Domestic Resource Mobilisation in Myanmar

Policy Brief

Background

A progressive and fair taxation system is a vital domestic resource for every sovereign State. Governments need to raise public funds to finance public expenditures for administrative, economic and social services, including public administration, education, health, water, power, sanitation and environmental services and infrastructure.

Over the past many years in Myanmar, issues and challenges related to tax policies, tax compliance and tax administration and incentives offered to corporates and companies has attracted the attention of CSOs as well as government. There have been concerns on the way tax system is designed and how it can be more progressive and fair, particularly from the perspective of generating resources for the entire country. Being a country in transition, there are efforts by the new government (that assumed office in April 2016 led by the National League for Democracy) to streamline the tax system so that it can enhance revenue generation potential and improve the budget particularly for social sectors.

Myanmar spends a very small amount of its budget on social sectors. Particularly education spending, while it has increased over the years, remains very low. Several problems related to the education sector incuding low quality service delivery, inequitable access, and the need to improve teaching standards need to be addressed through systematic budget support. Since 2011, the budget for education (as a percentage of the total budget, not GDP) has increased from as low as of 1.84% in 2011 to 8.05% in 2016-17. Despite increasing the education allocations of total government spending, this falls well below the 15-20% that is required for transformative change[1].

[1]Archer, D 2016 ‘Domestic Tax & Education’,The Education Commission, Background Paper: The Learning Generation, ActionAid International.

Lack of resources is often cited as a major constraint for improving the education budget; hence examining the possibilities of mobilizing domestic resources through effective tax systems becomes imperative.

It is in this context that this policy brief brings together the current state of knowledge and understanding on the tax system of Myanmar from the perspective of meeting the needs of public services, especially for education financing, where the investments are inadequate and insufficient. This policy brief outlines a set of recommendations that the government may adopt in streamlining the tax system so that domestic resources mobilization can be enhanced. A longer version of the scoping study to understand the tax system and issues in detail has formed basis for preparation of this policy brief.

1. Introduction

There are various sources including tax revenue, direct transfers from State Owned Enterprises (SOEs receipts), and other non-tax revenue that enables the government to generate domestic resources. However, for several reasons, the revenue received by the Government of Myanmar from such sources is consistently far lower than the projected amount, considering the value of the industries and their output.

Myanmar's current fiscal revenues stand at one of the lowest in the world: for the fiscal year 2014/2015, the tax to GDP ratio is only at 8.2%, one of the lowest in Association of South East Asian Nations (ASEAN). The Government of Myanmar's current revenues at the Union level are broken down as follows (tables 1 and 2):

Table 1 –Myanmar's Revenues (% of GDP)[5]

	2011/12	2012/13	2013/14	2014/15
Tax revenue	3.88%	7.07%	7.79%	8.21%
Transfers from SOEs to Union Government	2.29%	1.62%	1.36%	0.51%
SOE Receipts net of transfers to Union Government	5.50%	13.75%	12.32%	13.32%
Other nontax revenue	0.42%	0.88%	0.15%	3.83%
Grants	0.00%	0.05%	0.27%	0.49%
Revenues and Grants	**12.08%**	**23.38%**	**21.89%**	**26.36%**

[2]ActionAid Myanmar: Domestic Resource Mobilization and Education Financing – Scoping Study

[3]International Monetary Fund, 2015 Article IV, Staff Report, September 2015.

[4]Vicary, Alison et al., Network for Human Rights Documentation – Burma, 2010, The Hidden Impact of Burma's Arbitrary & Corrupt Taxation.

[5]International Monetary Fund, 2015 Article IV Consultation Staff Report, 2015.

Table 2. Myanmar's Composition of Revenues (% of Total Revenues)[6]

	2011/12	2012/13	2013/14	2014/15
Tax revenue	32%	30%	36%	31%
Transfers from SOEs to Union Government	19%	7%	6%	2%
SOE Receipts net of transfers to Union Government	45%	59%	56%	51%
Other nontax revenue	3%	4%	1%	15%
Grants	0%	0%	1%	2%
Revenues and Grants	**100%**	**100%**	**100%**	**100%**

2. Tax system of Myanmar

The tax system in Myanmar is in flux, as both the current and previous governments have rushed to reform a problematic and outdated set of laws and practices - with differing approaches and agendas. Among the nineteen types of tax[7], income tax and commercial tax are the major contributors to the government's tax revenue. About 80% of total tax revenue comes from these two types of tax. Income tax law was originally enacted in 1974 and amendments have been made twice within the five-year period of 2011-2015. Every year, income tax rates are provided with reference to Union Tax Law yearly enacted by Union Parliament, beginning in 2014.

Table 3 – Current Types of Tax

Category	Type of Tax
Taxes levied on domestic production and public consumption	Excise tax; Commercial Tax; License fees on imported goods; State lottery; Tax on transportation; sale revenue of stamp
Taxes levied on income and property	Income tax; Profit Tax
Custom duties	Income tax; Profit Tax*
Taxes levied on utilization of state's properties	Land; Water; Embankment; Extraction of forest products; Extraction of minerals; Fisheries; Rubber; Extraction of Oil and Gas; Communication Service; Power generation of electricity

*After revocation of profit tax in 2011, only income tax is levied without collection of profit tax.
Source: Report to the Parliament on Union Revenue by Ministry of Finance (second 6 month of FY 2015-16)

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[6] Ibid

[7] There are generally 19 types of taxes in Myanmar. Profit tax was no longer levied after the time of revocation of Profit Tax law in 2011. Furthermore, number of type of tax varies in accordance with the Union Tax Law. For example, "Special Good Tax Law ", designed to modify the Commercial Tax Law has been enacted by the Parliament and it has been effective from 1st April 2016. Therefore, it can be said that there will be a new tax law and the list of types of tax for FY 2016-2017 will also include special goods tax as a new type of tax.

Income Tax and Commercial Tax

Income Tax Law covers personal and corporate income tax. However where a bilateral or regional treaty applies the domestic laws are overridden.[8] The Income Tax Law states that resident nationals and resident foreigners are taxed on their total income described as "total amount of income, profits and gains wherever accruing or arising."[9] Tax on income is levied on State owned enterprises, cooperatives, foreign companies, salaried individuals (citizens and foreigners), partnership businesses, domestic companies and other such entities.

Overall, Myanmar's personal income tax is progressive. However new income tax laws that have impacted on corporate tax rates have reduced the rates particularly for foreign companies in their favour as the rates are now equal to the rates paid by domestic companies. Commercial Tax Law is aimed to collect a use tax on certain transactions, such as supplies of goods and services that are produced or consumed in Myanmar, the importation of goods in Myanmar and the sale of dwellings (houses) developed in Myanmar. The rates for the commercial tax range from 0% to 8% depending on the type of goods or services sold in Myanmar.

3. Analysis of Sources for Revenue Mobilization

State-owned Enterprises

For the past many decades SOEs have held a near monopoly in at least twelve sectors of the economy in the form of public-private partnerships, formed jointly with foreign investors. They range from mining and extractive industries (oil, gas, metals and precious stones), forest plantations, transport (air and rail), electricity, broadcasting services, banking services. A consequence of this situation was that SOEs have been protected financially with little to no accountability for decades.[10] Therefore resource mobilization has been limited, impacting significantly on the population. For example, two large and influential companies formed under the Special Companies Act[11] are the Union of Myanmar Economic Holdings Limited (UMEHL) and the Myanmar Economic Corporation (MEC). Established in the 1990s, the UMEHL holds stakes in almost all sectors of Myanmar's economy. Exempt from commercial and profit taxes, MEC was set up in 1997.[12] Prior to 2011, UMEHL and MEC enjoyed tax holidays, exempting them from payment of corporate taxes and custom tariffs.

There have been efforts to remedy this situation during the past few years. Following a policy change in the administration of SOEs in 2012, encouraging more accountability and transparency, GoM's receipts have risen. Non-tax revenues include licenses and fees, and other bonuses resulting from land and natural resource based concessions,

[8] The Burma Code, 1953, The Burma Income Tax – Chapter I, Section 4 (I). "The total income of any previous year of any person includes all income, profits and gains from whatever source derived"

[9] The Burma Code, 1953, The Burma Income Tax – Section 15.

[10] Cook, Paul, Privatization and Private Sector Development in a Transitional Economy: The Case of Myanmar, 1995.

[11] Special Companies Act, 1990

[12] http://asia.nikkei.com/Politics-Economy/Policy-Politics/Time-to-demilitarize-Myanmar-businesses

Special Economic Zones (SEZs), grants, and foreign aid. Currently, the SOE obligations to the Union Government are at a low 45% of net profit (25% income tax plus 20% of state contribution). Any profit remaining after the SOE pays fiscal obligations is transferred to the SOE's 'other accounts', for the company to utilise. There is still little known about how much SOEs have accumulated in their 'other accounts'. There is a need for enhancing transparency and independent audit of SOEs.

Extractive Industry, Agriculture and Forestry

Extractive industry, agriculture and forestry are other significant sectors where the potential to enhance revenue mobilization needs to be explored. As pointed out there are several concessions and incentives accorded to companies that are involved in these sectors which led to loss of revenue for the GoM over many decades. The Government and SOE's rely on oil and gas for significant amounts of domestic resource revenue. For example in the fiscal year of 2013/14 the Union Government received USD 2.7 billion from oil and gas taxes, equity returns, signature bonuses, custom duties, royalties and in-kind production. At the end of the 2014/15 financial year, USD 14.3 billion of Foreign Direct Investment (FDI) in oil and gas was recorded, accounting for 36.3% of the total FDI. Given this significance, there are renewed efforts from the government to restructure the operations of this sector (licensing, royalty agreements etc) which has been marred with secrecy for many years. Previously, production sharing contracts required companies to provide 30% of their revenue to the government, plus relevant income taxes and royalties ranging from 3-5%, depending on the mineral.[13] The recent amendments now require the government to take an equity interest instead of the 30% revenue sharing. While such mechanisms do enhance accountability and transparency, to what extent they advance resource mobilization efforts is yet to be assessed. In 2014 the Government of Myanmar signed the Extractive Industries Transparency Initiative (MEITI), a pledge which requires the submission of regular progress reports that demonstrate signs of improvement in terms of transparency and accountability.

[13]http://consult-myanmar.com/2016/01/18/mining-in-myanmar/

The first MEITI report released in January 2016 demonstrates that the Union Government collected USD 460 million in mineral revenues in the fiscal year 2013/14, 88% of which was generated from the jade and gem industry alone. The sector only contributed to 7% of the Union Government's non-state owned enterprise revenue in 2013-14. This is in striking contrast with the value of gems and jade sold through the Myanmar Gems Emporium at USD 1.4 billion.[14]

Large scale concessions given to agriculture and forestry sectors are also of concern in terms of revenue foregone by the Government of Myanmar. According to reports published by the Settlement and Lands Records Department, Ministry of Agriculture and Irrigation, and Ministry of Environment Conservation and Forestry around 20% of the total land area has been allocated to foreign or joint ventures for up to 70 years.[15] Investors received economic incentives, loans from state owned banks, and access to cheap land with low rents, and tax exemptions for the first 2-8 years. Similarly tax incentives are accorded to timber sale contracts and rubber plantations on a large scale. The Government of Myanmar promotes rubber production through 100% foreign investment as joint venture with the government, or a private domestic company.[16]

4. Tax Concessions and Incentives

Tax incentives involving tax cuts, tax breaks, and subsidies that may attract foreign investment are some of the ways in which resources are lost to the government exchequer. Incentives also include non-tax forms like exemptions, liberal labour standards (hiring and firing) and environmental protection, special economic zones and industrial zones. For example, a new Myanmar incorporated company, which has a foreign shareholder, will benefit from a five year income tax holiday at the commencement of operations. Export enterprises may receive 50% tax relief on profits made from export materials. In addition after the expiry of the tax-exempt period, losses incurred within the following two years may be carried forward for up to three years.[17]

International double taxation relief is applicable to income tax.[18] Double taxation treaties are either titled a Convention, Treaty or Agreement that allocates agreed upon taxing rights on cross border income to avoid companies from being taxed twice in both jurisdictions. As of the date of publication, Myanmar has signed avoidance of Double Taxation Agreements (DTAs) with the UK, Bangladesh, India, Indonesia, Laos, Malaysia, South Korea, Thailand and Vietnam. Often as a result of signing, developing countries forego tax revenues, to create a 'competitive' market that attracts foreign investors. For example, Singapore has entered into a double taxation agreement with Myanmar since April 2010. According to Article 13 the income tax rate for a Singapore resident must not exceed 10% of the profits, the Singapore resident must hold 35% or more of the capital of a Myanmar company, and sell at least 20% of his/her shares.

Similarly, bilateral investment treaties (BIT) are agreements that outline the terms for private investment of companies and nationals from one state operating in another

[14]https://eiti.org/node/4474

[15] UNFAO 2015 "Myanmar Land Tenure and Rural Development"Draft Version, United Nations Food and Agriculture Organisation.

[16] http://www.myanmargeneva.org/e-com/Agri/expind/agri-index/myanmar.com/Ministry/agriculture/business.htm

[17] MFIL. ibid.

[18]http://www.lawgazette.com.sg/2012-10/555.htm

state, also known as foreign direct investment (FDI). China and India were the first countries to sign deals with Myanmar's then military-led government. Japan, Thailand and South Korea have signed treaties most recently. The BIT with Japan provides tax incentives in that it ensures "national treatment"(Article 3)[19] and "fair and equitable treatment", in other words this trade agreement overrides the Foreign Investment Law that was in place at the time which required foreign investors to pay higher tax rates. However, the new investment law now provides this to all foreign investors regardless of their country of origin. Similar incentives accrue to companies of foreign origin under bilateral investment treaties that Myanmar has entered into with other countries over the past ten years.

Another area of high tax exemptions and resource drain is related to special economic zones. Myanmar's SEZ policy gives a significant number of concessions to investors from outside the country, which many analysts point out are avoidable and not necessary as drivers for FDI. Apart from concessional land grants SEZs and companies established in such locations enjoy tax exemptions. Currently there are three SEZs in operation in Myanmar. Similar tax incentives are provided for industrial parks and companies established in industrial locations. Industrial Zones and Special Economic Zones both serve to support and facilitate foreign investment in Myanmar. While it would be difficult at this stage to quantify incentives and concessions, it can be inferred from the above analysis that this is one area that needs attention from the government in order to rationalize several of these provisions.

Summary and Conclusions

The Myanmar Tax-GDP ratio is currently the lowest in the ASEAN region. In 2005-06, Myanmar tax-GDP ratio was 3.64%; 3.22% in 2010-11; 3.63% in 2011-12; 6.58% in 2012-13 and 7.69% in 2013-14.[20] In 2015-16 it was estimated the tax-GDP ratio was 8.11%, and 7.4% for the year 2016-17.[21] In contrast the ASEAN average of recent years is around about 13%.[22] Though the country has extensive and varying natural resources, particularly large oil and gas deposits, minerals, forestry and precious stones, the Government of Myanmar's budget received limited funding. Thus financing the key ministries for development and public services such as education and health have always been insufficient and the education sector in particular faces issues of low quality service delivery and inequitable access, resulting the need to improve curriculum as well as teaching standards.

SOEs provide only 45% of the net profits generated from state natural resource assets to the central government, the remaining amount is transferred to 'Other Accounts', with little transparency. Discretionary tax exemptions, low rents and leasing of 'vacant land' (as a legal loop hole) only to large scale agriculture and forestry projects have contributed to the increase of land alienation and illegal timber trade in Myanmar, resulting in loss of potential revenue for public services. Hence further attention

[19]http://www.bilaterals.org/IMG/pdf/japan_myanmar_bit.pdf, see also http://www.burmalibrary.org/docs19/IISD-2014-myanmar-japan_bilateral_investment_treaty-red.pdf

[20]Calculation based on Table 8.01 GDP @ current producers' prices by sector of activity (p.198) and Figure 17.2 Receipts Taxes (p.484). Myanmar Statistical Yearbook 2015. Central Statistical Organization, Nay Pyi Taw. December, 2015.

[21]Citizen's Budget 2015-16 (p.4) & Citizen's Budget 2016-17(p.22).Directorate of Budget, Ministry of Planning and Finance.Nay Pyi Taw. 2016.

[22]Source: Ministry of Finance; IMF and World Development Indicators,2014. MYANMAR: Ending poverty and boosting shared prosperity in a time of transition. Report No. 93050-MM. November 2014 pp.37-38

is required from the government on high value commodity crops, controlled predominately by SOEs, cronies and foreign investors, as well as on expanding hydropower projects that have resulted in community concern and protest.

Tax and revenue raising administration agencies responsibilities are characterised by fragmentation, and overlapping. There is a lack of clarity often over judicial authority, management and administration across various sectors. There are discretionary commercial exemption and/or low taxation rates for goods and services controlled by SOEs, which could otherwise be raised to contribute to revenue for public services.

Analysts point out that current tax incentives in Myanmar include avoidable tax holidays for a Myanmar incorporated company with a foreign shareholder, as well as significant tax relief on exports. There are currently no anti-avoidance rules[23] as is found in many other countries to stamp out unacceptable tax avoidance practices. The current government has streamlined investment law that provides foreign investors the same protections and incentives as domestic companies. In addition, Myanmar currently has a number of double taxation agreements (DTAs) that can be used in the favour of foreign investors to reduce the amount of tax they pay in Myanmar. The EU and Japan's agreements with Myanmar prohibit the Myanmar government from applying a windfall tax where there is an increase of sales and profit on a particular commodity. Such agreements need to be reviewed in due course.

Similarly, the SEZ law provides several unnecessary tax incentives particularly tax exemption periods and reduced rates at the expense of domestic resource mobilization for social services such as education.

[23]See IMF's Introducing a general anti-avoidance rule (GAAR):https://www.imf.org/external/pubs/ft/tltn/2016/tltn1601.pdf

The following key areas should be considered by the government for review:

- Our analysis points out that broadening the tax-base could raise sufficient public resources to finance essential quality services for all.
- Measures towards efficient tax-collection (and other forms of resource mobilization) is to focus on key high return industries such as extractives (oil, gas, gems, jade and minerals), large scale agriculture and forestry, and manufacturing and other businesses, including SEZs/IZs
- SOEs which are the main resource of revenue need to be restructured in terms of their relationship with the government and their contribution (profits and taxes). Transparency and accountability in SOEs is required on a priority basis.
- The Government of Myanmar should focus on tackling more adequately the incidence of tax evasion and avoidance in Myanmar, besides removing avoidable tax incentives.
- It is an opportune moment to raise the general public's awareness of and sensitivity to tax compliance and tax culture.