

Meeting Minutes of data clarification meeting between Moore Stephens (Independent Administrator - IA) and Internal Revenue Department (IRD) conducted on 28th September, 2017 at Meeting Hall of IRD in Naypyitaw from 5:30 P.M to 6:30 P.M

1. Objectives

- To verify information and clarify data with IRD for 2014-2015 and 2015-2016 initial reconciliation report

2. Participants

A total of 11 participants including 6 representatives from IRD, 2 representatives from Moore Stephens and 3 staff from NCS joined the Data Clarification meeting between IA and IRD. The detailed participant list is attached as annex one.

3. Discussions

Firstly, IA introduced that good afternoon everyone and thanks for meeting with us. Now, we are in the final stage of the scoping phase, this will be submitted as draft report and we have some questions about the information we got from IRD and they are:

IA : The first question is that the statement of revenues provided by IRD include only commercial tax and corporate income tax and how about other taxes like capital gains tax and withholding tax for mining companies and oil & gas companies?

IRD : There are five kinds of taxes collected in IRD such as income tax, commercial tax, specific good tax, state lottery tax and stamp duty. We provided income tax and commercial tax as requested by IA and Withholding tax is including in corporate income tax, so we do not separate withholding tax because it is an advance tax (It means if the companies pay 2% earlier tax, IRD reduces/sets off this 2% in the final assessment). So, we do not provide other taxes except income tax and commercial tax that relate to)

IA : How about specific good tax, state lottery tax and stamp duty?

IRD : Specific good tax is start collected only in January 2016 and formally, it is supporting tax for commercial tax and concerned with the 2016-17 fiscal year because it is effective in 1st April of 2016.

IA: If specific good tax is involved in commercial tax, how about state lottery and stamp duty?

IRD : Stamp duty is only liable when contract is signed. Most of the oil and gas companies did very far away from now like 10 years or 15 years before. So, that tax would be paid at that time and in PSC

contract with the MOGE for oil and gas companies, income tax or commercial tax show only pay in OIC company but other indirect tax in cash or what matter is OK to the government according to the PSC. So, it is very far from 2014-15 fiscal year and it is already paid.

IA : There are 2014-2015 and 2015-2016 PSC contract signed, is there stamp duty relating to contract signed?

MOGE : It is a little bit difficult to answer because the tax collected by LTO consist of commercial tax and income tax, stamp duty is collected by townships tax collector, so it is very hard to chase down stamp duty. the tax payer can pay these tax at any township, hard to chase and we do not have centralized computerized system, it is manually listed but I think if you would like to know about stamp duty, we can ask for company for first year and we can check the contract of how much it is paid.

IA : The company pay withholding tax for sub-contractor to IRD as its advanced cooperate income tax. What would the reported revenue submitted to IRD withholding tax for the sub-contractor for its advance?

IRD : There is two scenarios. One thing is that withholding tax is OK through MOGE in some case for that company. In other case, the tax withheld by Oil and Gas Company would not be including in the final statement because it is not their tax they pay withholding tax for another companies like subcontractor. They pay with the name of the sub-contractor. CIT contains Withholding tax for another company like sub-contractor

IA : In our reporting template, there are two separate lines : one for withholding tax and one for corporate income tax . Is this OK for IRD?

IRD : It is not OK for IRD.

IA : In previous MEITI report, IRD gave withholding tax and corporate income tax separately from MOGE and sub-contractor and the company also gave like that. So, we prepare this template.

IRD : According to the current legislation, withholding tax is credible withholding tax. Withholding tax is already included in the corporate income tax amount. Withholding tax is made by company for sub-contractor, Withholding tax is not company tax but for their sub-contractors, it is tax liability.

IA : In the first MEITI report, we asked the company and IRD submitted to report all (corporate income tax including any advance withholding tax and withholding tax made by company on behalf of sub-contractor?

IRD : When reconcile the data, some of the companies tried to put their withholding tax deterred by their sub-contractor, that is why it cannot match with IRD. It should not be included because it is not their tax liability.

IA : In technically, is this possible to identify all payments made by oil and gas companies on behalf of sub-contractor?

IRD : Of course. When I deter his money, the Chalon we prepare. We got a Chalon receipt. It will be his name and it is his deter ship. IRD's responsibility is to deter withholding tax as paid to government. We can identify three Chalon- one from tax payer, one from tax collector and one for tax agent.

IA : Do you have the information of company with withholding tax on behalf of sub-contractor? Sub-contractor directly pay withholding tax to IRD or another company pay for him?

IRD : According to the law, it is the responsibility of tax agent. At the time of payment, tax agent paid to tax payer. Tax agent collects money and paid to IRD. If it will not be paid, IRD assume it is defaulter.

IA: Do you have the information of tax agent? Do you have the payment made by tax agent as withholding tax?

IRD: At the moment, we don't have retent for the tax agent. According to our income tax law, no provision for finding tax agent.

IA : How you can make control tax agent whether they pay all withholding tax made be sub-contractor?

IRD: He is also a tax payer. He need to make his liability also. So, that is why, he come to IRD. Three copies the agent need to prepare it: one for him, one for sub-contractor and one for IRD. So, he will go to his respective office and then, he will claim for his tax liability. At that time, he has copies of Chalon and sub-contractor already withhold and submitted it, IRD will check it and then, IRD allowed him to deter as a confirm payment. If the tax agent did not pay it, he cannot receive Chalon.

According to law provision, it is the money of the government and the agent needs to pay within one day and otherwise, they can take seven days. But, if the tax agent will not pay in time, there will be penalty by the Ministry. But, in practice, we do not have any notification for the penalty. That is why, the company may be deterred withholding tax, they are afraid of the law but they deter the withholding tax and keep it but how we can find out is sometimes they did not notice it is the financial year ends, so one of the companies may deter withholding tax in March, they take it then they pay it in due. He is a sub-contractor and he claims to the respective office with Chalon but his Chalon mentions that it is due, so the respective

tax officer denies to him and it is not in time payment, according to the law, if you end income within a year, you need to pay advance payment within a year. If it did not pay, there will be 10% penalty.

IA : If there is no information about tax agent, it will be problem.

IRD : Now, we are drafting Administrative procedure law and it will streamline such a kind of thing. In our income tax law, there are many loopholes, so we fix it.

IA : Would you able to provide detailed withholding tax by tax agent for oil and gas company? Because in the reconciliation, we have to reconcile this information with the oil and gas company paid for withholding tax. Is this technically possible to provide this kind of payment?

IRD : If you focus on many companies for this time, it is impossible. In LTO, we have database like last tax payer. If they are agent, we can't provide information for withholding tax also if they made withholding tax. Another problem is that according to notifications, tax payer has to deter their withholding tax within their townships, it will be a little bit difficult for IRD because we have no indicative software at the moment. But, at LTO, You can get just some information about withholding tax also. If we announce last taxpayer, they can pay at LTO as one-stop-shop. But at the moment, some townships have burden of the collection and they tried to collect withholding tax in their area. So, Last Taxpayer Office can provide information in their region, but not cover the entire nation.

IA : For oil and gas companies, you can give for last taxpayer?

IRD : Sample size is large and we have no confident for the accuracy of the data. If you would like to get, we can provide the information from the LTO. We have some confident with this. To reduce companies' list with material threshold is convenient for IRD.

IA : How about information with state lottery in 2014-15 and 2015-16?

IRD : State lottery tax is not related with the extractive sector.

IA : How about capital gain tax?

IRD : Capital gain tax is one of the heading of the income taxes and also involved in CIT. Under the head of the Income tax, Capital gains tax is also the Separate line of the corporate income tax. You can get capital gain tax at some of the LTO.

After material threshold, we will provide capital gains tax for companies including in it.

IA : IRD data show that zero payment by oil and gas company in 2014-2015 and 2015-16.

IRD : We have no database for that matter as in 2014, LTO have not established yet and Last taxpayer office is established in 2015 and so, we cannot provide this information in 2014-15.

IA : All sectors such as mining, gems and jade , oil & gas all involved in LTO?

IRD: Of course. Oil and gas sector is fine at LTO but, other sector such as gems and jade are separate. At LTO, there are two large production gem companies but the numbers are too big.

According to the criteria of LTO, oil and gas sector is one of the criteria. So, the companies in oil and gas sector are organized at LTO. But for jems, mining and others, it is many and we cannot set up threshold for the LTO. So, it will be included in LTO 1, 2, 3 and other areas.

IA : IRD data showed that only 476 and 478 Gems and Jade companies made payments in 2014-2015 and 2015-2016 respectively while the statement of revenues reported by MONREC showed that 1660 and 1411 Gems and Jade companies made payments to MONREC during the same periodes, why?

IRD : Some companies only registered for production and not registered for tax payment.

According to amended Myanmar Gem stone law, if they pay royalty/gems tax, they do not need to pay any other income or commercial tax to IRD. At emporium, they pay 3% service fees to MGE and 7% to IRD.

IA : Why gem and jade companies made payment as corporate income tax to IRD?

IRD : It depends on the condition like production, they don't need to pay any tax,

If Gems and jade company's business is production of jewelry, commercial tax has to be given. So, they need to register commercial tax. It depends on the nature of the business. We cannot call corporate income tax, it is only commercial tax. In 2015-16, Gems can get 7% commercial tax. If the gem production companies import some diesel in their exploration and will resold these to others, they need to pay income tax. So, it is a little bit complicated to explain. It depends on the nature of the business.

IA : Jade and Gem company have other business ?

IRD : In 2014-2015, there is no income tax from royalty and it can be put into other income. But, in 2015-16, Myanmar Gemstone Law is amended and royalty cannot be put into other income and it can be put into corporate income tax.

We have to check with this law in order to know whether 2015-16 is included in it.

IA : Why the number of companies is nearly the same in 2014-15 and 2015-16 although corporate income tax is effective in 2015-16?

IRD : These are the same companies.

In Jade and Gems sector's revenue collection (2014-15), there is no corporate income tax and this is other income.

But, it can also be called corporate income tax but not related with the gems production because it depends on business and according to gemstone law, the gems company do not need to pay corporate income tax because after royalty tax, the company do not have the responsibility to pay corporate income tax.

But, if the company import diesel and not use in their business and resell it at trading, they have to pay corporate income tax not related with the gems. So, for IRD, it is difficult to divide it.

According to Myanmar Gemstone law, commercial tax is 15 percent for raw gemstone if they are sold in MMK and 7% for value-added products.

If they are sold in US dollars, there is no commercial tax and collect 7% for Royalties fee. It depends on the types of currency. It is collected mostly through MGE. For Jewelry shops, it is collected by IRD for trading, and from emporium sales and most of the operation extraction; it is collected by MGE.

IA : Is 7% collected by IRD directly from companies or through MGE?

IRD : MGE collect 10% for royalties and give 7% to IRD and MGE get 3% for service fees.

The flow chart of Jade and Gems (2015-16) is wrong and Royalties 7% tax has to go through MGE to IRD.

IA : Royalties fee is isolated from commercial tax?

IRD : It is not a different type of tax. Royalties fee is like a budget code collected under the name of Commercial tax.

IA : IRD showed that only 37 other minerals companies made payments in 2014-15 and 2015-16 respectively while the statement of revenues reported by MONREC showed that 969 and 1038 other minerals companies made payments the same period.

IRD : There are many companies that apply permission to MoNREC and MONREC gave permission to companies for exploration and get tax, but not IRD if they did not succeed operation. Only if the exploration succeeds, IRD gets tax.

IRD gave 37 companies for the 1st round but in second round, there are 136 companies. (for minerals)

IA : Is there any companies to give from IRD because it is still different with Ministry of Mining data?

IRD : There is time limitation and it is based on manual data, so it is difficult to comprehend the actual data. They have Over 300 units, collect the data and combine it but it is difficult to check which is oil and gas, which is gem companies because revenue officer is changing and is challenging for IRD to chase it. So, they provided the information we have and collected from regions/states.

IRD distribute letters to all of the IRD units, please prepare a report for mining companies but we have no integrated software to prepare the report. Every unit prepare a report at quarter than for mining. In LTO, they have industry code and it is easy to figure out which is the mining company and which is oil and Gas Company, but in other areas, there is no tax payer profile like that. According to the turnover & transfer policy of IRD, the revenue officer is changing from time to time. Another tax officer has no indicated software and everything is manually.

IA : According to amended Gems stone law, corporate income tax is collected by IRD or through MGE?

IRD : For 2015-16, MGE is not responsible for collecting corporate income tax and IRD collect them. Custom collect for export and import.

IA : The number of companies are the same for mining in 2014-15 and 2015-16. Why?

IRD: There is lack of cooperation between ministries although law is amended in 2016. We would like to suggest government Departments should collaborate more and exchange information. It is necessary to give MOM data to IRD in order to check them.

Now, President Office is issuing a notification letter to give income tax for all companies and all are paying it in 2017 and companies registration need to get recommendations from IRD for extension case. So, there will be comprehensive data in 2017.

All of the government agencies if they make a new license or the renew extension, the President Pffice issue a notification like that every Government Ministries when they make a new registration or a renew extension; there will be a tax clear certificate.

4. Decision Points

- To separate corporate income tax and withholding is not OK for IRD to fill in reporting template because in the first report, when reconcile the data, some of the companies tried to put their withholding tax deterred by their sub-contractor, that is why the data the companies provided cannot match with IRD's. It should not be included because it is not their tax liability.
- Concerning with providing detailed withholding tax by tax agent for oil and gas company, if IA focus on many companies for this time, it is impossible and Last Taxpayer Office can provide information in their region, but not cover the entire nation.
- Concerning with last taxpayer for oil and gas companies, IRD can provide the information from the LTO. They have some confidence with this. To reduce companies' list with material threshold is convenient for IRD.
- After material threshold, IRD will provide capital gains tax for companies including in it.
- Last taxpayer office (LTO) is established in 2015 and so, IRD cannot provide payment from oil & gas companies in 2014-15.
- According to amended Myanmar Gem stone law, if they pay royalty/gems tax, they do not need to pay any other income or commercial tax to IRD. At emporium, they pay 3% service fees to MGE and 7% to IRD.
- In 2014-2015, there is no income tax from royalty and it can be put into other income. But, in 2015-16, Myanmar Gemstone Law is amended and royalty cannot be put into other income and it can be put into corporate income tax. IA has to check with this law in order to know whether 2015-16 is included in it.
- According to Myanmar Gemstone law, commercial tax is 15 percent for raw gemstone if they are sold in MMK and 7% for value-added products. If they are sold in US dollars, there is no commercial tax and collect 7% for Royalties fee. It depends on the types of currency. It is collected mostly through MGE. For Jewelry shops, it is collected by IRD for trading, and from emporium sales and most of the operation extraction; it is collected by MGE. The flow chart of Jade and Gems (2015-16) is wrong and Royalties 7% tax has to go through MGE to IRD.
- For Gems and Jade companies number differences between MoNREC and IRD is because there are many companies that apply permission to MoNREC and MoNREC gave permission to companies for exploration and get tax, but not IRD if they did not succeed operation. Only if the exploration succeeds, IRD gets tax.
- In regards with the number of gems & jade companies is nearly the same in 2014-15 and 2015-16 although corporate income tax is effective in 2015-16, these are the same companies and only differences in paying kinds of tax.

- Concerning with the number of other minerals companies, IRD gave 37 companies for the 1st round but in second round, there are 136 companies.
- With regards to differences in companies number between IRD and MOM, IRD have over 300 units in different states/regions and they have no integrated software and all information are collected by manual. So, it is difficult for them to figure out kind of companies and so, it is necessary to give MOM data to IRD in order to check the companies numbers
- Government Departments/agencies should collaborate more and exchange information.

5. Participants

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