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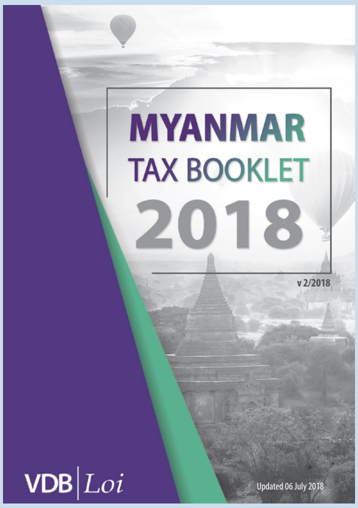
MYANMAR TAX BOOKLET 2018



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TEN WAYS TO MAKE MYANMAR'S TAX ENVIRONMENT MORE ATTRACTIVE FOR FOREIGN INVESTMENT WITHOUT LOSING ANY TAX REVENUE

The slogan of the Dutch tax authorities is "We can't make it more fun, but we can certainly make it easier". A fair, easy, predictable and efficient tax system is an important factor in attracting foreign investment. Sadly, problems or perceived problems with taxes and tax authorities in Myanmar are at the top of the list of issues affecting the business sentiment here. Why do foreign investors think taxes are so difficult here? How can we improve the reputation of the Myanmar tax system, and thereby the country as an investment destination? Is it possible to do that without reducing the tax income of the Union budget? Tax reform is never easy, especially in a country with an economy and a legal system that is in rapid transition. And let's not forget that the perceptions of some investors may be the result of their own internal issues rather than anything the hard working men and women of the IRD can help with. But if we are trying to make things easier, there are some measures the Government might want to consider that would help quite a bit. Here are some considered ideas to facilitate FDI, lift up Myanmar's score on the "ease of doing business" surveys, and all of that without cost to the treasury.

Highlights of this note

- Speed up the signing of double taxation agreements
- Prioritize implementing advance tax rulings for investors so that their tax treatment is predictable
- Accelerate wrapping up tax audits and assessments
- Create a favourable tax treatment for expatriate employees
- Paying taxes could be made easier with a few simple measures
- Grant a 5 year moratorium on withholding tax for all loans used for new investment
- The IRD needs to hold more public seminars and speed up publishing a tax manual and practice notes
- Stamp Duty should be replaced by an updated and modern registration fee
- Stop denying losses and "expenses not commensurate with the volume of business"
- Base the Specific Special Goods Tax on production value instead of retail price

Speed up the signing of double taxation agreements

Double taxation agreement (DTAs) are treaties between countries that make sure cross border investment and trade is only taxed one, not twice. They have a strong signal function to the international investment community. Having many DTAs shows that a country such is ready to adhere to the international tax principles most states use. It indicates that investors in Myanmar and those doing business with Myanmar will receive a predictable, transparent cross border tax treatment. Myanmar already has DTAs with a handful of trading partners, mostly ASEAN countries, and some more have been under negotiation for rather a long time. But this is not enough. It would send a strong sign of encouragement if the process would be sped up and DTAs with trading partners such as Japan, Germany, China, France, Australia and The Netherlands. In fact, the more, the better. Myanmar does not necessarily need to give up any fiscal revenue when signing many tax treaties. Myanmar already does not apply withholding taxes on dividend or income from trade, so these are not items that will cost us. If we examine the DTAs policy of prospective DTA parties, we see that many DTAs with emerging markets such as Myanmar are in fact on favourable terms for the emerging market country.

Prioritize implementing advance tax rulings for investors so that their tax treatment is predictable

Investors do not mind paying tax. What they cannot handle is unpredictable tax. You cannot properly make a business

plan if the tax impact is uncertain because laws and regulations are not clear or the practice is not well known. We can remedy this by introducing the possibility for investors to ask the IRD for an advance agreement on the tax treatment of the business. The applicant submits information and suggests what the tax treatment should be based on the law. If the IRD agrees, the tax assessment will, if the law stays the same, be in accordance with that agreement. Some countries call this an "advance ruling". It is a powerful tool to give investors the predictability they need to carry on their business. Less uncertainty means more investment, and it does not cost the state anything. Advance rulings are actually provided in the currently debated Tax Administration Law, but getting this to work as soon as possible would really help.

Accelerate wrapping up tax audits and assessments

The way the tax authorities carry out their tax audits enormously impacts how foreign investors think about the tax system of a country. We want them to feel treated fairly, efficiently and according to the rules. When financial years "stay open" because the tax authorities have difficulty deciding on an assessment, this creates a lot of aggravation. Much of this can be avoided by providing or better implementing the rule that decisions on issues obtained from a higher tax office must be implemented by a lower tax office. Higher tax offices should be required to make decisions within a reasonable timeframe, as is planned under future laws that are not yet in force. These is no reason why this cannot be implemented now, administratively. In the same vein, self-assessment should really be self-assessment. There is no point to mini-audit a self-assessed tax return when it is submitted. It will be thoroughly audited anyway in due course. Just check the pure basics, accept it and collect the tax. Audit it later. When investors hear there even are debates and rejections when their staff just tries to lodge a tax return, this does not help.

Create a favourable tax treatment for expatriate employees

Foreign and multinational businesses should be incentivised to send expats to Myanmar. Local spending by expats has a favourable impact on the economy in general, and it spurs investment in whole new sectors such as international schools, condominiums, clinics and F&B. Right now, many companies use employees based in cities such as Bangkok and Kuala Lumpur where the cost of living is cheaper and the taxes are lower. Both Thailand and Malaysia have a tax reduction policy for expatriate employees in certain situations with tax rates that are much lower than in Myanmar. We should be competitive with this, and issue a comprehensive Notification offering a wide range of tax benefits to expatriate employees working in Myanmar, such as tax exempt housing allowance, schooling and tax deduction for international health insurance. Because most of the offshore salaries are not taxed in Myanmar right now anyway, this is not a loss for the treasury. And it sends a strong signal that the Government would like to make it more attractive to live and work in Myanmar.

Paying taxes could be made easier with a few simple measures

Actually paying the tax owed can be needlessly cumbersome in Myanmar. Money needs to be wired to just one bank, and last minute changes mean that taxpayers need to line up and wait for hours at that sole bank's branch. The IRD could open bank accounts with every single bank in Myanmar, including foreign banks, and make it much faster and easier for taxpayers to pay. Companies also get needlessly frustrated if they are imposed late payment penalties due solely to the delay in processing cheques by the bank. Payments made at the last moment, but still on time, are often penalized due to processing delays the taxpayer cannot control. The IRD could simply accept the day of payment by the taxpayer as the cut-off date, and not the day the IRD receives the money in its own bank account. We want investors to feel our tax system is fair and workable, and not cause an unnecessarily negative experience.

Grant a 5 year moratorium on withholding tax for all loans used for new investment

The withholding tax on interest paid to a non-resident is 15% in Myanmar, reduced to 10% under Myanmar's DTAs. It is in practice the Myanmar borrowers who have to bear the cost of this tax, which means it becomes more expensive to finance projects. This cost is already very high when it comes to Myanmar. To spur investment in the country, you could reduce that cost by changing the withholding tax. You might waive it, or give a tax credit instead, without costing any tax revenue to the treasury in the long term (because the business expansions created with the loans will hike up the Commercial Tax collections very fast). If need be, you could slightly hike up the withholding tax on service fees to compensate, which is much lower in Myanmar than in any of the ASEAN countries (Myanmar charges 2.5% or 0% while most other ASEAN states apply between 10% to 15%).

The IRD needs to hold more public seminars and speed up publishing a tax manual and practice notes

Investors often complain that the tax rules are not clear, or not well known. Now, this is not always true. I have often noticed that when it comes to tax, people are generally simply not as well informed as they should be. But in any event, we should do what we can to improve transparency and predictability of tax treatment. There are current plans to publish a tax manual, and speeding this up would be a good idea. Holding public meetings to explain the IRD's interpretation and practice or publishing notes on the same goes a long way to help with the lack of sufficiently informed taxpayers. It takes a lot of effort, but the unavoidable effect is that rules are made much clearer. There will be much less of a sentiment that interpretation and application of tax laws is sometimes arbitrary.

Stamp Duty should be replaced by an updated and modern registration fee

The Stamp Duty, a tax using actual seals on physical instruments from the day we did not even have cars yet, is inefficient and probably loss generating if you take into account the massive cost of administering it. Foreign investors and other taxpayers struggle with the ancient categorization and haphazard interpretation that is unavoidable when you try to collect a tax that was written when you could not take an airplane or call anyone on the phone. Pretty much everything that is subject to stamp duty, is also supposed to be registered. Why not just impose or update a modern, online registration fee? No more confusion and complaints, easy to pay and no loss of revenue.

Stop denying losses and "expenses not commensurate with the volume of business"

Loss carry forward is accepted by pretty much every country. It is easy to understand why. If a business makes a loss of 100 in year 1 and a profit of 100 in year 2, the business actually did not make any profit yet. The profit of 100 is offset with the loss of the previous year. If the tax authorities however deny the loss to be offset, you essentially have a taxation on income that the taxpayer never earned. It seems obvious that such denial of losses is detrimental to the opinion investors have of the country they invest in. In Myanmar we encounter this problem too often. There is a deep rooted suspicion of losses and expenses in years the company is not yet doing well. Expenses often get rejected based on the infamous sec. 11B if of the Income Tax Act Law, which is vague and subject to individual interpretation. Because these rules do not exist in other countries, foreign investors are negatively surprised when they get their legitimate expenses and losses rejected on such basis. As this is income that actually does not exist, we should not be trying to tax it and it's not a loss to stop doing so.

Base the Specific Special Goods Tax on production value instead of retail price

The Specific Goods Tax applies to products such as alcohol, tobacco and fuel. Currently, producers and sellers need to go through a needlessly complex process of declaring and then perhaps changing their declarations of retail prices, because the tax is calculated on that retail price. This is very hard to manage in practice. It would be easier for investors to apply it on production, if need be at different rates. You can't know the exact retail price of every litre of gasoline or bottle of beer, and frequent corrections clog the system.

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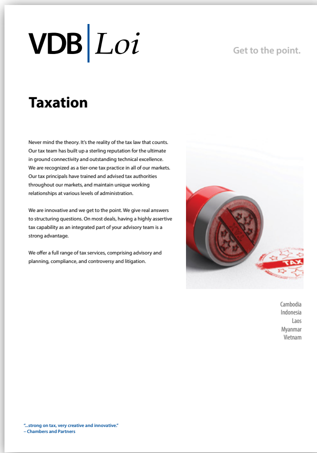

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