Rödl & Partner

QUARTERLY ASEAN NEWSFLASH

EYE-LEVEL EXCHANGE

Issue:
Q2/2019

Latest news on law,
tax and business in ASEAN

www.roedl.de/asean | www.roedl.com/asean

Rödl & Partner

QUARTERLY ASEAN NEWSFLASH

EYE-LEVEL EXCHANGE

Issue:
Q2/2019

Read in this issue:

→ Note from the editor

Dear reader,

Welcome to the Q2/2019 edition of our ASEAN Newsflash.

On 23 April 2019, the Trade in Services Agreement (ATISA) and the fourth protocol amending the ASEAN Comprehensive Investment Agreement (ACIA) have been signed at the 25th ASEAN Economic Ministers Meeting in Phuket, Thailand, after negotiations on both agreements had been concluded in November 2018.

The ATISA aims at achieving an improvement of the regulatory standards for the services sector in the region, as well as a reduction of unnecessary barriers to services trade within ASEAN. The fourth amendment to the ACIA protocol is an investment agreement for the ASEAN region consisting of four aspects of investment – namely protection, promotion, facilitation and liberalization of investment. It now contains a prohibition on performance requirements as well as elements of the trade related investment measures regime set by the World Trade Organization.

It remains to be seen whether the revised agreements will lead to an enhanced market opening of ASEAN members for the commercial presence of foreign service providers. Their signing, however, indicates a joint political will to achieve the free movement of services within the ASEAN Economic Community, and may thus be regarded as a positive signal for foreign investors. This and many other topics covering various fields of international trade have been discussed at our annual Forum Going Global on 16 May. Many thanks to all who spent the day with us, a review of the event can be seen here.

Markus Schlueter
ASEAN Desk
markus.schlueter@roedl.com

→ Indonesia

Trade in Services under EU-Indonesia FTA

Negotiations for an EU-Indonesia Free Trade Agreement (FTA) were launched on 18 July 2016, seeking to enhance trade and investment relations. The Comprehensive Partnership and Cooperation Agreement which entered into force in 2014 currently governs the overall relations between the EU and Indonesia.

TARIFF AND NON-TARIFF BARRIERS TO TRADE IN GOODS AND SERVICES

The aim of the FTA negotiations is to eliminate or reduce tariff and non-tariff barriers to trade in goods and services, and thereby facilitate trade flows, expand foreign direct investment (FDI) and level the playing field between private businesses and state-owned enterprises. Market entry liberalization for services is an important negotiation point. EU exports of services to Indonesia currently mainly comprise transport services, tourism and travel services, as well as other business services. Furthermore, European companies have been increasing their investments in Indonesia, especially in

- the chemical and pharmaceutical industry;
- the transportation, storage and communication industry;
- the food and beverage industry;
- the mining industry;
- the agricultural industry; as well as
- the hotel and restaurant industry.

Retail business in particular is still highly restricted for FDI in Indonesia.

The first offers on services and investment were made during the 6th round of negotiations in Palembang, Indonesia, which took place from 15 to 19 October 2018. With regard to sectoral regulatory provisions, initial progress was achieved in the fields of telecommunications, financial, delivery, and international maritime transport services. Further discussions on the sections of financial services, international maritime transport services, movement of natural persons, mutual recognition agreements including the new Indonesian proposal concerning seafarers as well as on digital trade took place during the 7th round of negotiations from 11 to 15 March 2019 in Brussels.

EU EXPECTATIONS AND INDONESIAN REGULATIONS

The EU side reiterated the need to eliminate foreign equity caps and to broaden the scope of commitments amid current non-tariff barriers which include, inter alia, investment barriers, access barriers to public procurement, competition policy (including subsidies), special conditions or privileges granted to state-owned enterprises and restrictions on e-commerce. As such, the FTA discussions include issues such as establishment, foreign ownership, public procurement and investor protections.

Indonesian laws and regulations currently provide two ways of investing in Indonesia, i.e. (i) through a limited liability company for foreign investment purposes (so called PT PMA) or (ii) by establishing a representative office, which may not render profit-generating activities and is fully financed by its overseas head office. Most foreign investments in Indonesia focus on the manufacturing sector, while various services sectors still face restrictions. To diversify investments and knowledge transfer, the President of Indonesia expressed the intention to deregulate other sectors, without specifying which ones.

THE INDONESIAN DNI

When referring to restrictions on foreign direct investment, the most important regulation in Indonesia is the Negative Investment List (DNI). The DNI list makes three distinctions: business fields that are open under certain conditions, business fields that are open with conditions, and business fields that are closed to investment. The investment environment has been unburdened in recent years, as traditionally closed sectors like hospital management services, the film industry and logistics have been opened to full foreign ownership by the Indonesian Government. However, some sectors remain closed to foreign shareholding or open only for a limited percentage, e.g. retail, wholesale or electronic payment services.

Investment liberalization has been discussed in the 6th round of negotiations and is defined as changes in market access for foreign investments agreed under the potential FTA.

The liberalization of the DNI list is seen as one of the priorities for the EU by stakeholders. Therefore, the partial or whole removal of the industries on the DNI list would certainly be targeted as part of an FTA between the EU and Indonesia. This is supported by earlier statements of the Indonesian Government on intentions to further liberalize the list in the future. A further opened foreign-ownership regime could attract more foreign investors, which would likely lead to more national growth, competition and service quality in Indonesia.

FOR MORE INFORMATION PLEASE CONTACT

Markus Schlueter
T +49 221 9499 093 42
markus.schlueter@roedl.com

→ Indonesia

The Determination of Permanent Establishment

As cross-border business models continue to increase, the need for legal certainty for foreign tax subjects carrying out activities in Indonesia is gaining importance. Hence, the Indonesian Minister of Finance (MoF) recently issued MoF Regulation No. 35/PMK/03/2019 on 1 April 2019, focusing on the determination of permanent establishment (PE).

DETERMINATION OF PE

PE exclusively concerns foreign tax subject, which may either be foreign individuals or foreign corporations. A foreign individual is defined as a person who is not domiciled in Indonesia, or residing in Indonesia for not more than 183 days within 12 months, while a foreign corporation is described as a corporation that is not established and domiciled in Indonesia.

A PE is defined as a form of business used by foreign tax subjects to carry out business activities in Indonesia. A PE should satisfy the following criteria:

a. there needs to be a place of business in Indonesia;
b. the above place of business needs to be permanent; and
c. the place is utilized by a foreign tax subject to carry out business activities in Indonesia.

However, the following forms of business shall also be considered as PE although not meeting the above criteria:

a. construction, installation, or assembly projects;
b. provision of services of any kind through individuals, as long as the work is carried out for more than 60 days within a 12 months period;
c. a person or entity acting as dependent agent;
d. agents or employees of insurance companies that are not established and not domiciled in Indonesia, collecting insurance fees or bearing risks in Indonesia.

The place of business covers any type of place, room, facility or installation including machine and equipment used for business purposes, e.g.:

a. place of management;
b. branch of company;
c. representative office;
d. office building;
e. factory;
f. warehouse;
g. room for promotion and sales;
h. mining and extraction of natural resources;
i. mining working area of oil and gas;
j. fishery, animal husbandry, agriculture, plantation or forestry; and
k. computer, electronic agents or automated equipment owned, leased, or used by a foreign tax subject to conduct business via internet.

If the foreign individual or foreign corporation meets the criteria of a PE, it is required to get registered and to obtain a tax identification number (*Nomor Pokok Wajib Pajak/NPWP*), at the latest one month after starting business in Indonesia. If applicable, a PE should also apply for a VAT-able entrepreneur registration whenever its gross turnover exceeds the minimum threshold of 4.8 billion IDR per annum.

CONCLUSION

Based on the stipulations of PMK 35, it can be concluded that the determination of PE is in accordance with the PE rules stated in the prevailing Indonesian Income Tax Law as well as with OECD and UN Commentaries. The issuance of PMK 35 is expected to have a positive impact on business activities in Indonesia by providing legal certainty with regard to the business model, in particular for those foreign tax subjects.

→ Indonesia

Update on the Expanded Coverage of 0 Per Cent Value Added Tax on Exportation of Service

The Indonesian Minister of Finance (MoF) recently issued MoF Regulation No. 32/PMK.010/2019 (PMK 32) concerning the limitation of activities and types of export of services that are subject to 0 per cent VAT, which came into force on 29 March 2019. Prior to that, the Indonesian government already provided MoF Regulation No.70/PMK.03/2010 (PMK-70) as amended by MoF Regulation No.30/PMK.03/2011 (PMK-30), that has now been revoked by the newly issued regulation. PMK 32 has the main objective of enhancing national economy through supporting the exportation of services and improving the service industry competitiveness by levying 0 per cent VAT on certain types of exportation of service.

EXPORTATION OF SERVICES UNDER PMK 32

Exportation of services is defined in PMK 32 as the activity performed within the customs area for the purpose of goods, facilities, conveniences or rights being available for utilization outside of the Indonesian customs area.

The activities carried out for the exportation of services include:

a. Services connected to movable goods to be exported for the utilization outside of the customs area, including:
    i. Toll-manufacturing;
    ii. Repair and maintenance; and
    iii. Freight forwarding related to the exportation of goods;
b. Services connected to immovable goods located outside of the customs area related to consultancy for construction work;
c. Any activities other than the above based on the requirements by the overseas counterparty, with the results being delivered for the utilization outside of the customs area by:
    i. Direct or indirect delivery such as mail or electronic channels;
    ii. Provision of the right to use (access) outside of the customs area.

The range of services described under point (c) of the above is specified as follows:

a. Information and technology services;
b. Research and development services;
c. Transportation rental services in the form of aircraft and/or ships for international flight or shipping;
d. Consultation services in the form of:
    i. Business and management service;
    ii. Legal service;
    iii. Architecture and interior design service;
    iv. Human resource service;
    v. Engineering service;
    vi. Marketing service;
    vii. Accounting or bookkeeping service;
    viii. Financial statement audit service;
    ix. Taxation service;
e. Trading service in the form of finding vendors inside of the customs area for the purpose of exportation;
f. Interconnection, management of satellite and/or communication/data connectivity.

The above exportation of services should be subject to a value-added tax of 0 per cent. However, in order to be granted this tax exemption, there are certain documentation requirements to be satisfied:

a. The service provision is based on a written engagement or agreement between the service provider (VAT-able entrepreneur or *Pengusaha Kena Pajak/PKP*) and the counterparty stipulating:
   - The type of service;
   - The details of activities performed within the customs area for utilization outside of the customs area;
   - The value of the agreed service.
b. Acknowledged payment proof from the counterparty.

If the above documentation requirements are not satisfied, the provision of services will be subject to 10 per cent VAT.

The VAT taxable event occurs as soon as the compensation is recognized as receivable or income. For compliance purposes, PKP still have to follow the VAT compliance as stipulated by the prevailing regulations. Therefore, PKP need to issue tax invoices, i.e. Export Declaration of Services or *Pemberitahuan Ekspor Kena Pajak,* that should be attached along with the commercial invoice. In addition, should the exportation include taxable goods related to toll-manufacturing, PKP also need to follow the existing Customs regulations.

FOR MORE INFORMATION PLEASE CONTACT

Tomy Harsono
T +62 21 5056 0405
tomy.harsono@roedl.com

→ Malaysia

Service Tax on Imported Digital Services

The Service Tax (Amendment) Bill 2019 has been passed by the Lower House of the Malaysian Parliament on 8 April 2019 and will, upon being passed by the Upper House and receiving Royal Assent, see digital services imported by consumers in Malaysia being subject to service tax at the rate of 6 per cent as of 1 January 2020.

Under this new regime, service tax will be imposed on any digital service that is provided by a foreign service provider to any consumer in Malaysia based on the value of the digital service charged by the foreign service provider. The scope of foreign service providers and digital services is wide. The Bill defines foreign service providers as any person outside Malaysia providing any digital service to a consumer. It also includes any person outside Malaysia operating an online platform and those who make transactions for the provision of digital services on behalf of any person.

Digital service is defined in the Bill as any service that is delivered or subscribed over the internet or any other electronic network, which cannot be obtained without the use of information technology and where the delivery of the service is essentially automated.

The imposition of service tax on imported digital services will require foreign service providers who meet the prescribed threshold (MYR 500,000) to be registered for service tax. A registered foreign service provider is required to charge six per cent of service tax on the digital services provided to consumers in Malaysia at the time the digital service is received by the foreign registered person. Service tax returns and payment are required to be filed and paid respectively by the last day of the month following the end of the taxable period.

→ Malaysia

Special Voluntary Disclosure Program ("SVDP")

Further to the announcement made during the Budget 2019, the SVDP has been introduced to enable taxpayers to voluntarily declare any under-reported or un-reported income during the period from 3 November 2018 until 30 June 2019.

The Malaysian Government has now decided to extend the SVDP until 30 September 2019.

PERIOD	REDUCED PENALTY RATE
1 April 2019 to 30 June 2019	10 %
1 July 2019 to 30 September 2019	15 %

The penalty rate will be increased to 45 per cent and above for disclosure from 1 October 2019 onwards.

GENERAL DISCLOSURE REGULATIONS

The SVDP primarily focuses on taxpayers with offshore bank accounts and undeclared income generated in Malaysia. Under the program, individual taxpayers must disclose all undeclared income up to 31 December 2017, while business taxpayers must disclose all undeclared income for the accounting period ending 31 March 2018.

The Malaysian Tax Authorities issued a media release in early March 2019, stating that any declaration made under SVDP for Year of Assessment (YA) 2017 and prior YAs will be accepted in good faith, with no audit or investigation being carried out in the future for the period in which the declaration was made.

As at 31 March 2019, a total of 381,979 taxpayers have voluntarily disclosed previously undeclared income to the Malaysian tax authorities.

→ Malaysia

Payments for distribution of software products not regarded as royalty payments

The definition of royalty has been expanded in the Malaysian Income Tax Act with effect as of 17 January 2017, to cover the use of or right to use software. This led to taxpayers' concerns that the Malaysian tax authorities may interpret the term of "royalty" to include payments for the purchase of software even if there is no exploitation of copyright involved.

LEGAL PRECEDENT

In the recent court case of *Glocomp Systems (M) Sdn Bhd v Director General of Inland Revenue*, the Malaysian High Court stipulated that payments made by a distributor in Malaysia for the purchase, distribution and marketing of various software and hardware products manufactured by a company in Singapore shall not be subject to withholding tax in Malaysia.

It was determined that such payments do not meet the definition of royalty under Article 12 of the Malaysia-Singapore Double Taxation Agreement ("DTA") as the activities were limited to the distribution of products, and there was no exploitation of any rights being part of the software copyrights of the products. Furthermore, the payments made by the Malaysian distributor are business profits of the Singaporean company under Article 7 of the DTA, and should only be taxable in Singapore.

It was also highlighted that the definition of "royalties" in a DTA takes precedence over the definition given in the Malaysia Income Tax Act.

Hence, the High Court has rejected the IRB's view of such payments meeting the definition of "royalty" under Section 2 of the ITA on the basis that the Malaysian company has been granted the license to transfer the products to their customers.

FOR MORE INFORMATION PLEASE CONTACT

Michael Wekezer
T +60 3 2276 2755
michael.wekezer@roedl.com

→ Myanmar

Taxation update

On 15 May 2019, the Internal Revenue Department (IRD) announced that the current financial year for private companies will only last from the 1 of April 2019 until 31 September 2019. Subsequently, the financial year will be aligned with the State's budget year and therefore last from the 1 October until 31 September of the following year. Unfortunately, the IRD failed to outline the implications on the Personal Income Tax and Commercial Tax ranges. Further clarification is expected soon.

The IRD also envisages to begin the implementation of the Integrated Tax Administration System in the financial year 2019-2020. By 2030, all tax processes shall be conducted via the electronic system. Stage one of the current five-stage enactment plan focusses on the Large Tax Payer Office and the Middle Tax Payer Office No. 1.

The Advance Income Tax exemptions which had only recently been introduced, have been revoked. Therefore, companies under the Self-Assessment System will again be levied a two per cent Advance Income Tax upon exporting goods.

Revision of the gambling law

The Myanmar parliament passed the long awaited Gambling Law.

While under the previous law, all kinds of gambling was prohibited, the new law allows for the establishment of "Casinos [...] where only foreigners shall be allowed to gamble".

However, the law does neither specify the requirements for obtaining the approval, nor the relevant ministry or government office responsible for the application. Further rules and regulations thus need to be released before the law can be enacted.

→ Myanmar

Insurance licenses

The first five 100 per cent foreign invested life insurance companies were granted provisional licenses in April 2019. This is a substantial change, since all private insurers had been abolished since 1964. Only since 2013, twelve local insurers were granted licenses to operate.

In 2014, the Ministry of Finance also granted licenses to three Japanese insurance companies to exclusively offer services in Thilawa, the Special Economic Zone near Yangon.

→ Myanmar

Ministry of Commerce Notification 23/2019

On 21 May, the Ministry of Commerce announced that foreign companies trading under the exceptions which were granted before the introduction of the Wholesale and Retail licenses in May 2018, do now have to apply for a Wholesale or Retail license under the new regime within 90 days. The requirements for such trading licenses for foreign investors are very steep due to high minimum investment capital requests and minimum retail space requirements of 929 square meters. The previously exempted goods were fertilizers, seeds, pesticides, hospital equipment, construction material and farm equipment.

The first eleven trading licenses under the directive issued by the Ministry of Commerce in May 2018 have been granted in April 2019. Four 100 per cent foreign owned companies were granted licenses for wholesale and retail business. Furthermore, three joint ventures and four 100 per cent local companies have been granted licenses as well.

→ Myanmar

Central bank grants licenses for foreign investors

The Central Bank announced a third round of granting bank licenses to foreign investors. The procedures shall be defined with the cooperation of international advisors.

Furthermore, the Central Bank released directives to modernize the sector and to improve the corporate governance of the banks. This includes restrictions for the banks to grant loans to related parties.

FOR MORE INFORMATION PLEASE CONTACT

Lutz Koch
T +95 1 9345 242
lutz.koch@roedl.com

→ Philippines

Revised Corporation Code (Part II)

The Revised Corporation Code and a selection of the key changes in the corporate landscape of the Philippines have been introduced in the last edition of this newsletter (Q1/2019). Though the Revised Corporation Code of the Philippines (Republic Act No. 11232) took effect on 23 February 2019, and despite some specific clarifications through the Securities and Exchange Commission (SEC), no specific Implementing Rules Regulations have been released so far. Nonetheless, the first One-Person-Corporations are being incorporated, and other changes are implemented by the relevant government authorities and business owners.

In addition to the latest newsflash, we would like to introduce the following changes that might also be relevant for your business in the Philippines:

EMERGENCY BOARD

In case an emergency action is required to prevent grave, substantial and irreparable loss or damage to the corporation, and the current number of directors is not sufficient to constitute a quorum, the Revised Code allows for the appointment of a temporary director to fill in the vacancy, by the unanimous vote of the remaining directors.

The scope of action of the temporary director shall be limited to the necessary emergency actions, and his term shall cease within a reasonable time from the termination of the emergency or upon election of the replacement director.

REPORTORIAL REQUIREMENTS

Corporations registered with SEC are generally required to file their audited financial statements and at least once a year a General Information Sheet. The latter states the key information of the business (e.g. ownership, representatives, capitalization). Additional reporting requirements apply for corporations vested with public interest. Under the Revised Corporation Code, the corporation may be allowed to redact confidential information from such required report(s). However, the information deemed confidential still needs to be filed in a supplementary report labelled “confidential”, together with a request for confidential treatment and an explanation of the grounds thereof.

Regardless of the changes under the Revised Corporation Code, a new format of the General Information Sheet has recently been introduced, adding a beneficial ownership disclosure page. Filings due after 30 June 2019 need to be made according to the new format.

BRANCH OFFICE DEPOSIT OF SECURITIES

Little has changed for the registration of a Branch Office of a foreign corporation, being an alternative to the registration of a stock or non-stock corporation. However, the mandatory initial security deposit for the first year of operation has been increased from 100,000 PHP to 500,000 PHP. Thereafter, within six (6) months after each fiscal year, an additional security deposit needs to be made, equivalent to two (2) per cent of the amount by which the Branch Office’s gross income for the year exceeds 10,000,000 PHP (previously 5,000,000 PHP).

CONFLICT OF INTEREST

The provision on self-dealings of directors, trustees or officers has been expanded to cover contracts of the corporation with spouses and relatives within the first to fourth degree of kinship. A director or trustee who has a potential interest in any related party transaction must abstain from voting on the related party transaction.

→ Philippines

Hague Apostille Convention

On 12 September 2018, the Philippines deposited the instruments of a Philippine accession to the Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents.

This is better known as the Hague Apostille Convention. The convention entered into force between the Philippines and other state parties on 14 May 2019.

The Apostille Convention is an international treaty that eliminates the need for multiple stages of certification of the validity of public documents that shall be used in a country other than their country of origin. It abolishes in particular the need for "double-certification" by the originating country and, subsequently, by the receiving country. For example, a Board Resolution passed outside the Philippines that had to be submitted to a Philippine government agency before the effective date of the Philippine´s accession to the convention required mostly at least three levels of certification (e.g. public notary, regional court/specific agency, Philippine Embassy/Consulate). A fairly complex, time-consuming and – depending on the authorities involved – occasionally also costly process.

Since May 14, public documents executed in Apostille-Contracting Countries and territories that shall be used in the Philippines no longer have to be authenticated by the Philippine Embassy or Consulate General, except for Austria, Finland, Germany and Greece. Thus, the Apostille Convention cuts down the process to generally one or two authentication levels.

For countries and territories which are not parties of the Convention, the previous process of authentication applies. Documents still have to be authenticated by the Philippine Embassy or Consulate General before they can be used in the Philippines (also known as "Red-Ribbon Authentication").

From a practical point of view, and depending on the Philippine authority the foreign documents need to be filed with, we are convinced though that it may still take considerable time until these changes will have been fully implemented. Thus, we recommend to seek professional advice in related matters and/or to ask for clarification from the receiving agency in advance.

→ Philippines

Government reviews rules and processes for foreigners residing and working in the Philippines

Due to recent reports and findings of a larger influx of (primarily Chinese) workers to the Philippines, who do not possess the required work/residency permits and who may thus allegedly also not pay the applicable taxes in the Philippines, the Ministry of Finance, the Department of Labor and Employment and the Bureau of Immigration have vowed to review their policies and to tighten enforcement measures.

Despite a reviewed and stricter implementation of the rules and processes in force, it is also currently discussed to oblige foreigners who want to seek employment in the country to mandatorily secure working visas from the Philippine embassy in their respective countries.

Currently, for practical reasons, the work permits and residency visas are mostly applied for when the future employee has already entered the Philippines. However, pending the issuance of the respective permits/visas, these persons may work in the country if they have obtained a provisional work permit valid for six months.

Joint guidelines for the issuance of work and employment permits to foreigners were signed on 30 April 2019.

We will keep you updated on these developments.

→ Philippines

Philippine Mid-Term Elections

Halfway through the term of President Rodrigo Duterte, on 13 May 2019, the Philippine mid-term elections were held. The election for 12 seats within the Philippine Senate was conducted together with various local elections all over the Philippines. In particular, the election for the senatorial seats was highly contested and also considered to be an indicator for the political support of the locally and internationally controversially discussed governance of the country.

In summary, not a single candidate of the opposition was able to obtain a seat in the Senate. On the local level, a number of surprising victories of promising candidates over established officeholders of political dynasties could be recorded.

Additional information on the mid-term elections (in German language) can be found here: www.roedl.de/themen/wahlen-philippinen-mid-term-regierung-wechsel

FOR MORE INFORMATION PLEASE CONTACT

Dr. Marian Majer
T +63 2 4791 785
marian.majer@roedl.com

→ Singapore

Amendments to the Employment Act

POSITION PRIOR TO 1 APRIL 2019

Prior to 1 April 2019, the general protections under the Employment Act ("EA") covered all employees except managers and executives earning more than SGD 4,500, domestic workers, seamen, and statutory/government board workers.

Part IV of the EA (provisions on rest days, hours of work, annual leave and other conditions of service) provided further protection to workmen earning not more than 4,500 SGD, and to non-workmen employees earning not more than 2,500 SGD.

POSITION AS OF 1 APRIL 2019

As of 1 April 2019, the general protections under the EA apply to all managers and executives regardless of salary thresholds. It is estimated that an additional 430,000 executives, professionals and managers are now covered under the revised EA.

Further, the salary threshold under Part IV for non-workmen employees has been raised to 2,600 SGD. It is estimated that the new salary threshold will benefit approximately 100,000 additional employees.

Annual leave has been taken out of Part IV of the EA and applies to all employees.

WHAT IT MEANS FOR YOUR ORGANIZATION IN SINGAPORE

Prior to 1 April 2019, many foreign expatriates were not covered under the EA as they were considered managers or executives earning more than 4,500 SGD. However, with the removal of the salary threshold, the EA now covers all such foreign expatriates as well as all local executives, professionals and managers.

It is crucial that companies do review (and amend, where necessary) all employment contracts and their employee handbook to ensure that they are in compliance with the new provisions of the EA.

IN PRACTICE, THE FOLLOWING ASPECTS ARE OF RELEVANCE

All employees are required to have a written employment contract with Key Employment Terms ("KETs"). KETs include the name of the employer and employee, job title, main duties and responsibilities, start date of employment, working arrangements, salary period, basic salary, fixed allowances, type of leave, other medical benefits, probation period, notice period, etc.

All employees are entitled* to a minimum of:

- 7 days of paid annual leave (up to 14 days)
- 11 days of paid public holidays
- 14 days of paid sick leave and 60 days of hospitalization leave
- 12 weeks of maternity leave (8 weeks of which ought to be paid maternity leave)
- 2 days of paid childcare leave

In relation to annual leave, please note that upon termination of the employment relationship, employees are entitled to either encash or clear their annual leave (unless the employee in question was terminated for misconduct).

*Please note that other criteria need to be met in order to benefit from some of these entitlements.

In relation to sick leave and paid hospitalization leave, note that employers must pay for their employee's medical consultation fee if it results in at least one day of paid sick leave, and arises from a medical certificate given to them by a medical practitioner from an approved public medical institution or appointed by the company.

Employees do now also benefit from other protections, including timely payment of salary, statutory protection against wrongful dismissal, and the right to preserve existing terms and conditions for employment transfer resulting from sale of business and business restructuring.

FOR MORE INFORMATION PLEASE CONTACT

Dr. Paul Weingarten
T +65 62 3867 70
paul.weingarten@roedl.com

→ Thailand

Political Developments in Thailand

MARCH 2019: GENERAL ELECTION

On 24 March 2019, Thailand held the first general election since 2014 to select the 500 members of the House of Representatives. The 250 members of the other chamber of Thailand's bi-chamber parliamentary system, the Senate, are appointed by the National Council of Peace and Order.

The Prime Minister will be elected through the absolute majority of all 750 members of the National Legislative Assembly. The election will likely take place within May or June. For now, analysts expect the current Prime Minister Prayuth Chan-o-cha to be able to secure a coalition to become Thailand's elected Prime Minister.

It remains to be seen how the new government will shape Thailand's policies. However, major changes to Thailand's economic development policies are unlikely, especially if Prime Minister Prayuth Chan-o-cha stays in power. Thailand will remain a top location for foreign direct investment in Southeast Asia.

MAY 2019: CORONATION OF HIS MAJESTY KING RAMA X

King Maha Vajiralongkorn, King Rama X, was crowned on 4 May 2019, becoming the tenth crowned King of the Chakri Dynasty. The first King of the Chakri dynasty ascended to the throne of Siam (today Thailand) in 1782.

The King is the head of state and appoints the Prime Minister and the Council of Ministers. The Prime Minister and the Council of Ministers are tasked with the administration of Thailand. We expect that the crowning of his Majesty King Rama X will contribute to further stabilize the country.

→ Thailand

Economic outlook

Rising global tensions, especially the trade conflict between the United States of America and the People's Republic of China, had an impact on Thai exports in the first quarter. Given Thailand's reliance on export, the government reduced the expected annual growth rate for 2019 to a range of 3.3 to 3.8 per cent (previously 3.5 to 4.5 per cent). The United States of America are considering to add the Thai Baht to the extended watchlist on currency manipulation.

The Bank of Thailand has rejected any claims of currency manipulation and pointed to the recent gains of the Thai Baht against the US Dollar. In fact, the Thai Baht has gained value against the US Dollar and the EURO since the beginning of 2019.

→ Thailand

Tax Amnesty 2019

On 26 March 2019, the 2019 Thai Tax Amnesty Act for Small and Medium Enterprises entered into force. The Act offers certain amnesties to SMEs with regards to taxation. Interested SMEs have to register for the Amnesty by 30 June 2019.

ELIGIBLE TAXPAYERS

The Amnesty 2019 is open to limited companies or limited partnerships with an income during the last accounting period of 12 months (ending on or before 30 September 2018) of not more than THB 500 million. The Amnesty is only open to taxpayers who are not subject to a tax investigation as of 26 March 2019.

TAXES INCLUDED BY THE AMNESTY

- Corporate Income Tax for the period of 1 January 2016 to 31 December 2017
- Value Added Tax as of January 2016 to February 2019
- Specific Business Tax as of January 2016 to February 2019
- Stamp duty for documents executed between 1 January 2016 to 25 March 2019

TAX RETURN AND PAYMENT OF TAXES

Eligible SMEs have to file tax returns and pay outstanding taxes by 30 June 2019. Furthermore, eligible taxpayers have to submit all tax returns for the period of 1 July 2019 to 30 June 2020 via the Revenue Department's e-filing system.

CONSEQUENCES OF AMNESTY

Eligible SMEs will be exempted from penalties, surcharges, and criminal charges regarding incorrect or unfiled tax returns for the periods mentioned above.

→ Thailand

Comprehensive Reform of Thailand's Export Controls

On 30 April 2019, the new *Trade Controls on Weapons of Mass Destruction Act* was published in the Royal Gazette. The Act will enter into force on 1 January 2020.

The Act will comprehensively reform Thailand's export controls. Similar to European export controls, goods will be classified according to different lists, classifying items as dual-use, military-use, or other goods. Depending on the

classification, exporters will have to apply for export licenses. Licenses will be available on a shipment basis or an annual basis. According to our information, only exporters maintaining a compliance program will be eligible for annual licenses (similar to the status of "Authorized Economic Operator" in Europe).

Goods not classified as dual-use or military-use goods may also require an export license depending on whether or not they could be used for the proliferation of weapons of mass destruction or terrorism. Thus, exporters will be obliged to review each export.

Violations of the act can be punished with severe penalties, including fines of up to THB 30 million and imprisonment of up to 30 years.

The relevant lists have not yet been published. However, we are expecting the list of dual-use goods to be similar to the EU list. We expect the authorities to publish regulations on the implementation of the Act in the course of this year.

Exporters in Thailand should prepare for the new obligations by setting up processes to clearly identify goods (e.g. HS code), customers and end-use of goods. Information should be recorded and available anytime to satisfy official inquiries.

→ Thailand

Thai Data Protection Act

On 28 February 2019, the National Legislative Assembly passed the new Personal Data Protection Act of Thailand. It will enter into force after having been published in the Royal Gazette. Since Thailand did not have dedicated personal data protection regulations before this Act, companies in Thailand will be required to set-up new structures to ensure compliance.

Important terms are similar to the General Data Protection Regulation in Europe, e.g., personal data, data controller, and data processor. Overall, the Thai legislature tried to draft an act that is comparable to other important data protection regimes.

The Act defines personal data as information identifying a person directly or indirectly. Controllers of data are responsible for the collecting, using and disclosing of personal data. Processors handle personal data on behalf of the controller.

Processing of personal data (collection, storing, using, disclosing, etc.) requires the consent of the data owner. Consent has to be provided freely and clearly.

Note that the Act has extraterritorial effect. Thus, it also applies to data controllers and processors located outside of Thailand, if and when they process personal data of individuals located in Thailand. These individuals do not have to have Thai nationality.

The Act grants the data owner certain rights, such as requesting a data controller to delete or destroy personal data. Most importantly, data owners may withdraw their consent to process data at any time.

Data controllers and processors will be required to appoint a dedicated data protection officer, who is tasked with ensuring compliance with the Act. They further have the duty to implement adequate security measures to protect personal data from loss, change or other influences.

Another relevant provision is the regulation of cross-border transfers of personal data. Similar to the regulations of the GDPR.

Violations of the Act may lead to civil, criminal, and administrative liability. Note that representatives of juristic persons (e.g. directors) can be held liable for offenses committed by the represented entity.

FOR MORE INFORMATION PLEASE CONTACT

Martin Chrometzka
T + 66 2 0263 258
martin.chrometzka@roedl.com

→ Vietnam

Regulations on foreign exchange management with regard to FDI activities

CURRENT REGULATIONS UNDER CIRCULAR 19/2014/TT-NHNN AND THE RELATED ENTANGLEMENTS

CIRCULAR 19/2014/TT-NHNN

Circular 19/2014/TT-NHNN of the State Bank of Vietnam dated 11 August 2014 provides guidance on foreign exchange management for foreign direct investment (FDI) in Vietnam (Circular 19). The Circular entered into effect as of 25 September 2014.

Focusing on FDI activities in Vietnam, Circular 19 in particular comprises provisions on investment capital, opening and using of direct investment capital accounts (DICA) in foreign currency and in Vietnam dongs; overseas remittance of capital, profit and other lawful income; and the transfer of investment capital for the pre-investment phase.

Besides Circular 19, a second circular – Circular 05/2014/TT-NHNN – covering the opening and using of indirect investment capital accounts (IICA) and foreign indirect investment (FII) activities in Vietnam has been issued 12 March 2014.

ENTANGLEMENTS OCCURRED UPON THE IMPLEMENTATION OF CIRCULAR 19

Within the four years since its implementation in 2014, Circular 19 has revealed a number of entanglements and insufficiencies, causing numerous challenges for foreign investors (FI) and foreign invested enterprises in Vietnam (FIE), as well as confusion on the part of commercial banks upon handling transactions related to FDI – resulting in a delay in capital transactions and increased expenses for FI and FIE:

DEFINITION OF FORM OF INVESTMENT AND FORM OF FIE

The Foreign Exchange Ordinance, its guidance decrees and this Circular 19 provide specific definitions with regard to "foreign direct investment" (FDI), "foreign indirect investment" (FII), "foreign direct invested capital enterprise" (FDIE), "direct investment capital account" (DICA) and "indirect investment capital account" (IICA). These definitions, however, are not part of the current Law on Investment (which has been enacted later, on 26 November 2014). This Law only identifies "investment" in general and "economic organizations having foreign invested capital".

This inconsistence in defining the form of investment results in major difficulties for FIs, FIEs and commercial banks upon determining the actual form of foreign investment (direct or indirect) as well as the correct capital account (DICA or IICA) to be used with such foreign investment.

CAPITAL TRANSACTIONS VIA BANK ACCOUNTS

Due to the difficulties in defining the form of foreign investment as described above, the FI, related enterprises and commercial banks see themselves confronted with the challenge to determine which bank account to be used for the respective capital transactions, e.g. the capital transactions between the non-residents among each other, between non-resident and resident (and vice versa) in Vietnamese enterprises.

CAPITAL INJECTION INTO VIETNAM FOR PRE-INVESTMENT

Prior to be granted an Investment Registration Certificate and an Enterprise Registration Certificate, the FI may need to arrange payments in favor of suppliers in Vietnam for land/premise lease, other expenditures for services and equipment, labor, etc. Circular 19 provided for such transactions only to be effected via a bank account opened by the FI with an authorized bank in Vietnam. This provision caused an increase in expenses and a delay in investment into Vietnam for FIs. Further obstacles occurred upon return transfers/reimbursements on behalf of the FIs.

DRAFT CIRCULAR – AN ORIENTATION TO REDUCE ENTANGLEMENTS AND INCONSISTENCIES

Recently, the State Bank of Vietnam released its draft circular (Draft Circular), which is supposed to amend and supplement a number of articles of

Circular 19, in order to resolve the current entanglements, to provide clearer regulations and to ensure overall consistency with the investment laws.

FORM OF FOREIGN DIRECT INVESTMENT ENTERPRISES (FDI ENTERPRISES)

Article 3 of the Draft Circular provides a clearer definition of FDI enterprises which is in line with the applicable Law on Investment, comprising:

1. Economic organizations having members or shareholders being foreign investors who are subject to Investment Registration Certification;
2. Economic organizations having foreign investors who contribute capital or purchase shares or a capital participation, which are operating in an industry or trade in which investment and business are subject to the regulations for foreign investment;
3. Economic organizations having foreign investors who contribute capital or purchase shares or a capital participation, resulting in such foreign investor holding 51 per cent or more subscribed capital of the economic organization;
4. Project enterprises established by foreign investors for implementing a PPP project in accordance with the law on investment.

WHO IS REQUIRED TO OPEN AND USE A DICA

According to the Draft Circular, the following business ventures are required to open and use a DICA for their financial transactions:

1. FDI Enterprises as defined under Article 3 of the Draft Circular;
2. Foreign investors participating in BCC contracts;
3. Foreign investors directly implementing a PPP project.

GENERAL PRINCIPLES FOR FOREIGN EXCHANGE CONTROL APPLIED TO FOREIGN INVESTMENT ACTIVITIES

1. Foreign investors are entitled to transfer cash from overseas into Vietnam for pre-investment activities.
2. For foreign direct investment in Vietnam, the business ventures as specified above have to open a DICA in foreign currency, Vietnam dong at one (01) authorized bank. All transactions of money receipts or payments in relation to foreign direct investment activities in Vietnam must be effected via such DICAs, with exception of some specific cases of capital transactions:
   - Capital transactions between non-residents shall not be effectuated via DICA;
   - Capital transactions in an economic organization other than those described above.

PRE-INVESTMENT ACTIVITIES

The Draft Circular provides a specific regulation to prevent a loss of control with regard to transactions of FI during the pre-investment period. Accordingly, FI are entitled to either transfer cash from overseas or from their bank account at an authorized bank in Vietnam into bank accounts of the suppliers or competent authorities for their pre-investment activities, in accordance with written agreements between the relevant parties.

BANK ACCOUNTS AND CURRENCIES USED IN CAPITAL TRANSACTIONS

The Draft Circular provides clearer regulations on bank accounts and currencies to be used in capital transactions.

1. Bank account:
   - Capital transactions between two non-residents or between two residents are not required to be effected via DICA.
   - Capital transactions between a non-resident and a resident (or vice versa) are required to be effected via DICA.
   - Capital transactions, the acquisition of shares/capital participation in economic enterprises not classified as FDI Enterprises shall be made via IICA.

2. Currency:
   - Evaluation, capital transactions, the acquisition of shares/capital participation in economic enterprises between two non-residents are entitled to be effected in foreign currency.
   - Evaluation, capital transactions, the acquisition of shares/capital participation in economic enterprises between non-resident and resident have to be effected in VND in accordance with the regulations on the restriction with regard to the utilization of foreign exchange in the territory.

So far, the current Draft Circular still contains some inconsistent regulations which are currently being evaluated and discussed by the competent experts, while the draft has not yet been ratified. It

reflects the mindset of the State Bank of Vietnam on the solution of the related matters.

During the validity of Circular 19, it shall be subject to the evaluation of the respective commercial banks to handle the capital transactions, and the FIEs in Vietnam may seek advice from the State Bank of Vietnam with regard to unclear regulations. Once the Draft Circular has been approved, it may reduce a number of burdens in relation to FDI in Vietnam.

FOR MORE INFORMATION PLEASE CONTACT

Stefan Ewers
T +84 28 7307 2788
stefan.ewers@roedl.com

→ Events

FGG 2019 in Nuremberg – A Short Review

On May 16, Rödl & Partner held its 20th Forum Going Global in Nuremberg which has developed into one of Germany's most important foreign trade events.

More than 300 representatives of internationally active enterprises took a chance on comprehensive updates on business opportunities and challenges around the globe. Our clients joined us in interactive panel discussions, gained valuable insights through a diversity of expert lectures (30 lectures – 66 experts), shared their thoughts and experience in intensive bi- and multilateral dialogues with like-minded entrepreneurs and Rödl & Partner experts from all service lines and – last but not least – enjoyed the vibrant multicultural atmosphere in and around our international exhibition tent- sharing information, updates, regional treats and souvenirs.

Enjoy some impressions of the day captured in our picture gallery.

SAVE THE DATE

LOOKING FORWARD TO SEEING YOU IN NUREMBERG AT THE 21ST FORUM GOING GLOBAL ON 2 JULY 2020.

FOR MORE INFORMATION PLEASE CONTACT

Bettina Meyer
T +49 221 94 9909 340
bettina.meyer@roedl.com

→ Events

Meet us at these upcoming ASEAN events

MED TECH INNOVATION DAYS

26 AND 27 JUNE 2019
GERMAN CENTRE SINGAPORE

German Mittelstand Exhibition and Conference

With Rödl & Partner acting as event partner and providing one of the specialist lectures:

ECONOMIC FORUM

20 JUNE & 18 JULY 2019
GERMAN CLUB MANILA

German Philippine Chamber of Commerce and Industry

With Rödl & Partner being present as premium event partner:

MARKET ENTRY MYANMAR

30 JULY 2019 (GERMAN LANGUAGE)
RENEWABLES ACADEMY BERLIN

With Rödl & Partner providing one of the specialist lectures:

www.roedl.com/asean

Imprint

Publisher:
Rödl & Partner Bangkok
Empire Tower 3, 25th Floor, 1 South Sathorn Road
Yannawa, Sathorn, 10120 Bangkok
Phone: +66 2 0263 258
E-Mail: bangkok@roedl.com
www.roedl.de
www.roedl.com

Responsible for the content:
Markus Schlueter
markus.schlueter@roedl.com

Layout/Type:
Bettina Meyer
bettina.meyer@roedl.com