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Myanmar News

Tax Exemptions for
Grant Aid and ODA Loan-
Development Projects

June 2018

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Update on Taxation of Development Projects

I. Introduction

Despite popular view and legal provisions suggesting the same, non-profit organizations are not automatically exempted from taxation of their income.

Pursuant to sec. 5 (a) (1) Income Tax Law (1974) as amended 2016, this law shall not apply to income received by a charitable institution and applied solely for charitable purposes. Further, sec. 5 (b) Income Tax Law (1974) provides that any person earning income for which the Union Tax Law grants tax exemption, relief or other benefits shall be entitled to such exemption, relief or benefit; the Union Government has the right to grant exemptions or relief from income tax or grant other benefits related to the tax for income obtained from donations for social, religious, health or educational causes in the country from domestic or foreign employers or international organizations, aid provided for the country by domestic or foreign organizations or donated property or donations provided by domestic or foreign organizations in the event of natural disasters. Unfortunately, these general tax exemptions are no longer expressly provided in the Union Tax Laws since 2015, and it is unclear whether they still apply.

Pursuant to sec. 31 Income Tax Law (1974), individual tax exemptions can be granted by the government to international organizations if the Government enters into an agreement with any foreign state or with any international organization relating to income-tax and if the agreement is notified, the terms of the said agreement shall be followed, notwithstanding anything contained in any other provisions of the Law. Accordingly, non-profit organizations may negotiate a Memorandum of Understanding (“MoU”) with the Myanmar government that provides for income tax exemptions both for the organizations as well as its employees. In this regard, the tax authorities have in the past confirmed that tax exemptions may be granted on income received in the form of donations for use in education, health, social, religious and charitable purposes. Further, sec. 31 (b) Union Tax Law (2018) provides, that the Ministry of Planning and Finance may grant relief or exemption from income tax in respect of activities carried out with donations or assistance – this would refer to payments made with donated funds, e.g. payments for consultants

Further, pursuant to section 15 (a) Union Tax Law (2018), the Ministry of Planning and Finance may grant relief or ex-

emption from Commercial Tax in respect of activities carried out with donations, assistance or loans from domestic or foreign organizations.

In practice, however, standardized application procedures are missing and there is a good deal of uncertainty which organizations and what projects may enjoy such benefits.

With the explicit intention to support national development projects, the Ministry of Planning and Finance (“MoPF”) issued Notification 38/2018 on 21 May 2018. According to this Notification, which shall come into force on 1 June 2018, national development projects carried out with Grant Aid and/or Official Assistant Loans (ODA Loans) may be entitled to enjoy certain tax exemptions.

Further, on 25 April 2018, the Union Government Cabinet (“UGC”) issued Notification 49/2018, according to which it may grant certain Commercial Tax- and Income Tax-exemptions from 1 May 2018.

Please find below a short summary of the most relevant changes.

II. Notification 38/2018

1. Grant Aid Projects

Companies, advisors and service providers participating as primary contractors or sub-contractors in projects being implemented with Grant Aid shall be granted exemption from Income Tax or Commercial Tax as follows:

- Income Tax-exemption for staff working on the project (excluding Myanmar citizens);
- Income Tax-exemption for companies, advisors and service providers working on the project;
- Commercial Tax-exemption for goods, machineries and auxiliary materials imported for use on the project; and
- Exemption from collection of Commercial Tax by companies, advisors and service providers, Commercial Tax in respect of project activities under sec. 5 (b) of the Commercial Tax Law (1990).

Comment Luther: *According to the Notification, said companies, advisors and service providers shall be exempt from Income Tax on their salaries, and the person responsible for withholding the tax from their salary is also exempt from such duty to withhold and pay the tax.*

Kindly note, however, that there shall be no exemption under this Notification of Income Tax on other salary income obtained from activities other than that of Grant Aid projects.

2. ODA Loan Projects

Further, companies, advisors and service providers participating as primary contractors or sub-contractors in projects being implemented with ODA Loans shall be granted exemption from Income Tax or Commercial Tax as follows:

- Income Tax-exemption for interest paid on loans taken by the Union of Myanmar;
- Commercial Tax-exemption for goods, machineries and auxiliary materials imported for use on the project; and
- Exemption from collection of Commercial Tax by companies, advisors and service providers, Commercial Tax in respect of project activities under sec. 5 (b) of the Commercial Tax Law (1990).

3. Import of Goods

Goods, machineries and auxiliary materials imported for use on a Grant Aid or ODA Loan project shall be exempted from Commercial Tax

Import of goods other than for projects implemented with Grant Aid or ODA Loans shall not be exempt from Commercial Tax under this Notification.

4. Commercial Tax

All companies, advisors and service providers participating as primary contractors or sub-contractors in projects being implemented with Grant Aid or ODA Loan shall be exempt from collecting the Commercial Tax (Output Tax) together with service fees, and paying the same, and the entities procuring the services shall also be exempt from paying the Commercial Tax (Input Tax).

Commercial Tax is exempted for domestic procurement of goods/services under agreement for project activities. However, Commercial Tax shall not be exempt for “shopping” of goods and raw materials, spending by staff in hotels and restaurants, electricity meter bills, and purchases at departmental stores for foodstuff, utilities and for services such as phone calls.

5. Application Process

Projects being implemented with Grant Aid or ODA Loan shall submit through the relevant ministry and procure the recogni-

tion of the MoPF, that the said project is in fact being implemented with Grant Aid or ODA Loan.

Comment Luther: *Application for such tax exemption is offered as part of Luther's Legal Services.*

6. NGOs

However, projects being carried out, not with Grant Aid or ODA Loans (of the Union), but by foreign/domestic organizations, or by NGO's, or programmes being carried out by companies with assistance from those entities, shall not be relevant to this Notification.

III. Notification 49/2018

1. Commercial Tax-Exemptions

The UGC may grant exemptions from Commercial Tax on goods directly donated to the Union of Myanmar by foreign/domestic donors and international organizations for social, religious, healthcare and educational purposes.

2. Income Tax-Exemptions

Further, the UGC may grant exemptions from Income Tax on financial assistance or goods provided directly to the Union by foreign/domestic organizations.

3. Application Process

Submission must be made through the relevant Ministry to the Ministry of Planning and Finance, for confirmation that [the goods/funds concerned] are goods or financial assistance donated directly to the Union

The exemptions in this Notification shall not be applicable to donations or grants to individuals, companies or other entities.

Comment Luther: *Application for such tax exemption is offered as part of Luther's Legal Services.*

Annex I - Unofficial English Translation of Notification No. 38/2018

Government of the Republic of the Union of Myanmar

Ministry of Planning and Finance (“MoPF”)

Notification 38/2018

21 May 2018

1. Exercising the powers conferred by Section 15a and 31b of the 2018 Union Tariffs Law (“UTL2018”), the MoPF, with the approval of the Union Government Cabinet (“UGC”), hereby issues this Notification, with the objective of national development projects, carried out with Grant Aid and Official Assistant Loan (ODA Loans) being able to fully enjoy tax exemptions in accordance with law, and to clearly understand matters which cannot enjoy tax exemption.
2. All companies, advisors and service providers participating as primary contractors or sub-contractors in projects being implemented with Grant Aid are granted exemption from income tax (“INT”) or commercial tax (“CT”) as follows:
 - a. INT exemption for staff working in the project, excluding Myanmar citizens;
 - b. INT exemption for companies, advisors and service providers working in the project;
 - c. CT exemption for goods, machineries and auxiliary materials imported for use in the project;
 - d. Exemption from collection of CT by companies, advisors and service providers, CT in respect of project activities under Section 5b of the CT Law.
3. All companies, advisors and service providers participating as primary contractors or sub-contractors in projects being implemented with ODA Loans are granted exemption from INT or CT as follows:
 - a. INT exemption for interest paid on loan taken by the Union;
 - b. CT exemption for goods, machineries and auxiliary materials imported for use in the project;
 - c. Exemption from collection of CT by companies, advisors and service providers, CT in respect of project activities under Section 5b of the CT Law.
4. According to the provision of Para 2a herein, all companies, advisors and service providers participating as primary contractors or sub-contractors in projects being implemented with Grant Aid, other than Myanmar citizens:
 - a. shall be exempt from INT on their salaries, and the person responsible for withholding the tax from their salary is also exempt from such duty to withhold and pay the tax.
 - b. however, there shall be no exemption under this Notification of INT on other salary income obtained from activities other than that of Grant Aid projects.
5. Import of goods other than for projects implemented with Grant Aid or ODA Loans shall not be exempt from CT under this Notification.

6. According to the provision of Para 2c and 3c herein, all companies, advisors and service providers participating as primary contractors or sub-contractors in projects being implemented with Grant Aid or ODA Loan shall be exempt from collecting the CT (Output Tax) together with service fees, and paying the same, and the entities procuring the services shall also be exempt from paying the CT (Input Tax).
7. CT is exempted for domestic procurement of goods/services under agreement for project activities. However, CT shall not be exempt for "shopping" of goods and raw materials, spending by staff in hotels and restaurants, electricity meter bills, and purchases at departmental stores for foodstuff, utilities and for services such as phone calls.
8. The projects being implemented with Grant Aid or ODA Loan shall submit through the relevant ministry and procure the recognition of the MoPF, that the said project is in fact being implemented with Grant Aid or ODA Loan.
9. However, projects being carried out, not with Grant Aid or ODA Loans (of the Union), but by foreign/domestic organizations, or by NGO's, or programmes being carried out by companies with assistance from those entities, shall not be relevant to this Notification.
10. This Notification shall come into force on 2018-JUN-01. This Notification shall not have retroactive effect on tax matters carried out before the coming into force of this Notification.

Kyaw Win
Union Minister
Letter No.: SaBa/Banda-2/1/254(2133/2018)
21 May 2018

Annex II - Unofficial English Translation of Notification No. 49/2018

Government of the Republic of the Union of Myanmar

Union Government Cabinet (“UGC”)

Notification 49/2018

25 April 2018

1. Exercising the powers conferred by Section 8b of the Commercial Tax Law (“CT Law”) and Section 5b2 of the Income Tax Law (“INT Law”), the UGC hereby grants exemption of CT on goods directly donated to the Union by foreign/domestic donors, international organizations for social, religious, healthcare [and] educational purposes, and grants exemption on INT on financial assistance or goods provided directly to the Union by foreign/domestic organizations.
2. Submission must be made through the relevant ministry to the Ministry of Planning and Finance, for confirmation that [the goods/funds concerned] are goods or financial assistance donated directly to the Union. The exemptions in this Notification shall not be applicable to donations or grants to individuals, companies or [other] entities.
3. This Notification shall come into force on 1 May 2018.

By order
signed
Zaw Than Thin
Secretary
UGC

Letter No.: 207/165-AhHpaRa(Commercial Tax)/(6/2018)

Date: 25 April 2018

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