Rödl & Partner

EYE-LEVEL EXCHANGE

Issue:
Q4/2018

QUARTERLY
ASEAN NEWSFLASH

Latest news on law,
tax and business in ASEAN

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Note from the editor

Welcome to the Q4/2018 edition of our ASEAN Newsflash. The last weeks saw several events which appear interesting from a German investment and trade perspective. In early November we participated in the 16th Asia-Pacific Conference of German Business (APK) in Jakarta to discuss the pros and cons of multilateralism, as well as new digitalisation trends in various industry sectors. Further in November, the Heads of Government of the ASEAN Member States gathered in Singapore for the 33rd ASEAN Summit to review ASEAN's progress in building a resilient and innovative community. During the summit, new agreements regarding trade in services as well as e-commerce were signed; we will closely monitor and report on the further implementation.

As a heads-up, our 2nd ASEAN Forum, which will take place in Singapore on 24 January, will again be dedicated to provide you with inside views into business opportunities and challenges in ASEAN countries. We would be happy to personally meet you there, invitations will be distributed by separate email.

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Rödl & Partner

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→ Indonesia

Indonesian tax reform: going digital

Tax reform is defined as the transformation of the tax system – comprising improvements to the tax administration and regulation as well as the expansion of the tax base. In Indonesia, tax reforms started in 1983, with the latest one being known as 'Tax Reform Batch III (2017-2020)', focusing on the consolidation of data, the acceleration of tax related procedures and an overall continuity of the reform process.

EMBRACING THE DIGITAL ERA

The latest Indonesian tax reform is strategically embracing the digital era. The Director General of Tax´ s (DGT) IT and database pillar is meant to generate reliable IT structures and databases to support the DGT´ s core business and to produce reliable and accurate output. The digitalization process is realized through the collection of integrated third party data, online and prepopulated tax returns as well as through the storage of taxpayers' account data. Upon implementing an automated and integrated system, the DGT will be able to easily retrieve any required information directly from the database, significantly reducing infringements of tax laws and improving a reliable tax administration.

IMPACT ON TAX COMPLIANCE

From a taxpayer's point of view, the digitalization will considerably improve the efficiency with regard to tax compliance. Paper-based submissions will be continuously abolished, simplifying and accelerating tax related procedures for the taxpayer and making it easier to fully comply with the current tax liabilities. e-SPT, e-Faktur, e-Billling, and e-Filing are some examples of how the DGT is continuously stepping forward into the digital world.

The DGT is currently also introducing e-Bukpot, having withholding tax receipts automatically synchronized within the system. With this comprehensive electronic system being pushed forward, it is feasible for more *'e-'*models to be introduced in the near future, further digitizing the Indonesian tax reform.

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→ Indonesia

Data Protection Aspects in EU-Indonesian FTA Negotiations

On 18 July 2016, the EU Trade Commissioner and the Indonesian Minister of Trade agreed to officially launch the negotiations for a Comprehensive Economic Partnership Agreement between the European Union and Indonesia (CEPA), with its completion being targeted for 2019.

The aim of the cooperation is to strengthen their bilateral relations, comprising all sectors of mutual interests.

PROCEEDINGS

The fifth of currently six negotiation rounds took place in Brussels from July 9 to 13, 2018 and included the discussion of data protection. Particular attention was paid to the EU provisions on cross-border data flows and the protection of personal data and privacy in the general Digital Trade Title of EU trade agreements. The text of the

EU provisions was sent in advance and then presented to the Indonesian side during the negotiating round. The provisions aim to provide for a straightforward restriction of protectionist barriers to cross-border data flows, in full compliance with the EU's data protection and privacy rules.

CROSS-BORDER DATA FLOWS

Personal data protection constitutes a fundamental right under Article 8 of the EU Charter of Fundamental rights, and can hence not be negotiated. Article 1 regarding "Cross-border data flows" is a horizontal clause covering all sectors of the economy as well as both, personal and non-personal data. In order to facilitate cross-border data flows between parties of trade agreements, it addresses certain restrictions, including

a) the requirement to use computing facilities in a party's territory (or respective certification requirements);
b) the forced localisation of data in a party's territory or
c) the prohibition of storing and processing data in the other party's territory.

Furthermore, Article 2 on "Protection of personal data and privacy" shall safeguard the parties' right to regulate in the field of personal data protection. In the light of its' importance as human right it includes, among others, an explicit recognition that both parties consider high standards and rules on privacy and personal data protection to be fundamental to the Agreement. The parties are permitted to adopt and maintain safeguards for privacy and personal data protection, including on cross-border transfers of personal data, which applies to the whole agreement. An obligation of transparency shall ensure that the parties are informed of possible future safeguards for data protection.

Both Articles will not be subject to the Investment Court System, which is being negotiated separately.

→ Indonesia

New regulations for importer identification number

Since the launch of the Online Single Submission (OSS) system on 9 July 2018, based on Government Regulation Number 24 of 2018, some related regulations issued by involved ministries have been revoked. One of these is the Regulation by the Minister of Trade Number 70/M-DAG/PER/9/2015 regarding Importer Identification Numbers (API) (Regulation 70). To be consistent with the OSS, the Minister of Trade recently issued Regulation Number 75 of 2018 regarding Importer Identification Numbers (API) (Regulation 75).

KEY FEATURES OF REGULATION 75

Importation may only be effected by importers who already obtained an API. Importers may only import goods without API, if the goods are classified, among others as temporary imports, promotional, required for scientific research and development, connected to remedy of natural disasters or required and imported by government institutions.

TYPES OF API

There are two types of API, i.e. (i) general importer identification number (API-U); and (ii) producer importer identification number (API-P). The API-U is granted to companies importing goods to be sold, while API-P is for companies importing goods to be utilized as capital goods, raw material or supporting material for production processes.

An API is valid as long as the importer operates the corresponding business activities in Indonesia. Under the new regulations, a Business Identification Number (Nomor Induk Berusaha – NI) issued by the OSS Agency is now treated as respective API. Importers who obtained an NIB as API have to submit an online report of import realization every three months to the Minister of Trade.

APIs for importers of foreign banknotes, business entities or contractors in energy, oil and gas, mineral and other natural resources are still issued by the Minister of Trade until this procedure is shifted to the OSS Agency in accordance with applicable laws and regulations. Importers who already obtained an API based on Regulation 70 have to register with the OSS Agency to obtain a NIB treated as API, at the latest six months after the issuance of Regulation 75, or before 20 January 2019. The new regulation will likely facilitate import licensing proceedings.

However, entrepreneurs already operating in Indonesia need to observe the time limit to comply with the NIB requirement and should initiate respective amendment proceedings soonest.

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→ Malaysia

Malaysia´ s 2019 Budget announced

Malaysia's 2019 Budget has been announced by the new federal government on 2 November 2018, introducing measures that focus on

a) implementing institutional reforms;

b) ensuring the socio-economic well-being of Malaysians;

c) fostering an entrepreneurial economy.

THE KEY TAX PROPOSALS INTRODUCED IN THE 2019 BUDGET INCLUDE:

- REDUCTION IN THE CORPORATE TAX RATE FOR SMALL AND MEDIUM ENTERPRISES (SME) from 18 per cent to 17 per cent for chargeable income up to RM 500,000;
- SPECIAL VOLUNTARY DISCLOSURE PROGRAM (SVDP) to encourage taxpayers to voluntarily declare any unreported income by offering reduced penalty rates from 3 November 2018 to 30 June 2019;
- TIME BAR PERIOD on unutilised tax losses and allowances (including unutilised incentive benefits) to be restricted to a maximum of 7 years;
- SURRENDERING OF LOSSES FOR GROUP RELIEF will only be allowed after the surrendering company has been in operation for more than 12 months, and restricted to a period of 3 consecutive years of assessment (YA). In addition, companies with brought forward investment tax allowances or unabsorbed pioneer losses will no longer be eligible to claim group relief;
- LABUAN COMPANIES will no longer be able to elect for income tax at the fixed rate of RM 20,000, and will be subject to a tax rate of 3 per cent on net profits. Income from intellectual property assets will be subject to taxation at the prevailing corporate income tax rate;
- IMPORTATION OF TAXABLE SERVICES as well as digital products and services will be subject to service tax effective as of 1 January 2019 and 1 January 2020 respectively;
- SERVICE TAX EXEMPTIONS will be granted on specific B2B services effective as of 1 January 2019;
- A CREDIT SYSTEM AGAINST SALES TAX PAYABLE will be introduced for small manufacturers who purchase manufacturing inputs from importers and traders instead of registered manufacturers;
- Effective as of 1 January 2019, REAL PROPERTY GAINS TAX (RPGT) rates for gains on disposals of real property or shares in real

property companies after 5 years shall be increased from
  - 5 per cent to 10 per cent for companies, non-citizens, and non-permanent residents;
  - or 0 per cent to 5 per cent for citizens and permanent residents.

- STAMP DUTY RATE ON THE TRANSFER OF REAL PROPERTY will be increased from 3 per cent to 4 per cent on values above RM 1 million effective as of 1 January 2019.

Budget 2019 seeks to enhance Malaysia's fiscal strength, whilst sustaining economic growth and aiming to support the welfare of the Malaysian people under challenging economic circumstances.

→ Malaysia

Malaysian Business Reporting System (MBRS)

The Companies Commission of Malaysia, also known as Suruhanjaya Syarikat Malaysia (SSM), is a Malaysian statutory body which has recently introduced an online submission platform based on the eXtensible Business Reporting Language (XBRL) format with the following main objectives:

- Regulators such as the Inland Revenue Board, Royal Malaysian Customs and Bursa Malaysia can easily analyse and compare financial information of the companies as well as influence the audit selection.

- SSM's time and cost of financial and non-financial information collation is significantly reduced as the burden of information recording is transferred from SSM to the respective companies.

WHAT IS MBRS?

MBRS is a digital submission platform which allows the annual submission of:

- Financial Statements and Reports (FS)

- Annual Returns (AR); and

- Exemption Applications (EA) which relate to FS and AR applications.

WHAT IS XBRL?

XBRL is an electronic language used to communicate business and financial data worldwide in an open, royalty free and international information format meeting the requirements of investors, regulators, lenders and others.

WHEN WILL IT BE IMPLEMENTED?

The submission of annual return and financial reports via MBRS is available since 28 September 2018 on a voluntary basis. However, effective as of November 2018, it will be mandatory for companies in Kuala Lumpur and Selangor to submit their annual returns, Certificate for Exempt Private Company (EPC) and unaudited financial statements to SSM using the MBRS platform. However, no date has been set so far for the submission of audited financial statements.

→ Malaysia

Increased minimum wage

The Prime Minister's Office announced that the minimum wage for all employees nationwide will be increased and standardised effective as of 1 January 2019. The new minimum wage will be MYR 1,050.00 per month, or MYR 5.05 per hour.

The Minimum Wages Order 2016 currently sets the minimum wage for employees in Peninsular Malaysia at MYR 1,000.00, whereas the minimum wage for employees in Sabah, Sarawak and Labuan is set at MYR 920.00. The minimum hourly wage in Peninsular Malaysia amounts to MYR 4.81, compared to MYR 4.42 in Sabah, Sarawak and Labuan. Effective as of 1 January 2019, the entire Malaysia will have the same minimum wage. As the new minimum wage will only take effect in 2019, entrepreneurs have time to adapt and to comply with the increase.

→ Malaysia

Malaysia to sell publicly held assets

Malaysian Prime Minister Tun Dr. Mahathir Mohamad recently announced that the government may have to devise new taxes, and to sell land and other "valuable assets" in order to deal with the country's national debt burden. He also declared that the government will welcome foreign investments to further grow the nation's economy.

Although no details have been revealed as to what assets will be sold, it seems likely that some publicly owned companies deemed by the government to not be part of a "strategic industry" may be offered to foreign investors in the near future.

This – together with the fact that Malaysia does already have a number of policies and incentives to encourage foreign direct investment – may create interesting opportunities for foreign investors wishing to acquire assets in the country.

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→ Myanmar

Central Bank of Myanmar allows for foreign banks to provide banking services to Myanmar-owned companies

According to Directive No. 6/2018 dated 8 November 2018, the Central Bank of Myanmar as of now allows for foreign banks in Myanmar to provide any financing and other banking services to Myanmar-owned companies, in the same manner as local banks.

The Directive applies to the 13 foreign banks which do have a license but whose lending was previously restricted to foreign-owned companies and joint ventures. Moreover, according to two officials of the Central Bank of Myanmar, next year foreign banks will be allowed to expand their branch networks in Myanmar. Until now, the 13 foreign banks are limited to one operative branch nationwide.

Foreign banks are, however, not allowed to provide retail banking services to individual Myanmar citizens such as personal savings accounts, card services and money transfers, and will not be allowed to accept immovable property such as land and buildings as security.

With these measures, the Central Bank further opens the banking sector to foreign players after recently announcing that they will allow for the 13 existing foreign banks to extend their services by including import financing services. Beforehand, only export trade financing was allowed for foreign banks.

→ Myanmar

Ministry of Investment and Foreign Economic Relations

On 19 November 2018, the Parliament approved the establishment of a new Ministry of Investment and Foreign Economic Relations which will be led by Myanmar Investment Commission Chair U Thaung Tun. The Ministry will take over the Foreign Economic Relations Department and the Directorate of Investment and Company Administration (DICA), currently administrated by the Ministry of Planning and Finance.

The President U Win Myint said the government needed the new Ministry "to make use of outside assistance from the United Nations and other international organizations in accordance with the country's policies and to effectively collaborate with the UN and others international organizations."

→ Myanmar

Wholesale & Retail: Standard Operating Procedures (SOP) published

Almost three months after the publication of the "Rules permitting wholesale and retail sale and distribution" (Rules), the Ministry of Commerce and Trade (MOC) released the Standard Operating Procedures (SOP) and a list of 24 categories of goods (Newsletter 3/2018 dated 26 July 2018) allowable for trade by foreign companies as well as joint ventures.

The MOC thereby clarifies that previous notifications regarding wholesale and retail are no longer applicable, and that new companies willing to trade goods and commodities have to apply in compliance with the new Rules. Existing companies operating under the former exemptions are granted a five years period to meet the minimum capital and floor space requirements.

The minimum capital requirement for 100 per cent foreign companies is USD 5 million for the wholesale sector, and USD 3 million respectively for the retail sector, excluding the value of land rental. For joint ventures, a minimum capital of USD 2 million (wholesale) or USD 700,000 (retail) is required, excluding the costs of lease agreements. The floor space minimum requirement for any outlet is 929 square meters.

Please note that the Rules do not take into account the Myanmar Companies Law, and do not treat companies with up to 35 per cent foreign ownership as "local companies". Instead, only 100 per cent locally owned companies are exempted from capital or floor space requirements and only have to apply for retail or wholesale licenses if their capital investment exceeds 700,000 USD.

EXCEPTION FOR OUTLETS IN SHOPPING MALLS

However, the MOC now allows for one remarkable exception. If a foreign company opens an outlet in a shopping mall that has obtained a retail license, they are not required to obtain a retail license themselves. As a consequence, they may conduct retail business regardless of floor space and minimum capital requirements. The company may apply for an Export/Import Certificate with the recommendation of the shopping mall.

→ Myanmar

Myanmar Companies Law

The Directorate of Investment and Company Adminstration (DICA) introduced the new electronic registry system called Myanmar Companies Online (MyCO) together with the implementation of the new Myanmar Companies Law on 1 August 2018.

SIGNIFICANT CHANGES UNDER THE NEW MYANMAR COMPANIES LAW

All legal persons (in other words: companies, human beings, associations, institutions or government agencies) conducting more than one isolated transaction or a transaction that exceeds a period of 30 days must register with DICA in order to carry on their business.

Under the new law instead of Representative Offices and Branch Offices, the entity of an Overseas Corporation is introduced. An Overseas Corporation is incorporated outside of Myanmar and only registered with DICA in order to conduct business in Myanmar.

The new Companies Law allows for the registration of a limited company with a single shareholder and only one director.

However, at least one director must be an ordinary resident in Myanmar. Overseas Corporations are as well required to name an ordinary resident in Myanmar as Authorised Officer to act as its representative in Myanmar. In order to qualify as an ordinary resident, the person must be resident in Myanmar for at least 183 days per year. Companies are required to install a resident director or an Authorised Officer by 31 July 2019 (the end of the transition period).
We are of course happy to provide you with a Nominee Director or an Authorised Officer who fulfills the qualification of an ordinary resident in Myanmar.

Instead of a Memorandum of Association and Articles of Association, companies must draft their own Constitution or choose the model constitution provided by the DICA in order to incorporate. Companies are no longer required to define their business objectives or the business activities that they would like to engage in. For existing companies, the objectives will stay in force until the end of the one year transition period (31 July 2019), unless they adopt a new constitution.

Under the new Companies Law, shares of companies no longer have a nominal or par value. Unless determined otherwise by the company, a share confers the right to an equal share in dividends and the right to an equal share in the distribution of assets.

A Foreign Company is a company incorporated in Myanmar in which an overseas corporation or a foreign person owns or controls an ownership interest of more than 35 per cent. Therefore, it is now allowed fo foreign investors to acquire shares of local companies and still be regarded as local companies. Foreign investors have the choice to either register a private company limited, a public company, a company limited by guarantee or an unlimited company.

The new Companies Law does not differentiate in its requirements or benefits between a foreign company and a local company. However, it requires all companies to notify the registrar if at any time the company becomes a foreign company. Of course, other laws and especially license requirements set by the ministries are likely to continue the differential treatment of local companies and foreign companies for the foreseeable future.

RE-REGISTRATION OF EXISTING ENTITIES

The “Myanmar Companies Regulations 2018” have been released on 25 July 2018.

From now on, all existing companies, representative offices and branch offices are required to re-register within a period of 6 months (until 31 January 2019).

The re-registration does not create a new legal entity and the existing rights and obligations of the re-registered company remain unaffected by the process. If an existing entity fails to re-register, it will be struck out of the register, while the liabilities of every member and director of the company will remain enforceable.

When companies re-register, they may opt for a new Constitution instead of the existing Memorandum and Articles of Association. This might be especially advisable for existing foreign companies, as the new constitution does not limit the business activities.

Representative Offices and Branch Offices must re-register as Overseas Corporations. However, the required information and documents as well as the reporting requirements under the new law differ substantially from the previous institutions.

We will be pleased to assist you with a re-registration process and provide you with more details.

→ Myanmar

Withholding Tax

On 18 June 2018, the Ministry of Planning and Finance enacted Notification 47/2018, which has been effective as of 1 July 2018. The highlights of the Notification are as follows:

- No more Withholding Tax will be levied on the purchase of goods, work performed, interest payment or supply of services on payments made to resident foreigners and resident citizens within Myanmar. However, there is no change on payments to non-resident foreigners (2.5 per cent);
- Payments made by Government organizations, Ministries and State-owned Companies for purchase of goods, work performed and supply services within Myanmar are subject to 2 per cent Withholding Tax on payments to resident citizens and resident foreigners, 2.5 per cent respectively to non-resident foreigners.

It is a celebration for Taxpayers in matters of Withholding Tax. These changes will improve the tax system, facilitate tax compliance, promote and stimulate the economy.

→ Myanmar

Standard Criteria for the education sector

Four months after the publication of Notification No. 7/2018, dated 20 April 2018 by the Myanmar Investment Commission (MIC), authorizing 100 per cent foreign investment in educational institutions including basic education schools, technical, vocational and training schools, higher education schools, subject based schools as well as other schools designated by the Ministry, the Directorate of Investment and Company Administration (DICA) released a list of 17 additional criteria to provide further guidance in the education sector.

The list of criteria includes namely rules on forms of investment (Citizen, JV with Myanmar citizen or foreigners), nationality and qualifications of the teachers as well as nationality of the Investor (Myanmar citizen of Foreigner).

→ Myanmar

Exchange Rate

Since May 2018, the US Dollar has continued to appreciate against the Kyat, rising by almost 10 per cent. The Central Bank of Myanmar (CBM) therefore intervened in the Forex market in order to stabilize the exchange rate. On 13 August, CBM has namely agreed to remove the 0.8 per cent trading band above or below the CBM’s reference rate.

→ Myanmar

The Internal Revenue Department plans to allow for more a convenient payment for taxpayers

The Internal Revenue Department (IRD) is developing an electronic system which might soon allow taxpayers to pay their contributions via mobile banking.

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→ Philippines

11th Foreign Investment Negative List released

On 29 October 2018 – more than 1 year later than expected – the President of the Philippines signed Executive Order No. 65, proclaiming the 11th Regular Foreign Investment Negative List.

The Foreign Investment Negative List is a key pillar of the 1991 Foreign Investments Act (FIA), summarizing industry sectors and activities that are either entirely prohibited to foreign investors or subject to limitations of foreign ownership.

The FINL identifies two categories of foreign ownership limitations: List A, which contains areas of investment where foreign ownership is limited by mandate of the Philippine Constitution or by specific laws, and List B, which contains areas of investment where foreign ownership is limited for reasons of security, defense, risk to health and morals, and protection of local small-and-medium enterprises (SMEs).

In principle, any industry which is not specifically mentioned in the FINL may be 100 per cent foreign-owned. In fact, most industries are open to 100 per cent foreign investment.

Nonetheless, it has to be kept in mind that within the fairly complex foreign investment framework, spanning numerous rules and regulations or even contractual terms, other direct or indirect foreign ownership limitations may nonetheless be applicable. One example is the Government Procurement Reform Act and its 2016 revised Implementing Rules and Regulations generally limiting bids for the provision of goods and services to government agencies to – amongst others - domestic corporations or joint ventures with at least 60 per cent domestic ownership or interest. Similar limitations, which are arguable though, may be found in the applicable framework for foreign contractor licenses.

Despite the positive development over the past years, the OECD FDI Regulatory Restrictiveness Index (16 May 2018) still indicates the Philippines to be one of the most restrictive nations to foreign investment out of 68 countries. However, it deserves to be emphasized that the same report also ranked the Philippines amongst the top FDI reformers.

The expectations of the business community vis-à-vis the 11th FINL where high in the light of the so called "Anti-Red-Tape Act", which was passed this year, and due to many pledges of the current government for "innovative" and "aggressive" measures to ease (legal and non-legal) restrictions for foreign participation in certain investment areas.

However, given the limited amount of changes, various business leaders and organizations noted that the 11th FINL is only a small step into the right direction.

Under the 11th FINL, the following sectors do now allow for 100 per cent foreign ownership:

- Internet businesses (e.g. internet access providers)

- Teaching at higher education levels as long as the subject taught is not a professional one (i.e. government board or bar examination)
- Training centers engaged in short-term high-level skills development, which are not part of the formal education system
- Insurance adjustment companies, lending companies, financing companies and investment houses
- Wellness Centers

Moreover, foreigners may now own up to 40 per cent – instead of the previous 25 per cent – of contracts for the construction and repair of locally-funded public works, except for infrastructure or development projects covered under Republic Act No. 7718, and projects which are foreign-funded or assisted and required to undergo international competitive bidding. Additionally, the foreign investment limitation for private radio communication networks has been increased from 20 per cent to 40 per cent.

→ Philippines

Maternity leave in the Philippines – A revolutionary step towards international employment standards

On Tuesday, 28 August 2018, the House of Representatives passed Republic Act No. 7322, seeking to increase maternity benefits for women workers in the government and private sectors.

Before the new regulations were passed, women who had a normal delivery were permitted to take sixty (60) days of maternity leave, while in case of a caesarian section the leave was prolonged to seventy-eight (78) days. According to a recent report of the International Labor Organization, the Philippines – together with Malaysia – provided the shortest maternity leave of all ASEAN countries.

With the new law, the lawmakers took a step towards the improvement of benefits for all mothers in the Philippines. Regardless of whether a woman had a normal delivery or a caesarian section, every covered female employee (SSS member), who has contributed / paid at least three monthly maternity contributions within the twelve (12) month-period before the semester of her childbirth or miscarriage, is entitled to maternity leave.

Furthermore, female workers may extend their maternity leave by an additional thirty (30) days without pay. However, an extension may only be granted if notice has been given to the employer in written form at least fourty-five (45) days before the end of the regular maternity leave. Bicameral approval has been given on October 1, while the previously planned maternity leave of 100 days has been increased to 105 days at once, and fathers have been granted 7 additional paternal leave days amounting to 14 days of paternal leave in total.

Maternity leave is paid by the employer to the employee according to her previous monthly salary up to a maximum limit regulated by SSS, and will be reimbursed to the employer's account by SSS.

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→ Singapore

Free Trade Agreement between the European Union and Singapore signed

The EUROPEAN UNION - SINGAPORE FREE TRADE AGREEMENT (EUSFTA) has been signed in Brussels on 19 October 2018. The EUSFTA now has to be approved by the European Parliament in order to be ratified. It is expected to enter into force in the first or second quarter of 2019. In addition to the EUSFTA, the EU and Singapore also signed the EU-SINGAPORE INVESTMENT PROTECTION AGREEMENT (EUSIPA). However, based on an opinion of the European Court of Justice from May 2017, the EUSIPA requires the approval of regional and national parliaments of the EU Member States to be ratified. This is due to its shared competence nature. The approval process is assumed to take 2 to 3 years.

EUSFTA – A LANDMARK FREE TRADE AGREEMENT

The EUSFTA is considered a landmark free trade agreement with regard to the extent of trade liberalization. The agreement shall signal a general free trade commitment on behalf of both parties and is supposed to be seen as stepping stone for a further trade liberalization with other Association of Southeast Asian Nations (ASEAN) member states. Currently, the EU is in the process of concluding a Free Trade Agreement with Vietnam. Trade negotiations have also be launched with other ASEAN countries, notably with Indonesia, Malaysia, the Philippines and Thailand. However, due to the political situation in Thailand and a discordance regarding services and IP as well as environmental issues concerning palm oil in Malaysia, the respective negotiations are currently put on hold.

EFFECTS OF EUSFTA

The EUSFTA will liberalize trade between the EU and Singapore and has attracted significant attention by businesses from both contractual parties. With regards to the tariff elimination, the EUSFTA will apply the concept of “ASEAN cumulation” for Singapore’s key export interest. This means, that goods sourced in other ASEAN countries will be deemed to originate from Singapore under the Rules of Origin of the EUSFTA.

The “ASEAN cumulation” concept is an important aspect of the EUSFTA for Singapore as a trading hub. The EUSFTA will further reduce non-tariff barriers, will improve trade in services and will open government procurement opportunities.

The EUSIPA will, once in place, replace the existing 12 bilateral investment agreements between Singapore and EU member states. The EUSFTA and the EUSIPA will foster the already strong economic ties between the 2 parties. In 2017, the EU and Singapore already counted a bilateral trade in goods exceeding SGD 98 billion. Singapore also attracts large amounts of foreign direct investments. More than 10,000 EU companies have already invested in Singapore.

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→ Thailand

Tax incentives international business center promotion

The Thai Cabinet approved concepts of four drafts of Royal Decrees proposed by the Ministry of Finance for the cancellation of the tax incentives provided to International Headquarters, International Trading Centers and Regional Operating Headquarters. The cancellation became necessary to comply with international standards of the OECD against tax base erosion and profit shifting.

Effective as of 10 October 2018, applications for IHQ, ITC, and ROH are no longer approved, while a new scheme has been introduced in the meantime - the International Business Center. The IBC is linked to the following requirements:

- Registered capital of THB 10 million
- Annual local expenses of at least THB 60 million (ROH and IHQ converted to IBC can apply the old conditions)
- At least 10 staff (or 5 staff in case of IBC-treasury center)

THE IBC PROVIDES THE FOLLOWING INCENTIVES:

Reduction of corporate income tax on service fees and royalties:

- Annual local expenses of THB 60 million: 8 per cent CIT rate
- Annual local expenses of THB 300 million: 5 per cent CIT rate
- Annual local expenses of THB 600 million: 3 per cent CIT rate

EXEMPTION OF CORPORATE INCOME TAX ON:

- Dividends from associated enterprises inside and outside Thailand
- Dividends or interests of overseas entities derived from the IBC

EXEMPTIONS OF SPECIFIC BUSINESS TAX ON

- Income of treasury management for the associated enterprises.

REDUCTION OF PERSONAL INCOME TAX FLAT RATE

- to 15 per cent for expatriate employees [likely requirement: minimum monthly salary of THB 200,000]

We strongly recommend all companies enjoying tax incentives under the mentioned schemes to review whether or not they are eligible for a promotion under the IBC scheme.

→ Thailand

VAT rate remains at 7 per cent

With Royal Decree No 669, the reduced VAT rate of 7 per cent has been extended until 30 September 2019. The statutory VAT rate is 10 per cent. However, since 1999 the rate has been lowered each year per Royal Decree to 7 per cent.

→ Thailand

Transfer pricing law enacted

On 27 September 2018, the National Legislative Assembly approved a revision of the Thai Revenue Code to include new provisions on transfer pricing. The new provisions will be effective for the accounting periods commencing on 1 January 2019 onwards. The relationship between the entities being determined by the direct or indirect partnership or a shareholding of more than 50 per cent including the management and controlling power.

Taxpayers with an annual income exceeding THB 200 million are required to submit a disclosure form providing information regarding relationship and transaction value with regard to related companies within 150 days from the end of the accounting year (together with the corporate tax return). Additionally, taxpayers will have to provide the Thai Revenue Department with comprehensive transfer pricing documentation providing significant information, e.g. transfer pricing policy between group companies, within 60 days (or 180 days for the first time) upon reception of a notice from the tax authorities. Non-compliance will result in a fine of THB 200,000.

The Thai Revenue Department has the right to make adjustments to income and expenses if they consider the pricing between related parties not to be at arm's length. Since the provisions will become effective as of 1 January 2019, the first disclosure form will have to be filed in 2020. Taxpayers should start storing comprehensive documents in order to comply with the new provisions.

Though only companies with income exceeding THB 200 million are required to file a disclosure form, the general power to adjust the pricing between related parties applies to all taxpayers conducting business with related parties.

Therefore, all companies should create and maintain comprehensive information and documents to avoid fines and adjustment of the officials on income and expenses. We expect the Thai Revenue Department will announce the relevant sub-legislation and detailed requirements during the coming months.

→ Thailand

Investment promotion: New investment category

The Thai Board of Investment has created a new promotion category 7.33)BOI Announcement No. Sor. 4/2561)2018((- THE DISTRIBUTION CENTER WITH SMART SYSTEMS:

PROMOTED PROJECTS ARE ELIGIBLE FOR AN A2 PROMOTION, MEANING:

- 8 years corporate income tax exemption)capped at 100 per cent of the investment, excluding cost of land and working capital)
- Exemption of import duties on machinery
- Exemption of import duties on raw materials used in production for export
- Other non-tax incentives

PROJECTS HAVE TO COMPLY WITH THE FOLLOWING REQUIREMENTS:

- Projects have to provide a warehouse with advanced technology such as automatic storage and retrieval systems as well as information technology support systems;
- Minimum investment of THB 1,000 million)approx. 26 million Euro(excluding cost of land and working capital;
- The following activities have to be established within three years:
  - creation of a data center or co-location in Thailand for data management;
  - at least 20 per cent of total project's employees have to be Thai personnel with bachelor degree in science and technology;
  - data analytics or data management activities related to digital transactions with high technology in Thailand with substantial local team participation;
  - introduction of an advanced digital training program; and

– set-up of a research and development co-operation program with Thai education or research facilities; only revenue stemming from cross-border
– logistic service fees will be eligible for the tax incentive.

Interested investors should get in contact with the Thai Board of Investment to gather further information on the promotion scheme.

→ Thailand

Trade: Deepening of economic relations between China and Thailand

On 7 November 2018, China and Thailand have agreed to further deepen the economic relations between the countries. Declared goal of the agreement is to increase the bilateral trade to USD 140 billion by 2021.

China and Thailand have identified the following areas for further cooperation: trade, investment and industry, science and technology, digitalization, tourism, finance and regional economic cooperation.

China is continuing work on regional trade and business relations, especially in the light of the proposed Regional Comprehensive Economic Partnership. The RCEP, if enacted, would comprise China, India, South Korea, Japan, Australia, New Zealand and the Association of Southeast Asian Nations (ASEAN). The RCEP would be the largest economic bloc in the world by population and by gross domestic product.

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→ Vietnam

New regulations on Social Insurance contributions for foreign employees in Vietnam

Foreign Employees in Vietnam will have to contribute to the Social Insurance scheme as of December 1, 2018 (employers contribution) or 2022 (employees contribution) respectively. This is a new regulation implemented as of December 1, 2018.

CHANGES

Until 31 December 2017, foreign employees were exempted from SI contribution in Vietnam. A regulation came into force on 1 January 2018, comprising the requirement for foreigners to contribute to the SI scheme. Due to a lack of guidance, this contribution has been put on hold, though, until now.

The SI scheme comprises three elements, i.e. the "Sick and Accident Insurance" and the "Pension Fund". The former is paid by the employer on behalf of the employee at currently 3.5 per cent, while the latter is paid by the employee at

8 per cent and at 14 per cent by the employer. The newly issued guidance now stipulates that:

From December 1, 2018, the employer will contribute 3.5 per cent to the SI scheme for "*Sick and Accident Insurance*". From January 1, 2022, both the employer and employee will contribute in full at a total of 8 per cent for the employee and 17.5 per cent for the employer. The calculation base for contribution is currently capped at the twentyfold of the common minimum salary which currently equals 27,400,000 VND (approximately 1,000 Euro).

This approach aligns Vietnam with other countries in the region such as e.g. Thailand. Singapore now remains the only country in the region where foreigners who are no permanent residents are not required to contribute to a SI scheme.

CONCLUSION

This change has caused major discussions between foreign chambers and the government of Vietnam. Foreign chambers believe that this increase in contribution will make it less attractive for foreigners to come to Vietnam. Whether or not the relatively low maximum contribution of 80 Euro for an individual will make Vietnam a less attractive country to work in, remains to be seen. The benefits of SI contribution for a foreign individual are very limited with regard to the "*Sick and Accident Insurance*" but will need to be reviewed again in relation to the pension portion.

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