

*This Interpretation is published by IRD. The English translation is intended to the taxpayers' clarification. Only Myanmar version is official.*

The Republic of the Union of Myanmar  
Ministry of Planning and Finance  
Internal Revenue Department

Practice Statement No. 1/2018  
Nay Pyi Taw  
29 October 2018

### **Deductibility of Gifts to Government Officials**

1. Pursuant to Section 51(c) of Income Tax Law, IRD is empowered to interpret that the cost of gifts provided to public officials is not allowed as deductible expenses for income tax purpose.

#### **What this Practice Statement is about**

2. This Practice Statement tells you how IRD treats for income tax purposes the cost of gifts provided to public officials.

#### **Who this Practice Statement applies to**

3. This Practice Statement applies to all taxpayers who claim deductions for income tax.

#### **The Law**

4. Under the Myanmar Penal Code, Chapter IX, sections 162 – 165, it is an offence for public officials to seek or accept any remuneration (other than legal remuneration) as a motive or reward to show favour or disfavour to any person, or to do or not to do any official act. Under section 3 and Chapter 10 of the Myanmar Anti-Corruption Law 23/2013 the provision of gifts to a public official to secure an undue advantage is an offence. Myanmar ratified the United Nations Convention Against Corruption in 2012, and that Convention became part of Myanmar law in January 2013. Under Article 12(4) of that Convention, each State Party must disallow tax deductions for amounts that result in an “undue advantage” to someone.

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### **Practice Statement**

5. IRD will not allow income tax deductions for gifts made to public officials. The cost of the gifts is either a personal expenditure or inappropriate expenditure, according to the Section 11(b)(ii) and (iii) of Income Tax Law.

6. Disallowance of a deduction for gifts applies whether the gift is made directly to a public official, or indirectly, through an associate or a family member. It also applies if the gift was made to any other person or entity at the direction of the public official.

7. The term “public official” applies to:

- a) all employees of the Myanmar government,
- b) all employees of any foreign government;
- c) any person holding legislative, executive, administrative or judicial office;
- d) all government appointees to any Board or Commission established by the government; and
- e) all employees and officials of public international organisations.

8. Following are the examples for more understanding:

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

##### *(i) Facts*

Ko Ko is a public official. Ko Ko's wife receives a present from an executive of a construction company, Company A, as a motive for persuading her husband to agree to an official assessment for the company for the 2016/2017 income year that is lower than the tax actually due. Company A deducts the cost of the gift in its tax return for the 2017/2018 income year.

##### *(ii) Application of Practice Statement*

IRD will decline the deduction because it is a gift intended to induce a public official to confer an undue advantage on, and favours, Company A. Also, this cost is an inappropriate expenditure.

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## **(b) Example 2**

### *(i) Facts*

U Sai is a Yangon businessman appointed by the Minister to be a member of a special Commission established to determine allocations of forestry logging licences. Company J is a forestry company seeking a licence for a parcel of forestry land in Myanmar. Company J approaches U Sai and offers to help U Sai understand Company J's expertise in logging, and takes him to one of Company J's logging sites. Company J then provides U Sai and his wife with a 10-day all expenses paid trip to Indonesia, 2 days of which involve a visit to one of Company J's logging operations in Kalimantan. Company J includes the cost of the trip in its deductible expenses.

### *(ii) Application of Practice Statement*

IRD will disallow the deduction because the trip was in the nature of a gift intended to influence H's decision in the allocation of logging licences.

## **(c) Example 3**

### *(i) Facts*

U Mg Mg is a public official. Y, the Managing Director of a construction company in Mandalay, pays the medical expenses for the hospital treatment of U Mg Mg's daughter, and claims these expenses as a deduction in Y's 2018 tax return.

### *Application of Practice Statement*

IRD will not allow the medical expenses claimed as an income tax deduction. Although there is no direct connection between the payment of the medical expenses and any favour received, allowing such payments as a tax-deductible expense would amount to a breach of the UN Convention Against Corruption.

Sd. xxx  
(Min Htut)  
Director General

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Letter Number: 1(2)/HO-1/IRD/2018(10659)

Date: 29 October 2018

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