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Investment in Myanmar Tax updates

16 August 2017

Agenda

- ▶ Overview of foreign investment in Myanmar
- ▶ Taxation system in Myanmar
- ▶ Investment incentives
- ▶ Hot topics and recent updates
- ▶ Other considerations

Overview of foreign investment in Myanmar



Common type of legal entity used by foreign investors

Common types of legal entity	▶ Limited liability company
	▶ Branch office
	▶ Representative office

Shareholder	Minimum requirements	Minimum 2 shareholders (individual or corporate)
	Citizen or local required	No restriction
	Corporate shareholder	Permitted

Director	Corporate director	Prohibited
	Minimum requirement	2
	Resident status	No restriction
	Legal representative	Not required

Corporate and statutory requirements

Capital requirement	Authorized capital / Minimum paid-up capital	<ul style="list-style-type: none"> ▶ USD 150,000 for manufacturing/construction activity ▶ USD 50,000 for service activity
	Shares	Minimum 2 shares
	Form of contribution into capital	Cash/In kind
	Currency of capital	USD only
Constitutions/ by laws	Memorandum and Articles of Association	
Execution of documents	<ul style="list-style-type: none"> ▶ Any documents that are not in English, it needs to be notarized and endorsed by the Myanmar Embassy of the investor's country or residence. ▶ Translation to Burmese language is not required. English translation is acceptable 	
Language requirement	Local language and English	

Foreign ownership restrictions

Restricted Investment

(MIL Section 42 and MIC Notification 15/2017)

- 1) Investment activities allowed to be carried out only by the Union
- 2) Investment activities that are not allowed to be carried out by foreign investors
- 3) Investment activities allowed only in the form of a joint venture with any citizen owned entity or any Myanmar citizen
- 4) Investment activities to be carried out with the approval of the relevant ministries

Submission of Proposal (MIL Section 36)

Proposal need to be submitted to get MIC permit for the below business activities;

- (a) investment businesses that are essential to the Union strategy
- (b) large capital intensive investment projects
- (c) projects which are likely to cause a large impact on the environment and the local community
- (d) investment businesses which use state-owned land and building
- (e) investment businesses which are designated by the government to require the submission of a proposal to the Commission

Land ownership restrictions

Restrictions (The Transfer of immoveable property restriction Act (1987) Section 4 & 5)

- ▶ No foreigner or foreign owned company shall acquire immovable property by way of purchase, gift, pawn, exchange or transfer.
- ▶ No person shall grant a lease of immovable property, for a term exceeding one year:
 - (a) To a foreigner or foreigner owned company.
 - (b) No foreigner or foreigner owned company shall receive a lease of immovable property, for a term exceeding one year.

Rights to use Land (MIL Section 50)

- ▶ An Investor who obtains permit or endorsement under MIL 2016 has the right to obtain a long-term lease of land or building from the owner if it is private land or building, or from the relevant government departments or government organization if it is land managed by the government, or land or building owned by the Union in accordance with the stipulations in order to do investment. Citizen investors may invest in their own land or building in accordance with relevant laws.
- ▶ Under MIL 2016, Foreign Investors may lease land or building up to 50 years with the option of consecutive 10 years and for further consecutive period of (10) years extension with the approval of the Commission.

Taxation system in Myanmar



Brief overview on taxes

Fiscal year

- ▶ 1 April to 31 March
- ▶ No alternative fiscal year allowed

Corporate Income Tax

- ▶ Tax rate for Limited liability company/ Branch Office : 25%
- ▶ Company under MIL - Exempt during tax holiday period
- ▶ Creditable 2% advance corporate income tax
- ▶ The recognition of income and expenditure for tax purpose is based on an accrual basis
- ▶ Tax losses:
 - ▶ Company incorporated under the Myanmar Companies Act (MCA) and under the MIL: Carried forward for 3 consecutive years and no carry back
 - ▶ Company incorporated under SEZ: Carried forward for 5 years from the year in which the loss was incurred

Capital Gain Tax

- ▶ 10% (for resident and non-residents)
- ▶ Income from capital gains is assessed separately from business income
- ▶ Capital loss cannot be treated as deductible expenses for corporate income tax calculation purpose

Brief overview on taxes

Withholding Tax

- ▶ When the payment of income is made by a Myanmar company to Myanmar citizen and/or resident foreigner or non-resident foreigner, the Myanmar entity is required to withhold tax at various rates depending on the type of income and status of the payee
- ▶ Withholding tax on interest (15%), royalties (10% or 15%), purchase of goods within the country, work performed or supply of services and hiring (2% or 2.5%)

Commercial Tax

- ▶ 5% (mostly)
- ▶ Subject to sale of goods/special goods produced in Myanmar, importation of goods/special goods, imported goods/special goods sold in Myanmar, providing services, trading activities, building developed and sold in Myanmar, sale of golden jewelries, export sale of goods (Crude Oil and Electric power)
- ▶ Commercial tax is not a Value Added Tax (VAT) with full credits system. Only partial offset system is available with conditions
- ▶ Commercial tax registration is required for any person who has taxable proceed of sale or receipt from service within a year
- ▶ Creditable if
 - ▶ Sales of goods (for trading/manufacturing business) - paid to local suppliers, paid for imported goods, paid for services fee
 - ▶ Provision of services (for services business) - paid for expenses used to provide services, paid to local suppliers, paid for imported goods

Brief overview on taxes

Personal Income Tax

- ▶ No requirement for assessment if the net annual income is 4.8 million MMK or less (threshold) in one financial year
- ▶ Resident foreigner who stayed in Myanmar for 183 days or more in a fiscal year and resident citizen are taxed on all income derived from sources within and outside Myanmar based on progressive tax rate ranging from 0% to 25%.
- ▶ Non-resident foreigner who stayed in Myanmar for less than 183 days in a fiscal year and worked in a company without MIC permit, is taxed on income derived from sources within Myanmar
- ▶ The salaries earned overseas by citizen are not subject to tax in Myanmar
- ▶ Assessable income is the salary after deduction of 20 % basic allowance (maximum MMK 10,000,000 equivalent to USD 7,400), family allowances (parent, spouse, children under 18-years or receiving fulltime education currently) and premium for life insurance.

Special Goods Tax

- ▶ Any person who imports, manufactures or exports the special goods shall be liable to pay special commodities tax at the prescribed rate.
- ▶ Under the Union Tax Law 2017, 17 types of goods will be taxed at specific rates ranging from 5% to 80% while another 5 types of goods will be taxed in Myanmar on exports at specific rates prescribed on the law.
- ▶ There will be 0% tax rate on the sale proceeds received from the exportation of special goods except for the 5 types of goods.
- ▶ There will be a range of tax rate for the special goods as such liquor (tax will be collected per liter basic) and cigarettes (tax will be collected per item basic).

Filing requirements

Types of tax	Basis of tax payment / filing	Deadline
Corporate income tax	▶ Quarterly corporate income tax payment	▶ Within 10 days of the following quarter
	▶ Annual corporate income tax return filing	▶ Within 3 months after the end of the income year (i.e., by the end of June)
Withholding tax	▶ Withholding tax return filing upon making the payment <small>(In practice, the withholding tax filing can be submitted on monthly or quarterly basis)</small>	▶ Within 7 days from the day the withholding tax is deducted (under the Income-tax Law)
Commercial tax	▶ Monthly commercial tax payment	▶ Within 10 days of the following month
	▶ Quarterly commercial tax return filing	▶ Within 1 month after the end of respective quarter
	▶ Annual commercial tax return filing	▶ Within 3 months after the end of the year
Personal income tax	▶ Monthly payroll withholding tax return filing <small>(In practice, quarterly filing is also acceptable)</small>	▶ Within 7 days after the end of the month
	▶ Annual salary statement filing <small>(The employer is required to submit the annual salary statement for the individual.)</small>	▶ Within 3 months after the end of the income year (i.e., by the end of June)

Double taxation agreement (DTA)

DTA

- ▶ Currently 8 treaty countries, i.e., Lao PDR, Singapore, Vietnam, Malaysia, Thailand, India, South Korea and United Kingdom
- ▶ Myanmar has signed tax treaties with Bangladesh and Indonesia, but these treaties have not yet been ratified as of date.
- ▶ WHT can either be reduced or exempted if there is no PE in Myanmar under relevant tax treaty.
- ▶ The relief under the applicable DTA is not automatically granted and the taxpayer required to submit "Tax Residency Certificate" and supporting documents to IRD in Myanmar to enjoy treaty benefits.

PE under Myanmar- Thailand DTA

- ▶ Capital Gains Tax - Tax to be assessed in the country where capital assets exist.
- ▶ Business Profits - Tax can be assessed and collected by the country where permanent establishment exist.
- ▶ Independent personal services - Tax is to be collected by the country where income is derived for stay of more than 183 days.
- ▶ Dependent personal services - If stay more than 183 days and with salary income, tax can be assessed in the country where salary income is derived.

Common tax structure used by foreign investors

Common tax structure

- ▶ Investment through Singapore and Thailand is relatively common structure in Myanmar.
- ▶ Any capital gains income as a result of the sale of a Myanmar operating company should be exempt under the tax treaty if conditions are met.
- ▶ Under Myanmar's tax treaties, certain types of interest and royalties are subject to reduced rates or are exempt from tax:

Countries	Interest	Royalties
Singapore	15 ¹	15 ³
Thailand	15 ²	15 ⁴

- 1) The rate is reduced to 8% if the recipient of the interest is a financial institution or a bank.
- 2) The rate is 15% if the beneficial owner ("BO") of the interest is a not resident of a contracting state.
- 3) The rate is reduced to 10% for royalties paid for patents, designs, models, plans, secret formulas or processes, industrial, commercial or scientific equipment or information concerning industrial, commercial or scientific experience. The rate is 15% for royalties in other cases.
- 4) The rate is reduced to 5% for royalties paid for copyrights of literary, artistic or scientific works. The rate is reduced to 10% for royalties paid for services of a managerial or consultancy nature or for information concerning industrial, commercial or scientific experience. The rate is 15% for royalties in other cases.

Investment incentives



Myanmar Investment Law

Common types of incentives

- ▶ Tax incentives
 - ▶ 3 to 7-year corporate income tax exemption based on development level of investment
 - ▶ Corporate income tax exemption on profits reinvested within one year
 - ▶ Deductions of accelerated depreciation
 - ▶ Deductions of certain research and development expenditure
 - ▶ Custom duty and commercial tax exemption machineries, equipment, instruments, machinery components, spare parts, construction materials during construction or expansion period
 - ▶ Custom duty and commercial tax exemption on importation of the raw materials and semi-finished goods conducted by an export-oriented investment business for re-export finished goods
 - ▶ Reimbursement of custom duty and commercial tax both on imported raw materials and semi-finished goods for re-export finished goods
 - ▶ Commercial tax exemption on export sales except for export of Crude Oil and Electric Power (this incentive is applicable for with or without MIC permit)
- ▶ Non-tax incentives
 - ▶ Right to lease land with longer period
 - ▶ Non-nationalization of business

Myanmar Investment Law

Investment Promoted Sectors (MIC Notification 13/2017)

The following Investment promoted sectors shall be granted income tax exemptions if it is applied to the Commission.

- a) Agriculture and its related services (except cultivation and production of tobacco and virginia)
- b) Plantation and conservation of forest, and other businesses with forest
- c) Livestock production, breeding and production of fishery products, and its related services
- d) Manufacturing (Except manufacturing of cigarette, liqueur, beer, and other harmful products to health)
- e) Establishment of industrial zones
- f) Establishment of new urban areas
- g) City development activities
- h) Construction of road, bridge and railway line
- i) Construction of seaport, river port and dry port
- j) Management, operation and maintenance of airport
- k) Maintenance of aircrafts
- l) Supply and transport services
- m) Power generation, transmission and distribution
- n) Production of renewable energy
- o) Telecommunication businesses
- p) Education services
- q) Health services
- r) Information technology services
- s) Hotel and tourism
- t) Science research development business

Special Economics Zones (SEZ)

SEZ location

- ▶ Kyaukpyu SEZ
- ▶ Thilawa SEZ
- ▶ Dawei SEZ

SEZ incentives

- ▶ 5-year corporate income tax exemption (promoted zone)
- ▶ 7-year corporate income tax exemption (exempted zone)
- ▶ 2nd five-year period: 50% corporate income tax reduction
- ▶ 3rd five-year period: 50% corporate income tax reduction on the profits reinvested within one year
- ▶ Import duty exemption on raw materials, machinery and equipment (exempted zone), trading goods, motor vehicles and equipment for wholesale trading, export trading and logistics service (free zone)
- ▶ 5-year import duty exemption on machinery and equipment for construction followed by 50% reduction for another five years
- ▶ Commercial tax exemption on a specified list of products manufactured for export
- ▶ 5-year loss carry forward from the year the loss is sustained



Hot topics and recent updates



Changes in Myanmar

Myanmar Investment Law 2016

- ▶ New Myanmar Investment Law 2016 was introduced combining the Foreign Investment Law with the Myanmar Citizens Investment Law.
- ▶ Tax incentives will be granted based on the zoning (from 3 to 7 years).
- ▶ MIC permit may no longer be required for long-term land lease.

Notification 36/2017

- ▶ Ministry of Commerce allows the foreign companies to trade on;
 - ▶ Construction materials
 - ▶ Fertilizers
 - ▶ Seeds
 - ▶ Pesticides
 - ▶ Hospital equipment

Changes in Commercial Tax

- ▶ 1% commercial tax shall be levied on the sale proceeds of gold jewelries. (Sec 14 (h) of Union Tax Law 2017)
- ▶ Production and domestic sale of goods, rendering of services, and trading activities are subject to commercial tax if the total sales proceed or service revenue exceeds MMK 50 million (previously MMK 20 million) within one financial year. (Sec. 15 (b) of Union Tax Law 2017)
- ▶ 8% commercial tax shall be levied on the export of electricity, and 5% on the export of crude oil.

Changes in Myanmar

Withholding Tax Changes	Kinds of payment subject to withholding	Tax Rate			
		Prior to 1 April 2017		Effective from 1 April 2017	
		For Resident Nationals and Resident Foreigners	For Non Resident Foreigners	For Resident Nationals and Resident Foreigners	For Non Resident Foreigners
	Interest payment for a loan or indebtedness or a transaction of similar nature or Saving.	-	15%	-	15%
	Royalties for the use of Licenses, Trademarks, Patent Right etc.	15%	20%	10%	15%
	Payment by State organizations, State enterprises, Development Committees, co-operative societies, foreign companies, foreign enterprises and organizations, local companies and partnership established under any existing law for purchase of goods, work performed or supply of services and hiring within the country under a tender, contract, quotation or other modes (other than the services mentioned in above items of this table)	2%	3.50%	2%	2.50% (Exemption if no PE under tax treaty)

Notes:

- ▶ Withholding tax exemption certificate is required to prove of not having a Permanent Establishment (PE)
- ▶ Payment for local purchases and services/hiring of not exceeding MMK 1,500,000 (approximately USD 1,155) per transaction made by the companies under the tax assessment of Self Assessment System ("SAS")/not exceeding MMK 500,000 (approximately USD 385) per transaction made by the companies not under the SAS, is not subject to withholding tax
- ▶ Withholding tax rate for non-resident foreigners can be reduced under the relevant tax treaties
- ▶ Withholding tax for resident is advance tax which can be used as credit against corporate income tax liability. Withholding tax for non-resident is final tax
- ▶ Prior to 1 April 2017, hiring is not included in the category of payments which subject to WHT.
- ▶ If services are provided outside of the country, WHT shall not be obligated.

Possible changes in Myanmar

▶ Taxation

- ▶ Stamp duty rate may be reduced.
- ▶ Improving the tax official knowledge on new businesses and tax collection process
- ▶ Improving and formulating tax compliance and tax obligations of the taxpayers
- ▶ Improving and formulating the tax assessment process

▶ Myanmar Companies Law

- ▶ Amending the Myanmar Companies Act (relaxation on the minimum requirement for shareholders and directors, which will be reduced to one each)
- ▶ All companies are required to have an audit as per current Myanmar Companies Act but New Myanmar Companies Act is in the draft stage and the threshold information is included but not confirmed yet. The draft threshold is that financial reports and audit do not apply for small company which it and its subsidiaries had
 - (1) Not more than 30 employees and
 - (2) Annual revenue in the prior financial year of less than 50,000,000 Kyats in aggregate.

Other considerations



Foreign exchange control

Banking

- ▶ 4 state-owned banks, 23 local private banks, 43 representative offices of foreign banks and 13 branch offices of foreign banks
- ▶ Banking system is being developed
- ▶ The electronic banking network has already been available to facilitate clearing system, electronic fund transfer and reporting system among financial institutions
- ▶ Debit card and ATM systems have been launched in Myanmar

Foreign exchange control

- ▶ Remittance of foreign currency out of Myanmar subject to permission from the Foreign Exchange Control Department which is under the Central Bank of Myanmar
- ▶ Foreign exchange control restriction significantly reduced since 1 June 2012. In practice, some case-by-case approval may still be needed
- ▶ So long as there is an obligation to make a payment and relevant supporting documents can be provided, there should not be an issue
- ▶ One of the important documents is the tax document, e.g., tax clearance certificate or final assessment letter to prove that the tax has been properly paid
- ▶ Exchange rate announced by the Central Bank of Myanmar will be used to record financial transactions in its book of account

Visa and work permit requirements

Visa and work permit requirements

- ▶ To enter Myanmar, all visitors must have a valid passport and an entry visa.
- ▶ Visitors may apply for single or multiple entry visas.
- ▶ A tourist visa allows a stay of 28 days, which is not entitled to extend the visa. A business visa allows a stay of 10 weeks (70 days), which may be extended up to 12 months on a case-by-case basis.
- ▶ A visa on arrival may be granted based on a prior arrangement with the Ministry of Hotel and Tourism.
- ▶ Infants and children require a separate visa even if traveling on a parent's passport.
- ▶ Individuals may apply for the different types of visa through Myanmar embassies or consulates overseas and also point of entry.
- ▶ Myanmar has introduced work & stay permit system for foreign personnel employed under the MIL or SEZ.
- ▶ Expatriate employees working under the company incorporated under the MCA can apply for a stay permit based on an employment contract with the employer. The stay permit has a duration of 3 months to 1 year.
- ▶ However, given that the Permit to Trade is one of the supporting documents required to apply for a stay permit for business executive and employee, in practice, expatriates working in Myanmar before the issuance of such permits need a business visa, which will allow the visa holder to stay in Myanmar for up to 10 weeks.

Accounting and audit requirements

Accounting records

- ▶ The books of account can be prepared in either Burmese or English and must be retained for accounting and tax inspection
- ▶ Under OAS, companies are required to maintain the books of account for 3 years. Companies under SAS are required to maintain the books of accounts up to 5 years. Under SEZ rules, the Investor and the Developer shall maintain records for a period of 7 following years starting from the end of relevant financial year.
- ▶ If there are outstanding cases with the MIRD, the companies are required to maintain the books of account for all years being audited

Accounting standards

Myanmar Financial Reporting Standards (MFRS), in principle, follow International Financial Reporting Standards (IFRS)

Statutory audit requirement

- ▶ Statutory financial statements are required to be prepared in either Burmese or English
- ▶ All companies, branches of foreign corporations, and representative offices must have their financial statements audited by auditors

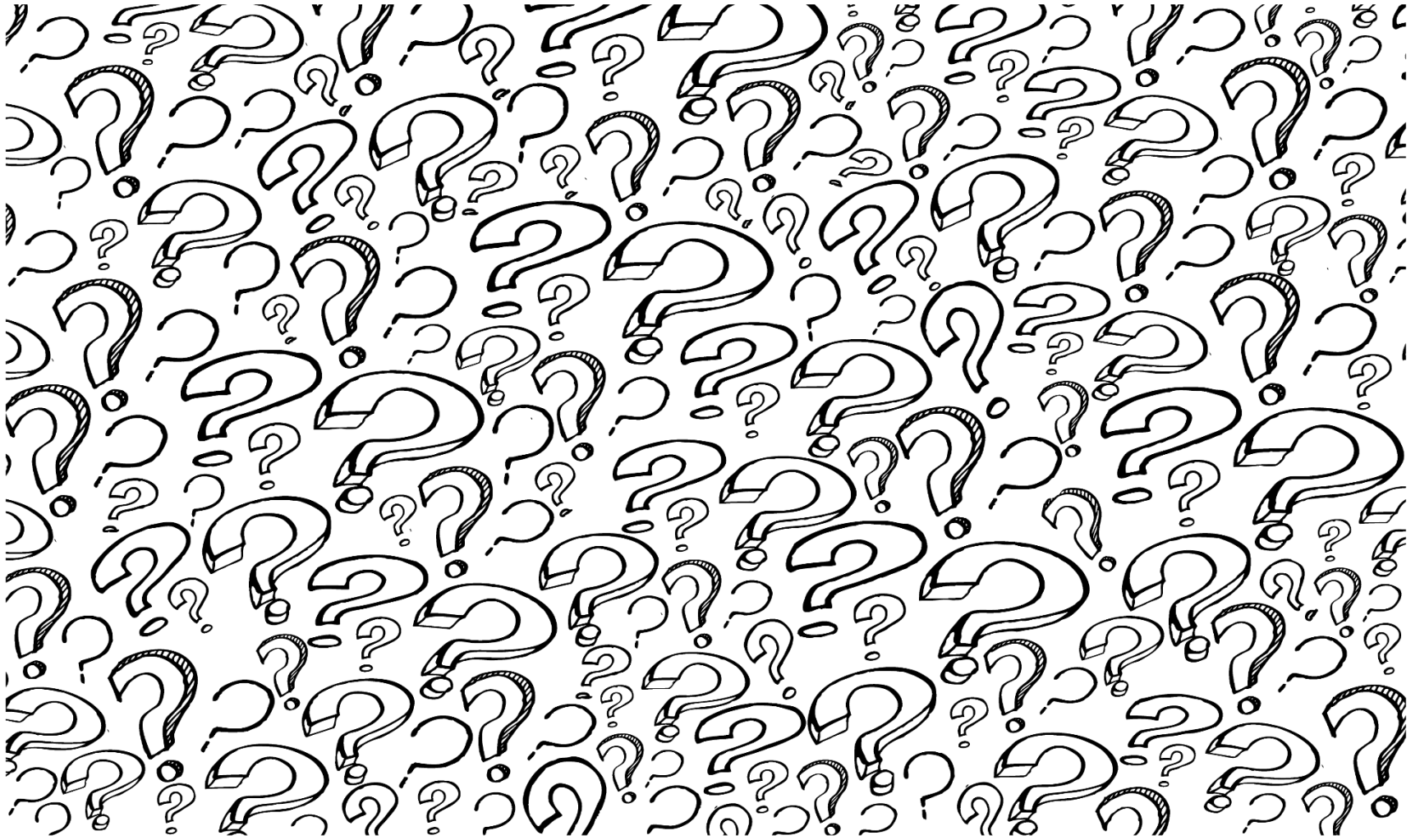
Qualification of statutory auditors

Statutory auditors must be a certified public accountant licensed by the Myanmar Accountancy Council

Filing requirement

- ▶ Draft financial statement and annual income tax return must be filed with the MTO under the MIRD by 30 June
- ▶ Audited financial statements must be submitted to the MTO within the date specified in the Call Letter. The Call Letter is normally issued by after 1 - 2 months from the filing date of annual income tax return
- ▶ Annual income tax return along with detailed attachment must be filed with the LTO under the MIRD by 30 June

Questions



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