

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

Public Ruling No. 3/2022

Nay Pyi Taw, Waxing of Tazaungmon, 1384 ME

(16 November 2022)

**Public Ruling for Tax Avoidance, Underpayment of Tax, False or Misleading Tax
Information and Tax Evasion**

Introduction

1. In order to clarify to the public, the terms and provisions of tax avoidance, underpayment of tax, false or misleading tax information and tax evasion, and to publicize the reaction and enforcement on these matters, the Director General of the Internal Revenue Department, in exercise of the power conferred by Section 11, subsection (a) of the Tax Administration Law, issues this public ruling.
2. This public ruling is binding on the Internal Revenue Department under Section 11, subsection (b) of the Tax Administration Law.

Matters related to:

3. This is a clarification on how the Internal Revenue Department is going to interpret the provisions of tax avoidance, underpayment of tax, false or misleading tax information, and tax evasion and in matters related to taking action and enforcement on it.

Relevant Persons

4. This public ruling is related to all of the taxpayers who are making tax avoidance, underpayment of tax, provide false or misleading tax-related information and tax evasion.

Relevant Provisions

5. This public ruling is related to the provisions of Section 32, Section 68, Section 69 and Section 77 of the Tax Administration Law.

Tax Avoidance

6. If any person fully understands the tax laws and breaches the tax ethics with the purpose of avoiding the tax and acting to reduce the taxable income or tax liability, it shall be regarded as tax avoidance. Regarding tax avoidance, the following matters are included in particular:
 - (a) Failure to disclose the asset, property, service or benefit as market price,
 - (b) Making non-arm's length transfers at cross-border transfer pricing,
 - (c) Splitting income between taxpayer and associated enterprises with the purpose of lowering the total tax payable upon the income,
 - (d) Reorganizing the structures of associations in order to enjoy tax benefits,
 - (e) Tax avoidance by abusing bilateral or multilateral tax treaties.

Negligent or Fraudulent Underpayment

7. If any person files the tax return and underreports the payable tax as a result of negligence or fraudulence, it shall be regarded as negligent or fraudulent underpayment. Regarding the negligent or fraudulent underpayment, the following matters are included in particular:
 - (a) Deliberate failure to file tax return for the period
 - (b) Underreporting of income and proceeds of sales
 - (c) Fraudulently claiming reliefs
 - (d) Fraudulently applying for depreciation
 - (e) Using or submitting false documents or fictitious invoices
 - (f) Receiving tax credit on input tax by fraud practices
 - (g) Omission of output tax
 - (h) Failure to affix the tax labels on the receipt for tax payable
 - (i) Failure to affix the tax labels on the identified specific goods
 - (j) Occurring false or incorrect bookkeeping due to either person or machine.

False or Misleading Statements

8. If any person submits false or misleading statements to the tax authority in order to either reduce the tax or to avoid tax collection or tax payment or to receive non-liable refund, and the tax authority assessed the person on the basis that the statements were true and amount properly payable by or refundable to the person exceeds or is inferior to the amount that would be payable or refundable, it should be regarded as false or misleading statements. Regarding the false or misleading statements, the following matters are included in particular:
 - (a) Intentional omission of income and proceeds of sales,
 - (b) Declaration of false or misleading statements in tax return,
 - (c) Submitting false or misleading statements when the tax official inquires either in written or oral form,

- (d) Keeping or submitting false or misleading accounting records and documents,
- (e) Importing or exporting the commodities illegally,
- (f) Transferring the assets to avoid recovery of tax,
- (g) Omission of the bank account information,
- (h) Keeping more than one financial statement.

Tax Evasion

- 9. If any person commits or offends the tax laws in willful manners, or commits the cases related to above-mentioned paragraph 7 and 8 in several times or massive losses of state's revenue as a result of any failure to tax obligation, it shall be regarded as tax evasion and shall be enforced criminal proceeding and penalties specified as tax evasion offences under Section 77 of the Tax Administration Law.

Prosecute under Anti-Money Laundering Law

- 10. Tax evasion offenders, according to the above-mentioned paragraph 9, shall be taken action by the Tax Administration Law as well as may also be prosecuted by the Anti-Money Laundering Law.

- 11. Following examples are provided for clear understanding of the public ruling:

Example (1)

- (a) Case: Company "A" is a local liquor and beverages company which produces and sells various liquors and filed the income tax return for 2020-2021 Income Year by declaring the sale amount of 500 million kyats. When doing tax audit for that Income Year, it was found that Company "A" sold the liquors with the reduced factory sale price to its associated enterprises but the Company sold with the factory sale price that was defined in accordance with the market price to the other non-associated enterprises.

- (b) Application of the ruling: Company "A" breached the tax ethics and did not describe the market price with its associated enterprises for the purpose of reducing the tax payable and therefore, it shall be regarded as tax avoidance.

Example (2)

- (a) Case: Company "B" is an import company and declared the sale amount of 100 million kyats in the income tax return for 2020-2021 Income Year. When doing tax audit for that Income Year, it was found that the Company underreported the sale income although actual sale income was 120 million kyats.

- (b) Application of the ruling: Company "B" underreported its sale income for the purpose of reducing tax in willful manner and therefore, it shall be regarded as negligent or fraudulent underpayment.

Example (3)

- (a) Case: Company "C" is a production company and filed the commercial tax return for 2020-2021 Fiscal Year by declaring the refund amount of 120 million kyats. When doing tax audit for that Fiscal Year, it was found that the Company had already offset the tax paid on imported raw materials which were used for production process with monthly payable commercial tax and therefore is no right to receive commercial tax refund.
- (b) Application of the ruling: It was found, according to the documents, that Company "C" submitted the false or misleading statements for the purpose of claiming non-liable refund in order to avoid tax payable in willful manner and therefore, it shall be regarded as false or misleading statements.

Example (4)

- (a) Case: Company "D" is a production company and filed the income tax return for 2020-2021 Income Year and declared the production income of 500 million kyats and refund amount of 200 million kyats. When doing tax audit for that Income Year, it was found that Company committed the omission of production sale income, claiming the depreciation in fraudulence, submission of the false or incorrect accounting records and documents, and claiming non-liable refund during that Income Year.
- (b) Application of the ruling: It was found that Company "D" committed the omission of sale income, claiming the depreciation in fraudulence, submission of the false or incorrect accounting records and documents in willful manners and therefore, it shall be regarded as tax evasion.

Effective Date

12. The public ruling shall come into effect from 1st January, 2023.
13. I hereby sign and publish the public ruling.

Note: The translation for English language is only for the understanding of the public. In the case of divergence of interpretation, the Myanmar text shall prevail.

Sign
(Min Htut)
Director General