



# LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

CONVENIENCE TRANSLATION - ACCURACY NOT GUARANTEED

**Republic of the Union of Myanmar**  
**Revenue Appellate Tribunal**  
**Income Tax Reference No. 1/2022**

Applicant	Vs.	Respondent
PTTEP International Limited (Yangon Branch) No. 2, Sei Myaung Yeiktha Lane 8 1/2 Mile, Mayangone Township, Yangon Daw Thuza San (Authorised representative) 12/A Sa Na (Naing) 181432 Appearing for the applicant	-	Internal Revenue Department Office No. 46, Nay Pyi Taw
Appearing for the respondent	-	U Aung Myo Kyaw Advocate U Tin Htwe, Director (Departmental Representative) Internal Revenue Department
Date of the order	-	21 March 2023

## Judgment

In the case, the tax audit team of the Large Taxpayers' Office found that PTTEP International Limited (Yangon Branch) had made transfers from the operating accounts to the reserve fund account at the time of the cash call and credited the cash call through the reserve fund account in order re-invest earned profits in the business in the 2014-2015 fiscal year, instead of keeping a reserve fund account, and that, according to the bank statements and the evidence, it cannot be determined that there had been a reserve fund account for reinvesting profits earned from the business according to section 27 (b) Foreign Investment Law 2012. Unsatisfied with the assessment of an amount of MMK 22,357,488,551 as non-exempt income according to the tax audit's finding, the applicant appealed to the Head of the Large Taxpayers' Office, but the Head of the Large Taxpayers Office passed an order that the assessment of the tax audit team of the Large Taxpayers' Office was valid because the earned profits were not kept in a reserve fund account in accordance with section 27 (b) Foreign Investment Law 2012, against which the applicant appealed to the Revenue Appellate Tribunal. The Revenue Appellate Tribunal opened and heard the case as Income Tax Appeal No. 7/2020 and confirmed the order of the Head of the Large Taxpayers' Office and dismissed the appeal. Arguing that there are legal issues in the judgment order of



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the Revenue Appellate Tribunal that have to be resolved, the applicant applies to have the case referred to the Supreme Court of the Union as an income tax reference.

The Revenue Appellate Tribunal studied the submissions of the applicant and the respondent and relevant documents in detail. The applicant submitted that according to section 21 (b) Foreign Investment Law 1988, the MIC is the only government authority that may grant an income tax exemption on re-invested profits. With regard to the submission whether the Revenue Appellate Tribunal's consideration that "granting income tax exemptions is not part of the powers vested in the MIC" is legally correct, there is no such consideration in the Revenue Appellate Tribunal's Income Tax Appeal No. 7/2020. Chapter 7 of the Foreign Investment Law 2012 stipulates the duties and powers of the commission, with section 12 setting forth the duties and section 13 setting forth the powers. The granting of income tax exemptions is not listed as a power in these provisions. It can be found only in chapter 12, section 27 of this law that tax exemptions or relief may be granted to investors. It has been found that the Tribunal only considered the findings and the reasons and that there is no legal issue to be resolved.

In the income tax appeal, the applicant stated that PTTEP SA complied with the Foreign Investment Law 1988 by keeping the profits in reserve fund accounts (Deutsche Bank Account No. 0017277300 and Bank of America Account No. 33334262) and reinvesting them within one year, that the MIC exempted from income tax for re-investment the total profit earned in the 2013-2014 income year of USD 103.81 million, and that the Large Taxpayer Office's decision overruling the income tax exemption granted by the MIC is wrong. As section 5 (d) Income Tax Law stipulates that "where benefits in respect of income tax are prescribed in any other existing law, those benefits shall be allowed accordingly," PTTEP SA's income tax exemption entitlement exists only if it is in accordance with the provisions of the Foreign Investment Law 1988 or if PTTEP SA complies with the law. It is obvious that the LTO has the responsibility and authority to verify whether the applicant has fully complied with the provisions of the law. Based on the application and arguments, the current dispute is not a dispute about the income tax exemption granted by the commission, but rather the dispute is about not getting the exemption granted by the commission because the investor failed to comply with the provisions of the law. Because the Tribunal considered all this, it has been verified that there is no legal issue to be resolved.

According to the findings in the appeal, the applicant submitted a clarification according to which the MIC allowed reserve fund accounts to be opened with foreign banks when verifying applications for reinvestment of profits, but according to the documents in the case, it has not been found that the MIC had given permission to open PTTEPI's reserve fund accounts with a foreign bank. In addition, no evidence was submitted in the clarification that the opening of reserve fund accounts (Deutsche Bank Account No. 0017277300 and Bank of America Account No. 33334262) and withdrawals from these reserve fund accounts were verified and approved by MOGE and the MIC. Since the Tribunal reviewed and decided that, whether PTTEPI failed to fulfill its obligations to comply with the law and rules to



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enjoy the permission granted by the MIC was verified and enforced by the Large Taxpayer Office, that it was verified whether the provisions of section 5 (d) Income Tax Law were complied with, and that the decision of the Head of the Large Taxpayer Office, which confirmed the assessment of the tax audit team of the Large Taxpayer Office and dismissed the applicant's (first) appeal, was made in accordance with the law, it can be considered that there was no tampering with the decision of the MIC and there is no legal issue to be resolved.

The Foreign Investment Law 2012 came into force on 2-11-2012, and section 45 of the said law stipulates that investors under the Union of Myanmar Investment Law (State Peace and Development Council Law No. 10/1988) before the promulgation of this law shall be deemed to be investors defined by this law, and section 57 repeals the Union of Myanmar Investment Law (State Peace and Development Council Law No. 10/1988). Because of these provisions, it is clear that PTTEP SA is an investor under the Foreign Investment Law 2012. The disputed income tax issue is the reinvestment in the 2014-2015 fiscal year of profits earned in the 2013-2014 fiscal year. It appears that the MIC meeting held on 16-1-2015 decided to grant the income tax exemption for the reinvestment. In relation to foreign financial transaction matters where the main dispute lies, chapter 13 para. 20 of the Union of Myanmar Foreign Investment Law Procedures provides for the opening of an account at Myanmar Foreign Trade Bank for financial matters, and section 40 (b) Foreign Investment Law 2012 states that when dealing with foreign financial matters, an account shall be opened at a bank that has the right to engage in foreign banking in the Union to carry out financial matters related to the business. Because of these provisions, the Tribunal concluded that PTTEP SA was an investor permitted according to the Foreign Investment Law 2012 and based on the provisions of the Foreign Investment Law 2012, the decision on the (second) appeal was made in accordance with the provisions of the law, so there is no legal issue to be resolved.

Therefore, considering that there is no need to refer the decisions under review in the judgment passed by the Revenue Appellate Tribunal in Income Tax Appeal No. 7/2020 to the Supreme Court of the Union because no legal issues or issues with legal effect, and no reasonable doubts regarding legal issues have arisen, the following order has been made:

### Order

Confirming the order issued by the Appellate Revenue Tribunal's Order No. Khaya (Form)/3/03 (469/222) dated 27-7-2022, this reference by which a reference of the case to the Supreme Court of the Union is applied for is rejected.

Myint Oo  
Chairman

Kyaw Kyaw

Zeya Kyin Yun

Yi Yi Myint

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Member

Win Naing  
Member

Member

Win Tin  
Member

Full Bench

Member

Oo Kyi  
Member

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**Republic of the Union of Myanmar  
Revenue Appellate Tribunal  
Income Tax Reference No. 3/2022**

Applicant	Vs.	Respondent
PTTEP International Limited (Yangon Branch) No. 2, Sei Myaung Yeiktha Lane 8 1/2 Mile, Mayangone Township, Yangon Daw Thuza San (Authorised representative) 12/A Sa Na (Naing) 181432 Appearing for the applicant		Internal Revenue Department Office No. 46, Nay Pyi Taw
Appearing for the respondent		- U Aung Myo Kyaw Advocate - U Tin Htwe, Director (Departmental Representative) Internal Revenue Department
Date of the order		- 21 March 2023

## Judgment

In the case, the tax audit team of the Large Taxpayers' Office found that PTTEP International Limited (Yangon Branch) had made transfers from the operating accounts to the reserve fund account at the time of the cash call and credited the cash call through the reserve fund account in order re-invest earned profits in the business in the 2015-2016 fiscal year, instead of keeping a reserve fund account, and that, according to the bank statements and the evidence, it cannot be determined that there had been a reserve fund account for reinvesting profits earned from the business according to section 27 (b) Foreign Investment Law 2012. Unsatisfied with the assessment of an amount of MMK 20,501,366,807 as non-exempt income according to the tax audit's finding, the applicant appealed to the Head of the Large

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Taxpayers' Office, but the Head of the Large Taxpayers Office passed an order that the assessment of the tax audit team of the Large Taxpayers' Office was valid because the earned profits were not kept in a reserve fund account in accordance with section 27 (b) Foreign Investment Law 2012, against which the applicant appealed to the Revenue Appellate Tribunal. The Revenue Appellate Tribunal opened and heard the case as Income Tax Appeal No. 7/2020 and confirmed the order of the Head of the Large Taxpayers' Office and dismissed the appeal. Arguing that there are legal issues in the judgment order of the Revenue Appellate Tribunal that have to be resolved, the applicant applies to have the case referred to the Supreme Court of the Union as an income tax reference.

The Revenue Appellate Tribunal studied the submissions of the applicant and the respondent and relevant documents in detail. The applicant submitted that according to section 21 (b) Foreign Investment Law 1988, the MIC is the only government authority that may grant an income tax exemption on re-invested profits. With regard to the submission whether the Revenue Appellate Tribunal's consideration that "granting income tax exemptions is not part of the powers vested in the MIC" is legally correct, there is no such consideration in the Revenue Appellate Tribunal's Income Tax Appeal No. 7/2020. Chapter 7 of the Foreign Investment Law 2012 stipulates the duties and powers of the commission, with section 12 setting forth the duties and section 13 setting forth the powers. The granting of income tax exemptions is not listed as a power in these provisions. It can be found only in chapter 12, section 27 of this law that tax exemptions or relief may be granted to investors. It has been found that the Tribunal only considered the findings and the reasons and that there is no legal issue to be resolved.

In the income tax appeal, the applicant stated that PTTEP SA complied with the Foreign Investment Law 1988 by keeping the profits in a reserve fund account (Bank of America Account No. 33334262) and reinvesting them within one year, that the MIC exempted from income tax for re-investment the total profit earned in the 2014-2015 income year of USD 118.07 million, and that the Large Taxpayer Office's decision overruling the income tax exemption granted by the MIC is wrong. As section 5 (d) Income Tax Law stipulates that "where benefits in respect of income tax are prescribed in any other existing law, those benefits shall be allowed accordingly," PTTEP SA's income tax exemption entitlement exists only if it is in accordance with the provisions of the Foreign Investment Law 1988 or if PTTEP SA complies with the law. It is obvious that the LTO has the responsibility and authority to verify whether the applicant has fully complied with the provisions of the law. Based on the application and arguments, the current dispute is not a dispute about the income tax exemption granted by the commission, but rather the dispute is about not getting the exemption granted by the commission because the investor failed to comply with the provisions of the law. Because the Tribunal considered all this, it has been verified that there is no legal issue to be resolved.

According to the findings in the appeal, the applicant submitted a clarification according to which the MIC allowed reserve fund accounts to be opened with foreign banks when verifying applications for



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reinvestment of profits, but according to the documents in the case, it has not been found that the MIC had given permission to open PTTEPI's reserve fund account with a foreign bank. In addition, no evidence was submitted in the clarification that the opening of a reserve fund account (Bank of America Account No. 33334262) and withdrawals from this reserve fund account were verified and approved by MOGE and the MIC. Since the Tribunal reviewed and decided that, whether PTTEPI failed to fulfill its obligations to comply with the law and rules to enjoy the permission granted by the MIC was verified and enforced by the Large Taxpayer Office, that it was verified whether the provisions of section 5 (d) Income Tax Law were complied with, and that the decision of the Head of the Large Taxpayer Office, which confirmed the assessment of the tax audit team of the Large Taxpayer Office and dismissed the applicant's (first) appeal, was made in accordance with the law, it can be considered that there was no tampering with the decision of the MIC and there is no legal issue to be resolved.

The Foreign Investment Law 2012 came into force on 2-11-2012, and section 45 of the said law stipulates that investors under the Union of Myanmar Investment Law (State Peace and Development Council Law No. 10/1988) before the promulgation of this law shall be deemed to be investors defined by this law, and section 57 repeals the Union of Myanmar Investment Law (State Peace and Development Council Law No. 10/1988). Because of these provisions, it is clear that PTTEP SA is an investor under the Foreign Investment Law 2012. The disputed income tax issue is the reinvestment in the 2015-2016 fiscal year of profits earned in the 2014-2015 fiscal year. It appears that the MIC meeting held on 16-1-2015 [*sic*] decided to grant the income tax exemption for the reinvestment. In relation to foreign financial transaction matters where the main dispute lies, chapter 13 para. 20 of the Union of Myanmar Foreign Investment Law Procedures provides for the opening of an account at Myanma Foreign Trade Bank for financial matters, and section 40 (b) Foreign Investment Law 2012 states that when dealing with foreign financial matters, an account shall be opened at a bank that has the right to engage in foreign banking in the Union to carry out financial matters related to the business. Because of these provisions, the Tribunal concluded that PTTEP SA was an investor permitted according to the Foreign Investment Law 2012 and based on the provisions of the Foreign Investment Law 2012, the decision on the (second) appeal was made in accordance with the provisions of the law, so there is no legal issue to be resolved.

Therefore, considering that there is no need to refer the decisions under review in the judgment passed by the Revenue Appellate Tribunal in Income Tax Appeal No. 7/2020 to the Supreme Court of the Union because no legal issues or issues with legal effect, and no reasonable doubts regarding legal issues have arisen, the following order has been made:



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### Order

Confirming the order issued by the Appellate Revenue Tribunal's Order No. Khaya (Form)/3/03 (469/222) dated 27-7-2022, this reference by which a reference of the case to the Supreme Court of the Union is applied for is dismissed.

Myint Oo  
Chairman

Kyaw Kyaw  
Member

Zeya Kyin Yun  
Member

Yi Yi Myint  
Member

Win Naing  
Member

Win Tin  
Member

Oo Kyi  
Member

Full Bench

*[Published in the Myanmar Gazette dated 5 April 2024.]*



## LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

### About Lincoln Legal Services (Myanmar) Limited

Lincoln Legal Services (Myanmar) Limited provides the full range of legal and tax advisory and compliance work required by investors. We pride ourselves in offering result-oriented work, high dependability and a fast response time at very competitive prices. Please do not hesitate to contact us:

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