

Government of the Republic of the Union of Myanmar
Ministry of Finance and Revenue
Minister's Office
Notification No.102/2012
The 8th Waning of Tabaung 1373 M.E, Naypyitaw
(15th March 2012)

The Ministry of Finance and Revenue with the approval of the Union Government, notifies the following Rules under the Income-Tax Law Section 51, subsection (a).

CHAPTER I

Title, Application and Definitions

1. (a) These Rules shall be called the Income-tax Rules.
(b) These Rules shall commence from the 2012-2013 financial year.
2. The expressions in these Rules shall have the same meaning in the Income-Tax Law and 'Law' has the meaning as defined in the Income-Tax Law.

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CHAPTER II

Relief for Spouse and Children

3. (a) The expression spouse in sub-clause (2)(bb) of sub-section (c) of section 6 of the Law means the spouse living with the person or maintained by the person at any time within the income year. Provided that the spouse shall not, on his or her own, earn an assessable income within that income year.

(b) The expression children in sub-clause 2(bb) of sub-section (c) of section 6 of the Law means a person's own children, step children, and children adopted in accordance with the Law who are maintained by the person at any time within the year and who fulfil all the undermentioned conditions:-

Explanation - The expression "receiving educational instruction" means receiving fulltime instruction at any school, university, college, or any educational establishment, or serving an apprenticeship under articles to qualify in a profession.

(c) In allowing the reliefs under section 6 of the Law, if there is more than one source of income, the relief shall be set-off in stages starting with the income at the lowest income-tax rate and then on to income at higher income-tax rates.

CHAPTER III

Exemption and Relief for Savings

4. (a) For the purpose of clause (iii) of sub-section (a) of section 5 of the Law
A receipt in respect of savings means any interest from savings from state banks and interest from savings certificates under the savings bank law.
- (b) Contributions towards savings fund entitled to relief under sub-clause (2) (dd) of sub-section (c) of section 6 of the Law shall mean contributions toward a social security fund.

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CHAPTER IV

Computation and Assessment of Capital Gains

5. (a) If any person sells, exchanges or transfers by any other means one or more capital assets and during the year of the transaction the total value thereof is of an assessable amount and if profits have arisen there from, he shall file a return of income to the Township Revenue Officer within one month from the date of the sale, exchange or transfers of the capital assets concerned.

Explanation – The date of the sale, exchange or transfer of capital assets means the date of the execution of the deed of the sale, exchange or transfer and the date of the delivery of the assets, whichever is the earlier.

(b) If the Township Revenue Officer is of the opinion that any person is liable to pay tax in respect of capital gains, he may send a notice to that person to file a return of income for the gains.

(c) Assessment of the tax shall be made in the respective income year on the person who received capital gains. In making the assessment, the tax shall be computed and demanded at the rates of tax existing in that income year. In determining the capital gains, the following shall be deducted from the full value of the sale, exchange or transfer of the capital asset concerned:

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- (i) the net value, remaining after deducting the total depreciation allowed under the Law from the sum total of the original cost to the assessee and any capital expenditure actually incurred by the person for making any addition thereto;
- (ii) expenditure incurred in the procurement of the capital asset and in the sale, exchange or transfer of the same.

(d) If the original cost actually incurred in the procurement of the asset by the assessee cannot be ascertained or if the asset is acquired by inheritance or by way of a gift, the market value prevailing at the time of acquiring the asset shall be deemed to be the original cost to the assessee.

(e) Where any capital asset became the property of the assessee before 1st April 1997, the original cost under clause (1) of sub-rule (c) or original cost under sub-rule (d) shall be deemed to be the market value of the asset prevailing on that date. Provided that only expenditure incurred or depreciation allowed after that date shall be included in the computation under clause (1) of sub-rule(c).

- (f) Where the Township Revenue officer is of the opinion that the value stated by the assessee in respect of the sale, exchange or transfer of the capital asset is, without sufficient reason, less than the market value prevailing at the time of the transaction, he shall substitute the value for the prevailing market value.
- (g) Where the assessment is not completed within the income year under this Rule, the assessment may be made on the relevant assessee in accordance with the provisions of the Law, as if it were not applicable under sub-rule (c)
- (h) In the case of assessment or re-assessment of capital gains under sub-section (b) of section 21 of the Income-tax Law, and where the deed of sale, exchange or transfer of the capital asset concerned has been registered under the Registration Act, the period of limitation shall be reckoned from the date of the registration of the deed.

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CHAPTER V

Procedure for Assessment of undisclosed sources of income

6. In respect of any immovable property or movable property including money for which the person concerned is unable to accurately account as to how he has acquired the property, for the purposes of determination of income and assessment thereon under section 14, the year of disclosure of the property or the money shall be deemed to be the income year in respect of the value of that property or the money. The property or the money and all the expenditure incurred in acquiring the property shall be deemed to be the income of that year and assessed accordingly.

Explanation- the year of disclosure means:-(a) in the case of property, if acquired by purchase, the year of purchase, or if constructed and completed in a year's time that particular year.

Provided that, if it is in the course of construction the relevant years of construction;
(b) in the case of money, the year the money is found to exist or the year by evidence the money was received, whichever is the earlier.

CHAPTER VI

Income Year to be Assessment Year

7. If the order under section 29 of the Law to the effect that the income year shall be the assessment year in respect of any class of assessee is issued, the assessment may, in the absence of any specific provision in the order be made as follows:-
- (a) the Township Revenue Officer may send a notice to the person belonging to those class of assessee to estimate his total income received from all sources in that assessment year and to file the return of income. The notice shall be deemed to be the notice issued under subsection (b) of section 17 of this Law; (b) a person who has already filed a return of income or who has been served with the notice under sub-rule (a) may be notified to produce or cause to produce supporting evidence in respect of the total income that may accrue or arise in that year. The notice shall be deemed to be the notice issued under subsection (b) of section 19 of the Law;
 - (c) after having examined and heard the supporting evidence by the assessee or the other evidence as required by the Township Revenue Officer, on the day specified in the notice issued under sub-rule (b) or, on the basis of available evidence, assess income-tax on the assessee's total income. In making the an assessment computation and demand shall be made in accordance with the rates of that assessment year.
Provided that, where there is failure to comply with the conditions contained in the notice under sub-rule (a) or (b), the Township Revenue Officer, after obtaining all available evidence, shall assess on the basis of the evidence;
 - (d) no further assessment shall be made on account of the change of the assessment year in respect of the total income of the assessee on whom assessment has been made under this Rule;
 - (e) if the person on whom assessment has been made under this rule produces within the year that follows the assessment year, reliable evidence that the income determined for the relevant assessment year is incorrect or where the Township Revenue Officer finds the reliable evidence, the Township Revenue Officer may amend the assessment. If the amended assessment is made, the period of limitation under this Law shall be computed based

only on that amended assessment.

Explanation - If necessary, the Ministry of Finance and Revenue of the Union Government may, by notification under section 7 of the Law, confer on a person the powers of the Township Revenue Officer under this rule.

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CHAPTER VII

Assessment in the Income year

8. If the order under section 29 of the Law to the effect that an assessment may be made in respect of any income in the income year is issued, in the absence of specific provisions in the order, the Township Revenue Officer may make the assessment as follows:-
- (a) the Township revenue officer may send a notice to the person receiving income to estimate that income received in the relevant income year and to file the return of income. The notice shall be deemed to be the notice issued under sub-section (b) of section 17 of the Law;
 - (b) a person who has already filed the return of income or who has been notified under sub-rule (a), may be served with a notice to produce or cause to produce supporting evidence in respect of income that may accrue or arise in that year. The notice shall be deemed to be a notice served under sub-section (b) of section 19 of the Law;
 - (c) after examining and hearing the supporting evidence produced by the assessee, or other evidence as required by the Township Revenue Officer, on the day specified in the notice issued under sub-rule (b) or as soon as possible, the Township Revenue Officer shall, on the basis of available evidence, assess income-tax on the assessee's income. In making the assessment, the tax shall be computed and demanded in accordance with rates relevant for the assessment year. Provided that on failure to comply with the terms of the notice issued under sub-rule (a) or (b), the Township Revenue Officer using available evidence, shall make an assessment on the basis of that evidence;
 - (d) the specific assessment made under this rule in respect of any class of income shall be deemed to be the advance assessment for the income. The total income of the assessee including the above-mentioned income, shall be subsequently assessed in accordance with the Law. In making the subsequent assessment, the tax paid in the advance assessment shall be credited;
 - (e) the decisions made in the advance assessment under this rule, may be altered as necessary in the subsequent assessment made under sub-rule (d);
 - (f) where the assessment is not completed in the income year under this rule the assessment may

be made on the relevant assessee in accordance with the provisions of the Law as if it were not applicable under section 29 of the Law.

Explanation - If necessary, the Ministry of Finance and Revenue of the Union Government may, by notification under section 7 of the Law, confer on a person the powers of the Township Revenue Officer under this rule.

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CHAPTER VIII

Assessment of Non-resident Citizens

9. (a) Assessment of income-tax on a non-resident citizen under section 30 of the Law shall be made in accordance with the provisions prescribed under this rule.
- (b) (i) The total income of a non-resident citizen for any income year under sub-section (n) of section 3 of the Law includes total income within Myanmar and total foreign income.
- (ii) The total income within Myanmar of a non-resident citizen means all income received by him in Myanmar within that year.
- (iii) The total foreign income of a non-resident citizen means all income received by him outside Myanmar within that year. Provided that the total income of a non-resident citizen shall not include income exempt under any law.
- (c) In assessing the income-tax of a non-resident citizen, his total income within Myanmar and his total foreign income shall be computed and determined separately. Based on these determinations, the tax on the total income within Myanmar and the tax on the total foreign income shall be computed separately. The non-resident citizen is liable to pay income-tax equal to the total of both the taxes.
- (d) The assessment and collection of income-tax on the total income, within Myanmar of a non-resident citizen shall be in accordance with the relevant provisions of the Law and the income-tax payable shall be computed in accordance with the rates specified by notification of the Ministry of Finance and Revenue, with the approval of the Union Government.
- (e)(i) In computing the total foreign income of a non-resident citizen, the computation shall be made under the heads provided in section 8 of the Law and shall be in accordance with the provisions of the Law. Provided that in computing the total foreign income of a non-resident citizen, reliefs allowed under section 6 of the Law shall not apply.
- (ii) The rate of income-tax applicable to the total foreign income of a non-resident citizen may be prescribed by notification of the Ministry of Finance and Revenue of the Union Government, with the approval of the Union Government.

(f) If a non-resident citizen receives any income outside Myanmar within any year, the total foreign income in that year shall be estimated and the income-tax liable thereon shall be paid in that year according to the procedure laid down by the person delegated by the Ministry of Finance and Revenue of the Union Government for this purpose. In making the payment, the assessee may, at his own convenience, do so by instalments from time to time without extending the period beyond the respective income year.

(g) The sum paid according to the provisions of sub-rule (f) or the sum recovered as a result of the combined use of the provisions laid down in sub-rule (f) and (n) shall be deemed, under the provision of sub-rule (i), to be income-tax paid in respect of an income-tax assessment of that respective year. The income-tax so paid shall be credited in the respective assessment.

(h) (i) If a non-resident citizen earns income outside Myanmar within the income year, he shall file a return of income on his total foreign income to the Township Revenue Officer within three months after the end of that year according to the procedure laid down by the person delegated by the Ministry of Finance and Revenue of the Union Government for this purpose.

(ii) If it is considered that a non-resident citizen has income outside Myanmar, the Township Revenue Officer may send a notice requiring him to file a return of income in respect of his total foreign income in the prescribed manner. If an assessment or re-assessment is to be made in respect of foreign income earned abroad which is included in the class of income for assessment or re-assessment under section 21 of the Law; it shall be made only in accordance with section 21 of the Law. (i) The Township Revenue Officer, or the person delegated by the Ministry of Finance and Revenue of the Union Government, on receipt of the return of total foreign income under sub-rule (h) shall, as soon as possible, assess the total foreign income of the relevant non-resident citizen. Before assessing the non-resident citizen's total foreign income, the Township Revenue Officer may call for from anyone with documentary supporting evidence that is deemed necessary for the Township Revenue Officer to make a decision. If a non-resident citizen fails to file a return of income as required under sub-rule (h), the Township Revenue Officer shall make an assessment on the income based on any available evidence.

- (j) When income-tax is payable under sub-rule (i), the Township Revenue Officer shall send a notice of demand, in accordance with section 53 of the Law, upon the person liable to pay the income tax. That notice of demand shall be deemed to be a notice of demand under section 53.
- (k) The assessee who is liable to pay income-tax on the total foreign income shall pay only in the foreign currency included in that total foreign income.
- (l) If a refund is found to be due to a person to whom income-tax is assessed under sub-rule (i), that refund shall be set-off against the income-tax payable under sub-rule (f). Provided that if, within one year after that assessment has been made under sub-rule (f) on the ground that there has been no foreign income, the refund due to him shall be made in that foreign currency.
- (m) In order to collect income-tax on the total foreign income payable by a citizen under this rule, before his departure from Myanmar, the person to whom the powers are delegated by the Ministry of Finance and Revenue of the Union Government; for this purpose shall have the right to make appropriate arrangements.
- (n) (1) If any person to whom these rules apply, fails to pay the income-tax in accordance with the rules, the person shall be deemed to be a defaulter under section 39 of the Law. (2) In making the recovery of tax from a defaulter under sub-clause (1), of this rule, the duties are delegated by the Ministry of Finance and Revenue of the Union Government for this purpose shall have the right to decide the currency with which to make the recovery.
- (o) In computing the total foreign income and the tax thereon, it shall be computed in kyats equivalent to the foreign currency concerned. In calculating the kyat equivalent of that foreign currency, the exchange rates of the foreign currency is determined as prescribed by the Ministry of Finance and Revenue of the Union Government.
- (p) The person to whom the duties are assigned by the Government may, by notification, prescribe detailed requirements for carrying out the matters provided in these rules.

CHAPTER IX

Assessment of Non-resident Foreigners

10 If the Township Revenue Officer considers that a non-resident foreigner's income under section 26 of the Law cannot be definitely known, the Township Revenue Officer may compute the income for income-tax assessment by one of the methods mentioned below:

(a) by computing at a rate considered reasonable by the Township Revenue Officer on the gross receipt of that person under section 26 of the Law;

(b) by computing the income within Myanmar by using the following formula:-

$$\text{Income within Myanmar} = \frac{\text{Receipts within Myanmar}}{\text{Receipts within and without Myanmar}} \times \text{Total income within and without Myanmar}$$

Remarks - The total income within and without Myanmar in this sub-rule (b) means the total income computed and determined in accordance with the provisions of the Law.

(c) if it is impracticable to compute the income under sub-rule (a) or (b), then computation may be by any method deemed reasonable to the person to whom duties are assigned by the Ministry of Finance and Revenue of Union Government for this purpose.