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Myanmar:
Notification 64/2019 dated 5 August 2019 providing guidance on tax assessment procedures due to the change in fiscal year

What is the change?

Pursuant to Section 40 of Union Tax Law 2018-2019, the Ministry of Planning and Finance (MOPF) issued the notification 64/2019 on 5 August 2019, which specifies the procedures on tax collection and assessment for the transitional period starting 1 April 2019 to 30 September 2019. This notification provides highlights on the tax procedures for the six-month transition period that are applicable to all taxpayers (except state-owned enterprises) before the adoption of the new financial year commencing 1 October 2019.

This tax update covers the following areas:

1. How to determine the tax-exemption thresholds for the specific goods tax (SGT), personal income tax (PIT), commercial tax (CT), capital gain tax (CGT), as well as corporate income tax (CIT) for SMEs;
2. How to determine the tax residency status of foreign nationals for the purpose of personal income tax; and
3. How to calculate corporate income tax and employees' personal income tax for the six-month transition period.

How to determine the tax-exemption thresholds for SGT, PIT, CT, CGT, and CIT for SMEs

As you may note, the Union Tax Law 2018-2019 has stated the applicable tax-exemption threshold for taxpayers on various tax types such as SGT, PIT, CT, CGT, and CIT for SMEs. Under the notification 64/2019, the tax-exemption thresholds are determined as follows:

Tax type	To determine total income in accordance with notification 64/2019	Annual exemption threshold
SGT	Total revenue from local production and sale of tobacco leaf, cheroots, and cigars for the six-month period shall be multiplied by two to derive the total average annual income.	Average annual ≤ MMK 20 million
CT	Total revenue or sales proceeds for the six-month period shall be multiplied by two to derive the total average annual income.	Average annual ≤ MMK 50 million
PIT	Total income received by an individual for the six-month period shall be multiplied by two to derive the total average annual income.	Average annual ≤ MMK 4.8 million
CGT	This is on an actual basis; there is no requirement to multiply by two.	Value of the sale or transfer of capital assets ≤ MMK 10 million
CIT for SMEs	Total income received by SMEs for the six-month period shall be multiplied by two to derive the total average annual income.	Average annual ≤ MMK 10 million

Based on the above, if the equivalent revenue, income, or sales or total asset value fall within the tax-exemption threshold, the taxpayers may be exempt from tax assessment.

How to determine the tax residency status of foreign nationals for the purpose of personal income tax

The notification 64/2019 states the procedure of how to determine the tax residency status of foreign nationals while calculating the personal income tax for the transitional period starting 1 April 2019 to 30 September 2019. In a six-month period, the foreign national will be considered a tax resident if his or her total actual number of days staying in Myanmar, after multiplying by two, exceeds 183 days. As a tax resident, he or she will be taxed based on the worldwide income basis and will be eligible to claim basic allowances and relevant relief under the existing rules. If his or her total number of days staying in Myanmar after multiplying by two does not exceed 183 days, he or she will be considered a nontax resident and will not be eligible to claim basic allowances or the relevant relief under the existing rules. Moreover, only Myanmar-sourced income will be subject to taxation in Myanmar.

Deloitte's view

The procedure to determine the tax residency status under the notification 64/2019 may result in difficulties for foreign nationals whose employment contract is between three and six months. Under the existing rules and regulations, a foreign national who is considered a nontax resident foreigner would be subject to taxation on Myanmar-sourced income only.

If this notification applies, the said foreign national will be considered a tax resident, provided that, after multiplying days of stay by two, his or her stay in Myanmar exceeds 183 days. In this case, he or she will be subject to tax on worldwide income in Myanmar. As a result, he or she may be exposed to pay higher taxes in the six-month transitional period. Further interpretation may be required in this regard.

How to calculate CIT and an employee's personal income tax for the six-month transition period

3(a) CIT: The method of calculating CIT for companies, entities registered/approved under MIC, and cooperatives under the notification 64/2019 is as follows:

Total income received for the period 1 April 2019 to 30 September 2019	**xxx**
Add: Depreciation	xxx
Add: Interest	xxx
Add: Donation as per section 6(A) Income Tax Law	xxx
Total adjusted income	**xxx**
Multiplied by: (on the above)	2
Total income for adjustment	**xxx**
Less: Depreciation	(xxx)
Less: Actual interest payment	(xxx)
Less: Donation as per section 6(A) Income Tax Law	(xxx)
Adjusted annualized taxable income for the period	xxx
Income tax rate	25%
Income tax on annualized taxable income	xxx
Divided by: (on the above)	2
Income tax for the six-month period	xxx

As a first step, depreciation, interest, and donations shall be added back to the total income received for the period 1 April 2019 to 30 September 2019.

As a second step, the total net income from the first step will be multiplied by two to derive the average annual income. For SMEs, only profits in excess of MMK 10 million will be subject to CIT.

The total average annual income from the second step will be reduced by the tax depreciation and the actual interest payment made during the transitional six-month period. Further, the adjusted average annual income will be reduced by donations, which are capped at 25% of total net income in accordance to income tax law.

Finally, the adjusted annual income after depreciation, interest, and donations will be subject to the CIT rate applicable to the taxpayer.

The CIT due for the transitional six-month period will be calculated by further dividing by two the total estimated tax due on the final step above.

Deloitte's view

Notification 64/2019 outlines the simplified view that the income and expenses of businesses are deemed to be received and incurred equally over a 12-month period. Whereas, in practice, that will not be the case.

In addition, the method to calculate CIT under notification 64/2019 is not in line with the previous notification, 72/2018, that addressed the transitional procedures for state-owned enterprises, which were the first enterprises to adopt the change in fiscal year-end. Under notification 72/2018, CIT will be based on the actual income and expenses for the six-month period, and the net income will be reduced by the depreciation related to the six-month period instead of a full year's tax depreciation. However, notification 64/2019 allows tax depreciation for a full year for businesses other than state-owned enterprises.

Under notification 64/2019, only the actual interest payment incurred for the period can be claimed as a deductible business expense. However, the accounting treatment follows the accrual concept and, thus, interest expenses as per financial statements will be considered as non-deductible expenses. As such, the taxpayer may need to ensure that the actual interest payment has been made to claim the interest payment as a deductible business expense. Otherwise, it will lead to a higher CIT liability for the taxpayer.

Finally, notification 64/2019 does not provide any clear procedures on the official assessment system. The calculations and guidelines mainly consider businesses under the self-assessment system. This would cause higher tax liabilities for most businesses without capital assets.

Therefore, we believe further interpretation may be required from the Internal Revenue Department ("IRD").

3(b) Personal income tax on salary: Notification 64/2019 further provides details on how an employee's personal income tax shall be calculated.

Salary, wages, annuity, pension, gratuity, any fees, and/or commissions under the salary heading during the period between 1 April 2019 to 30 September 2019 shall be multiplied by two to determine average annual income. The income is exempt from the assessment if average annual income is not more than MMK 4.8million.

After accounting for the basic allowances and reliefs, and deducting these items from the average annual income, in accordance with the existing tax law, rules, and regulations, personal income tax will be calculated at progressive tax rates of 0% to 25 percent. Thereafter, the calculated personal income tax will be divided by two to determine the tax liability for the transitional period from 1 April 2019 to 30 September 2019.

Deloitte's view

The approach to determine estimated annual income, which notification 64/2019 outlines, presumes that an employee will receive benefits twice in a 12-month period. In reality, benefits such as a bonus or incentive and variable benefits in kind are received by employees once every year. If the procedures stated in notification 64/2019 apply to the calculation, the employees would face a higher personal income tax liability for the six-month transitional period.

In addition, there is no clear guideline on how the social contribution shall be calculated and claimed as relief in this period.

The IRD may consider providing further interpretation on unclear areas.

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Venezuela:
Implications of constituent law on individual tax wealth

What is the law about?

The Constitutional Law that creates the Tax on Wealth, which the National Constituent Assembly passed, was published on July 3, 2019, Official Gazette N° 41667.

The law outlines the following stipulations:

Taxable event

On August 16, 2019, the local tax administration effectively enacted a new law that permits taxing the net wealth of individuals qualified as "special taxpayers.'' This qualification shall be given to the taxpayers through an official notification.

Who is obliged to pay this tax?

All individuals and entities qualified as special taxpayers who have a net worth of 150,000,000.00 tax units (around USD 350,000.00 or above) are liable to file and pay this new tax.

What qualifies someone as a "special taxpayer"?

Any individual or entity who received this year, or has ever received, a special taxpayer certificate issued by the local tax authorities will be automatically designated as a special taxpayer from the moment it receives the communication until the tax authorities decides to take away this qualification.

What is a "tax unit" defined as?

It is a measure that normalizes and keeps updated, year after year, the amounts specified in the Venezuelan tax laws and tax regulations, which are expressed in direct proportionality. The current value of a single tax unit is 50.00 VEN equivalent to 0.0025 USD.

Understanding the "special taxpayers'' category

The Venezuelan Tax Administration uses the special taxpayers category to identify taxpayers (individuals and entities) whose net worth represents an amount equal or greater than the equivalent of 150,000,000.00 tax units (as mentioned before). This classification is one of the control mechanisms that tax authorities use to enhance the tax-collection process. In this sense, individuals and companies who are given this qualification will receive an official notification identifying them as a special taxpayer.

How is Venezuelan residence determined?

- A person has been in Venezuela for more than 183 days in a fiscal year (continuous or not).
- A person's main business base is in Venezuela.
- A person has Venezuelan nationality and he or she is a public official, even when his or her main business base is located abroad.
- A person has Venezuelan nationality and proves his or her new tax residence in a country that is qualified as a low-tax jurisdiction, unless the country shares a tax-double-avoidance treaty with Venezuela.

When is an individual presumed to be a Venezuelan resident?

In addition, the law presumes that an individual shall be considered a Venezuelan resident when accomplishing the following:

- A person's household income is earned in Venezuela.
- A person's spouse or children (dependent family members) have a permanent home or permanent establishment in Venezuela, or are Venezuelans.
- The individual has Venezuelan citizenship.

In order to demonstrate the nonresidence condition, the individual must present a certificate of tax residence, issued by a foreign tax authority, to the Venezuelan Tax Administration.

Territorial criteria

This new law will be applicable to both the Venezuelan residents and nonresidents as well. The tax base will be the value of the assets located both in Venezuela and foreign countries (if any) for residents, and only the assets located within the country for nonresidents.

Type of goods and rights subject to this tax

Goods and rights located in the country:

- The rights over immovable assets located in the country.
- Vessels, aircrafts, ships, and navigation belongings, and motor vehicles registered in Venezuela; in addition, the vehicles registered or enrolled in a different nation will be considered as goods located in Venezuela, provided that they have been in the other contracting estate for less than 120 continuous or discontinuous days.
- The capital shares and other security titles representing the capital of the company, issued by Venezuelan entities.
- Precious stones, jewelry, and works of art.

Taxable period

The declaration and payment of this tax must be made in the period between October 1 and November 30 of each year.

Who is exempted from this tax?

- The Republic and other political territorial entities;
- The Venezuela Central Bank;
- The functionally decentralized governmental entities;
- The main dwelling registered in the Tax Administration;
- Dwelling belongings;
- Social benefits and other benefits derived from labor relations;
- Communal property rights;and
- The assets invested in primary agricultural, livestock, aquaculture, and fishing activities, as long as they conform the taxpayer's main business.

Some assets valuation methods

Immovable assets located in Venezuela: The value of immovable assets located in the country will be the highest amount resulting from the following methods:

- The value assigned by the municipal registry.
- Market value.
- The value resulting from updating the acquisition price.
- The value of lands will be included in the value of the properties built or under construction, except for buildings on lands of third parties.
- If the building is still under construction, the value will result from the price calculated over the percentage of the project.
- The improvement cost will be added to the immovable assets.

Immovable assets located abroad: To determine the value of immovable assets located outside the country, it is necessary to use the highest value resulting from the methods established in the contracting country or by using the current market value as of September 30 each year.

Other immovable assets: The value of immovable assets derived from multiple ownership contracts will be the highest value between the acquisition price and the market value as of September 30 each year.

Capital shares: The shares and other equity titles, including those denominated in foreign currency and/or listed in the stock exchange, will be valued according to their value as of September 30 each year.

Jewelry and art pieces: The value of jewelry, art pieces, and antiques will be determined using the higher value between the updated acquisition price or the current market value as of September 30.

Valuation rules: Goods and rights that are not included in this law will be valued at the higher value between the current market value or the updated acquisition price.

Tax rate: The tax rate will be 0.25 percent calculated over the net worth value.

Tax deduction: This tax cannot be deducted from the income tax compensation.

Filing return: Individuals and entities are obliged to file and pay this tax.

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