

# KELVIN CHIA YANGON

LOCAL KNOW-HOW WITH INTERNATIONAL EXPERTISE

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**Kelvin Chia Yangon Ltd. (KCY)** has been in active operation in Myanmar since 1995, currently with offices in Yangon and Mandalay. KCY is the firm of choice for those seeking to navigate Myanmar's fast-changing and complex regulatory landscape, a jurisdiction in which KCY has gained in-depth legal expertise from the numerous transactions it has handled.

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## TAX ADMINISTRATION LAW ENACTED

*Tax Administration Law was enacted on 7 June 2019, to streamline the administration of different taxes such as income tax, commercial tax and special commodities tax, and increase effectiveness of tax collection.*

In order to streamline the collection and administration of various taxes administered by the Internal Revenue Department (“**IRD**”), the 2019 Tax Administration Law (“**TAL**”) was enacted on 7 June 2019. The TAL 2019 will become effective from 1 October 2019, and is expressly applicable to income tax, commercial tax, and the special commodities tax. The TAL also prescribes that its provisions will supersede provisions on the same subject matters contained in the other laws and regulations.

### Tax Identification Number and Tax Clearance Certificate

The TAL prescribes that each tax payer is to be issued with a single Tax Identification Number that is applicable for all tax matters, such as those relating to income tax and commercial tax. The Tax Identification Number is required to be included on all filings and declarations, and on all issuances to the tax payer from the IRD relating to tax matters. The tax payer is also required under the TAL to notify to the IRD of any changes to its name, including the company name, address, or the nature of the business on which the tax is being levied. For matters relating to commercial tax and special commodities tax, the tax payer is required to notify the IRD of the change within 15 days after the change, and for income tax matters, the changes are required to be notified to the IRD by the tax payer within one year after the change.

The TAL also prescribes that the tax payer can request the IRD to issue a Tax Clearance Certificate, and the IRD may issue a Tax Clearance Certificate upon confirmation that the tax payer has:

- (i) No additional tax to be paid, and has paid the warranty on any dispute relating to tax, or
- (ii) Has shown to the satisfaction of the IRD that it had made plans to pay the applicable taxes, and the tax payer had paid the applicable taxes within its due dates in accordance with the plans prepared.

The IRD is also authorized under the TAL to issue regulations relating to the requirements for the issuance of a Tax Clearance Certificate.

### Issuance of Public Rulings and Advance Rulings

The IRD is authorized under the TAL to issue Public Rulings on the interpretation of the tax laws in order to ensure consistency and serve as guidance for the public. The Public Rulings issued by the IRD are stipulated to have binding effect on the IRD, but does not have a binding effect on the tax payers, and the Public Rulings are binding on the IRD until the formal issuance from the Director General of the IRD of their withdrawal.

The TAL also stipulates a system for application of a Advance Ruling by a tax payer on the implementation of a tax law with respect to a particular situation. The Advance Ruling is to have binding effect on the IRD and the tax payer applying for the Advance Ruling from the date of its issuance. The IRD may also amend a previously issued Advance Ruling in part or entirely, or to retract the Advance Ruling entirely through a written notice to the applicant of the Advance Ruling. The TAL also stipulates that any amendments or withdrawal of an Advance Ruling will not have retroactive effect. The Advance Rulings issued in accordance with the TAL will also be revoked if there are any amendments to the tax laws resulting in a particular Advance Ruling becoming contrary to the provisions in the Tax Law.

### **Maintaining of Records and Inspections of Records**

The TAL prescribes that tax payers are required to maintain the records required for assessment of profits or losses for tax filings within Myanmar, in Myanmar language or in English. The records are required to be kept for seven years from the date of its occurrence, and for prolonged matters taking more than seven years, the records are required to be kept until the end of the period of relevant assessment for the particular matter. The TAL also prescribes that banks and financial institutions keep records of the parties acquiring financial services, including their identities, Tax Identification Numbers, and the information relating to the transactions.

For the purposes of collecting information to calculate the amount of tax leviable on an individual, or to collect information to assess tax on an individual, or to collect information relating to a tax related investigation or prosecution of an individual, the responsible officer assigned by the IRD is authorized by the TAL to enter the relevant business premises, or public property during normal business hours, or during a time as approved in writing from relevant township judge through an application made by the IRD's Director General, without prior notice. The responsible officer is also authorized to enter the tax payer's residence, or places other than the relevant business premise or public property with the approval of the tax payer, or with a written approval from the relevant township's judge at the time and through the means as stated in the approval. The TAL also authorises the IRD and its responsible officers to send notices to the third parties requesting for information on another entity for the purposes of assessing tax, or to collecting information for a tax-related investigation or prosecution, irrespective of the provisions relating to release of information and inspection in other relevant laws.

### **Reassessment Period**

Irrespective of provisions under the Income Tax Law, Commercial Tax Law, and Special Commodities Tax Law, in accordance with the TAL, the IRD is allowed to conduct a reassessment of a previously assessed tax within six years from the end of the relevant assessment period. In the cases of reassessment due to failure by the tax payer to submit the tax filings or incomplete filings, or reassessment due to an error in the initial assessment due to fraud or willful neglect by the tax payer, the IRD is allowed to conduct a reassessment within twelve years from the end of the initial assessment period.

### **Administrative Reassessment and Appeal**

When a tax payer wishes to appeal against an assessment or decision by the IRD, the TAL allows the tax payer to file an appeal to the Director General of the IRD within thirty days from the date of receiving the decision from the IRD. The Director General of the IRD is to notify the tax payer in writing of its decision after deliberation of the information in the appeal by the tax payer. If the tax payer is not satisfied with the decision by the Director General of the IRD, the tax payer may proceed to the Tax Appeal Board within 90 days from the date of receiving the decision of the Director General of the IRD. If there is no decision from the Director General of the IRD within ninety days from the date of the appeal to the Director General of the IRD, the tax payer may also proceed to the Tax Appeal Board within thirty days from the end of the ninety days period.

### **Appointment of Agents and Definition of Representatives of Tax Payers**

The TAL requires that companies' directors appoint a company secretary or officer for the purpose of maintaining the statements and records, and an association or partnership to appoint a member or officer responsible for ensuring compliance with the

relevant provisions under the tax laws. Furthermore, a non-resident citizen or a non-resident foreigner is required to designate a resident of Myanmar for the purposes of undertaking responsibilities to ensure compliance with the TAL on behalf of the non-resident.

The TAL defines the representatives of tax payer as the following:

- (i) In case of an individual who's legally incapacitated, guardian or manager who receives income or benefit for his or her behalf,
- (ii) In case of a company, the company's main person in charge,
- (iii) In case of partnership, member of partnerships,
- (iv) In case of trust, the trustee,
- (v) For associations other than a partnership or company, the individual responsible for keeping accounts of the receivables and payables on the association's behalf,
- (vi) For union government, the individual responsible for keeping accounts of receivables and payables,
- (vii) For Nay Pyi Taw Council, State or Regional Government, the individual responsible for keeping accounts of the receivables and payables on its behalf,
- (viii) For foreign governments or foreign embassies and consulates, the individual responsible for keeping accounts of receivables and payables on its behalf within the country,
- (ix) For non-resident local and foreigners, the manager of the business owned by the individual or the responsible person who handles its businesses within the country.

The representatives are responsible for performing the duties and responsibilities of the tax payer prescribed under the TAL, including the responsibility to pay the applicable taxes, and maintenance of records. The representatives are liable to pay the taxes leviable on the tax payer up to the amount of assets of the tax payer under the control or possession of the representative.

### **Refund of Taxes**

The TAL prescribes that the IRD is required to refund any taxes paid by the tax payer that is in excess of the assessed and liable amount within six years from the end of the relevant financial year. Prior to making the refund to the tax payer, the IRD is required to deduct the applicable taxes, interests or fines from the amount, and shall be required to deduct the applicable tax for the next twelve month period as an advance tax leviable, and may refund the remaining balance. If the manager, however,

### **Interest on Unpaid Taxes and Refund of Taxes**

The TAL prescribes that an individual who has not paid a leviable tax by the prescribes date is liable to pay an interest on the unpaid amount from the date when the tax is due, to the date that the particular tax is paid. The interest payable is to be calculated separately, and is levied in addition to any penalty that may be applicable. Furthermore, the tax payer may also receive interest on any refundable amount of tax from the IRD from the date of the accrual of the refund to the actual date of the refund. If the refundable amount has been deducted from the additional tax accrued, TAL states that it is to be deemed that the tax has been refunded. The Ministry of Planning and Finance, with the approval of the Union Government, may stipulate the interest rates applicable.

### **Monetary Fines**

The TAL prescribes monetary penalties for the following offenses:

- (i) Failure to file for tax registration or notify changes of information of the tax payer,
- (ii) Mistatements on the invoice, receipt, debtor and creditor records,
- (iii) Late tax filings,
- (iv) Reduced payment of taxes due to negligence or wilful intent,
- (v) Wrong or misleading statements,
- (vi) Failure to maintain records,

- (vii) Failure to provide assistance with the functions of the tax officers,
- (viii) Failure to abide by the notice to provide information,
- (ix) Late payments, and
- (x) Failure by third party debtors to abide by the notices from the IRD.

The Section 64 of the TAL prescribes that the monetary fines prescribed under the TAL is separate from other monetary fines prescribed under other tax laws.

### **Criminal Offenses and Penalties**

The TAL prescribes that criminal offenses may be prosecuted within twelve years from the date of the offence, or if the IRD becomes aware of such an offence after the end of the twelve years, within three years after becoming aware of such offence.

Offences which may give rise to prosecution as a criminal offense includes tax evasion, hindering tax administration, facilitating breach of provisions under the TAL, and failure to maintain confidentiality as required under the TAL. An individual found to have committed a tax evasion is able to be penalised with an imprisonment of not more than seven years, or a monetary fine that is the greater of Kyats 250,000 or 100% of the amount of tax leviable on the person for which was evaded, or both. For hindering tax administration, an individual may be penalised by imprisonment of not more than one year, or a monetary fine of 250,000, or both. Hindering tax administration is defined under the TAL to include the following activities:

- (i) Failure to provide documentary evidence, records, or information for investigation by the tax officer,
- (ii) Failure to answer the summons issued in accordance with the law to appear before the tax officer,
- (iii) Prevention of access to business premise or residence by the tax officer or authorized parties in accordance with the law,
- (iv) Failure to submit the tax filings with the purpose of hindering tax administration,
- (v) Submission of falsified invoice, receipt, creditor and debtor records,
- (vi) Provision or failure to provide invoices, receipts or creditor and debtor records in breach of a provision under a tax law,
- (vii) Utilization of falsified tax identification number, or a tax identification number not associated with oneself,
- (viii) Refusal to allow the IRD to conduct ground investigation or survey, refusal to provide land map, forms, proof of possession, lease agreement, other agreements or documents for the purpose of investigation,
- (ix) Hindering of tax assessment and collection by other means.

For offences conducted by a corporate entity or an association, the TAL prescribes that in the case of a company, an offence by a company is to be deemed as being committed by a member of the board of directors or a similar officer. For an association, an offence by the association is to be deemed as being conducted by its members or officers. A director, member, or officer of the company cannot be held liable as conducting the breach of the provisions under the TAL if such breach occurred in spite of their objections, or without knowledge, or if the director, member or officer had taken all measures possible based on the nature of the business and circumstances to prevent the breach.

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