

Government of the Republic of the Union of Myanmar

Ministry of Planning and Finance

Internal Revenue Department

Practice Statement No. 3 /2019

Nay Pyi Taw

(5 July , 2019)

Calculation of withholding tax on interest and royalty payment

1. Pursuant to Section 16(b) of the Income Tax Law, Notification No 47/2018 issued by Ministry of Planning and Finance, this Practice Statement further clarifies how withholding tax (WHT) is calculated on interest and royalty payments, where WHT is payable.

What this Practice Statement is about

2. This practice statement tells you how the Internal Revenue Department (IRD) calculates withholding tax when a person makes an interest or royalty payment to either residents or non-residents and withholds the income tax at the prescribed rate from those payments. *Note that WHT does not apply to interest payments for residents.

Who this Practice Statement applies to

3. This Practice Statement applies to residents, resident foreigners and non-resident foreigners who pay for and receive interest and royalty payments.

The relevant provisions of the Law and Notifications

4. Section 16(a) of the Income Tax Law requires that a person withholds tax from payment at the time of the disbursement, and to pay such withheld tax to the relevant revenue office. Ministry of Planning and Finance, with the approval of the Union Government, has issued a Notification No. 47/2018 which sets out the rates and instruction how to withhold income tax from payment at the time of the disbursement. According to the Paragraph 6(c) of the Notification No. 47/2018, “the payer is still responsible to withhold tax even if the payee denies to be withheld.”

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5. The word “withhold” suggests that the tax has to be deducted from a payment and the balance remitted to the recipient. For example, an interest payment of 1,000,000 MMK is made to a non-resident lender and WHT of 15% is deducted from that payment. 850,000 MMK is paid to the lender and 150,000 MMK WHT paid to IRD.

6. However, in some cases a loan agreement or intellectual property contract will require the lender/licensor to pay the full amount (gross up) to them and any WHT is specified to be borne by the borrower/licensee. Gross up which means that they would receive the full amount promised to them without deduction for tax. In that case the full 1,000,000MMK is required to be paid to the lender/licensor and the WHT must be calculated after grossing the payment up by the following formula:

(The gross payment/(1 – the WHT rate)) – the gross payment = the WHT payable.

$(1,000,000/(1-0.15)- 1,000,000) = 176,471$ WHT payable

The amount payable to the lender/licensor is 1,000,000 MMK

The WHT to be paid to IRD is 176,471 MMK

The grossed-up payment including WHT is 1 176,471 MMK (15% or 176,471 MMK of this amount is WHT).

7. The following examples provided to further clarify how WHT is calculated per this practice statement:

Example 1 – interest paid to non-resident NET

Company A has borrowed money (Loan 1) from a lender resident in Germany. The loan agreement states that Company A will comply with all local (Myanmar) tax obligations in relation to interest payments on the loan. The interest payment due on Loan 1 is 5,000,000 MMK. Myanmar does not have any Double Tax Agreement (DTA) with Germany so there is no DTA relief available. Company A will calculate the WHT as follows:

$5,000,000 \times 0.15 = 750,000$ MMK WHT payable

As Company A is paying the interest net of WHT no grossing up calculation is required.

Example 2 – interest paid to non-resident GROSSED

Company A has also borrowed money from a second lender resident in Germany (Loan 2). The Loan 2 agreement requires Company A to pay interest without any deduction of Myanmar WHT. The interest payment due is 5,000,000 MMK. Myanmar does not have any Double Tax Agreement (DTA) with Germany so there is no DTA relief available.

As Company A is paying the lender the gross interest the payment must be grossed up to calculate the correct WHT. The WHT is calculated as follows:

$(5,000,000 / (1 - 0.15) - 5,000,000) = 882,353$ MMK WHT payable

Example 3 – royalty payment to non-resident GROSSED

Company B makes royalty payments to an Intellectual Property holder in Singapore. The intellectual property agreement requires Company B to pay the royalty without any deduction of Myanmar WHT. The royalty payment due is 10,000,000 MMK. Myanmar has a DTA with Singapore which reduces the prescribed rate of WHT from 15% to 10%.

As Company B is paying the gross amount to the licensor of the Intellectual Property the payment must be grossed up (this time using the beneficial rate provided by the DTA). The WHT is calculated as follows:

$(10,000,000 / (1 - 0.1) - 10,000,000) = 1,111,111$ MMK WHT payable.

8. This Practice Statement is hereby signed and issued.



(Min Htut)

Director General

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