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

Interpretation Statement No. 2/2019
1st Waning of Tabodwe 1380 ME.
(20 February 2019)

Interpretation Statement on charge of income tax on lease premium received by Lessors

1. IRD has issued this statement under the authority of Commercial Tax Regulation 55 (b) so taxpayers know clearly the charge of income tax on lease premium received by Lessors.

What this Interpretation Statement is about

2. This Interpretation Statement states how IRD interprets the provisions of the Income Tax Law concerning the lease premium received by lessees.

Who this Interpretation Statement applies to

3. This Interpretation Statement applies to lessors of property and assets.

Definition

4. A **lessor** is a person who typically owns property or an asset and rents it to the lessee in return for rental payment including lease premium payments.
5. A **lessee** is a person who leases property or an asset from another person (the lessor) and makes rental payments including lease premium payments to that person.
6. A **lease premium** payment is a payment made by the lessee to the lessor to enable the lessee to acquire the right to lease the property.

The relevant enacted Law

7. (a) Section 13 of the Income Tax law provides that "tax shall be payable by any person under the head capital gains in respect of the gains realized from the sale, exchange or other ways and means of transfer of one or more

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capital assets within a year. Capital gains shall be computed and assessed in accordance with the Rules.”

(b) Section 5 (c) of Income Tax Regulation sets out the way in which capital gains are to be calculated. It states that the net amount after deduction the depreciated value of an asset and capital expenditure on additions to it from the sales value is subject to tax as a capital gain. The calculation of capital gain shall be computed as Chapter (4) of Income Tax regulation.

(c) Section (4) of Income Tax provides that

(a) “According to the Union Taxation Law, the rates of income tax shall be prescribed, amended and added by the following:

- (i) assessable total income;
- (ii) rates of income-tax for each class of income;
- (iii) rates of income-tax for each class of income and assessable income in respect of foreign currency receipts.

(b) When prescribe, amend and add under sub-section (a), the tax shall be charged at rates prescribed for each class of income for those who receive assessable total income within the year relating to the assessment year or the date of effect as the case may be.

8. Sections 27(b) and 28 of 2018 the Union Taxation Law and 2018–2019 the Union Taxation Law prescribe that;

(a) Collectives or individual other than the company participating in Myanmar’s oil and gas sector shall be imposed a 10 percent income tax on either profit in kyat or profit in foreign currencies. For foreigner residing abroad, tax shall be imposed in the currency earned.

(b) Income tax shall not be imposed on sale, exchange, or any other means of transfer of one or more Real Estates if total value is not exceeding 10 million kyat.

9. Section 3(r) of Income Tax law defines a **capital gain** as “any profit realized from the sale, exchange or transfer of any capital asset”. Section 3(q) of Income Tax Law defines a **capital asset** to be “any land, building and the

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rooms therein, vehicles and any assets provided contribution to an enterprise”.

10. Section 19(d) of the Union Taxation Law states that “whoever receives income from renting land, buildings and apartments shall be imposed a 10 percent income tax separately after deducting allowances as described in Article 6 of the Income Tax Law. It shall not be repeated by combining with other incomes. For state-owned economic enterprises, businesses, companies and cooperatives operating under the permission of Myanmar Investment Commission, income tax shall be imposed at the rates specified for type of taxpayers.”

Interpretation Statement

11. A lessor of property or an asset receives a lease premium payment. According to lease agreement, this kind of receipts a lease premium payment is in return for giving the lessee the right to lease the property or asset, or for transferring the right to access to the property or asset to the lessee. This right is an intangible capital asset of the lessor, which is transferred to the lessee at the commencement of the lease. So because of the lease agreement, this kind of receipts of a lease premium payment by lessor is not income from business, this receipt comes from the transfer of an intangible asset from one person to another. Therefore, 10% of this receipt will be charged by income tax. The lessor doesn't have expenses on depreciation of this intangible capital asset, this is the receipt on lease premium payment made in return for the right to enter into a lease or to gain access to property or an asset to be rented. So the original value of assets shall be calculated as 'zero'.
12. If the lessee who lease via the lessor and transfer this intangible right to other lessee, the original payment of lease premium to the first lessor shall be deducted.

Example (1)

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'A' enters into a lease agreement with 'B' under which 'A' leases a building from 'B' in which to conduct his business operations. The terms of the lease agreement state that:

- (i) 'A' must pay rent to 'B' of 2,000,000 Kyats per month over the term of the lease; and
- (ii) 'A' must also pay to 'B' a lease premium amount of 24,000,000 Kyats upon signing the lease agreement.

Application of Interpretation Statement

The receipt of lease premium amount 24,000,000 Kyats received by 'B' is the receipt from the transfer of right to access to an intangible assets. 'B' shall not be deducted expenses or original value from this receipt. Because the transfer of right to access to an intangible assets doesn't have expenses.

This receipt of lease premium amount 24,000,000 Kyats shall be charged by capital gain tax because the amount is more than 10 million Kyats.

'B' is not allowed to deduct the expenses and actual value on this lease premium payment of 24,000,000 Kyats, and shall be charged 10% income tax determined as capital gains.

If 'B' receipts monthly lease payment including lease premium payment, it shall be charged income tax within the income year.

Example (2)

'X' enters into a lease agreement with 'Y' under which 'X' leases a building from 'Y' in which to conduct his business operations. The terms of the lease agreement state that:

- (a) 'X' must pay rent to 'Y' of 2,000,000 Kyats per month over the term of the lease; and
- (b) 'X' must also pay to 'Y' a lease premium amount of 24,000,000 Kyats upon signing the lease agreement.

'Z' leases this building from 'X' which is leased from 'Y' with lease agreement. According to this lease agreement,

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- (a) 'Z' must pay rent to 'X' of 2,500,000' Kyats per month over the term of the lease; and
- (b) 'Z' must also pay to 'X' a lease premium amount of 35,000,000 Kyats upon signing the lease agreement.

(c) Application of Interpretation Statement

The receipt of lease premium amount 35,000,000 Kyats received by 'X' is the receipt from the transfer of right to access to an intangible assets. Although 'X' shall not be deducted expenses or original value from this receipt, the lease premium amount of 24,000,000 Kyats paid to 'Y' can be deducted from this amount of 35,000,000 Kyats. Although the transfer of right to access to an intangible assets doesn't have expenses, the lease premium amount of 24,000,000 Kyats paid to 'Y' can be deducted from the lease premium amount of 35,000,000 Kyats received from 'Z' because this transfer of right to an intangible assets over the lease agreement is from the first owner of assets.

'X' receipts the lease premium amount shall be charged by capital gain tax because the amount is more than 10 million Kyats.

Therefore, the lease premium amount of 24,000,000 Kyats shall be deducted from the lease premium amount of 35,000,000 Kyats from 'X' and the rest amount of 11,000,000 Kyats shall be charged 10% income tax as capital gain within the income year.

If 'X' receipts monthly lease payment including lease premium payment, it shall be charged income tax after deduction from the original monthly lease payment.

This Interpretation Statement is issued by:

Sd. xxx
(Min Htut)
Director General

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