

CMA

「2013年新興市場拓展策略」 研討會

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2012/13香港稅率及免稅額概要

直接稅項

2012/13

利得稅：

法團業務	16.5%
非法團業務	15%

薪俸稅：

標準稅率（應用於應評稅入息實額， 即扣除個人免稅額之前）	15%
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間接稅項

2012/13

印花稅：	稅率
股票轉讓	0.2%
不動產轉讓	\$100 – 4.25%

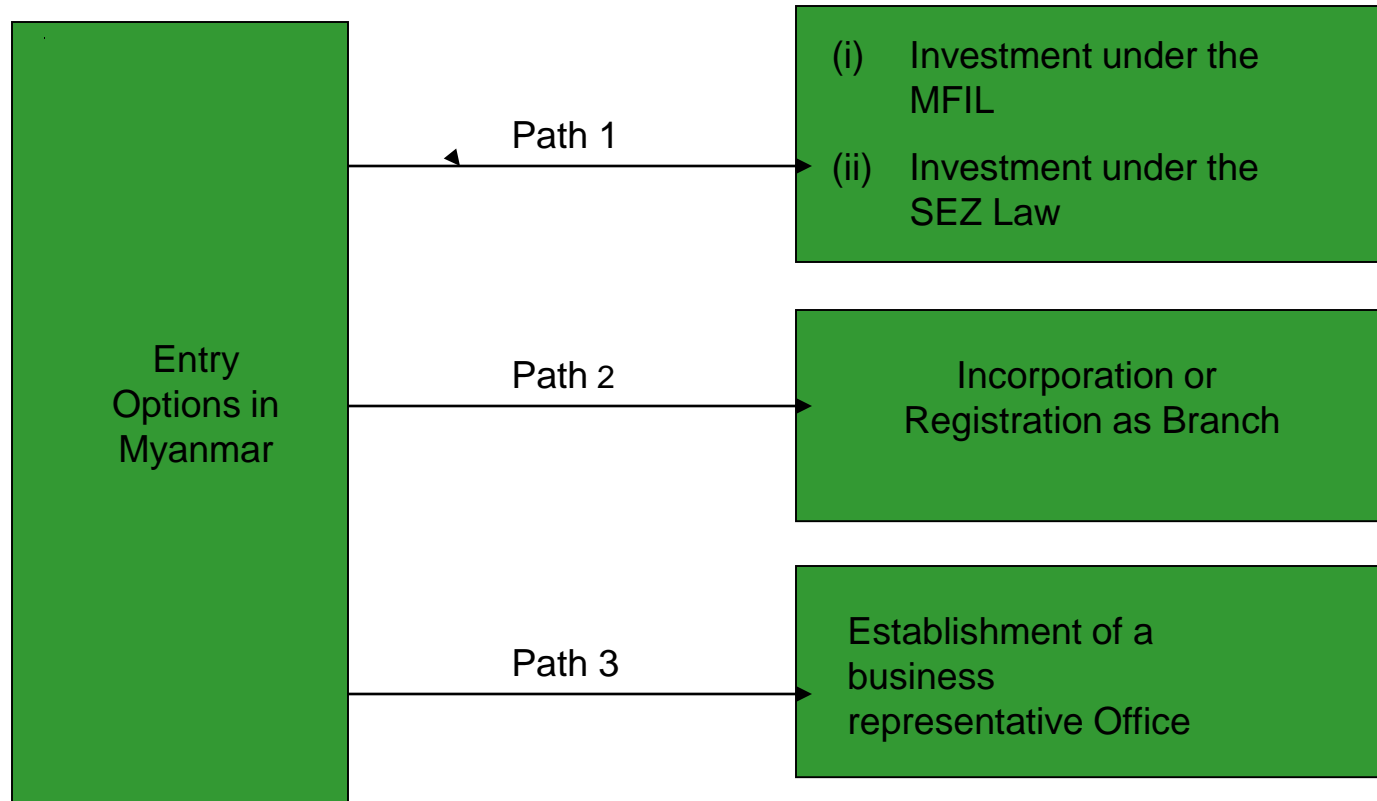
額外印花稅：

SSD

BSD

Doing Business
in
The Republic of the Union of Myanmar

Investment Vehicles



Types of Economic Activities allowed for Foreign Investment

1. Agriculture (JV with Myanmar Citizens or Government)
2. Livestock and Fishery (JV with Myanmar Citizens or Government)
3. Forestry
4. Mining (Feasibility Study & Mineral Exploration) (**Product Sharing Contract** system)
5. Industry
 - (a) Foodstuff
 - (b) Textile
 - (c) Personal Goods
 - (d) Households Goods
 - (e) Leather Products
 - (f) Transport Equipment

5.(g) Building Materials

(h) Pulp and Paper

(i) Chemicals, Chemical Products and Pharmaceuticals

(j) Iron and Steel

(k) Machinery and Plant

6. Construction

7. Transport and Communication

8. Trade

9. Hotel.

- Foreign investors cannot do International Trade but can do domestic Trade Only Except MIC Company (CMP,PSC)
- Foreign investors wants to do Mining, Pearl and Gems business etc., there are relevant legislations ,for instance, Myanmar Mines Law (1994), Myanmar Pearl Law(1995), Myanmar Gems Law (1995).
- Foreign investors have to take MIC approval as well the permit of the Concerned Ministry.

To be carried out solely by the Government

- 1.Extraction of Teak & sale of Teak
- 2.Cultivation & conservation of forest plantation
3. Exploration, extraction and sale of petroleum and natural gas
4. Exploration & extraction of pearls, jade & precious stones & export of the same
- 5.Breeding & production of fish & prawn in fisheries which has been reserved for research by the government
6. Postal and Telecommunication Services
7. Air Transport service and Railway Transport Services
8. Banking Service & Insurance Service
9. Broadcasting Service & Television Service
10. Exploration and extraction of metals & export of the same
11. Electricity Generating Services
- 12.Manufacture of products relating All Rights Reserved Security & Defense

Path I: Investment under the MFIL

* 100% own

* JV (the ratio of Foreign Capital and Citizen Capital may be prescribed in accord with the approval of both foreigner and citizen who has made JV)

•Any investment System contained in contract which approved by both parties

Minimum Investment

Minimum Amount of Capital depend on nature of business shall be prescribed by MIC with the approval of Government

Incentive :

5 years Tax exemption + 1 year (if reinvest), Free Customs Duty on instruments for construction, 50 % income tax relief on export goods, after this period corporate tax 25 % & commercial tax 5%

Types of Land:-Lands owned by the government department; organization; Private lands owned by citizens.

Government & Private

Land Lease : 50 +10+10 yrs

SEZ, Dawei SEZ, Kyauk Phyu, Thilawa

5+3 more years Tax Holiday, Land Lease : 30+15+15+15 yrs

May Scrutinize within 15 days and shall decide within 90 days.

All Rights Reserved

FIL 2012 Company Benefit

- Right to use land Initial 50 years extend 10 year + 10 Years
- International Trade (Export/import businesses)
- **Exemption & Relief**
 - 5 years income tax free,
 - Reinvest within one year, relief on profit accrued
 - Deduct depreciation from the profit
 - Income from exported, up to 50%
 - Individual Foreigner same income tax with Citizens
 - Deduct expense R & D within Myanmar
 - Carry in set off the loss actually within two years
 - Relief from Custom / Internal Tax for equipments
 - Exemption Custom Duty / Internal Tax for the first three year after the completion of construction of Business
 - Exemption custom duty / internal Tax If the volume of Investment is increase,
 - Exemption Commercial Tax (VAT) for Export

The Special Economic Zones Law (2011)

Special Privileges for Investor

- (a) Manufacturing finished products from raw materials, process production by machinery, carrying out warehousing, transport, service providing;
- (b) Transporting and importing raw materials, packaging materials, machinery and equipment;
- (c) Commerce, export and import;
- (d) Selling at local market, other goods produced by investment business, which are sub-standard but consumable except medicines and foodstuffs;
- (e) Carrying out other businesses not prohibited under the existing Laws, with the permission of the Management Committee under SEZ Law and so on.

Responsibilities for the Investor

- (a) Sell the goods produced in the SEZ to the international market;
- (b) Use the imported materials for own production only and not sell them in local market;
- (c) If it is desirable to sell the goods, contained in sub-sections (a) and (b), locally shall obtain the permission and pay stipulated taxes and revenues and so on.

Appointment of local workers/ technicians

- (a) Shall employ at least 25% of Citizens at first 5 year
- (b) Shall employ at least 50% of Citizens at second 5 year
- (c) Shall employ at least 75% of Citizens at third 5 year

Right to Transfer Foreign Currency

Investor may transfer the following currencies:

1. Capital Brought in
2. permitted for withdraw by MIC
3. Net profit after deduct taxes
4. Income of foreigner employee after deduct taxes
5. Liquidated Money
6. Damages

Path II: Incorporation under the Myanmar Companies Act

1. Necessary Permit to Trade & Registration
 - 100 % Foreign wholly owned
 - JV with Citizen Investors
 - Branch/ Representative Office

2. Exempted from obtaining Permit to Trade & Registration
 - JV with the Government
(under Special Company Act 1950)

Types of Company

1. **Public Limited Liability Company**

(At least 7 shareholders, after registration must apply Certificate of Commencement of Business to enable the start the business operation)

In Myanmar, First Private Bank Limited; First Myanmar Invest; etc are public companies.

2. **Private Limited Liability Company**

(Acceptable from at least 2 up to 50 shareholders)

3. **Special Company under Special Company Act 1950** (**JV with Government**)

Requirements For New Company Registration *for Company registration office*

For **Private Company**

1. At least two shareholder (Legal/natural) person are needed.
Copy of Natural person passports ****

2. Each shareholder's Bank confirmation letter mentioned the balance of amount showing at least USD 50000 (for services, Tour & Tourism, Bank representative Office and Insurance Representative Office) and at least USD 150000 (for Industrial , Hotel and Construction) from their Bank ****

3. Intended Activities to be performed

In the case of a **Foreign Branch or Legal Person**, the following shall be furnish in addition to above mentioned documents.

1. Instead of the Company Memorandum and Article of Association, a copy of Head Office's Memorandum and Articles of Association or of Charter, statute or other instruments constituting or defining the constitution of the company****
2. The Annual Report for the last two financial years or if it is the copies of Head Office Balance Sheet and Profit and Loss Accounts for the last two financial years****
3. Appointed letter/ power of attorney for the Authorized Person ****
4. Board of Director's resolution of parent company.
5. List of Board of Director of Parent Company
6. Intended Activities to be performed
7. Where the original Memorandum and Article of Association and other relevant documents are not in English Language authentication of translation into English.

The Myanmar Companies Act (1914)

Benefits

- Stay permit for **3 months, 6 months or 9 months**
- Opening foreign currency account
- Tenure of permit to Trade of Company **3 years**
(**Renewable**)

Rights and Duties of Directors of an Incorporated

Rights and Powers

Subject to the duties and the terms of Memorandum and Articles, a director has the right/ power to:

- Enter into contracts (within the objects of the company) on behalf of the company;
- Not be excluded from properly acting as a director (all directors must be given notice of Board Meetings);
- Inspect and take copies of the company's accounts (this is a statutory right which cannot be altered by the Articles); and
- In concert with the other directors, do all that is necessary and incidental to carrying out the business of the company including issuing shares, refusing to transfer shares (if specifically permitted by the Articles), recommending dividends, making calls on shares, making reserves and investing the company's funds.

Directors' Liabilities/ Duties

1) A director will be personally liable for any loss or damage:

- Entering into contracts beyond the scope of the company's objects;
- Exceeding the powers given to him/ her;
- Breaching his/ her fiduciary duties; and
- Being negligent.

2) Furthermore, the Companies Act voids any provisions (whether in the Articles or a contract) which relieves or exempts a director from, or indemnifies a director against, liability in respect of any negligence, default or breach of duty of which he/ she is guilty.

However, the following provision would be enforceable:

“Every Director shall be indemnified out of the funds of the Company against any liability incurred by him/ her in defending any proceedings whether civil or criminal, in which judgment is given in his/ her favour or in which he/ she is acquitted or in connection with any application under Section 281 of the Companies Act in which relief is granted to him/ her by the Courts.

Shareholders' Rights (1)

- Have their names on the register of shareholders;
- Transfer their shares, subject to any restrictions imposed by the Articles or a Shareholders' Agreement;
- Attend meetings (all shareholders must be given notice of meetings);
- Inspect the statutory registers kept by the company;
- In the case of a further issue of shares, have the chance to acquire the new shares in proportion to existing shareholdings before such are offered to others;
- Receive a copy of the minutes of general meetings upon request;
- Remove a director by extraordinary resolution;
- Receive a copy of the profit and loss statement, the balance sheet and the auditors report;
- Appoint, by special resolution, inspectors to investigate the affairs of the company;

Shareholder's Rights (2)

- Appoint the company's auditor at the AGM; and
- Resolve, by special resolution, to wind up the company.

Shareholders' Liabilities and Duties

Each shareholder is liable to:

- Pay calls on his/ her shares;
- Forfeit his/ her shares if calls are not met
- In the case of winding-up of the company, contribute up to the amount unpaid on his/ her shares
- Unlimited several liability where the company carries on business with less than the prescribed minimum shareholders (two for a private company); and
- Abide by the decisions of the majority unless that majority of shareholders has acted oppressively, fraudulently or *mala fides*.

For Public Company,

For a Public company, the following additional documents shall be submitted before commencing the Business

1. List of Director to act as director
2. List of person who have consented to act as director
3. Agreement to take qualification shares
4. At least 7 share holders (Legal/natural) person are needed. Copy of Natural person passports ****
5. Each shareholder's Bank confirmation letter mentioned the balance of amount showing at least USD 50000 (for Services, Tour & Tourism, Bank representative Office and Insurance Representative Office) and at least USD 150000 (for Industrial , Hotel and Construction) from their Bank ****
6. Intended Activities to be performed

Winding Up of the Company:

1. Compulsory winding up; by the petition of a creditor, disaffected shareholder or the like; and
2. Voluntary winding up: at the request of the shareholders.

Grounds for compulsory winding up

1. The company defaults in filing its statutory reports or in holding its AGM;
2. The company does not commence its business within one year of incorporation or suspends its business for a period of one year or more;
3. The number of shareholders is reduced below the prescribed minimum;
4. Upon petition by a creditor, the company is found by the Court or to be unable to pay its debts; or
5. The Court is of the opinion that it is “ just and equitable “ that the company be wound up.

Grounds for voluntary winding up

- Upon the filing of a *bona fide* petition of the shareholders, based on a special resolution to that effect, the Court may order the winding up of the company.
- Despite a shareholder's special resolution, however, the winding up order is at the discretion of the Court which must be satisfied that there are sufficient grounds for winding up the company.

Path III:

Business Representative Office

- Myanmar Company registered as a official Business Representative under the Ministry of Commerce.
- Order No. 2/89 (The Business Representative Order)

Myanmar Company (Services)

Bankruptcy

- In Myanmar, bankruptcy proceedings are made according to the Civil Procedure.
- There are circumstances in which a debtor commits an act of insolvency when he transfer all or part of his property for the benefit of his creditors, or with the intent to defeat or delay his creditors. Then an insolvency petition may be presented either by a creditor or by a debtor, and the Court may make an order adjudging him as an insolvent in accordance with Section 6 and 7 of the Insolvency Act.

Dispute Resolution

- It is possible for contracting parties to nominate the Myanmar Chamber of Commerce to arbitrate and decisions of the Chamber are subject to Ministry of Commerce sanctions against parties who default on an award;
- Myanmar is decided to sign the **New York Convention**.
Foreign Arbitration Award Enforceable in Myanmar (Vice versa)
- Option to choose an **ASEAN Dispute Resolution Mechanisms**.

The Property Law

Types of Land:

Lands owned by the government department; organization;
Private lands owned by citizens.

MFIL : Land Lease : 50 +10+10 yrs

SEZ :Land Lease : 30+15+15+15 yrs

To Lease land, MIC approval is necessary.

Without MIC permit ,Foreign Investors are not allowed to lease not more than one year. (1987 Immovable Property Restrictions Act)

But, foreign investors can lease immovable property with other ways.

1. A huge amount of deposit to land-lord and monthly rental fees should be paid. (Under the Urban Rent Control Act, 1960)
2. If the property is outside the Urban Area, it is applicable the Transfer of Property Act, 1882.

Taxes in Myanmar

- Corporate Tax - 25 % on Income
- Commercial Tax- 5 % on Services
- Progressive Income Tax on Individuals Salaries – 1 % to 20
- Non resident foreigner (less than 185 days in Myanmar) - 35 % on income

Labor Laws

- Social Security Act, 2012
- Leave and Holidays Act, 1951
- The Settlement of Labor Dispute Law, 2012
- Labor Organization Law 2012

Minimum wages for employees \$ 70 per a month.

Social Security LAW 2012

Current Status - New Regulation, Rule and Procedure are drafting.

Two kinds of Contributions

1. General Insurance (made by the Employers, the Workers and the State)

- Sickness
- Maternity
- Death

2. An Insurance scheme in respect of

- Injury at work
- Occupational diseases. (made Only by the Employers)

Benefits

(a) Sickness benefit

(b) Maternity benefit

(c) Funeral grant

(d) Benefits in respect of injury sustained at work:

- Temporarily disablement benefit;
- Permanent disability pension.

(Employer Contribution Rate 2.5 % and Worker Contribution rate 1.5 % base one worker earning)

Leave and Holidays Act, 1951

Leave

- Employees of private enterprises are entitled to following **Paid Annual leave;**
 1. 6 days casual leave;
 2. 10 days earned leave;
 3. 30 days medical leave;
 4. 21 public holidays (An average)

- **Maternity Leave**

Women employee shall be granted to Maternity Leave according to the Social Security Act.

Working Hours

The Shops and Establishments Act, 1951

- 8 hours per day and 48 hours per week
- 6 days per week

The Factories Act, 1951

- 8 hours per day, 44 hours per week
- 6 days per week
- 16 hours in a week/ 12 hours a week for continuous process for working overtime
- Double of the normal wage for overtime wages

The Settlement of Labor Dispute Law(2012)

- The Conciliation Body
(Making decisions within 3 days or
Handover to Arbitration Body within 2 days)
- The Arbitration Body
(Making decisions within 7 days or
Handover to Arbitration Council within 2 days)
- The Arbitration Council
(Form Tribunal)
- Tribunal
(Making decisions within 14 days or the decisions shall
be final and assume as those of the Arbitration Council)

Intellectual Property

- There is no Trademark Act. But we can protect by way of Registration of Declaration of Ownership of Trademark.

Enforcement

- Civil Remedies (Perpetual Injunction under the Specific Relief Act)
- Criminal Remedies (Under Penal Code)

Border Measures

- Sea Customs Act

*Trademark Law

*Patent law

*Industrial Design law

* & Copy Right law are now drafting.

Financial Regulations

The Financial Regulations

- The Central Bank Law (Current Status- New Central Bank law Drafting)
- Financial Institutions Law

Types of Bank

- State-Owned Bank (MFTB, MICB)
- Private Bank (KBZ, AGD, YOMA, Ayeyarwaddy Bank, so on)
- Semi-Government Bank (INWA, MYAWADDY, MLFTB, so on)

MFTB & MICB and other Private Banks such AGD, Myanmar Apex Banks as are now authorized to allow Foreign Exchange.

Domestic borrowing in foreign & local currency aren't available.

- Foreign Banks are allowed to open as a Representative Bank.

Mining

- **Large Scale Production**_ Commercial production of mineral which requires substantial investment and expenditure or special technical know-how and methods;
- **Small Scale Production**_ Commercial production of mineral which does not require substantial investment and expenditure or special technical know-how and methods.

Tenure of Permit

- Large Scale Production_ not exceeding 25 yrs
- Small Scale Production_ not exceeding 5 yrs

Duty: Rental fees, Security deposits.

Royalty: Gems 5 % to 7.5 %

Metallic Minerals 4 % to 5 %

Environmental Law

- Investors, must:
Apply international sustainable development principles and practices (such as financial disclosure, benefit sharing, conducting EIA and SIAs).
- Conduct inclusive and meaningful EIA and SIAs in accordance with international best practice through a process that ensures access to relevant information, adequate participation of affected communities and public hearings to mitigate the impact of development projects on local communities and the environment.
- Abide by international sustainable development initiatives and mechanisms, such as guidelines on sustainable oil palm development and Forest Law Enforcement, Governance and Trade (FLEGT).
- Foreign investors should refrain from any form of new engagement in the plantation, energy and extractive sectors in Myanmar until the people of Myanmar can meaningfully participate in development decisions, preconditions for responsible investment are in place, and adverse impacts can be mitigated.

Investment protection agreements

Myanmar has investment protection agreements with

*China,

*India,

*Kuwait,

*Laos,

*the Philippines,

*Thailand

*and Vietnam

Thank You



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The law and procedure on this subject are very specialised. This article is a general explanation for your reference only and should not be relied on as legal advice for any specific case. If legal advice is needed, please contact our solicitors.

請注意

本題目之法律及程序十分專門。此文章只屬一般性之解釋，供你參考，而不應被依賴為關於任何特定事件之法律意見。如需法律意見，請與我所律師聯絡。

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