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2023 Union Tax Law Comes into Effect from 1 April 2023

On 30 March 2023, the State Administration Council (“SAC”) enacted the 2023 Union Tax Law (“**2023 UTL**”) which is effective from 1 April 2023.

The 2023 UTL specifies the Special Goods Tax rates, Commercial Tax exemptions and income tax rates for the fiscal period beginning on 1 April 2023.

Save for the slight updates to the taxes on various kinds of alcohol which is categorized as a special good, most tax rates remain unchanged.

Special Goods Tax (“SGT”)

Under the 2023 UTL, SGT is applicable on manufacturing, sale and importation of the following goods:

Commodity	SGT Rate
Cigarettes	From 10 Kyats to 27 Kyats per cigarette
Tobacco	60%
Virginia tobacco, cured	60%
Cheroot	1 Kyat per item
Cigars	80%
Pipe tobacco	80%
Various types of betel chewing preparations	80%
Various kinds of alcohol	From 209 Kyats per litre to 60% per litre value
Various kinds of beer	60%
Various kinds of wine	From 92 Kyats per litre to 50% per litre value
Logs and processed timber	5%
Vans, saloons, sedans and estate wagons including double cab and 4 door pick-up cars (excluding Battery Electric Vehicles [BEV])	From 10% to 50%
Kerosene, petrol, diesel, aviation jet fuel	5%
Natural gas	8%

Furthermore, there is SGT applicable on exportation of commodities for “Logs and converted timber” with the rate of 10%. The 2023 UTL also prescribes that no SGT will be levied on the domestic production and sale of tobacco, cheroot and cigar if the total annual sales revenue does not exceed 20 million kyats.

Commercial Tax (“CT”)

Under the 2023 UTL, the number of goods for CT exemption has remained as 46 items with a comprehensive enumeration of solar panel, solar charger and solar inverter, and battery electric vehicles (“BEV”). The CT exempted goods include certain food commodities, agricultural and livestock-related commodities, school and stationery commodities, health-related commodities, commodities used for religious and community purposes, transportation related commodities, commodities used for industrial purposes, defense related commodities, gems and minerals, and other specified general commodities. As for the number of services for CT exemption, it has increased from 33 items to 34 items. Notably, the added service exempt from CT payment is the charging service for BEVs.

The CT exempted services are from the foreign affairs sector, defense sector, religious and cultural sector, transportation and telecommunications sector, education and press sector, health sector, planning and finance sector, social welfare and resettlement sector, industrial and power sector, and general sector.

For the sale of goods and service other than the CT exempted goods and services, CT is applicable where the annual turnover exceeds the threshold amount of 50 Million Kyats, and CT rates applicable are as follow;

- 5% for sales of goods and service in general;
- 3% for sales value of property development;
- 3% for hotel and tourism services;
- 1% for sales of gold jewelries, and there is no input-tax offset allowance is provided for gold jewelries.

Further, the 2023 UTL requires that new SIM card activations be subject to one-time CT of MMK 20,000, and internet services (both mobile and fixed services) will be subject to 15 % CT.

Exporting of the following products are subject to CT with the respective rate;

- 8% for exporting of electricity
- 5% for exporting of crude oil

Except for the CT on electricity and crude oil, Commercial Tax for export is 0%, and the CT payment incurred at the time of purchase or production can be offset, or where the CT paid upon production or purchase is greater than the CT applicable at export, an application for refund is permitted.

Income Tax

Under the 2023 UTL, Corporate Income Tax (“CIT”) rate remains the same as under the 2022 UTL, which is 22% on the net profits for the following type of entities:

1. Companies incorporated under Myanmar Company Law or Special Company Act 1950,
2. Income of non-resident foreigners, other than their salary,
3. Companies operating under permission from the Myanmar Investment Commission (“MIC”), and
4. State-owned enterprises.

Additionally, the 2023 UTL specifies that the applicable CIT for companies listed on Yangon Stock Exchange is 17% on the net profits.

Personal Income Tax (“PIT”) related to salary income is exempted for tax payers whose income are below 4,800,000 Kyats per annum. The applicable income bracket and tax bracket for PIT remain unchanged, as described in the following table.

No.	Level of Income		Tax Rates
	From (Kyats)	To (Kyats)	
1	1	2,000,000	0%
2	2,000,001	10,000,000	5%
3	10,000,001	30,000,000	10%
4	30,000,001	50,000,000	15%
5	50,000,001	70,000,000	20%
6	70,000,001 and above		25%

PIT shall be paid according to the prescribed tax rates after deducting the following allowances under Section 6 of Income Tax Law:

- 20% for own allowance (maximum 10 Million Kyats)
- 1 Million Kyats allowance for each parent
- 1 Million Kyats allowance for spouse (if spouse has no-taxable income)
- 5 Million Kyats allowance for each of child
- Own Life Insurance Premium and for spouse

Rental Income: The income tax rate applicable on rental of properties except where the lessor is a state-owned enterprise, companies operating with a MIC permit, other companies, and cooperatives, is 10%, as it was stipulated in the 2022 UTL.

For rental of properties where the lessor is a state-owned enterprise, businesses operating with a MIC permit, companies, and cooperatives; income from rental are included in its cumulative income, where CIT of 22% is assessed on net profits.

Capital Gain Tax (“CGT”): For profits arising from the sale of capital asset, including land, building, vehicles and other capital assets, there is CGT of 10% applicable on sale of capital assets in non-oil and gas related sectors, as it was under the 2022 UTL. CGT is applicable to both resident and non-resident taxpayers deriving a profit from the sale, exchange or a transfers of capital assets in Myanmar if the total value of capital asset sold, exchanged or transferred is 10 million Kyats and above.

CGT for companies in the oil and gas sector is as follows:

No.	Profit	Tax Rates
1.	up to equivalent of Kyat (100,000) millions	40 %
2.	from equivalent of Kyat (100,001) to (150,000) millions	45%
3.	equivalent of Kyat (150,001) millions and above	50%

Tax Relief for Small and Medium Enterprises: For newly incorporated small and medium enterprises, CIT is exempted for the three years from the date of business commencement, including the year of business commencement, on net profits of up to 15 million Kyats. Compared to the 2022 UTL, this threshold has increased by 5 million (previously, it was 10 million Kyats only).

Undisclosed Source of Income: Under the 2023 UTL, the tax rate assessable on undisclosed source of income, is identical to the rate prescribed under the 2022 UTL.

No.	2023 UTL		
	Income Amount		Tax Rates
	From (Kyats)	To (Kyats)	
1.	1	300,000,000	3%
2.	300,000,001	600,000,000	5%
3.	600,000,001	1,000,000,000	10%
4.	1,000,000,001	3,000,000,000	15%
5.	3,000,000,001 and above		30%

Income Tax Exemptions: The following types of income shall not be subject to income tax (i) total income received from cash award program during a year on seizures under the Narcotic Drugs and Psychotropic Substances Law; (ii) total income received from cash award program during a year on seizures of illegal properties; (iii) rewards received together with tittle, honorary and medal conferred by the State; (iv) income from salary earned in the foreign currency of a citizen residing abroad; (v) lottery rewards received from Aung-Bar-Lay Myanmar lottery; (vi) pension received when a civil servant retires, a sum received in commutation of a pension and gratuity; (vii) rewards from the State on finding antiques.

Gemstones Tax

Under the 2023 UTL, sales of gemstones will be assessed based on the higher amount of the actual sales price and the sales price as determined by the Myanmar Gemstones Enterprise. The applicable tax rates under the 2023 UTL also remain unchanged from the 2022 UTL as follows:

No.	Type of Gems	Tax Rates
1.	Uncut jades	11 %
2.	Rubies, sapphires, and other uncut gemstones (except for diamonds and emeralds)	9%
3.	Polished jades, rubies, sapphires, and other gemstones (except for diamonds and emeralds). Also, polished jewelry in which jades, rubies, sapphires, and other valuable gemstones (except for diamonds and emeralds) are embedded.	5%
4.	Items made from gemstones	5%

Phase-two of the soft-opening period of the Trademark Law begins 3 April 2023

On 1 April 2023, the Myanmar Intellectual Property Department (“MIPD”) issued Announcement No. 1/2023 in which it is stated that phase-two of the soft-opening period of the 2019 Myanmar Trademark Law (“Trademark Law”) will begin on 3 April 2023. According to the announcement, applications for trademark registrations may be submitted in Naypyidaw, Yangon in person, and by way of online submissions. In this phase, the applicants will need to submit proof of payment of registration fees and evidence for eligibility for Right of Priority (as described more detailed in Chapter IV of the newly published Trademark Rules (defined below)).

If you are unable to make the registration yourself, you can also register through a trademark representative (agent) with a World Intellectual Property Organization (“WIPO”) file user account. The representative must be a Myanmar national, a resident, at least 18 years old, and meet the requirements prescribed by the Ministry (as detailed in the Trademark Rules). Applications submitted via representatives must be accompanied by the authorization form (TM-2 form). For those who are overseas residents, the TM-2 form must be endorsed by a notary public in their place of permanent residence or official place of business. The filing date for applications filed within the soft-opening period of the Trademark Law (comprising phases 1 and 2) will be day one of the grand-opening of the Trademark Law (*provided official fees are paid, and application particulars are complete*).

The official date of the grand-opening when trademark registrations will be accepted, has not been announced yet, but according to the state-run Myanmar Alin Newspaper released on April 4th, it appears that the grand-opening (phase-three) of the Trademark Law will start on April 26th, 2023. During this period, the MIPD will accept applications for both old and new trademarks for a limited time. Additionally, any marks intended for use in the Myanmar market without actual use will be accepted as new marks. However, any new mark that is not currently in use at the time of registration will need to be used for the product or service specified in the application within three years from the registration date.

Intellectual Property Rights Agency

The Intellectual Property Rights Agency (“IPA”) was likewise formed with relevant members by the Ministry of Commerce on 1 April 2023 as mandated by various intellectual property laws. At the same time, the IPA has also issued the prescribed service fees for the relevant trademark registration applications as follows:

No.	Type of service	Official Fees (Kyats)
1	Accepting and examining an application for trademark registration (TM-1)	150,000
2	Accepting and examining a re-application for trademark registration following a failure to comply with prescribed rules (TM-3)	100,000
3	Examining a request to correct clerical and other errors in a trademark application, and making the correction (TM-4)	50,000
4	Examining a request to limit the list of goods or services in an application for trademark registration, and limiting thereof (TM-6)	50,000
5	Examining a request to divide an application for trademark application, and dividing thereof (TM-7)	100,000
6	Examining an application for opposition to a trademark registration (TM-8)	150,000

7	Registering a trademark	150,000
8	Examining and approving a request to issue a certified copy of a trademark registration certificate (TM-9)	50,000
9	Examining a request to amend information recorded in the trademark register that may be amended, and making the amendment (TM-10)	50,000
10	Examining an application to extend the term of the registration of a trademark, and recording thereof (TM-11)	300,000
11	Examining an application to record the transfer of trademark rights, and recording thereof (TM-12)	100,000
12	Examining an application to record a license to use a registered trademark, and recording thereof (TM-13)	100,000
13	Examining a request to declare a registered trademark as invalid (TM-15)	150,000
14	Examining a request to cancel a registered trademark (TM-16)	100,000
15	Examining a request to change the name of the representative, and changing the name (TM-17)	20,000
16	Examining and approving a request to extend a specified period (TM-18)	50,000
17	Examining an application for an appeal (TM-19)	500,000

Trademark Rules

The Ministry of Commerce has also issued the implementing rules for the Trademark Law (the “Trademark Rules”) dated 1 April 2023. The Trademark Rules contain, among others, more detailed procedures and requirements for the application submission, requirements for description of trademarks in the applications, explanations on Right of Priority, timelines and other relevant procedures envisioned in the Trademark Law.

According to the Trademark Rules, it is prescribed that the application for trademark application must be accompanied by, among other things, full description of the mark. The requirements for the description are outlined in the Trademark Rules as well. For example, the description must clearly describe the major part of the mark that wishes to enjoy the protection of rights. If the mark contains words or letters or numbers which are other than Burmese or English, the transliteration and translation thereof shall also be provided. Application for three-dimensional (3D) marks and combination of color marks must be accompanied by a relevant statement of acquired distinctiveness between the mark and the product or service. Other requirements for different cases of trademark applications are also outlined in the Trademark Rules.

Under the Trademark Rules, the Right of Priority may be enjoyed by the owners of marks registered at the Office of Registrar of Deeds and Assurances (“ORD”) or the mark that is unregistered at the ORD but under actual use. The benefit of the Right of Priority is that it can be used as a basis for opposing the registration of marks or defending the same. In order to enjoy the Right of Priority, the relevant mark owner applies for it in accordance with the Trademark Rules stipulated in Chapter IV within the six months of the official date of acceptance for trademark registrations (i.e. the grand-opening). Please note that the official date of acceptance/grand-opening is yet to be announced in the near future.

The Trademark Rules also prescribe various timelines for examination of the applications and other relevant activities relating to trademark applications. Rule 21 prescribes that the examination officer for the trademark applications shall notify the applicant for amendments or explanations if it is found to be not in compliance with the requirements of the law or found to be incomplete. The applicant must respond to the officer's request within 30 days of the receipt of the notification otherwise the application will be deemed relinquished. This 30-day timeline to respond is also applicable to other related activities such as re-applications, fixing clerical errors, limiting, or dividing the application. If the application is satisfactory without anyone opposing the registration thereof, the Registrar will notify the applicant to pay the registration fees within 60 days.

The Trademark Rules also contain other procedures and requirements for opposing the registrations, renewals, registration permitting the use of marks, transfer of trademark ownerships and appointment of representatives. Notably, the eligibility criteria to act as representative in relation to trademark application matters are prescribed in the Trademark Rules. The representative must be a Myanmar national who is of at least 18 years of age. All applications made through the representative must be accompanied by TM-2 form and the TM-2 form must be endorsed by a notary public in the relevant country for the applicants with overseas residence.

About Kelvin Chia Yangon (KCY)

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.

Our main practice areas

Foreign Investments | Incorporation and Company Maintenance | General Corporate and Commercial | Due Diligence | Mergers and Acquisitions | Joint Ventures and Production Sharing Agreements | Investment Funds | Energy/Oil and Gas | Natural Resources/Mining | Banking | Project and Project Financing | Manufacturing | Education | Agriculture | Real Estate | Infrastructure | Construction | Telecommunications | Compliance / Regulatory | Licensing and Permits | Labour and Employment | Immigration | Taxation | Insurance | International Arbitration | Intellectual Property | Special Economic Zones

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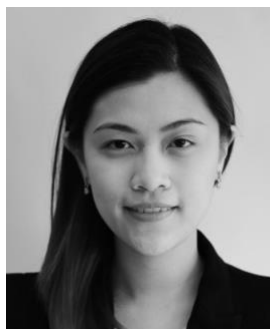
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