall apply to all of the taxpayers who are making tax avoidance, underpayment of tax, provide false or misleading tax related information and tax evasion.

**Applicable Provisions**

5. This public rulings shall apply to the provisions of sections 32, 68, 69 and 77 of the Tax Administration Law.

## **Tax Avoidance**

6. If any person understands the tax laws and violates the tax ethics for the purpose of avoiding the tax and reducing the taxable income or tax liability, it shall be considered as tax avoidance. Tax avoidance includes the following matters:

- (a) failure to disclose the asset, property, service or benefit as market price;
- (b) making non-arm's length transfers at cross-border transfer pricing;
- (c) splitting income between taxpayer and associated enterprises for the purpose of reducing the total tax payable upon the income;
- (d) reorganizing the structures of associations in order to obtain tax benefits;
- (e) tax avoidance by abusing bilateral or multilateral tax treaties.

## **Negligent or Fraudulent Underpayment**

7. If any person files the tax return and underreports the payable tax negligently or fraudulently, it shall be considered as negligent or fraudulent underpayment. Negligent or fraudulent underpayment includes the following matters:

- (a) deliberate failure to file tax return for the prolonged period;
- (b) underreporting of income and proceeds of sales;
- (c) fraudulently claiming reliefs;
- (d) fraudulently applying for depreciation;
- (e) submitting false accounting documents;
- (f) incorrectly applying the right of offset on input tax;
- (g) omission of output tax;
- (h) failure to affix the tax labels on the receipt for tax payable;
- (i) failure to affix the tax labels on the identified specific goods;
- (j) occurring accounting errors due to either person or machine.

## **False or Misleading Statements**

8. If any person submits false or misleading statements to the tax official in order to either reduce the tax or to willfully avoid tax collection or tax payment or to receive a refund of tax to



which the person is not entitled and the tax official assessed the person on the basis that the statements were true and amount payable by or refundable to the person exceeds or is inferior to the amount that would be payable or refundable, it shall be considered as false or misleading statements. False or misleading statements includes the following matters:

- (a) intentional omission of income and proceeds of sales;
- (b) disclosing incorrect information in tax return;
- (c) submitting false or misleading statements when the tax official inquires either in written or oral form;
- (d) keeping or submitting false accounting records and documents;
- (e) importing or exporting the commodities illegally;
- (f) transferring the assets to avoid recovery of tax;
- (g) omission of the bank account information;
- (h) keeping more than one financial statement.

#### **Tax Evasion**

9. If any person violates the tax laws in willful manners or commits the cases related to above-mentioned paragraphs 7 and 8 in several times or massive losses of State's revenue as a result of any failure to tax obligation, it shall be considered as tax evasion and shall be taken criminal action and with a fine specified as tax evasion offences under section 77 of the Tax Administration Law.

#### **Prosecution under the Anti-Money Laundering Law**

10. Tax evaders, according to the above-mentioned paragraph 9, shall be taken action by the Tax Administration Law as well as may also be prosecuted by the Anti-Money Laundering Law.

11. Following examples are provided for clear understanding of the public rulings:

#### **Example (1)**

- (a) Case: Company "A" which produces and sells various liquors and beverages in local filed the income tax return for 2020-2021 Income Year by declaring the sale amount of 500 million kyats. When doing tax audit for that Income Year, it was

found that Company "A" sold the liquors with the reduced factory sale price to its associated enterprises but the Company sold with the factory sale price that was defined in accordance with the market price to the other non-associated enterprises.

- (b) **Application of the public rulings:** It shall be considered as tax avoidance as Company "A" violated the tax ethics and did not describe the market price to its associated enterprises for the purpose of reducing the tax payable.

#### Example (2)

- (a) **Case:** Company "B" is an import company and filed the income tax return for 2020–2021 Income Year by declaring the sale amount of 100 million kyats. When doing tax audit for that Income Year, it was found that the Company underreported the sale income although actual sale income was 120 million kyats.
- (b) **Application of the public rulings:** It shall be considered as negligent or fraudulent underpayment as Company "B" underreported its sale income for the purpose of reducing tax in willful manner.

#### Example (3)

- (a) **Case:** Company "C" is a production company and filed the commercial tax return for 2020–2021 Fiscal Year by declaring the refund amount of 120 million kyat. When doing tax audit for that Fiscal Year, it was found that the Company had already offset the commercial tax paid on imported raw materials which were used for production process with monthly payable commercial tax and there is no right to receive commercial tax refund.
- (b) **Application of the public rulings:** It shall be considered as false or misleading statements as it was found, according to the documents, that Company "C" submitted the false or misleading statements for the purpose of claiming non-liable refund in order to avoid tax payable in willful manner.



## Example (4)

- (a) Case: Company "D" is a production company and filed the income tax return for 2020-2021 Income Year and declared the production income of 500 million kyats and refund amount of 200 million kyats. When doing tax audit for that Income Year, it was found that Company committed the cases such as the omission of production income, claiming the depreciation in fraudulence, submission of the false accounting records, and claiming non-liaible refund during that Income Year.
- (b) Application of the public rulings: It shall be considered as tax evasion as it was found that Company "D" committed the omission of sale income, claiming the depreciation in fraudulence, submission of the false accounting records in willful manners.
12. The public rulings shall come into effect commencing from 1<sup>st</sup> January 2023.
13. I hereby sign and publish this Public Rulings.

Sd/ xxx

(Min Htut)

Director General

Letter No : 1 (1)/HO-1/IRD/2022 (9682)

Date: 16 November , 2022

## Distribution to:

Myanmar Accountancy Council

Revenue Appellate Tribunal

Director General, Printing and Publishing Department } With a request to publish the statement in  
Myanmar Gazette

All Deputy Director Generals (IRD)

All Directors of the Directorates (IRD)

Heads of Offices, LTO 1 and 2

Heads of Offices, MTO 1, 2, 3, 4 and 5

All Heads of State/Regional Revenue Offices

Head of Union Territory Revenue Office

} With an instruction to inform and explain to the  
respective taxpayers

Information Team } With an instruction to broadcast on IRD website

Myanmar Institute of Certified Public Accountants (MICPA)

Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI)

Copy to:

- Office copy
- Archive

Note: The translation for English language is only for the understanding of the public. In the case of divergence of interpretation, the Myanmar texts shall prevail.