

Eye-level exchange

Quarterly ASEAN Newsflash

Latest news on law, tax and business in ASEAN

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Note from the editor

Dear reader,

Welcome to the Q2/2018 edition of our ASEAN Newsflash. While a global trend in protectionism could be seen in the last years, we gladly observe some different approaches in ASEAN. Recently Thailand has expressed its hope of joining the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, the Philippines further liberalize the investment environment in the newly issued negative list, Indonesia and the EU concluded the fourth round of free trade negotiations while the EU-Vietnam FTA is expected to be signed in late 2018.

These and many other issues will also be discussed at our firm's Forum Going Global which will be held in Nuremberg, Germany, on 21st June 2018. We would be happy to meet you personally and talk about your worldwide trade and investment activities. If you are interested in joining the event, please refer to the following link:

www.roedl.de/forumgoingglobal/

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> Indonesia – Tax Holiday Rules Revamped and Eased

The Indonesian Minister of Finance recently issued Regulation No.35/PMK.010/2018 (PMK-35), introducing a new concept of tax holiday. PMK-35 has been in effect since its enactment on April 4th, 2018. The modified regulation aims at inviting investors to make new investments in Indonesia's 'pioneer industries', with the incentive of a 100 % relief of corporate income tax for up to 20 years. Under different programs, Indonesia has offered tax holidays since 2011, but the approval process has been comparably complicated and often with unclear results. Under the revised rules, a company can apply for income tax relief when it requests investment permits. Basically the investment size will determine the number of years for which a company can get tax discount.

Pioneer Industries

To benefit from the tax incentive, investors need to engage in one of 17 "pioneer industries", which can be understood as those that, among others, create added value to the economy and introduce technology. Among such industries are e.g. maritime transport, telecommunications, medical equipment, industrial machinery, processing of metals and agricultural products as well as machinery or components for ships, aircraft, trains or power plants.

The incentives are applicable for both, new investment or expansion. Applicants must be an Indonesian legal entity. The minimum investment volume needs to be IDR 500 billion (approx. US\$ 37 million) and applicants need to comply with debt-to-equity ratio for taxation purposes. Further it is required that no previous request for tax exemption has ever been rejected. The Minister of Finance is supposed to come to a decision within 5 working days.

Further industrial sectors, which are not explicitly categorized as Pioneer Industry, may also qualify for the tax incentive, provided the investor meets the above requirements. In these cases, the governmental Capital Investment Coordinating Board (BKPM) will call for an inter-ministerial meeting to examine the application.

The benefit is a 100 % relief of corporate income tax. The tax relief duration depends on the investment volume:

Period of Tax Relief (in Years)	Investment Volume (in Rupiah)
5	500 billion up to less than 1 trillion
7	1 trillion up to less than 5 trillion
10	5 trillion up to less than 15 trillion
15	15 trillion up to less than 30 trillion
20	More than 30 trillion

Once investors have been granted the exemption, their tax liability will be reduced by 100 %, and none of their income will be subject to withholding tax for the corresponding period. After the tax holiday period has expired (transition period), investors can still enjoy a 50 % reduction for the next 2 years. The new Regulation also provides cases in which the tax relief may be revoked, e.g. reduced investment volume or inconsistencies in the realization of the investment plan.

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> Indonesia – PT Companies Need to Report Beneficial Owners

The Indonesian government issued President Regulation No. 13 of 2018 on the Implementation of the Principle of Knowing Beneficial Owners of Corporations in Relation to the Prevention and Eradication of Money Laundering and Terrorism Financing Crimes (Regulation 13) with effect as of 5th March 2018, which requires corporations registered in the country to reveal details of beneficial ownership, aiming to tackle money laundering and terrorism financing in ASEAN's largest economy.

- 1) Under the new Regulation 13, a corporation has to (i) determine at least one person being its beneficial owner, (ii) appoint an employee to implement the principle of knowing beneficial owners, and provide respective information to authorized institutions upon request and (iii) keep the reported information on the beneficial owner accurate and up to date. Such reporting becomes particularly relevant when the PT applies for establishment, registration, legalization, approval or business license, or for any changes or updates during its operation. The report needs to be submitted by the founders or management of the limited liability company, a notary or a proxy. Failure to comply with Regulation 13 may lead to sanctions imposed on the corporation in accordance with laws and regulations not further specified so far. Existing corporations are given one year from the effective date of Regulation 13 to implement the principle of knowing beneficial owners.

- 2) The term “corporation” includes PT PMA companies, i.e. the only corporate vehicle for foreign investors in Indonesia. Authorized institutions are broadly defined as central or local government institutions that have authority over registration, legalization, approval, notification, business licensing or dissolution of corporations, or as institutions having the authority to monitor and regulate corporation businesses. The authorized institutions may also determine another beneficial owner based on independent audit, information from other institutions and other reliable information.

The beneficial owner of a corporation is determined by several criteria; as to PT (limited liability companies) criteria, a beneficial owner:

- possesses more than 25 % of the shares in the limited liability company as stated in the articles of association;
- possesses more than 25 % of the voting rights in the limited liability company as stated in the articles of association;
- receives more than 25 % of the profits earned annually by the limited liability company;
- possesses the authority to appoint, replace and dismiss members of the board of directors and board of commissioners of the limited liability company;
- possesses the authority or power to influence or control the limited liability company without the need to obtain authorization from any party; receives benefits from the limited liability company; and/or
- is the actual owner of the fund used to subscribe for the shares of the limited liability company.

The implementation of the reporting requirement in practice remains to be seen; while tools for the technical execution of this obligation have already been installed in the ministry’s online system, guiding regulations with details of the required procedures have not yet been issued. However, particularly in case of new establishments or changes to the corporation, the shareholders and management should be prepared to report the beneficial owner.

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> Myanmar – Wholesale and Retail Open Up to Foreign Investors

In a long awaited move, the Ministry of Commerce and Trade (MOC) released the requirements for foreign investors to engage in trading activities with imported goods and commodities. According to Notification 25/2018, dated 9th May 2018, and the “Rules permitting wholesale and retail sale and distribution” released on the same date, the MOC henceforth allows wholesale and retail business by foreign companies as well as by Joint Venture companies. Previously, foreign companies were only permitted to engage in the trade of goods they produced in Myanmar, as well as a limited choice of goods urgently needed for the local market.

Requirements for foreign investment into wholesale and retail

The MoC differentiates between 100 % foreign companies, Joint Ventures (up to 80 % foreign investment) and local companies. While currently local companies are required to have 100 % local shareholding, the new Myanmar Companies Law expected to be implemented as of 1st August 2018, will allow for foreign investors to hold up to 35 % of the shares of a local company.

The minimum capital requirement for 100 % 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 the lease agreements.

Local companies have no minimum capital requirements.

Retail and wholesale may be conducted in any township in the Regions and the States. The liberalization of the market was much anticipated by investors, and complies the Myanmar Investment Law and its regulations.

> Myanmar – Electronic Company Registration System/Update on Legal & Tax

Introduction of the Electronic Company Registration System/Requirement of Re-Registration for all existing Companies

With the expected implementation of the new Myanmar Companies Law on 1st August 2018, a new electronic registry system called MyCO (Myanmar Companies Online) will be launched. According to the Directorate of Investment and Company Administration (DICA), all exist-

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ing companies, branch offices and representative offices will be required to re-register within a period of 6 months.

In order to coordinate this process, the Draft Regulations of the Myanmar Companies Law, which are called "Myanmar Companies Regulations 2018", have been released for public consultation on 2nd May 2018. The consultation period will end on 31st May 2018.

The draft regulation clarifies that the re-registration does not create a new legal entity and does neither affect the property, rights nor obligations of the company.

This new law and the new electronic system will ease the processes with DICA significantly, representing a big leap forward into a contemporary business environment.

Reduction of Company Registration Fees

According to the Notice published on 13th March 2018, the Directorate of Investment and Company Administration (DICA) reduced the company incorporation fees from 500,000 Kyats to 250,000 Kyats, entering into effect as of 1st April 2018.

Private Education sector opens to 100 % foreign investments

According to Notification No. 7/2018 dated 20th April 2018, the Myanmar Investment Commission (MIC) may authorize 100 % 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.

Full capital investment by foreigners will be more than welcome by both investors and students, given that the development of the education sector is considered an essential need in Myanmar.

Labor Law – Minimum wage

In March, the National Committee for the Minimum Wage has determined the country's minimum wage at 4,800 Kyats per day or 600 Kyats per hour for an eight-hour day. The said new minimum wage will only apply to companies which employ more than 10 people.

Union Tax Law 2018

The new Union Tax Law 2018 came into effect on 1st April 2018.

Contrary to previous assumptions, the Financial Year for the private sector will remain unchanged (1st April to 31st March of the following year), while only the government's budget year as well as the financial year for public companies will be changed to 1st October until 30th September of the following year.

The decision not to modify the Financial year for all taxpayers is a relief, given that enterprises would have faced a legal uncertainty for the period of 1st April to the 30th September 2018.

New Myanmar Mine Rules

After a long wait, the Ministry of Natural Resources and Environmental Conservation (MNREC) issued the new Myanmar Mine Rules under Notification 13/2018 dated 13th February 2018.

Myanmar Insolvency Bill

The DICA published the first draft of the Myanmar Insolvency Bill on 25th April 2018. In this regard, a consultation meeting has been held on Wednesday, 9th May 2018.

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> Philippines – Latest Economic and Regulatory Developments and Outlook

The Duterte administration follows up with the positive developments of the past administration(s) with regard to the Philippines steadily reforming and partially liberalizing its regulatory environment.

In this quarterly newsletter, we want to summarize a selection of the latest economic and particularly regulatory developments, namely:

- 1) General Economic Overview
- 2) German-Philippines Agreement on Social Security
- 3) Threshold for M&A Notifications Raised
- 4) Divorce Bill
- 5) Expanded Maternity Leave Bill
- 6) 11th Foreign Investment Negative List

General Economic Overview

The ASEAN-Region remains a key driving force for the global economic growth and will maintain its excellent standing in the years to come. In 2017, the Philippines clocked an annual GDP growth of 6,7 % on par with China. For 2018 to 2020, the World Bank (as well as many other key analysts) expects the Philippines to main-

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tain its role of one of Asia's leading countries in terms of GDP growth. While it remains to be seen whether the Philippine Government will meet its ambitious target corridor for 2018 aiming at an economic growth of 7 to 8 %, it is highly likely that the Philippines will maintain if not increase its GDP-growth compared to the past years. On the other hand the Philippines have to exercise caution to prevent the economy from overheating. The underperformance of the Peso as well as the increase of inflation to a 3-years high of 4 % (January), 4.5 % (February) and 4.3 % (March) [based on last year's CPI measurement] are some of the indicators that need to be monitored.

German-Philippines Agreement on Social Security

On 17th January 2018, the Senate of the Philippines ratified the Social Security Agreement with Germany. The Agreement will become effective as of 1st June 2018. The bi-lateral agreement mainly follows the standards set by the International Labor Organization and reflects the steady increase in economic, cultural and diplomatic co-operation between the two countries. It provides for an equal treatment of individuals under the convention for nationals of both contracting states, and particularly facilitates the portability of employees and benefits between the two countries. For example, Art. 7 provides that if an individual employed in one contracting state is temporarily seconded to the other contracting state, the social security legislation of the first state shall generally apply to such individual within the first 48 month of such assignment.

Threshold for M&A Notifications Raised

On 5th March 2018, the Philippine Competition Commission raises the threshold for compulsory M&A notifications to:

- 5 Million Peso (≈ 78 TEUR) for the "Size of a Person"; and
- 2 Million Peso (≈ 31 TEUR) for the "Size of Transaction".

Previously the threshold has been set at 1 Million Peso (≈ 16 TEUR) for each category.

The new notification requirement will become effective as of 20th March 2018.

Divorce Bill

The Philippines is the 4th largest Christian country on earth with about 80 % of its population being Roman Catholic. It is also one of the last remaining countries where the state denies formal divorce proceedings to its citizens – leading to a large number of annulment proceedings, illegitimate child issues and other pain and stress resulting from irreparable marriage problems.

On 19th March 2018, the House of Representatives approved the House Bill 7303 (also the Absolute Divorce Bill)

which may establish a process for "irremediably failed marriages" comparable to the majority of countries. However, the Bill needs to also pass the Senate where it will face a strong opposition, and the President of the Philippines expressed his concerns as well.

Expanded Maternity Leave Bill

The number of days of maternity leave were last increased by the Philippine Congress in 1992. Currently, women who have undergone a normal childbirth qualify for a 60 days paid maternity leave (78 days if the delivery was by Caesarian section), one of the lowest in ASEAN. The Expanded Maternity Leave Bill, which is meant to increase the general eligibility to a 100 days paid maternity leave and an additional 30 days optional unpaid leave, has already been approved by the Senate on 6th March 2017. However, the response of the House of Representatives for the law to be enacted is still pending. Some of the House representatives have generally shown their support, and a decision may be expected within the next quarter.

Update: Foreign Investment Negative List

The so called Foreign Investment Negative List is published by the government of the Philippines about every two (2) years. It principally summarizes and regulates the areas in which foreign ownership in a Philippine enterprise may be prohibited or limited. The 10th Regular Foreign Investment Negative List was published under former president Aquino III on 29th May 2015. In the past years, the foreign ownership restrictions have been liberalized continuously, allowing foreign investors/companies a 100 % ownership in most areas of business. The 11th Negative List which has not yet been published but which has been presented to President Duterte for his final approval, is expected to further reduce the remaining restrictions. Areas which are linked to the improvement of infrastructure in the Philippines are expected to be the greatest beneficiaries in the new list. However, other areas such as retail, education, practice of professions and public utilities are further areas where an elimination or at least a reduction of the current ownership restrictions is expected. Also in this aspect, Q2/2018 will be an interesting period to monitor ...

... to be continued ...

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> Singapore – General Data Protection Regulation

Should you, as an organization established outside the European Union, be concerned about the amended General Data Protection Regulation?

If you monitor the behavior of individuals in the EU or if you offer goods and services to individuals in the EU, then the answer definitely is: Yes!

Monitoring the behavior of individuals in the European Union

Monitoring includes the tracking of individuals online - including the cases in which the data are used to create profiles, especially in order to make decisions with regard to these individuals, or in order to analyze or predict the individuals' preferences, behavior or attitudes.

This includes all forms of web tracking (e.g. by way of cookies or social plug-ins such as "like" buttons), profiling, targeted / programmatic advertising.

Offering goods and services to individuals in the EU

An organization is considered to be offering goods or services to individuals in the EU as soon as it obviously intends to offer goods or services to individuals in the EU, even if no money is involved.

The use of a language or currency commonly used in EU countries, with the option to place orders in that other language/currency, or the mention of customers or users resident in the EU will be relevant and may serve as evidence for an organization intending to offer goods or services to individuals in the EU.

Appointing a representative in the EU

If you are subject to the extended territorial reach of the GDPR, you may be required to appoint a representative in the EU who will, along with your organization, be accountable for all issues related to the processing of personal data.

This representative must be situated in an EU member state where the individuals are resident whose personal data are being processed.

Note that this obligation does not apply to organizations processing personal data only occasionally or on a small scale, and which do not touch on sensitive data harboring high risks for the personal rights and freedom of individuals.

Appointing a Data Protection Officer

In addition to the appointment of a representative in the EU, you will need to appoint a Data Protection Officer

(DPO) if your core activities involve either the processing of sensitive data and/or the regular and systematic monitoring of individuals on a large scale.

A DPO's role is to assist organizations in monitoring internal compliance, to inform and advise on data protection obligations, to provide advice regarding Data Protection Impact Assessments, and to act as a contact point for all data processing issues and Data Protection Authorities.

Penalties

To ensure compliance, the GDPR introduced heavy financial penalties for non-compliance, amounting to up to EUR 20 million or 4 % of the annual turnover for groups of companies, whichever is larger.

Organizations infringing their obligation to designate a representative or a DPO may be subject to an administrative fine of up to EUR 10 million or up to 2 % of the total global annual turnover of the preceding year, whichever is higher.

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> Thailand – Latest Update on Employment and Remuneration Policy

New Fines for Illegal Employment of Foreigners in Thailand

In summer 2017, Thailand drastically increased the fines for illegal employment of foreigners in Thailand. After having received feedback from businesses in Thailand, the government decided to reduce the fines. The new regulations will enter into effect on 1st July 2018.

Foreigners working without a work permit are subject to a fine of THB 2,000 to 50,000 and repatriation. Foreigners who are unable to show their work permit booklet can be fined up to THB 5,000.

Employers employing foreigners without a work permit are subject to a fine of THB 10,000 to 100,000 per foreigner. If the employer gets caught a second time, this may lead to an imprisonment of up to 1 year. In addition, the fine will be increased to THB 50,000 to 200,000.

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Further, such employer will be prohibited from employing any foreigners for the next 3 years.

General Minimum Wage

The newly proposed daily minimum wages are applied as of 1st April 2018, and do now range from THB 308 (approx. EUR 7.90) for the three southern provinces to THB 330 (approx. EUR 8.50) for the provinces Rayong, Chon Buri and Phuket. The minimum wage for Bangkok and surrounding provinces (Bangkok, Chachoengsao, Nakhon Pathom, Nonthaburi, Pathum Thani, Samut Prakan, Samut Sakhon) will be set to THB 325 (approx. EUR 8.35). The average daily minimum wage will thus be approx. THB 316 (approx. EUR 8.10).

Minimum Wage for Specific Professions

According to the *Notification of the National Wage Committee on Wage Rates According to Skills Standards No. 7*, employees in 16 professions will be eligible for a wage hike, depending on position and individual experience of the employee. Industries subject to these regulations are the furniture industry, plastic industry, shoe industry as well as iron industry. These new minimum daily wages rate between THB 340 and 600, depending on position and individual experience of the employee. Non-compliance with these rates is considered a criminal offence. Employers may face imprisonment of up to 6 months and/or a fine of maximum THB 100,000 for disregarding the relevant rates.

Tax Reports for Financial Institutions – Amendment of Revenue Code Suggested

The Revenue Department suggested an amendment to the Thai Revenue Code demanding financial institutions, financial institutions and electronic payment service providers in particular, to report customers to the financial authorities, if such customers have at least 3,000 transactions effected per year.

Furthermore, these financial institutions and e-payment service providers need to report customers to the Revenue Department, who deposit or offer fund transfer services for at least 200 transactions with a combined value of THB 2 million per year.

The main goal of the amendment is to enhance tax compliance, in particular with regard to Withholding Tax and Value Added Tax.

Financial institutions not complying with these requirements shall be fined up to THB 100,000, plus an extra THB 10,000 per day. According to the draft, the first report shall be made on 31st March 2020.

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> Vietnam – FTA between EU and Vietnam expected to be signed in August 2018

The Member States of the European Union and the Socialist Republic of Vietnam are expected to sign the Free Trade Agreement EVFTA early in the third quarter of 2018.

This will have a significant impact on trade between the contracting parties, and will boost the Vietnamese economy which is already exceeding expectation.

Status

The intention to enter into a Free Trade Agreement between the European Union and Vietnam has already been concluded in 2015, after years of negotiations. General rules and principles have been agreed upon and have now been fixed in an agreement.

Member States of the European Union and Vietnam are expected to sign this agreement in the third quarter of 2018. The conclusion of this Free Trade Agreement will trigger the process of provisioning benefits and obligations under the agreement.

General Content

- 65 % of tariff lines will be eliminated after conclusion of the agreement;
- The EU will eliminate import taxes on 99 % of tariffs within 7 years after conclusion of the agreement;
- Vietnam will eliminate import taxes on 99 % of tariffs within 10 years after conclusion of the agreement;
- Alignment of import and export requirements with international rules and regulations;
- Improvement of transparency for import and export procedures and requirements;
- Rules of origin are aligned with common requirements – 40 % local content;
- Certification and self-certification requirements are implemented. The latter is not available for Vietnam but will be, once Vietnam has implemented a sufficient procedure and identified the relevant requirements;
- WIPO– protection will be applicable to IP rights in Vietnam;
- Human Rights considerations are in place.

Conclusion

The EVFTA will boost trade between Vietnam and the EU. Germany, being Vietnam's most significant trade partner in the EU, will benefit the most, but so will all other European Countries. The agreement will streamline customs control in Vietnam and will enforce transparency requirements that are so desperately required.

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