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Legal Lens: MIC Adopts Flexible Approach for Export-Oriented Investment Tax Incentives

KEY TAKEAWAYS

The Myanmar Investment Commission (MIC) has revoked MIC Notification 87/2017 with the issuance of MIC Notification 8/2024 on 5th April 2024, eliminating the special classification for 100% export-oriented investments to be eligible for tax reliefs.

This regulatory update signifies a move towards evaluating tax incentives and exemptions on a case-by-case basis, rather than under a fixed classification system.

(1) Background and Previous Regulations:

The Myanmar Investment Commission (MIC)'s Notification 87/2017, issued on November 20, 2017, was a key legislative instrument that facilitated tax incentives for enterprises whose operations were geared exclusively towards export. Under this framework, enterprises that managed to supply all locally manufactured finished and semi-finished goods exclusively for export purposes were eligible for significant tax reliefs.

These reliefs included exemptions on customs duties and import taxes for the importation of raw materials and partially finished goods, provided these enterprises exported the finished products and generated at least 80% of their income from foreign currency earnings derived from these exports.

Additional exemptions could be granted proportionally based on the anticipated foreign currency earnings exceeding the base requirement, offering a substantial incentive for investors to maintain or increase export volumes.

(2) Changes and Consequences:

On April 5, 2024, the MIC issued a pivotal change to the regulatory landscape affecting export-oriented enterprises. With Notification 8/2024, MIC has revoked its prior Notification 87/2017, which had classified certain business investments that export 100% of their products from Myanmar. This change is effective immediately and marks a significant shift in the treatment of these enterprises under Myanmar investment law.

The revocation of Notification 87/2017 through Notification 8/2024 suggests a strategic shift in MIC's policy framework. Rather than maintaining a distinct classification for 100% export-oriented investments, MIC has now adopted a more holistic approach.

It is unclear if this move is a response to avoid granting tax privileges to the companies requiring export earnings to facilitate the imports, reflecting a possibly adaptive economic strategy by the MIC to current market conditions.

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Anyhow, as a result of this approach of MIC, the evaluation of tax incentives and exemptions will be based on a case-by-case basis, in accordance with Section 77(b) of the Myanmar Investment Law. This law allows the MIC to offer customs and tax exemptions under broader criteria without restricting them to enterprises meeting the 100% export-oriented classification.

(3) Implications for Export-Oriented Enterprises:

This regulatory update indicates a move towards a more flexible and potentially more inclusive policy environment. It allows the MIC to consider a wider array of factors in granting tax reliefs, thus adapting more dynamically to the changing economic landscape and specific circumstances of each enterprise.

This change, however, requires enterprises to be diligent in complying with the ongoing reporting obligations, such as the submission of tax incentive applications and regular import and export declarations to avail themselves of possible tax benefits.

Even though it remains uncertain whether the Myanmar Investment Commission (MIC) will introduce any new sets of criteria to replace Notification 87/2017 in the future. This ambiguity suggests that enterprises must stay particularly vigilant and responsive to any further regulatory updates that may define or modify the conditions under which tax exemptions and incentives are granted.

At Decha & Co, we are closely monitoring these developments and are ready to assist our clients in adapting to any new regulatory frameworks as they emerge. This proactive approach ensures that your investment strategies remain robust and compliant with the evolving investment landscape in Myanmar.

(4) Note:

For our clients engaging in or considering export-oriented investments in Myanmar, it is crucial to reassess your business strategies and compliance frameworks in light of these changes.

Decha & Co remains committed to providing you with the latest updates and strategic advice to navigate this new regulatory environment effectively. We encourage you to contact us to discuss how these developments might impact your business operations and investment planning in Myanmar.

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