

This Interpretation is published by IRD. The English translation is intended to the taxpayers' clarification. Only Myanmar version is official.

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

Interpretation Statement No. 3/2019
1st Waning of Tabodwe 1380 ME.
(20 February 2019)

Interpretation Statement on charge of commercial tax on lease premium and monthly lease payment

1. IRD has issued this statement under the authority of Commercial Tax Regulation 55 (b) so taxpayers know clearly whether the charge of commercial tax or not on lease premium and monthly lease payment.

What this Interpretation Statement is about

2. This Interpretation Statement states how IRD interprets the provisions of the Commercial Tax Law concerning whether the charge of commercial tax or not on lease premium and monthly lease payment (if payment is made in an advance) by lessees to lessors of property and assets.

Who this Interpretation Statement applies to

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

Definition

4. A **lessee** is a person who leases property or an asset from another person (the lessor) and makes one or more rental payments to that person;
5. A **lessor** is a person who typically owns property or an asset and rents it to the lessee in return for one or more rental payments and
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.

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The relevant enacted Law

7. (a) Section 3, subsection (e), (f), (g), (h), (i), (j), (r) and (s) define the proceed of sales, proceed of services, producer, service provider, importer, Landed value, trading business and traders.

Section 4 states the actions that charging commercial tax and Section 5 states the responsibilities to pay that commercial tax. Section 14 (b) and (e) of the Union Tax Law 2018-2019 states that the rate of tax charging and basic facts of calculation on commercial tax. According to these statements, Commercial tax shall be charged on the proceed of sales selling and production in a country, selling on imported goods, on trading business, on landed values of imported goods and on receipts of services.

(b) According to section 3, subsection (c) of commercial tax, Goods means the imported material and material produced in the country for sale.

(c) According to section 3, subsection (d) of commercial tax, service means rendering of service for remuneration, fee or consideration.

Interpretation Statement

8. A lessor of property or an asset receives a lease premium payment. 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. The transfer of an intangible asset from one person to another is not a supply of a good or service by the lessor to the lessee because the right is neither a material good nor a service. Therefore, a rent 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 is not subject to commercial tax.

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Example

'A' is in business. '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 rent premium amount of 24,000,000 Kyats upon signing the lease agreement.

Application of Interpretation Statement

'B' does not need to collect commercial tax on lease premium amount of 24,000,000 Kyats paid by 'A'. Because 'B' does not sell goods or service to 'A'. 'B' just transfer intangible assets to 'A' by giving the lease the right to lease the property or assets.

However, 'B' needs to collect commercial tax on monthly lease payment of 2,000,000 Kyats paid by 'A'. Because this receipt of service is subject to commercial tax under 2018 Union Taxation Law and 2018-2019 Union Taxation Law.

The reason why not commercial tax on lease premium charge from 'B' to 'A', is that the lease premium is not selling of goods or services. But the commercial tax of monthly lease payment charge from 'B', 'A' can claim this payment (monthly lease payment added commercial tax) under regulations 42 of commercial tax.

This Interpretation Statement is issued by:

Sd. xxx
(Min Htut)
Director General