

Investing in Myanmar

November 2012



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Myanmar Market Overview

Market Overview

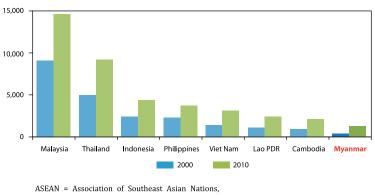
After decades with limited development and modernization Myanmar is now entering a new era. As a result of restrictions imposed by many foreign governments, foreign investments in Myanmar have primarily been from a limited number of countries, focusing on a limited number of sectors. This has caused Myanmar's development to lag behind the rest of the other ASEAN countries, and indeed behind the rest of the world.

Now the scenery is clearly changing. Today Myanmar is attracting a lot of interest from the international business community. According to "Myanmar in Transition", a recent report by the Asian Development Bank, Myanmar has a strong foundation for high growth based on the demographic of the population, providing an attractive low-cost workforce, the rich supply of natural resources and abundant agricultural resources, as well as the potential for tourism.

"Myanmar's recent reforms open up a wide range of economic opportunities (including foreign investment in key sectors that are outdated due to decades of isolation), with its strategic location playing a key role."

(from ADB's report "Myanmar in Transition", published in August 2012)

GDP Per Capita of Selected ASEAN Countries (\$, PPP) (Source ADB)



ASEAN = Association of Southeast Asian Nation GDP = gross domestic product, Lao PDR = Lao People's Democratic Republic, PPP = purchasing power parity. Source: Economy Watch 2012

Myanmar's Real GDP Growth Rates (1950-2010,%) (Source ADB)



Sources: 1950-1987 from Myint 2011; 1988-2012 from ADB-SDBS 2012



Banking System:

Myanmar's banking system requires many improvements to meet with demands from International businesses. Limited access to capital is one of the constraints of doing business in Myanmar.

The Central Bank of Myanmar has eased some of the banking rules and regulations - and has extended the currency exchange and money transfer services to 19 private owned Myanmar Banks.

Foreign owned businesses are allowed to open USD accounts in local banks.

Debit card and Credit card systems were introduced recently, and it is hoped that international cards will be able to be used in Myanmar within one year.

Currency:

Myanmar Kyat (MMK), is the functional currency.

The Kyat was introduced in 1852. From 1998, the Foreign Exchange Certificate (FEC) was introduced to replace the dollar exchange in the black market and is to be abolished by 2013.

In April 2012, Myanmar began a managed floatation of its currency. The daily reference rate is set by the Central Bank of Myanmar.

Land Ownership:

Under the Transfer of Immovable Property Restriction Law of 1987, foreigners are restricted from owning land.

Foreigners are allowed to lease land. In general foreigners can only enter into lease contracts with a maximum duration of one year. Under the new Foreign Investment Law of 2012, foreign companies investing under a permit from the Myanmar Investment Commission can enter lease agreements with the duration of 50 years, with the possible extension of two terms of 10 years each.

Business Sectors:

As of August 2012 there were over 29,000 businesses registered with the Directorate of Investment and Companies Administration, of which over 1,300 were 100% foreign owned companies and branches. However, it is not clear how many of these foreign entities were actually operational.

Small and medium sized enterprises (SMEs) make up the vast majority of business in Myanmar.

Advantages of investing in Myanmar:

- ASEAN membership offers regional trade benefits;
- Strategic location, between China and India ;
- Rich supply of natural resources, including forests, minerals, natural gas, gems and jade;
- Abundant agricultural resources, as well as marine resources;
- High potential for tourism; and
 - Attractive demographic profile of the labor force, providing one of Asia's lowest labor costs.



Setting Up Business in Myanmar



Legal forms of foreign investments

Foreign investors that wish to carry out business activities in Myanmar can incorporate a foreign owned limited liability company, register a branch of a foreign company, operate as a sole proprietor or establish a partnership. Foreign banks can also set up representation offices in Myanmar, but the activities of such offices are very limited.

Foreign investors can own 100% of a limited liability company or partnership, depending on the business of the entity.

Limited liability companies can either be registered under the Myanmar Foreign Investment Law (MFIL), enabling a wide range of benefits and incentives, or under the Myanmar Companies Act (CA), where these benefits are not available.

The current minimum capital requirement for a MFIL company is currently USD 500,000 for a manufacturing company and USD 300,000 for a service company. Under the CA the minimum capital requirement is reduced to USD 150,000 for a manufacturing company and USD50,000 for a service company.

Restrictions on foreign investments

Myanmar currently has a wide range of possibilities for foreign investment, including opening up for 100% foreign ownership. Nevertheless, several restrictions do apply depending on the business activities that are involved.

The 2012 version of the MFIL provides a list of 11 economic activities that are to be restricted for foreign investments. The restricted activities can be summarized as follows:

- activities that affect culture and ethnic traditions;
- activities that can be harmful to people's health or harmful to the environment;
- import of experimental technology, pharmaceuticals and utilities that have not yet been approved abroad;
- manufacturing and service activities as further described by Notification;
- agricultural activities, livestock activities and fishery activities - as further described by Notification; and
- activities conducted within ten miles of the borders of Myanmar, unless carried out in an designated economic zone.

Under the MFIL the Myanmar Investment Commission (MIC) and the Government can approve foreign investments in these activities if this is deemed to be in the interest of the state.

Investment incentives

Companies registered under the MFIL can be granted a wide range of benefits, subject to the approval of the MIC. The benefits include:

- Tax exemption for a period of up to five years, with the possibility of extension for a reasonable period based on the MIC's discretion;
- Exemption from income tax on profits if the profits are reinvested within one year;
- Right to accelerate depreciation;
- Export activities might enjoy relief from up to 50% of the income tax on profits and exemption of commercial tax;
- Right to carry-forward and set-off losses up to three consecutive years from the year the loss is sustained;
- Exemption or relief from customs duty or other internal taxes on machinery equipment, instruments, machinery components, spare parts and materials used in the business that are imported as they are actually required for use during the period of construction; and
- Exemption or relief from customs duty or other internal taxes on such raw materials imported for the first three years' commercial production following the completion of construction.

It should be noted that the new Foreign Investment Law was passed on 2 November 2012. Full implementation of the new law requires a number of detailed regulations to be issued. Thus, the full extent of the new law is not known at the time of writing.

Setting up business

The laws and regulations as well as the practice of the relevant governmental bodies - are subject to rapid changes. Thus, choosing an experienced and up-to-date advisor in Myanmar is extremely important. Accounting/Finance for companies and Myanmar branches of foreign companies

Euro

ANGE CRO

Financial statements

In 2004 the Myanmar Accountancy Council (MAC) issued its own standard accounting system – the Myanmar Accounting Standards – based very closely on International Accounting Standards (IAS).

Under the Myanmar Companies Act (CA) companies must maintain proper books of accounts which are required to be kept at the registered office of the company. MAC is a member of the ASEAN Federation of Accountants (AFA). MAC is in the process of adopting the Myanmar Accounting Standards for Small and Medium Entities.

Audit requirements

In Myanmar, accounting and audit services are restricted activities, which can only be provided legally by 100% locally owned firms. The CA requires the annual accounts of a company to be audited.

Fiscal year / Functional currency

0.658

4.894

043

The fiscal year in Myanmar is 1 April to 31 March. With effect from April 1 2012 the Myanmar Internal Revenue Department (IRD) issued a Notification stating that foreign currency income and expenditures are to be converted to Myanmar Kyats (MMK) in accordance with daily rates set by the Central Bank of Myanmar.





Myanmar Tax Guide



Taxes in Myanmar are in general administered by the Internal Revenue Department, a governmental body under the Ministry of Finance and Revenue. The Myanmar tax system is comprised of fifteen taxes and duties, divided into four main categories:

- Taxes imposed on production and consumption;
- Taxes imposed on income and ownership;
- Customs duties; and
- Taxes levied on the utilization of State owned properties

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Overview



1. Taxation of Companies

Introduction

Myanmar resident companies are taxed on their world-wide income. This does not apply to companies registered under the Myanmar Foreign Investment Laws (MFIL), which are not subject to pay taxes on foreign income. Non-resident companies are only taxed on income from sources within Myanmar.

1.1 Residence

A company is considered to be resident in Myanmar if it is registered under the Myanmar Companies Act or under the Myanmar Foreign Investment Law. Thus, in general entities that are registered in Myanmar are considered to be resident regardless of place of effective management etc..

1.2 Taxable Income

Income tax is charged on the total income of an enterprise, i.e. the total income as computed under each of the following heads of income:

- Profession;
- Business;
- Property;
- Income from other sources; and
- Income from undisclosed sources.

1.3 Capital Gains Tax

Capital gains are taxable at 10% for resident tax payers and 40% for non-resident tax payers. Capital gains for shares in oil and gas companies are subject to between 40% and 50% tax. The rights for Myanmar to impose capital gains tax on non-resident investors are limited in several of Myanmar's DTA's.

The taxable capital gain is calculated based on the difference between the sales proceeds and the cost of the asset, less the accumulated tax depreciation allowed under the Myanmar Income Tax Law.

1.4 Dividends

Under Myanmar tax law dividends received are not subject to Income Tax. Myanmar does not impose Withholding Tax on distributed dividends, regardless of the residency of the recipient.





1.5 Deductions

Expenses incurred in direct relation to the generation of taxable income, and depreciation allowance, including initial depreciation allowance on capital assets, are deductible for tax purposes. Deductible expenses include statutory expenses such as approved pension fund contributions. Bad debts are deductible, but only when such bad debts are finally written off. Expenses which are of a capital or personal nature and which are not commensurate with the volume of business generated are not deductible for tax purposes.

Donations given to approved charitable institutions or funds for religious or charitable purposes are also deductible. However, this is subject to a maximum of 25% of the total taxable income.

1.6 Losses

Tax payers are entitled to carry losses forward for a maximum of 3 years. Losses cannot be carried back. Whilst capital gains are taxable, capital losses cannot be carried forward to set off future capital gains.

1.7 Grouping/Consolidation

There are no grouping provisions or consolidation provisions in Myanmar.

1.8 Tax Depreciation/ Capital Allowances

Depreciation is deductible in accordance with specified rates if the assets are used in the course of carrying on a business. With the approval of the MIC an increased depreciation rate can be applied. Depreciation can be claimed for the whole year irrespective of the date of purchase. Depreciation cannot be claimed for assets that have been sold or transferred during the tax year.

1.9 Interest Expense / Thin capitalisation

Interest on foreign source loans that are approved by the Myanmar Investment Commission (MIC) and the Central Bank of Myanmar are deductible for income tax purposes. For local source loans, the Central Bank of Myanmar determines a maximum interest rate, currently set to 13%. This maximum rate will also apply limited interest deductions for tax purposes. There are no thin capitalisation rules in Myanmar.

1.10 Transfer Pricing

Myanmar has no formal transfer pricing regulations.





1.11 Tax Rates

The current corporate income tax rates in Myanmar are as follows:

Taxpayer category	Tax Rate
Companies incorporated in Myanmar under the Myanmar Companies Act	25%
Entities operating under the Myanmar Foreign Investment Law	25%
Non-resident foreign entities, including Myanmar registered branch	35%
Capital gains	
resident tax payernon-resident tax payertransfer of shares in oil and gas companies	10% 40% 40 - 50%

Payment of Tax

An enterprise in Myanmar is to pay advance tax, on a monthly or quarterly basis. The prepayment is determined in accordance with the project income for the tax year. Tax credits will be factored into the calculation during the assessment.

Companies formed under the Myanmar Foreign Investment Law can be granted tax exemption for 3 years by the Myanmar Investment Commission.

1.12 Tax Administration

Tax Returns

The tax year follows the fiscal year, starting 1 April and ending 31 March.

The annual tax return must be filed with the Office of the Internal Revenue within 30 June the following income year. If a business is dissolved, an income tax return must be filed within one month from the time the business was discontinued. Tax returns for capital gains tax are to be sent within one month after the capital asset was disposed of.





2. Taxation of Individuals

Introduction

Income received from employment, profession, business, property and other income by individuals is liable for payment of Income tax and other indirect taxes. Capital gains from sales of assets will be assessed under Profit tax.

Individual residents in Myanmar are liable for personal income tax and profit tax on Myanmar and foreign source income, whereas nonresidents are subject to income tax and profit tax on Myanmar source income only.

2.1 Residence

A person is resident in Myanmar if the person is "domiciled in" or has a "principal place of abode" in Myanmar. In the case of foreigners; a foreigner who resides in Myanmar for 183 days or more during the income year will be deemed as a resident foreigner; otherwise the foreigner will be deemed as non-resident.

2.2 Employment Income

Employment income includes salary, wages, pensions, bonuses, fees, commissions received and receivable, profits such as the annual value of rent –free accommodation, any subsidies and contribution on behalf of an employee such as a provident fund and interest received there on, but excluding any interest received from one's own contribution to the Government Provident Fund.

2.3 Exemptions and Personal allowances

Employees are granted an annual exemption in the amount of MMK 1,440,000 (approximately USD 1,650). In addition resident employees with children under the age of 18 without income, and children above 18 that are receiving educational instructions, are granted relief of MMK 200,000 per year per child. Furthermore, relief of MMK 300,000 per year is granted for employees supporting a spouse (limited to one spouse).

2.4 Tax Rates

The personal income tax rates are as follows:

Residency status	Income	Tax rates
Resident citizen	All source of income	1% to 20% on Employment, 2% to 30% on income other than salaries, at progressive rate
Foreigners working on a government project	Income received in the country	20%
Resident foreigner	All source inside/ outside of the country	1% to 20% on Employment, 2% to 30% on income other than employment salaries, at progressive rate
Non-resident foreigner (DTA applicable for certain countries)	Income received from the source in the country	35%

Source: IRD 15 March 2012

2.5 Tax Administration Returns and Assessments

Employers are required to withhold income tax from salaries and other benefits paid to employees. Tax deducted from employees is payable to IRD in monthly or quarterly installments.

Tax deducted from income other than from employment is payable to IRD within seven days from the date of deduction.

All individuals with earnings are required to submit an annual personal income tax return to the IRD within 30 June. Individuals whose income is only from employment are not obligated to file a tax return.

The additional tax or refund will be incurred based on the return submitted. The claim for refund is to be made within one year from the date of the receipt of confirmation letter from IRD.



3. Indirect and Other Taxes

3.1 Commercial Tax

The Commercial Tax Law was introduced on 31 March 1990, with effect from financial year 1990/1991. Briefly, the Commercial Tax is a turnover tax levied on goods and services. The law provides certain regulations for the offset of input and output of the commercial tax. This tax is imposed on a wide range of goods and services supplied in Myanmar and on the importation of goods from abroad. The tax is also imposed on the export of goods.

For goods and services supplied in Myanmar, commercial tax is imposed at the time of supply.

For the import of goods, commercial tax is collected by the Myanmar Customs Department at the point of importation in the same manner that customs duties are collected.

Commercial tax is levied according to the schedules of the law. If the goods are those imported from abroad, the tax shall be charged on the Landed Cost and if the goods are those produced within the State the tax shall be charged on the Sales Receipt. In brief, the commercial tax is applicable at the following levels:

- Products as specified in Schedule I covering 70 essential and basic commodities – are not subject to tax if they are produced in Myanmar, but subject to 5% tax if produced outside Myanmar.
- Products as specified in Schedule II to V are subject to 5% tax for both locally manufactured and imported products. If the goods are sold from approved industrial zones the applicable commercial tax is 3%.
- Products as specified in Schedule VI covering specific commodities – where tax is applied at a range from 8% to 100%.
- Services as specified in Schedule VII are subject to 5% commercial tax.

Export of goods under Schedules I to VI is not subject to commercial tax, with the exception of five specific categories. The commercial tax rates for these categories are as follows:

- Petroleum crude 5%
- Natural Gas 8%
- Jade and other precious stone 30%
- Teak log and teak conversion 50%
- Hard wood log and hard wood conversion 50%

Exemption from commercial tax is available if this is considered appropriate by the relevant authorities, particularly as an incentive for a newly established business and for exports. An exemption will only be granted on a case-by-case basis.





3.2 Withholding Taxes (WHT)

With effect from April 1st 2010, with amendments on August 26th 2011, withholding tax is applicable at the following rates:

Type of Income	Rate applicable to resident recipients	Rate applicable to non-resident recipients
Dividends	-	-
Interest	-	15%
Royalties	15%	20%
Payments for purchases of goods in the country under a deed of contract, deed of agreement or any agreement by State Organizations, Development Committees, Co-operatives, Partnerships, Companies and Organizations established under any existing law.	2%	0%
Payments for services under a deed of contract, deed of agreement or any agreement by State Organizations, Development Committees, Co-operatives, Partnerships, Companies and Organizations established under any existing law.	2%	3.5%
Payment for services and purchases of goods in the country, under a deed of contract, deed of agreement or any agreement by a foreign entrepreneur or a foreign company.	2%	3.5%

Certain WHT rates can be reduced under Myanmar's DTA's





3.3 Stamp Duty

Stamp duty is applicable to a number of transactions. Some of the most relevant stamp duties are as follows:

- Sale or transfer of immovable property (outside Yangon) 5% of the value.
- Sale or transfer of immovable property (inside Yangon) 7% of the value.
- Rental of immovable property contract for between one year and three years 1.5% of the value.
- Rental of immovable property contract for more than three years 5% of the value.
- Sale or transfer of shares 0.3% of the value.

3.4 Property Tax

Immovable property situated in Yangon is subject to property taxes, covering general tax (20%), lighting tax (5%), water tax (12%) and conservancy tax (15%). Due to the restrictions on foreign ownership of land these taxes are usually not a direct issue for foreign investors.

3.5 Customs Duty

Most imported goods, with a few exceptions, are subject to customs duties on importation and require to be declared to the Myanmar Customs Department accordingly. The Tariff Law, introduced in March 1992, and all subsequent issued notifications, have standardised and enhanced the system of grouping and symbolising goods for the purposes of international trading. They have also ensured that customs duties are levied in accordance with the spirit of a market oriented economic system. Currently, the customs duties levied on the import of machinery, spare parts and inputs generally range from 0% to 40% of the value of the goods imported. For exports of goods, export duty is levied on commodities.





4. International Tax

4.1 Double Tax Agreements

Myanmar has entered into Double Tax Agreements (DTA) with the United Kingdom, Singapore, Malaysia, Vietnam, Thailand, India, Bangladesh, Indonesia, South Korea and Laos. Under the Myanmar Income Tax Law a DTA needs to be announced before it is to override the provisions of the tax law. Currently only the UK tax treaty has been announced in accordance with the requirement of the tax law. Thus under domestic law application of the DTA, with the exception of the UK DTA, is at the discretion of the tax authorities. It can therefore be advisable to confer with the Myanmar tax authorities before arrangements are implemented.





5. Anti-avoidance Rules

5.1 Introduction

The Myanmar Income Tax Law gives the tax authorities the right to carry out assessments and reassessments in cases where a tax payer fraudulently tries to evade taxes. In such cases there is no statute of limitations in Myanmar. The tax authorities can impose penalty taxes of 50%. Tax evasion can also be a criminal offence, punishable with from three to ten years imprisonment.

5.2 Transfer Pricing

There is no specific transfer pricing legislation in Myanmar.

5.3 Thin Capitalization

There is no specific thin capitalization legislation but there are limitations on the deductibility of interest (see 1.9).

5.4 Controlled Foreign Company (CFC) Provisions

There are no CFC provisions in Myanmar.





Under the Central Bank Law of Myanmar, the Central Bank is given the authority to administer the Foreign Exchange Regulations Act (FERA).

The FERA covers all foreign currency and balances in foreign currency, as well as instruments entitling settlement in foreign currency. According to the FERA transactions in foreign currencies are prohibited unless the transaction is with an authorized dealer or if permission if granted by the Central Bank.

Companies registered under the Myanmar Foreign Investment Law are entitled to repatriate investment funds and profits in the currency of which the investment was made.

Contractual arrangements that are in violation of the FERA are not legally binding.



KPMG Introduction



Turning knowledge into value

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KPMG in Myanmar

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- AFA ASEAN Federation of Accountants
- CA Myanmar Companies Act
- DICA Directorate of Investment and Company Administration
- DTA Double Taxation Agreements
- FEC Foreign Exchange Certificate
- FERA Foreign Exchange Regulations Act
- IRD Internal Revenue Department
- MAC Myanmar Accountancy Council
- MFIL Myanmar Foreign Investment Law
- MIC Myanmar Investment Commission
- MMK Myanmar Kyat
- PE Permanent Establishment
- USD United States Dollar
- VAT Value Added Tax
- WHT Withholding Tax

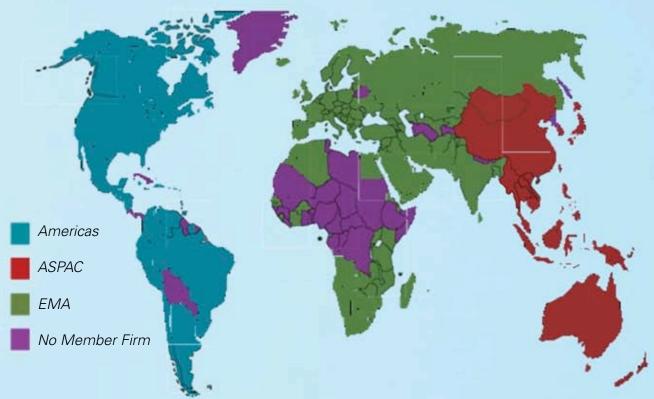




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Americas

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Costa Rica Dominican Republic Guatemala Honduras Nicaragua Panama

ASPAC

Australia Cambodia Hong Kong/China SAR Indonesia Japan Korea Laos Malaysia Myanmar Mongolia New Zealand Philippines Singapore Taiwan Thailand Vietnam

EMA

Africa Austria Belgium Cyprus Denmark Finland France Germany

Greece Iceland Ireland Italy Luxembourg Morocco Netherlands Norway Portugal Spain Sweden Switzerland Tunisia Turkey UK

Africa sub region

Angola & Mozambique Botswana Ghana Kenya, Tanzania & Uganda Malawi Mauritius Namibia Nigeria Sierra Leone South Africa Swaziland Zambia Zimbabwe

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Albania Bulgaria Croatia & Bosnia Czech Republic Estonia Hungary Latvia Lithuania Macedonia Poland Romania & Moldova Serbia & Montenegro Slovakia Slovenia

CIS sub region

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MESA sub region

Afghanistan Bahrain Egypt India Iran Iraq Kuwait Lebanon Oman Pakistan Qatar Saudi Arabia Sri Lanka Syria UAE Yemen

TOG sub region

Anguilla Bahamas Bermuda Caricom Cayman Islands & BVIs Channel Islands Isle of Man Malta Turks & Caicos Islands

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