

Government of the Republic of the Union of Myanmar

Ministry of Planning and Finance

Internal Revenue Department

Practice Statement No. 8 /2019

Nay Pyi Taw

(19¹⁵ November, 2019)

Deductibility of discretionary expenditure

1. Internal Revenue Department, in exercise of the power conferred by section 51 (b) of the Income Tax Law, hereby issues this Practice Statement to provide guidance on how the discretionary expenditures are allowed to deduct.

What this Practice Statement is about

2. This Practice Statement explains how Internal Revenue Department determines the deductibility of the discretionary expenditures and expenses under corporate social responsibility (CSR).

Relevant Terms

3. Corporate Social Responsibility (CSR) is a phrase that defines a business model that promotes ethical behavior by companies, such as good citizenship, compliance with the law and sound labor and environmental practices.

Who this Practice Statement applies to

4. This Practice Statement applies to any taxpayer who requests their discretionary expenditures and CSR expenses to be deducted from their taxable income.

The Law

5. Section 6-A of Income Tax Law prescribes that “when assessing the taxable income, money donated for any religious or charitable organization (established for advancement of education and/or health or relief of the poverty or victims of natural disasters) or a related fund sponsored by the State or organized by the Ministry of Planning and Finance of the Union Government by the virtue of a notification may be

deducted from the income. The deductible donation shall not exceed 25% of the total income of the taxpayer”.

6. Section 11(b) of Income Tax Law prescribes that “in computing income, expenditure incurred for the purpose of earning that income, and depreciation allowance as prescribed by the Regulations shall be deducted however capital expenditure, personal expenditure and expenditure not commensurate with the volume of business shall not be deducted”.

Practice Statement

7. Businesses often make discretionary (voluntary) payments to community groups or philanthropic organizations. Where those payments are relevant to section 6-A of the Income Tax Law, those expenses will be allowed up to 25% of income as donations.

8. Where discretionary (voluntary) payments are not applicable to provisions of Section 6-A of income tax law or the charitable donations exceed the statutory limit (specified percent), these payments will not be allowed as charitable donations.

9. Discretionary payments that do not meet the charitable definition contained in section 6-A or charitable donations (CSR or other expense) that exceed the statutory limit will be allowed as expenses when the businesses can prove the nexus (link) between the expenditure and the income earning process. It will be necessary for the business to demonstrate that it derived advertising, promotional, brand recognition or other benefits from the expenditure.

10. CSR expenditure that is incurred as part of a contractual obligation under the business operating permit or similar is not discretionary and will be allowed as expenses.

11. For CSR expenditure or discretionary expenditure that satisfies the nexus test, where that expenditure involves capital expenditure it must be capitalized or amortized over the useful life of that asset.

12. The following examples are provided to further clarify which discretionary expenditures are allowed as expenses:

Example 1 –

Facts: Company A has a Corporate Social Responsibility (CSR) programme with an annual budget of 500,000,000 kyat. During the fiscal year, Company A's CSR programme incurs the following expenditure. Company A retains ownership of the mobile health clinic vans and they clearly display Company A's name and logo. Publicity of the dates and venues for public clinics record Company A's name, and promotional material for the clinics also records Company A's name and logo.

- (a) 400,000,000 kyat on the purchase and fit out of mobile health clinic vans
- (b) 250,000,000 kyat on the operating costs of the health clinic vans (fuel, medical supplies and salaries for the clinic staff)

Application of this Practice Statement: The expenditure cannot be considered under section 6-A (donations) as Company A has retained ownership of the mobile health clinic vans. Company A satisfies Internal Revenue Department that it receives significant publicity as a result of the visibility and activities of the mobile health clinic vans. The cost of the mobile health clinics (including the fit out costs) must be capitalized and can be depreciated at the equivalent depreciation rate for motor vehicles (12.5%). The operating costs of the mobile health clinics can be expensed in the year incurred.

Example 2

Facts: Company B makes charitable donations in excess of the 25% statutory allowance provided by section 6-A. It is acknowledged as donor with certificates of recognition issued by the donee organizations. There is no record of Company B receiving any significant publicity or other benefits as a result of making the donations.

Application of this Practice Statement: Company B cannot claim the excess donations as an income tax deduction as there is insufficient nexus between the expenditure and the earning of taxable income.

Example 3

Facts: Company C has made a donation to township development committee to organize a cultural event. It has no record of any direct publicity arising from these payments, and no benefit has arisen from this deed.

Application of this Practice Statement: Company C is not able to demonstrate sufficient link between the expenditure and the income earning process. The expenditure will not be allowed as an expense.

Example 4

Facts: Company D is a bank looking to expand its activities in smaller townships. It gives funds to township development committees to assist with an annual market day. At the market day the bank will have a stall and staff in uniform handing out free pens and calendars bearing the banks name and logo and will be encouraging attendees to open accounts with the bank.

Application of this Practice Statement: The contributions to the committees to assist with holding of the market day and the cost of the items given away will be deductible as there is a clear link between the expenditure and the earning of income by Company D.

Example 5

Facts: Company E makes the following CSR payments and cannot provide sufficient evidence of publicity or public recognition for payments a) to f) however it is named as official sponsor of the book festival (as described in g) with its name and brand prominently displayed and its products are given away as free samples during the event.

- (a) 25,000,000 kyat for paving the alternate road to avoid the town
- (b) 5,000,000 kyat to an environmental group to support the planting of trees
- (c) 10,000,000 kyat for the installation of recycling bins in nearby townships
- (d) 5,000,000 kyat to sponsor a local football team
- (e) 50,000,000 to assist with the production of a locally made film

- (f) 10,000,000 kyat to the city council to assist with water festival activities
- (g) 25,000,000 kyat to organize a book festival

Application of the practice statement: The expenditure incurred as (a) to (f) will not be deductible as there is insufficient connection with Company E earning income. However, the payment made to the organizers of the book festival (g) would be deductible as there are demonstrable advertising and promotional benefits arising from the expenditure.

13. This Practice Statement is hereby signed and issued.



(Min Htut)

Director General

Letter No. 1(2)/ odg-1/ ird /2019 (13099)

Date: 19th, November , 2019

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