CONSEQUENCES OF TAX INCENTIVES FOR FOREIGN DIRECT INVESTMENT IN MYANMAR

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Abstract

In order to promote a particular economy, the Myanmar Government aims at attracting Foreign Direct Investment (FDI) by offering tax incentives (Tax concessions) in the form of tax holidays, for FDI including domestic investments and other allowances. However, such generous fiscal incentives to attract FDI could hinder the government's efforts in building fiscal policy space. Moreover, in making investment decisions, the investors often emphasize on the other considerations such as relatively low-cost labor, political situation, etc rather than the tax incentive system. Thus, such tax incentives may have only caused the waste of revenue costs because the incentives go to the investments. In this situation, tax reforms in the other revenue laws, other than the incentives regime, have been made by increasing the domestic income tax and the other commercial tax. Thus, this paper discusses the consequences of tax incentives that are offered to Foreign Direct Investment in Myanmar which can lead to adverse impacts to the local revenue system by causing revenue loss. This paper also analyzes the legal issues related to current Revenue Laws and Myanmar Investment Law, 2016. It is found out that the current Myanmar Investment Law, 2016 needs more specific provisions relating to the tax incentives with respect to the terms of relief which can lead to revenue cost.

Keywords: Tax incentives, Foreign Direct Investments, Revenue Loss

Research Methodology

This paper used the descriptive methods by analyzing both primary data from legislations and secondary data from literature, government's websites, official publications, and analytical review on tax incentives for FDI in development of the Myanmar economy as well as the consequences of offering tax incentives for FDI in the domestic revenue system. Data utilized in this paper are collected from legislations, literature books, research papers, Publications, Journals and relevant websites. First, it studies the nature of tax incentives and linkage between tax incentives and FDI. Second, it studies the tax incentives which are currently offered to FDI in Myanmar legislation. Finally, it discusses whether the tax incentives for FDI can have adverse impacts to the local revenue system by causing revenue loss.

Introduction

In order to promote and facilitate both foreign and domestic investment in the economy and open more economic sectors to private investment, Myanmar Government enacted a new investment law in April 2017. Such law offers as an investment incentive to investors; Corporate Income Tax (CIT) holiday, Tax-free profit if reinvested, depreciation, equal income tax rate, R&D deduction, exemption for imports of machinery, equipment, materials, spare parts, construction materials that cannot be purchased locally, exemption for raw materials and semi-finished goods, Refund of tax and duty in case of export. Moreover, in order to enhance the profitability of a newly established business or expansion of an existing business which will contribute to the country's economic objectives, Myanmar Investment Law and the Myanmar Special Economic Zone Law grant relief from customs duties on imports of equipment and construction materials which enables a firm to reduce its capital requirements and lower its fixed costs. Relief from duties on imports of raw and semi processed materials and of components

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generally provides a competitive advantage in establishing a domestic or foreign market.[2] Since most of the tax incentives are introduced after other deficiencies in law and administration are remedied and are directed to areas of economic activity that the country wishes to develop, it is important to analyse that whether such exemptions and reliefs help in development of Myanmar Economy and trade relation.

A common objective of tax exemptions and reliefs in Myanmar is regional development. Therefore, investors in designated regions (usually the more remote, economically less-developed regions of a country or regions with high levels of unemployment) receive tax holidays, investment allowances, or accelerated depreciation. However, a serious disadvantage of offering tax incentives to attract investment is that, to the extent that enterprises that would have invested in any event claim them, tax revenue is lost without any corresponding benefit to the host country. Moreover, this can lead to pressure for similar treatment from other deserving sectors. This pressure is much more difficult to withstand once some targeted incentives have been given. Therefore, in a number of countries, both developing and industrial, the incentives have spread over time to other activities, and removing the incentives once the reason for them has gone has been difficult politically. While any one targeted incentive may not involve a significant revenue cost, the total for all the resulting incentives can sharply erode government revenues from the business sector.

Nature of Tax Incentives

Traditionally, Governments have used the tax incentives (sometimes also referred to as fiscal incentives) as a tool to promote a particular economic goal.[3] Tax incentives may be defined as any incentives that reduce the tax burden of businesses or enterprises in order to attract them to invest in particular projects or sectors. They are exceptions to the general tax regime.[4] It is also defined as a measure that provides more favorable tax treatment of certain activities or sectors compared to what is granted to the general industry.[5] Tax incentives characterize a means to attract socially beneficial investment[6] by lowering the tax liability of the investors[7], especially in countries which have a weak investment environment and limited capability to address such weakness.[8] In such a case, investors may be entitled to the direct and quantifiable monetary benefits.[9] These may be included in any part of the tax code such as the corporate income tax, personal income tax, value-added and excise taxes, customs tariffs and investment and the other related laws.[10] These are preferential tax treatments which are offered to a selected group of taxpayers and some form of exemptions such as tax holidays, credits, investment allowances,

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[2] George E. Lent, (1967) "Tax Incentives for Investment in Developing Countries" *International Monetary Fund* Vol-14 No.2, p-251.

[3] United Nations, (2018) "Design and Assessment of Tax Incentives in Developing Countries: Selected Issues and Country Experience", p-6.

[4] United Nations Conference on Trade and Development, 'Tax Incentives and Foreign Direct Investment' https://unctad.org/system/files/official-document/iteipcmisc3_en.pdf.

[5] Klemm (2010), "Causes, benefits and risks of tax incentives", *International Tax and Public Finance,* Vol-17, p-315.

[6] Janet Stotsky, (2024) "Tax Incentives and Investment" *Asian Development Bank,* Issue 54, p-2.

[7] International Institute for Sustainable Development, "Revisiting Tax Incentives as an Investment Promotion Tool" https://www.iisd.org/itn/en/2024/01/13/revisiting-tax-incentives-as-an-investment-promotion-tool/.

[8] Janet Stotsky, (2024) "Tax Incentives and Investment" *Asian Development Bank,* Issue 54, p-2.

[9] International Institute for Sustainable Development, "Revisiting Tax Incentives as an Investment Promotion Tool" https://www.iisd.org/itn/en/2024/01/13/revisiting-tax-incentives-as-an-investment-promotion-tool/.

[10] Janet Stotsky, (2024) "Tax Incentives and Investment" *Asian Development Bank*, Issue 54, p-2.

preferential tax rates and import tariffs or customs duties and deferral of tax liability.[11] Thus, it can be grouped into a number of categories such as investment allowances and tax credits, timing differences, reduced tax rates, and free economic zones.[12] Tax incentives may be classified into two categories depend upon its nature, i.e., profit-based tax incentives (which reduce the amount of payable tax by granting investors tax holidays or reducing the applicable tax rate) and cost-based tax incentives (which defer the payment of tax by the extension of extended loss carry-forward periods or accelerated depreciation).[13]

The use of tax incentives depends upon the varying reasons based on the developing status of the countries. Developed or advanced countries tend to use such incentives as a spare tool and mostly in the form of enhanced cost recovery of investments under the corporate income tax. However, developing or transition countries tend to use that more broadly in the corporate income tax, consisting of the form of tax holidays, but also across the range of tax instruments.[14] In the former countries, such incentives are incorporated in the income tax law while in developing countries, it has been used in the form of the combination of targeted and more general incentives which is included in the income tax law, the investment laws and other laws, or simply government decrees.[15] In some cases, the incentives may be seen as a counterweight to the investment disincentives inherent in the general tax system especially in transition countries. However, in other countries, the incentives are proposed to offset the other disadvantages that investors may face, such as a lack of infrastructure, complicated and antiquated laws, and bureaucratic complexities and weak administration, in the tax area or elsewhere.[16]

The role of tax incentives in promoting FDI has been subjected to many studies, but their respective advantages and disadvantages have never been clearly established. Some stated that tax incentives are bad in both theory (since they distort investment decisions) and in practice (since they are often ineffective, inefficient and prone to abuse and corruption) for foreign direct investments. Even though the tax incentives are used as a means for a country's economic development, they also entail forgone revenues and increase administrative cost and complexity, cause undesirable distortions in investment behavior, and encourage corruption and rent-seeking.[17] At first, tax incentives seem to be costless since they do not appear to affect the current fiscal system or budget. However, they may impose significant costs such as revenue loss, low economic efficiency, increased administrative and compliance costs, and excessive tax planning and tax evasion that may exceed their benefits and considerably erode the general tax base.[18] Thus, it is necessary to find the right balance in using tax incentives to ensure that their benefits exceed the costs.

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[11] United Nations, (2018) "Design and Assessment of Tax Incentives in Developing Countries: Selected Issues and Country Experience", p-5.

[12] Ibid.

[13] International Institute for Sustainable Development, "Revisiting Tax Incentives as an Investment Promotion Tool" https://www.iisd.org/itn/en/2024/01/13/revisiting-tax-incentives-as-an-investment-promotion-tool/.

[14] Janet Stotsky, (2024) "Tax Incentives and Investment" *Asian Development Bank*, Issue 54, p-2.

[15] Zee, H., Stitsky, J.G., Ley, E (2002), "Tax incentives for business investment: a primer for policy makers in developing countries", *World Development*, Vol-30, p-1497.

[16] Vann David Holland and Richard J. Vann, (1998) "Income Tax Incentives for Investment" *International Monetary Fund* Vol-2, p-1.

[17] Janet Stotsky, (2024) "Tax Incentives and Investment" *Asian Development Bank*, Issue 54, p-10.

[18] United Nations, (2018) "Design and Assessment of Tax Incentives in Developing Countries: Selected Issues and Country Experience", p-6.

Tax Incentives for FDI in Myanmar

In order to reduce the effective tax burden for a specific project, Myanmar Investment Law offers the exemptions and reliefs for income tax as an incentive to some investment activities. Income tax exemptions shall only be granted to sectors that the Commission has specified as sectors that are promoted for investments.[19] With respect to the income tax exemption, designated the less developed regions as Zone (1), the moderate developed regions as Zone (2), and the adequate developed regions as Zone (3), the Commission shall, with the approval of the Government, issue a notification and may grant income tax exemptions to investment business in Zone (1) for a period of 7 consecutive year including the year of commencement of commercial operation, investment operation, investment businesses in Zone (2) for a period of 5 consecutive year including the year of commencement of commercial operation, and investment businesses in Zone (3) for a period of 3 consecutive year including the year of commencement of commercial operation.[20]

The designation of the zones is subjected to change depending on the development in the respective regions. MIC, in exercise of the powers conferred under Sec-100 (b) of MIL, issued a notification regarding to the Designation of Development Zones on 22 February 2017. In accordance with this notification, 162 areas are designated as Zone 1: Less Developed Regions, 122 as Zone 2: Moderate Developed Regions and 46 areas as Zone 3: Developed Regions.[21] In exercises of the power conferred under section 43 and sub- sec (b) of Sec- 100 of the MIL, MIC has prescribed 193 investment promoted sectors with the approval of the Union Government by notification. Such investment promoted sectors shall be granted income tax exemptions if it is applied to MIC.[22]

Furthermore, the law also offers such exemption or relief in case of the reinvestment activities. The Commission may scrutinize and grant (a) exemption or relief from income tax if the profits obtained from the investment business is reinvested in the same business or in a similar type of investment business within one year, (b) right to depreciation for the purpose of income tax assessment, after computing such depreciation from the year of commencement of commercial operation based on an accelerated depreciation rate (which is less than the stipulated lifetime of the asset) and (c) right to deduct expenses from assessable income incurred for research and development (R&D) related to the investment activities/business required for the development of the country and carried out in the country.[23]

If such businesses operate in accordance with this Section, such businesses may reinvest the profits obtained during the exempted fiscal year in the next following fiscal year in the same business or any similar type of business and the income shall be exempted on this profit. But, if a business reinvests the profits obtained during the fiscal year prior to reinvestment exemption in the next following fiscal year, income tax exemption shall not be granted although that business is granted income tax exemption on reinvestment of the profits arisen from the businesses by MIC in accordance with this Section.[24] For example, reinvesting the amount of 1,000,000,000

[19] Section-75 (c), The Myanmar Investment Law 2016.
[20] Section 75 (a), The Myanmar Investment Law 2016.
[21] Myanmar Investment Commission, Designation of Development Zone (No. 10 / 2017, 22 February 2017).
[22] Myanmar Investment Commission, Classification of Promoted Sector Notification (No. 13 /2017, 1 April, 2017).
[23] Section-78, Myanmar Investment Law, 2016.
[24] Ministry of Planning and Finance, Application of Income Tax Exemption on Reinvestment, Granted Under Myanmar Investment Law (No.1/2021, 30 June 2021).

MMK in 2017-2018 fiscal year (Assessment Year) which is out of the total profits of 2,000,000,000 MMK obtained in 2016-2017 fiscal year (Income Year) is not entitled for reinvestment exemption.[25]

Furthermore, in Myanmar, the Commission may scrutinize and grant (a) exemptions and reliefs from customs duty and other internal duties and taxes or both of machineries, equipment, instruments, machinery components, spare parts, construction materials unavailable locally, and materials used in the business, which are imported as actually required, during the construction period or during the preparatory period of the investment business, (b) exemptions and reliefs from customs duty and other internal duties and taxes or both on the importation of the raw materials and partially manufactured goods conducted by an exported-oriented investment business for the purposes of the manufacture of products for export, (c) reimbursement of customs duty or other internal duties and taxes or both on imported raw materials and partially manufactured goods which are used to manufacture products for export, and (d) if the volume of investment is increased with the approval of the Commission and the original investment business is expanded during the permitted period of investment, exemption or relief from the customs duty or other internal duties and taxes or both on machineries, equipment, instruments, machinery components, spare parts, materials used in the business, and construction materials unavailable locally, which are imported as they are actually required for use in the business which is being expanded as such.[26] The finished products which are manufactured by the raw materials or the partially manufactured goods imported with tax exemption or relief shall be fully exported and not be allowed for the local sale.[27]

Moreover, with the purpose of attracting the investors, the Myanmar Special Economic Zones Law, 2014 (Myanmar SEZ Law) also grants a generous tax incentive such as a corporate tax holiday of up to seven years, and a subsequent extended period of reduced corporate tax rate, as well as deductions linked to R&D investments and local staff training activities. The Myanmar SEZ Law specifies that businesses in the free zone and promotion zone receive income tax exemptions for the first seven or five years, respectively, followed by a 50% reduced tax rate for the second five years, plus an additional five-year reduced rate on reinvested profits. Then the standard corporate tax rate of 25% applies.[28] Dividends paid out to shareholders from taxed profits are exempt from dividend tax. Additionally, free zone investors are exempt from customs duties and commercial taxes on all imports used for production (including imports from promotion zones), while promotion zone investors can apply for exemption on imported capital goods only. The investors may entitled to enjoy the exemptions of customs duties and other relevant taxation for five years from the business commencement on the import of equipment and instrument not for sales and their required spare parts, the construction materials for factory, warehouse and own office, the motor vehicles and other materials which are essential for the business, and fifty percent relief of the custom duties and other taxation for the consecutive five years.[29] Moreover, expenses related to staff training and research activities incurred by investors in free zones can be deducted from taxable income.

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[25] Ibid.

[26] Section 77, Myanmar Investment Law, 2016.

[27] Ministry of Planning and Finance, Announcement for the Application of Tax Exemptions or Reliefs under Section 77 (b) of the Myanmar Investment Law (No.35/2017, 30 March 2017).

[28] Section 32, Special Economic Zones Law, 2014.

[29] Section 44, Special Economic Zones Law, 2014.

Therefore, the Myanmar Government broadly grants tax holidays based on the location of the investment, including in under-developed areas and also to certain economic activities (e.g. skills development, R&D, environmental protection) by studying these two laws (the Myanmar SEZ Law and the Myanmar Investment Law). However, companies engaged in 'non-promoted' activities will not receive an income tax holiday.[30]It is directed to new firms and is not available to existing operations.

Table 1: Tax Incentives to FDI in Myanmar under Myanmar Investment Law and the Special Economic Zone Law

		Inside SEZs		Outside SEZs
Law		SEZ Law		Investment Law
Approval		SEZ Management Committee		Myanmar Investment Commission
Tax exemptions and reductions	Commercial tax/ VAT	Free Zone	Exemption	No exemption
		Promotion Zone	Exemption for 5 years	
	Corporate income tax (CIT)	Free Zone	Exemption for 7 years 50% reduction for next 5 years 50% reduction for next 5 years for reinvested profits	Exemption for promoted sectors only, for 3, 5 or 7 years depending on development designation of location
		Promotion Zone	Exemption for 5 years 50% reduction for next 5 years 50% reduction for next 5 years for reinvested profits	
	Dividend tax	Free Zone	Exemption on dividends paid out from profits for which CIT was paid	No exemption
		Promotion Zone		
	Deductions	Free Zone	Local staff training and R&D activities	R&D activities
		Promotion Zone	Not specified	
Customs duties		Free Zone	Exemption on import of capital goods, intermediate goods and raw materials (including from Promotion Zone)	Exemption on import of capital goods during the construction period or during the preparatory period of the investment; Refund on import of raw materials and intermediate goods for the manufacture of export products
		Promotion Zone	Exemption on capital goods for 5 years 50% reduction for next 5 years Refund on import of raw materials and intermediate goods for the manufacture of export products	

Relation between Tax Incentives and Foreign Direct Investment

The impact of tax incentives on FDI is ambiguous. Over the past decades, most of the supervisors of international Investment and Econometric analysis have shown that tax incentives are not the most powerful and essential tool in influencing the decisions of multinationals in choosing their locations.[31] Thus, in making investment decisions, investors often emphasize the unimportance of tax incentives compared with the other considerations. Firstly, firms analyze the country's basic economic and institutional situation. In case of making investments in developing and transition countries, investors consider the cost of labour, and the other considerations included in large-scale investments such as the legal framework of market economy and political situations, policies on land lending and[32] whether countries have stable macroeconomic policies

[30] Charltons, 'Myanmar Investment Law', https://www.charltonsmyanmar.com/investment-law/.

[31] Alina Cristina, (2012) "The Effectiveness of the Tax Incentives on Foreign Direct Investments" *Journal of Public Administration, Finance and Law,* p-56.

[32] Vann David Holland and Richard J. Vann, (1998) "Income Tax Incentives for Investment" *International Monetary Fund* Vol-2, p-2.

and manage well the critical macroeconomic variables, such as inflation, interest rates, and exchange rates.[33] Also in Myanmar, foreign investors desire to operate in industries because of its abundance of young and cheap labour which is an asset for labour-intensive and low-skilled light manufacturing activities.[34] Thus, there are numerous non-tax-related factors that bear on investment decisions and income tax exemption was perceived as a negligible stimulant for investment decisions.

Moreover, taxpayers desire to be able to predict the tax consequences of their projects or actions which need clear laws (that have stability). In most developing countries, the tax laws are not clear, overlap in offering tax incentives in different laws and may be subject to frequent revisions which may have the potential to cause difficulty in long-term project planning.[35] Thus, the administration of the law is as important as the law itself and hence, it is obvious that the tax administration may cause difficulty for the investors in coping with their business whether in providing timely and consistent interpretations of the law or in enforcing the law appropriately.[36] Thus, most stated that tax reliefs or exemptions are the tools that give compensation for weak negative factors that are found in a climate of investment. Thus, rather than tax incentives, the general tax system is more important in relation to Foreign Direct Investment.

Discussion

In attracting investments, tax incentives have not by and large been successful specifically in Foreign Direct Investment. Firstly, this can only lead to the country's revenue loss because of the reason that the incentives only go to the Investment by way of imposing serious costs and there is no return to the economic development of the country. However, exemptions or reduced tax rates on corporate income tax (CIT), tax deductions or credits on expenses (e.g., R&D), and accelerated depreciation of assets are the most common form of incentives that are used under Myanmar Investment Law and Myanmar Special Economic Zone Law. Among them, the tax holidays can have a significant impact on fiscal costs.[37] The incentives offered under such two laws are the most generous in the region (along with Cambodia, Indonesia, Lao PDR and VietNam), as a result of the long period of reduced CIT rate.[38] For example, while the Cambodia is the least generous in the region, the forgone revenue due to tax incentives was estimated to amount to 6%.[39] Thus, many regional peers have abolished the reduced tax rate or tax incentives in zones which may avoid creating a dual regime system that can be a source of complexity and distortion.[40] With respect to Myanmar's tax regime, the World Bank estimated MMK 41 billion (approximately USD 27 million) has been lost out by the Myanmar Internal Revenue Department because of the income tax exemptions. Moreover, from the International Monetary Funds, it is estimated that with regards to the corporate income tax, "overly generous and discretionary tax incentives are considered to be a direct cost exceeding 25% of the total income tax revenue.[41]

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[33] Janet Stotsky, (2024) "Tax Incentives and Investment" *Asian Development Bank*, Issue 54, p-2.
[34] OECD, (2020) "OECD Investment Policy Review Myanmar 2020", p-31
[35] Vann David Holland and Richard J. Vann, (1998) "Income Tax Incentives for Investment" *International Monetary Fund*, Vol-2, p-3.
[36] Ibid.
[37] OECD, (2020) "OECD Investment Policy Review Myanmar 2020", p-206.
[38] Ibid 207.
[39] OECD (2018), OECD Investment Policy Reviews: Cambodia 2018.
[40] OECD (2018), OECD Investment Policy Reviews: Cambodia 2018.
[41] Sebastian Sahla and Alison Ken, (2020) "Fair Finances: How tax and social spending can support the reduction of poverty and inequality in Myanmar" *Oxfam & ActionAid Policy Brief*, p-13.

Hence, prioritizing industries may also be problematic and may not be suitable for Myanmar. In Myanmar, Government revenues largely depend upon the corporations and economic enterprises. Because of the such low rate or exemptions and reliefs, it may have an adverse impact on Myanmar's revenue regime and could hinder the standard of living and the economic development with the reasons that tax incentives are intended to encourage investment in certain sectors or geographic areas, they are rarely provided without conditions attached.

Secondly, according to Sec-75 of the MIL, 2016, the income tax exemptions are designated to the specified zone for a respective period. The Ministry of Investment and Foreign Economic Relations stated that "In the view of the balanced development of the regions and states, in matters of the income tax exemption, zones have been set according to development, and three, five and seven years per zone. Income tax exemptions are not given to all businesses, but only to those engaged in investment sectors necessary for the development of the state, thus regulating the state's income and development". It also mentioned that the incentives are only granted to the promoted sectors and not offered to all investment activities and thus, the revenue loss will not be faced.[42] Generally, There are two primary sources of the cause of the tax revenue losses from tax incentives; (1) forgone revenue from projects that would have been undertaken even if the investor did not receive any tax incentives and lost revenue from investors and (2) activities that improperly claim incentives or shift income from related taxable firms to those qualifying for favorable tax treatment.[43] In this case, the provisions under Sec-75 may be similar to the first situation. Thus, it may be denoted that the revenue loss will occur if the investment activities are only operated during the incentive periods and there are no benefits to the country at all. The revenue loss will occur in case of the investment in short-term, high-profit projects. Because of the reasons that these projects would occur even though there are no tax incentives, the tax incentive is a pure windfall to them.

Finally, the harmonized taxation system is one of the important factors in a country's revenue system. According to Section 5(d) of the Income Tax Law and the Sec-80 of the Myanmar Investment Law, if there are the provisions relating to the exemptions and reliefs with regard to the income tax and the other kinds of taxes, it must be carried out in accordance with the MIL and Myanmar SEZ Law. Except the exemptions and reliefs under section 75, 77 and 78, other taxes shall be carried out in accordance with relevant tax laws.[44] Moreover, the MIC may approve or reject some or all of the application of the Tax Incentives requested by the Investor, and may grant a Tax Incentive in whole or in part in accordance with conditions.[45] However, in Rule 94 of the Myanmar Investment Rules 2017, it is provided that the MIC may refuse to grant a Tax Incentive if the Investor or an Associate has within the previous 3 years discontinued or significantly reduced a prior Investment for which a tax incentive was given under any law or has not complied with applicable tax laws.[46] In this case, it may be misunderstood that the investors may be entitled to apply the tax incentives besides the MIL and Myanmar SEZ Law.

Moreover, in accordance with the Rule-114, the power in relation with the tax exemptions and reliefs for investments activities are also conferred to the Internal Revenue Department by

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[42] MIFER, Article "Myanmar's Investment Laws Part (6) New Government, New Law" written by U Aung Naing Oo, Permanent Secretary of the Ministry of Investment and Foreign Trade" https://mifer.gov.mm/mm

[43] OECD, (2020) "OECD Investment Policy Review Myanmar 2020", p-206.

[44] Section-80, Myanmar Investment Law, 2016.

[45] Rule-93(a), Myanmar Investment Rules, 2017.

[46] Rule-94, Myanmar Investment Rules, 2017.

providing that "in evaluating a tax return of an Investor benefiting from a Tax Incentive under sections 75 and 78 of the Law the IRD may review whether the Investor is complying with the provisions of the Law relating to the Tax Incentive and any conditions specified in the Tax Incentive granted to the Investor".[47] Moreover, according to the Sec-86(a) of the Tax Administration Law, the Ministry of Planning and Finance and IRD may issue necessary rules, regulations, by-laws, notifications, orders, directives and procedures with the approval of the Government.[48] From the power conferred upon it, the IRD issued the practice statement with respect to the "Application of Income tax exemption on reinvestment, granted under the Myanmar Investment Law".[49] Thus, it may be seen that the IRD also plays an important role in granting and implementing the tax incentives conferred under MIL.

In the case of PTTEP International Limited (Yangon Branch) vs. the Internal Revenue Department, a tax audit by the Large Taxpayers' Office found that PTTEP transferred funds from its operating accounts to a reserve fund account during the 2014-2015 fiscal year, intending to reinvest profits. However, the audit concluded that there was insufficient evidence of a legitimate reserve fund account in compliance with Section 27 (b) FIL 2012, leading to the assessment of MMK 22,357,488,551 as non-exempt income. PTTEP appealed this decision, but the Head of the Large Taxpayers' Office upheld the tax audit's findings. Subsequently, PTTEP filed an appeal with the Revenue Appellate Tribunal.[50]

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 Tribunal studied the submissions of the applicant and the respondent and relevant documents in detail. The applicant submitted that according to Section 21 (b) FIL 1988, the MIC is the only government authority that may grant an income tax exemption on reinvested profits. With regard to the submission whether the 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 Tribunal's Income Tax Appeal No. 7/2020.[51]

Chapter 7 of the FIL, 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.[52] The same situation occurs in the new investment law, MIL 2016. According to Sections 24 and 25 of the MIL and Rule 99 (a) of the MIR, MIC may scrutinize and grant when applying to enjoy exemptions and reliefs in accordance with the provisions of this

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[47] Rule-114, Myanmar Investment Rules, 2017.

[48] Section-86, The Tax Administration Law, 2019.

[49] Ministry of Planning and Finance, Application of Income Tax Exemption on Reinvestment, Granted Under Myanmar Investment Law (No.1/2021, 30 June 2021).

[50] *PTTEP International Limited (Yangon Branch) v Internal Revenue Department,* (2022) Revenue Appellate Tribunal.

[51] Ibid.

[52] *PTTEP International Limited (Yangon Branch) v Internal Revenue Department,* (2022) Revenue Appellate Tribunal.

Law and the assessment with respect to reinvestment activities carried out by MIC.[53] However, as above-mentioned, the provisions with respect to reinvestment activities are issued by IRD. In this situation, the investors may have misunderstood that the reinvestment activities are carried out by the IRD rather than MIC. Thus, the provision with respect to this regime should be clear and consistent.

In my opinion, tax incentives should be built into the tax laws and should not be issued in special decrees or other *ad hoc* ways. Moreover, it should be supervised by the Ministry of Planning and Finance rather than giving authority to the MIC. The regular assessment of the benefits of the tax incentives compared to their costs in terms of the forgone revenue, administrative cost, economic inefficiency and encouragement of corruption and rent-seeking.[54] Moreover, it may result from the difficulties the tax administrations face in auditing taxpayers. Thus, the specific administration of the tax system in case of the tax incentives for FDI which may have an adverse impact to the revenue system, are important.

Conclusion

Foreign Direct Investments play a critical role in the development of Myanmar's economy. Thus, with the purpose of contributing to sustainable and inclusive development, tax incentives in the form of tax exemptions and reliefs for income tax, customs duties and other kinds of tax are offered under the Myanmar Investment Law, 2016 and the Special Economic Zone Law, 2014. Nonetheless, according to the nature of tax incentives, a serious disadvantage in case of attracting the FDI is that the tax revenue is lost without any corresponding benefits to the host state. Even though the tax incentives are offered to the targeted areas, it may not be significant in one project or business. However, while any one targeted incentive may not involve a significant revenue cost, the total for all the resulting incentives can sharply erode government revenues from the business sector. Moreover, at the time of making investment decisions, the investors often emphasize the unimportance of tax incentives compared with the other considerations. Thus, granting of the tax incentives may not be effective in attracting the FDI. Also in Myanmar, by studying the Myanmar Investment Law and the Special Economic Zone Law, the Myanmar Government offered generous incentives to the investors. Moreover, although the provisions stated the authority to offer the tax incentives incurred to MIC, in some cases, the Internal Revenue Department also has the power to examine such incentives. Thus, the provisions under Myanmar Investments Rules, 2017 are not consistent with the Myanmar Income Tax Law, 2011 and the Myanmar Investment Law 2016. Thus, in order to be effective taxation and to ease tax administration, the tax incentives under Myanmar Investment Commission should be included in the other relevant tax laws and assessing the application of tax incentives for foreign investors from MIC should be placed to the Internal Revenue Department. By providing a secure tax system, attracting to the foreign direct investment may be effective in achieving sustainable growth and significant development in Myanmar's economy.

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[53] Sections-24,25, Myanmar Investment Law, 2016 and Rule 99 (a), Myanmar Investment Rules, 2017.

[54] Janet Stotsky, (2024) "Tax Incentives and Investment" *Asian Development Bank*, Issue 54, p-2.

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