Rödl & Partner

QUARTERLY ASEAN NEWSFLASH

EYE-LEVEL EXCHANGE

Issue: Q1/2022

Latest news on law, tax and business in ASEAN

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→ Note from the editor

Dear reader

This quarter which, from international trade perspective, began quite promising with the entry-into-force of the Regional Comprehensive Economic Partnership, is currently dominated by worrying geopolitical developments, international trade tensions and an ongoing global rise of inflation; not to mention the next wave of the pandemic in many countries.

In light of these volatile business conditions we see that many clients continuously test and adapt their international supply chains and investment strategies. From frequent discussions with many of you it appears that most states in Southeast Asia continue to be identified as solid investment destinations and on a regional level we also see that ASEAN remains committed to global trade.

Thailand and Vietnam have recently relaxed their covid-related entry restrictions for international travelers, and further ASEAN members are about to follow soon. Several countries in the region have eased tax regulations to support local and international business operations. More details on this and other topics can be found in the following articles. We trust you will find helpful information herein; stay safe and sane in these turbulent weeks.

Sincerely yours,

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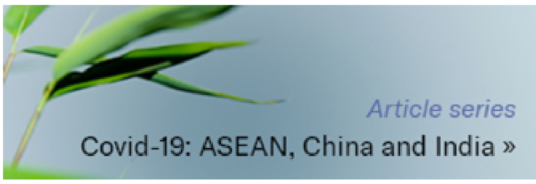

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→ International Trade

Three ASEAN Participants in WTO Disciplines on Domestic Services Regulation

The World Trade Organisation's joint initiative to develop new disciplines on domestic regulation in services declared their conclusion at the 12th WTO Ministerial Conference on 2 December 2021.

The initiative is on voluntary basis but the current 67 participants account for more than 73 per cent of world services trade. The initiative had the objective to develop disciplines mitigating trade restrictive effects of measures relating to licensing and qualification requirements and procedures as well as technical standards.

WTO members also examined how the disciplines under negotiation relate to those under recent regional trade agreements, such as the Regional Comprehensive Economic Partnership, and other free trade agreements, including those between Singapore and the EU, China and the Association of Southeast Asian Nations (ASEAN) or Indonesia and Australia.

The participants, which include three ASEAN members, i.e. the Philippines, Singapore and Thailand, noted the conclusion of negotiations on the Reference Paper concerning Services Domestic Regulation on 26 November 2021. They intend to incorporate the disciplines in the Reference Paper as additional commitments into their respective Schedules of the General Agreement on Trade in Services (GATS).

Background

According to the WTO Economic Research and Statistics Division, trade in services is the fastest-growing sector of today's global economy and the most dynamic segment of world trade, but its potential remains constrained by a variety of barriers, including limited transparency and predictability of regulations, and rather widespread procedural inefficiencies.

WTO Members generally have the right to regulate the supply of services within their territories in order to meet domestic policy objectives. This can lead to asymmetries concerning the degree of development of services regulations in different member states. A significant part of service trade barriers is attributable to regulatory divergence, as well as opaque regulations and cumbersome procedures. Many globally operating companies thus complain that obtaining, filling and submitting a large number of official documents required for their trading operations costs them a considerable amount of time and resources. In this light, a central background for this initiative is the recognition of respective compliance difficulties faced by service suppliers.

Article VI:4 of the GATS provides that the members of the Trade in Services Council develop necessary disciplines through subsidiary bodies, with the goal of ensuring that domestic measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services.

The focus of the disciplines, which are treated as additional commitments under Article XVIII GATS, lies on measures that are closely linked to the process of authorization to supply a service. They seek to ensure that existing market access and national treatment commitments are not nullified by burdensome authorization procedures. Hence, the objective is to create good regulatory practices that help mitigate any unintended trade-restrictive effects of procedures for authorizing the supply of services. The disciplines are designed to be compatible with WTO members' diverse regulatory systems and approaches.

Authorization Proceedings

The reference paper on services domestic regulation states that each Member shall, to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application for authorization. The term "authorization" means the permission to supply a service, resulting from a procedure to which an applicant must adhere in order to demonstrate compliance with local requirements and standards.

Authorities shall endeavor to accept applications in electronic format and accept copies of documents, that are authenticated in accordance with the Member's domestic laws and regulations, in place of original documents. Original documents should merely be required to protect the integrity of the authorization process.

Transparency

For the improvement of procedural transparency the competent authorities shall, if possible, provide (i) an indicative timeframe for processing of an application and (ii) without undue delay information concerning the status of the application upon respective request. They also need to timely ascertain the completeness of an application for processing under the Member's domestic laws and regulations, which is often an open issue for investors in administrative practice.

From transparency perspective it is also required that all information necessary for obtaining, maintaining, amending and renewing such authorization are either published or otherwise made publicly available in writing. If an application is rejected, the applicant should be informed of the reasons for rejection and, if applicable, the procedures for resubmission of an application. In this context, an applicant should not be prevented from submitting another application solely on the basis of a previous rejection.

Each Member shall ensure that the authorization fees charged by its competent authorities are reasonable, transparent, based on authority set out in a measure, and do not in themselves restrict the supply of the relevant service.

Technical Standards

Technical standards adopted by the Members' authorities have to be developed through open and transparent processes. In this regard, the Members shall ensure that such measures are based on objective and transparent criteria and respective procedures are impartial and adequate for applicants to demonstrate whether they meet the requirements. Furthermore such measures may not discriminate between men and women.

Further disciplines apply to measures by Members relating to licensing requirements and procedures, and qualification requirements and procedures affecting trade in financial services, as defined in the GATS Annex on Financial Services.

Schedules of Specific Commitments

The WTO members participating in the negotiations have circulated schedules of commitments setting out how they intend to incorporate the new disciplines on services domestic regulation into their existing WTO commitments. Other WTO Members may anytime join the Declaration by incorporating the disciplines outlined in the Reference Paper as additional commitments into their GATS Schedules. Subject to the completion of domestic procedures, the participants aim to submit their Schedules of Specific Commitments for certification within twelve months of the Declaration's date.

While developed countries such as the EU member states or Singapore appear to vastly fulfill the commitment already, the domestic implementation in some emerging economies will be more complex. We will monitor the progress and report on new developments with particular regard to the participating ASEAN members.

→ International Trade

Update FTA Negotiations between EU and Indonesia – Focus on Services and Investment

The 11th negotiation round on an EU-Indonesia Free Trade Agreement (FTA) took place in November 2021 in a virtual format, after some delays due to the pandemic. Negotiations for the FTA were launched in 2016 and seek to enhance trade and investment relations. Currently, the Comprehensive Partnership and Cooperation Agreement, which entered into force in 2014, governs the overall relations between the EU and Indonesia.

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 and level the playing field between private businesses and state-owned enterprises. Market entry liberalization for services is an important but also difficult negotiation point. While in the recent negotiation round no major advancements could be made on key outstanding issues that require political decisions, most groups could make progress at technical level and prepare the ground for further discussions, according to the report issued by the European Commission.

The first offers on services and investment were made during the 6th round of negotiations in October 2018. The negotiation group now discussed in more depth the texts on delivery, telecommunications, financial and international maritime transport services, as well as on mutual recognition arrangements and general provisions of the text. The group, however, did not appear to address in detail core points such as market access, for which further discussions will be required. Several sectors, such as e.g. retail business, are still restricted for European direct investment in Indonesia, even under the new Omnibus legislation which aims to liberalize the investment framework.

The EU side reiterated already three years ago the need to eliminate foreign equity caps and broaden the scope of commitments amid current non-tariff barriers which include, inter alia, investment barriers, barriers to access 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 discussion include issues such as establishment, foreign ownership, public procurement and investor protection.

According to the report, both sides deepened discussions on investment liberalization, addressing in particular provisions on Scope, National Treatment and Performance Requirements. However, in the 11th negotiation round no discussions took place on revised market access offers on investment. Investment protection was also not covered this round.

We will continue to monitor and report on the further progress.

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→ Indonesia

Decision 91: Omnibus Law declared "conditionally unconstitutional"

The Law No. 11 of 2020 on Job Creation ("Job Creation Law") – also commonly referred to as the "Omnibus Law" – has been subject to a judicial review by the Constitutional Court of the Republic of Indonesia (Mahkamah Konstitusi or "MK") since late 2020. Through the decision No. 91/PUU-XVIII/2020 ("Decision 91"), dated 25 November 2021, MK has declared the Job Creation Law to be "conditionally unconstitutional", which means the enactment of the Job Creation Law was not fully compliant with the constitution of the Republic of Indonesia (the "Constitution") and therefore needs to be rectified.

In its consideration for the Decision 91, MK holds the view that the omnibus format (ie. issuing one law to amend several existing laws) adopted by the Job Creation Law is inconsistent with the prevailing law on the formation of laws and regulations, as such law does not recognize the omnibus format. The fact that there are substantial differences between the bill (draft) of the Job Creation Law and the enacted law also contributes to the imposition of the "conditionally unconstitutional" status to the Job Creation Law under the Decision 91.

Details to Decision 91

In light of the above, the Decision 91 renders the following:

1. to declare that the formation of the Job Creation Law contradicts with the Constitution and will have no legal binding power if it is not rectified within the period of two (2) years as of the date of the Decision 91;

2. to declare that the Job Creation Law shall remain valid until the above rectification is made within the period of two (2) years;

3. to order the lawmakers to rectify the Job Creation Law within 2 (two) years, as otherwise the Job Creation Law shall become permanently unconstitutional;

4. to declare that, in the event the rectifications were not made within the prescribed timeline, any and all articles or provisions of laws revoked or amended by the Job Creation Law will be reinstated; and

5. to declare the suspension of all strategic and broad-impact actions/policies, and to restrict the issuance of new implementing regulations in relation to the Job Creation Law.

Outlook

Whilst many academics view the Decision 91 as ambiguous and inconclusive, the Indonesian Government seems to have taken a stand that the Job Creation Law along with all of its implementing regulations will remain valid while the revisions as mandated by the Decision 91 are underway – a view that has been expressed by many public officials, ministers and even the President of the Republic of Indonesia himself on many occasions.

The Indonesian Government expressed its willingness to honor the Decision 91 and will expedite the revisions of the Job Creation Law in the beginning of 2022. The Minister of Investment/Chairman of Investment Coordinating Board further assures that there will be no disruption to investments caused by Decision 91.

Our Conclusion on the decision and its impact on investments in the country

Despite the comforting position of the Indonesian Government, the Decision 91 may still give rise to practical risks, as to date the implementation of the Job Creation Law remains a work-in-progress. Since there are some technical implementing regulations that still need to be issued by the ministries in charge as a result of the enactment of the Job Creation Law, the restriction to issue new implementing regulations imposed by Decision 91 might lead to the current uncertainty caused by the absence of relevant technical implementing regulations to persist, which may also catalyze disruptions in the licensing process.

The Indonesian Government has made a significant step into the right direction opening the country more for foreign investments. Current and future investors are concerned that the decision at hand might put their investment at jeopardy. The Government has already announced to address the decision in due course, and it can be expected that this is handled with priority to reduce concerns at hand. Following the intention to further open the country to foreign investors, it can be expected that the executive, legislative, and judicial bodies are working together to solve concerns related to the enacted laws.

Rödl & Partner will continue to closely monitor the situation and provide updates on the status on a regular basis.

→ Indonesia

Updated Singapore-Indonesia Tax Treaty

The new Singapore – Indonesia tax treaty takes effect on 1 January 2022 for most parts, including those regarding Withholding Tax rates and tax credits. It was previously ratified by Indonesia on 11 May 2021. Several updated aspects under this newly adjusted tax treaty are shown below.

Article 9 on Associated Enterprise

The new tax treaty contains provisions for corresponding adjustments to be applied in consistency with the OECD Model Tax Convention. In determining such adjustments, the competent authorities shall consult each other.

Article 10 on Dividends

Withholding Tax rates on Dividend remains unchanged at 10 percent (for a minimum of 25 percent shareholding) and 15 percent in other cases. The Branch Profit Tax rate for permanent establishments is reduced from 15 percent to 10 percent. Paragraph 7 of Article 10 concerning Dividends further mentions that the reduced Branch Profit Tax rate shall not affect agreed clauses in the production sharing contracts or other mining sector contracts.

Article 11 on Interest

The Withholding Tax rate icontinues to be 10 percent. The new tax treaty no longer provides exemption on interest payment on Government Bonds. Furthermore, tax exemption is available on interest payments made to government bodies. The new tax treaty provides a list of within-scope government bodies in this regard.

Article 12 on Royalties

The new tax treaty reduces the Royalty Withholding Tax rates to 10 percent and 8 percent, depending on the type of royalty definition. Those rates are reduced from the previous 15 percent. Alienation of certain types of intangible assets is removed from the royalty article.

Article 13 on Capital Gains

This is a new Article introduced in this updated Tax Treaty. Gains on the disposal of shares of an Indonesia listed company is taxable in Indonesia. The disposal of shares in a company deriving more than 50 percent of their value directly or indirectly from immovable property may be exempt from tax in the source country if one of the following conditions is met:

- The alienator owns less than 50 percent of the issued total of shares being alienated;
- The immovable property is used by the company to carry on its business;
- The gains arise from the framework of a reorganization, a merger, a demerger or similar operation.

Article 28 Entitlement to benefits

An interesting aspect is that an anti-abuse provision is included in Article 28 based on the principal purpose test. This is consistent with the recent OECD's initiative regarding the prevention of base erosion and profit shifting.

The results of the updated tax treaty should benefit both, Singapore and Indonesia businesses and promote bilateral trade and investment between the two countries.

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→ Malaysia

Amendments to the Minimum Wages Order 2020

On 1 February 2020, the Minimum Wages Order 2020 ("the Principal Order") came into effect and introduced a minimum wage for employees whose place of employment is located in a City Council or Municipal Council areas as outlined in the Schedule to the Principal Order.

The Minimum Wage Order 2020 rates are as below:

MINIMUM WAGE RATES IN CITY COUNCIL AND MUNICIPAL COUNCIL				
Monthly	Daily			Hourly
	Number of working days in a week			
	6	5	6	
RM 1,200.00	RM 46.15	RM 55.38	RM 69.23	RM 5.77

For an employee whose place of employment is in an area other than the City Council or Municipal Council areas, the minimum wage rates are as follows:

MINIMUM WAGES RATES IN AREA OTHER THAN CITY COUNCIL AND MUNICIPAL COUNCIL				
Monthly	Daily			Hourly
	Number of working days in a week			
	6	5	6	
RM 1,100.00	RM 42.31	RM 50.77	RM 63.46	RM5.29

The Principal Order has been amended through the Minimum Wages (Amendment) Order 2022 ("the Amendment") which has been gazetted on 20 January 2022 and will come into effect on 1 February 2022.

Under the Amendment, the definition of "City Council or Municipal Council area" has been added, and such areas shall now be understood as "any areas declared or established as City Council or Municipal Council areas under the Local Government Act 1976, Local Government Ordinance 1961 or Local Authorities Ordinance 1996 or Putrajaya or Labuan". Furthermore, the Schedule to the Principal Order listing the 16 City Council areas and 40 Municipal Council areas is deleted.

Thus, from 1 February 2022 onwards, it will be irrelevant with regard to the applicable minimum wage rate, whether an employee's place of employment is located in the 56 areas listed in the Schedule to the Principal Order. Following the Amendment, it will now be decisive whether the place of employment is located in an area that has been or is hereafter declared or established as a City Council or Municipal Council area under the local government legislation. It is expected that this will provide uniformity with regard to the wage rates in areas with the status of City Council or Municipal Council.

The Amendment does not increase the minimum wages as set out in the Principal Order, and as such the current minimum wages remain competitive to other major jurisdictions in the ASEAN region. However, recent comments of the Human Resource Minister of Malaysia suggests an increase of the monthly minimum wage to RM 1,500 by the end of this year which, as to the Malaysian Employer Federation, might impact the economic recovery of Malaysia.

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→ Malaysia

Tax Exemption on Foreign Sourced Income (FSI)

Tax Exemption on FSI Received by Resident Individuals

The Ministry of Finance ("MoF") has agreed to exempt from tax all FSI derived by resident individual taxpayers, except for resident individuals carrying on business through a partnership. Non-resident taxpayers (i.e. individuals, corporates and others) will continue to be exempted from income tax under Paragraph 28, Schedule 6 of the Malaysian Income Tax Act 1967 ("ITA").

Tax Exemption on Foreign Dividends

Income tax exemption on dividends will be granted to companies and Limited Liability Partnerships, while individuals will be tax-exempted for all types of income, including dividend income.

Tax Exemption on all FSI for Cukai Makmur (Prosperity Tax)

The MoF also announced that FSI received in YA 2022 will be excluded from the computation of tax in connection with the Prosperity Tax. This announcement addresses the concerns of multinational entities (“MNEs”) regarding the applicability of the Prosperity Tax at the rate of 33 percent on FSI remitted to Malaysia in YA 2022.

→ Malaysia

Deferment of Remittance of Withholding Tax on Payments to Agents, Dealers and Distributors

Section 107D of the Malaysian Income Tax Act ("ITA") was introduced with effect as of 1 January 2022, whereby companies are required to withhold tax at a rate of 2 percent on payments made to agents, dealers and distributors; and remit the tax withheld to the Inland Revenue Board of Malaysia (“IRBM”).

This applies to agents, dealers or distributors who are individual residents and have received more than RM 100,000 (in cash and non-cash) from companies in the immediate preceding YA. The tax withheld must be remitted to the IRBM within 30 days from the date the amount was paid or credited to the agents, dealers or distributors. Companies that do not comply with the remittance requirements under section 107D of the ITA may be subject to an increase in tax of 10 percent of the amount to be remitted. In addition, a tax deduction will not be allowed on the expenses in case the Withholding Tax payment has yet to be remitted to the IRBM.

However, on 12 January 2022, the IRBM announced a deferment of remittance of Withholding Tax on payments to agents, dealers and distributors until 31 March 2022. This deferment was implemented by the IRBM to ensure that impacted companies are able to make the necessary preparations and appropriate notifications to their agents, dealers or distributors accordingly. In line with the announcement, companies are also allowed to remit to the IRBM the 2 percent tax withheld on payments made to their agents, dealers or distributors for January to March 2022 from 1 April 2022, without incurring any increase in tax of 10 percent.

→ Malaysia

Updates on Tax Treatment of Research and Development (R&D) Expenditure

On 29 December 2021, with the issuance of Public Ruling (“PR”) No. 10/2021 - Tax Treatment of Research and Development Expenditure Part II – Special Deductions -, the IRBM updated their guidelines with regard to expenditure that qualifies for special deduction in respect of R&D activities.

The updated ruling specifies that any cash contribution or payment for the use of services that are capital in nature will not qualify for the double deduction under section 34B of the ITA. Revenue expenditure must be incurred for an “approved” qualifying R&D activity in the basis period to qualify for a double deduction under section 34A of the ITA.

In addition, effective 1 January 2021, if the payment for R&D expenditure undertaken outside Malaysia (outsourced) amouonts to more than 30 percent of the total allowable R&D expenditure, the total expenditure incurred will not qualify for a double deduction. If the project is outsourced to any service provider, it is important for the R&D company to find out how the product/process is developed. The R&D and the service provider have to identify and determine any novelty or technical risk involved and the systematic, investigative and experimental (“SIE”) studies for the purpose of claiming the double deduction.

The updated ruling also specifies that payments made by the holding company for the use of the service on behalf of a subsidiary or associate company which is paid to the R&D company will not be allowed as a double deduction under section 34A of the ITA either. R&D companies are also not entitled to claim a double deduction for research expenditure incurred on behalf of a subsidiary or associate company.

→ Malaysia

Clarification on Definition of Factory for Reinvestment Allowance Purposes

Schedule 7A of the ITA refers to "factory" as the portions of floor area of a building or an extension of a building used for the purposes of a qualifying project to place or install a plant or machinery or to store any raw material, goods or materials manufactured prior to sale, provided that said portion of the building or extension of the building used for the storage of raw material, goods and/or materials, must not be more than one tenth of the total floor area of that building or extension.

The IRBM has recently clarified that only the portion used for the purpose of a qualifying project fulfils the definition of a "factory" for reinvestment allowance purposes under Schedule 7A of the Income Tax Act 1967 (ITA).

The Clarification provided by the IRBM under the Practice Note No. 1/2022 is set out below:

- In calculating a Reinvestment Allowance claim under Schedule 7A of the ITA, the use of space for the purpose of storing raw materials and/or other goods in excess of one tenth of the total floor area of a factory will not be taken into account. This tax treatment also applies in case of an extension or addition made to an existing factory building.

- Where a portion of the extension to the building is used for various purposes other than for a qualifying project, reinvestment allowance is only available for the portion of the extension to a building used for the purpose of a qualifying project.

- The area of storage space for raw materials, goods or materials or both must not exceed 10 percent of the total area of the extension to the building used for the purpose of a qualifying project.

- The taxpayer must exclude the total area of sales office space for the purpose of determining a "factory" or space used for the purpose of a qualifying project. This is required as a sales office is not included in the definition of a "factory".

→ Malaysia

New public rulings on the taxation of partnerships

Public Ruling (“PR”) No. 7/2021 - Partnerships Taxation Part I – Determination of the Existence of a Partnership has been issued on 29 December 2021, outlining the determination of the existence of a partnership for income tax purposes.
Guidelines on Determining the Existence of a Partnership

This PR outlines the characteristics of a partnership based on its interpretation in accordance with the Partnership Act 1961 and Section 2 of the ITA.

In order to constitute a partnership, partners must have agreed to carry on a business where there is a sharing of business profits and losses. According to this interpretation, a mere sharing of a business’ gross income or expenses does not constitute a partnership, regardless of whether the partners sharing such returns have any right or interest in any property from which or from the use of which the returns are derived.

Other factors to determine the existence of a partnership also include the following:

- Mutual relation between the parties
- Co-ownership
- Deed of partnership

Generally, a joint venture is not deemed a partnership. There is a distinction between a joint venture and a partnership. Only when a joint venture has the basis of a partnership, it would be considered a partnership. Where a joint venture is formed for a limited term or for a single undertaking, the joint venture would likely not constitute a partnership.

Guidelines on Computation and Allocation of Income for Partnerships

PR No. 8/2021 - Partnerships Taxation Part II – Computation and Allocation of Income, issued on 29 December 2021, highlights the computation and allocation of income for partnerships.

According to this PR, for tax purposes, a partnership is not a chargeable person. Every partnership would be treated as if it is a sole proprietorship business. Income derived from the partnership is allocated to its partners based on the agreed profit sharing ratio, and taxed in the hands of the partners. The financial accounting period annually ending on 31 December is taken to be the basis period of a partnership.

→ Malaysia

New Exchange of Information (EOI) rules

Malaysia has committed to the EOI arrangements under the respective Malaysian Double Tax Agreements ("DTAs"). Rules in relation to the EOI under DTAs have been gazetted under the Income Tax (Exchange of Information) Rules 2011 ("the 2011 Rules").

With effect as of 1 January 2021, these Rules have been updated vide the Income Tax (Exchange of Information) Rules 2021 ("the 2021 Rules").

The updates to the Rules are set out below:

- The scope of a "bank" has been expanded to include a Labuan company or bank licensed under the Labuan Financial Services and Securities Act 2010 and Labuan Financial Services and Securities Act 2010.
- The scope of the 2021 Rules covers (in addition to EOIs under DTAs) EOI under a Tax Information Exchange Agreement, the Convention on Mutual Administrative Assistance in Tax Matters, any bilateral or multilateral tax convention, and any bilateral or multilateral competent authority agreements.

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→ Myanmar

Draft Cyber Security Law

Shortly after the coup in 2021, the State Administration Council (SAC) which ousted the elected government under Aung San Suu Kyi and the National League for Democracy (NLD), circulated their draft Cyber Security Law and yielded criticism from most Chambers of Commerce and other stakeholders.

As a result of the increasing control of the Internet by the military, the use of VPNs on end-devices has become widespread among the population, since access to social media is no longer possible without VPNs. Social media is essential for sharing information in Myanmar, especially after further restrictions on press freedom.

In its draft of the Cyber Security Law, the SAC tries to restrict the use of the Internet in general, to ban Social Media via VPNs in particular and to criminalize them. This should not only curb the flow of information within the population, but also dry up the fundraising opportunities of the shadow government.

The newly submitted draft was sent to various ministries, chambers of commerce, banks and telecom companies, which were able to submit their statement before January 28, 2022 to comment. The draft would give the SAC unlimited powers to access user data, remove objectionable content, restrict internet providers, server connections altogether, and punish violators with jail terms. The draft has neither been amended nor has a new Cyber Security Law been enacted yet.

→ Myanmar

Economic Growth in 2022

After the estimated contraction of the economy in Myanmar by 18 percent until 30 September 2021, the World Bank's Myanmar Economic Monitor only predicts a 1 percent growth in 2022.

Despite recent signs of a relative stabilization in some areas, the economy remains weak with an estimated loss in size of 30 percent compared to what it could have been without the pandemic and the coup. The limited access to adequate banking products, cumbersome transfers of funds, electricity and internet cut-offs, exchange rate losses and other factors are significant challenges for nearly all foreign investors.

The outlook of the economic growth in this year highly depends on the further development of both, the conflict and the pandemic situation.

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→ Singapore

Enhancement of Singapore´ s Corporate Governance Regime

On 10 January 2022, the Corporate Registers (Miscellaneous Amendments) Bill, seeking to amend the Companies Act 1967 and the Limited Liability Partnerships Act 2005, was passed. The amendments seek to strengthen Singapore's corporate governance regime and to better align Singapore with the international standards of the Financial Action Task Force (FATF) in combating global money laundering and terrorism financing.

THE AMENDMENTS ARE AS FOLLOWS:

Register of Nominee Shareholders

Prior to the amendments, the Companies Act requires companies to maintain a Register of members. The person holding the shares on behalf of another person is known as the nominee shareholder, whilst the person for whom the shares are held is known as the nominator. The nominee shareholder is listed in the Register of members as the shareholder on record, and the nominator did not have to be identified in the said Register. As the nominee shareholder typically acts on the instructions of the nominator, the lack of transparency on the identity of these persons who actually controls the shares is an area of concern on an international scale.

With the amendments, both local and foreign companies in Singapore now need to (i) keep a non-public Register of nominee shareholders and nominators, and (ii) update their Register within seven (7) days of being informed by the nominee. This ensures that nominators are better identified, thus aligning Singapore's legislation with international standards.

The Register of nominee shareholders and nominators is not accessible by the public. However, the Registrar of Companies or an officer of the Accounting and Corporate Regulatory Authority may inspect and examine the said Register and make inquiries to ensure compliance with the Companies Act. Further, a public agency may also exercise such similar powers of inspection and conduct an inquiry in relation to the Register of nominee shareholders and nominators to administer and enforce any written law. A public agency includes a public officer and a ministry or department of the Singapore government.

II. Identity of Registrable Controllers

The next set of amendments introduces new requirements in relation to the identification of registrable controllers, for both local and foreign companies and Limited Liability Partnerships (LLPs).

In the past, companies and LLPs were required to maintain a Register of Registrable Controllers. These would be individuals or corporate entities with significant interest in or significant control over the company or LLP. However, there have been times when a company or an LLP would claim to have no registrable controllers with significant interest or control.

With the amendments, companies and LLPs which are unable to identify a registrable controller with significant interest in or who has significant control over the company or LLP, will be required to identify all individuals with executive control over the company or LLP as registrable controllers.

Such individuals are the chief executive officers and directors or partners who exercise executive control over the daily or regular affairs of the company or the LLP through a senior management position. By ensuring a registrable controller to be identified, the transparency of beneficial ownership and the control of companies and LLPs in Singapore will be enhanced, in line with international expectations.

III. Time frame to update Register of Nominee Directors

Local companies are required to maintain a Register of Nominee Directors, reflecting their status as nominee director and the particulars of their nominator. However, there was no time frame specified as to when local companies had to update their register whenever there is a change in particulars of the nominee director or their nominator.

The amendments require local companies to update the Register of Nominee Director within seven (7) days of such changes. This results in more clarity as to the timeline, and ensures the said Register to be updated in a timely manner.

IV. Time frame for Foreign Companies to update Register of Members

Foreign companies are currently required to keep and maintain a Register of Members at their Singapore branch, but there is no time frame as to when updates are to be made when there is a change in members' particulars. The amendments specify a 30-day time frame for foreign companies to update their Register of Members.

Specifying a 30-day time frame took into consideration that foreign companies would take more time to contact members who are located overseas, and to subsequently update the Register of Members, which is located in the registered office in Singapore.

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→ Thailand

Covid Relief – Tax Cut

Currently, the Thai Government has numerous schemes in place aimed to stimulate the economy and domestic spending, as well as easing the financial burden for the population following the Covid-19 pandemic.

Shop Dee Mee Kuen

The most recent scheme called Shop Dee Mee Kuen ("Shop and Payback") allows for individuals subject to Personal Income Tax filing in Thailand to get a deduction on their assessed income of up to 30,000 baht for purchases of goods and services. Those purchases must be made in the period from 1 January 2022 until 15 February 2022.

The tax benefit will reduce Personal Income Tax obligations under the Personal Income Tax filing for the year 2022 (form PND.90/PND. 91 - to be filed within March 2023).

Tax payers may benefit according to their individual top tax bracket, with high income earners being able to save tax up to 35 percent of their purchases or up to 10,500 Baht.

In order to benefit from the scheme, taxpayers need to request a full tax invoice/receipt for their purchases, indicating the name of the customer, personal tax ID and address.

Certain goods and services are excluded from the scheme, such as alcohol, cigarettes, vehicles such as cars, motorcycles or ships, petrol for vehicles, newspapers or magazines, tourism and hotel expenses, utilities such as water, electricity, telephone and internet bills, fees for services which would be used after the designated period as well as insurance premiums.

→ Thailand

Covid Update – Reimplementation of Test & Go

The Thai Government reinstated the Test & Go quarantine free entry scheme starting 1 February 2022. The scheme has been slightly modified in comparison to the previous version.

Test & Go requirements and procedure

Now, fully vaccinated travellers are required to take a PCR-Test upon arrival and remain in hotel quarantine until the test result is received.

Afterwards, the arrivals are free to explore Thailand. However, on the fifth day after entry, all travellers are required to take another PCR-Test and must wait in hotel quarantine for the test result. The hotel doesn't need to be the same as the first one.

In general, entry under Test & Go requires an approved Thailand Pass, a negative RT-PCR test result within 72 hours before travels, an insurance policy with a coverage for Covid-19 of at least USD 50,000, evidence of an approved hotel on day 1 and 5, including expenses for two RT-PCR tests, as well as proof of vaccination or recovery.

Still available: The Sandbox Scheme

Alternatively, travellers can enter Thailand under the Sandbox scheme. People arriving under the Sandbox scheme take a PCR-Test upon arrival and are free to explore the defined Sandbox area once they receive their negative PCR-Test result.

However, they need to remain within a certain region, for example Phuket. After 7 days and a second negative PCR-Test, they may travel onwards. Only vaccinated people are eligible for the sandbox program. The aforementioned general travel requirements similarly apply to the Sandbox scheme.

→ Thailand

Export controls for Dual-Use Items

The Trade Control on Weapons of Mass Destruction Related Items Act, B.E. 2562, has been in effect since 1 January 2020, and mainly aims to regulate the export of dual-use items (DUIs). DUIs are goods, software and technologies that have a civil and/or potential military application. The Ministry of Commerce recently issued a notification implementing the Catch-all-Control (CAC) measures for DUIs.

The CAC measures authorize the Department of Foreign Trade to inspect, investigate and suspend the export, re-export, transshipment and transit, if the exported product is classified as DUI. Currently there are two lists issued by the Ministry of Commerce prescribing DUIs.

Optional Internal Compliance Program

To avoid and mitigate complications for businesses involved with DUIs, the notification also includes an optional Internal Compliance Program (ICP). This ICP needs to be registered and certified with the Department of Foreign Trade. Then the business will be considered credible and privileged if being investigated. The ICP contains six elements, and depending on the number of elements the business complies with, it will receive a certificate as either good, very good or perfect. These six elements are:

- Responsibility and resources for implementing ICP procedures
- Screening processes
- Training
- Record keeping
- Auditing
- Reporting and corrective action

As mentioned above, the installment of the ICP is not mandatory, but highly recommended in case of trading dual use items. We note that under the regulations, Thai authorities have the right to stop exports (or similar) of dual use items; having a certified ICP would decrease the chance of being subject to government interjections.

→ Thailand

Land and Building Tax

Thailand imposes a tax on land and buildings owned by taxpayers. The land on which a building is erected and the building itself can be owned by different parties. The tax rates are divided into six different categories based on the usage of land and buildings. Those categories are:

- Agricultural Property
- Residential Property (Building and Land)
- Residential Property (Building Only)
- Residential Property (Other than those specified above)
- Others (Commercial, Industrial, etc.)
- Vacant or unused property

Thailand last changed the tax rates in 2020, and recently announced to maintain those tax rates. The tax rates ranged from 0.01 percent for agricultural property with a value up to 75 million Baht to 0.10 percent for residential property with a value of more than 100 million Baht.

However, Thailand has announced a 90 percent reduction on the computed land and buildings tax liability through the Royal Decree on Land and Building Tax Reduction, B. E. 2563, which took effect on June 10, 2020. Therefore, taxpayers only had to pay 10 percent of the computed tax amount for 2020. The government intended to provide additional financial relief from the Covid-19 pandemic. With a second Royal Decree in 2021, Thailand extended the 90 percent tax reduction for 2021.

Recently, the Finance Ministry announced that it would not consider an extension for the 90 percent tax reduction because of the fiscal burden imposed by this measures for the state. The tax reduction costs the state around 30 billion Baht per year (around 800 million Euro).

Property developers criticized the announcement and asked to extend the measure for another two years, as the impact on the sector remains severe, not only for property business, but also on hotels, industries and the Thai people.

While there is a clear need for privacy protection, given the current economic situation, the decision was expected and seemed overall reasonable to ensure an ongoing economic recovery.

→ Thailand

Mutual Administrative Assistance in Tax Matters

On 3 June 2020, Thailand joined the Convention on Mutual Administrative Assistance in Tax Matters (MAC), and ratified the Convention on 22 December 2021. Germany had already ratified the convention in 2015.

The MAC was jointly developed by the OECD and the Council of Europe in 1998, and amended by protocol in 2010. The convention is aimed towards the prevention of Base Erosion and Profit shifting (BEPS), as well as the promotion of further tax co-operation between the 144 participating jurisdictions.

Details to the Convention

The Convention is set to enter into force in Thailand on 1 April 2022. The Convention includes various measures, such as an automated exchange of information between members of MAC (AEOI), the exchange of information on request (EOIR) and the spontaneous exchange of information (SEOI). Thailand has committed to implementing the first round of AEOI in 2023. Thailand is currently going through the process of aligning the national regulations with the Common Reporting Standard (CRS) required for the AEOI. In order to achieve this, Thailand published a draft of the CRS Act which is expected to come into force in early 2022.

Obligations in relation to the CRS Act

The CRS Act will impose obligations on financial institutions, primarily the collection and reporting of information to the competent authorities. Likely, financial institutions will be required to:

- Arrange for their customers or controlling persons of their customers, whose financial accounts are maintained with such reporting financial institutions, to identify themselves;

- Collect information and conduct customer due diligence to identify reportable accounts of reportable persons;

- Report the relevant information to the Tax Revenue Department; and

- Maintain relevant data and documents.

A penalty for non-compliance will be imposed as well.

Further steps to tackle BEPS in Thailand

Furthermore, Thailand amended the Revenue Code giving the Director-General of the Revenue Department the authority, to collect and exchange tax information with other jurisdictions. It is also expected that Thailand will be removed from Europe's so called grey list (Annex II of the European Union's list of non-cooperative jurisdictions for tax purposes) once the Convention comes into force.

Additionally, there is a 15 step action plan to further tackle BEPS. Most recently, on 9 February 2022, Thailand signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI), which is part of the BEPS action plan step 15. This allows Thailand to modify existing bilateral tax treaties in a synchronized and efficient manner to implement the tax treaty measures of the BEPS action plan without having to devote resources to the renegotiation of each treaty.

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→ Vietnam

New Decree regulating the implementation of the Law on Real Estate Business

On 6 January 2022, the Government issued Decree No. 02/2022/ND-CP providing the implementation of the Law on Real Estate Business 2014 ("Decree 02") which will take effect from 1 March 2022. The purpose of Decree 02 is to facilitate investment into the real estate sector while simultaneously assuring greater transparency.

We would like to bring to your attention the following crucial changes introduced by Decree 02:

Removal of regulation on legal capital applicable for real estate business

Previously, the companies engaging in real estate business had to surpass the official minimum legal capital requirement of VND 20 billion. Decree 02 abolishes the requirement of affixed minimum legal capital and replaces it with regulations under which the minimum capital requirement depends on the size of the project site as well as on the level of investment.

Accordingly, to develop a real estate project, the investor must have equity of (i) not less than 20 percent of the total investment capital for projects using less than 20 hectares of land; or (ii) not less than 15 percent of the total investment capital for projects using 20 hectares or more.

New issuance of standard contractual templates for real estate transactions

Unlike the old regulations under which templates were only a reference or starting point for the negotiation of the parties, Decree 02 now clearly introduces the requirement to draft certain contracts in accordance with the standard contracts provided by the government as attachments to Decree 02, including the form of the contract as well as key terms and conditions therein.

The types of contracts which fall under this new requirement include, among others, sale and purchase of real estate, lease and sublease of real estate, lease purchase of real estate and transfer of real estate projects.

New conditions for conducting real estate business and transfer of real estate projects

- The Decree 02 further requires that certain information about the real estate company must be publicized, such as corporate information, mortgage information, quantity and types of real estate products to be traded, sold or transferred as well as other products. Any change to the publicized information must be publicly updated without delay.

- Furthermore, it has now been clarified that the Law on Investment 2020 only applies on a transfer of a project, if the project has approved investors (as prescribed in the Law on Investment 2020) or the project has been granted an Investment Registration Certificate. The relevant authority would then be the Department for Planning and Investment. Otherwise, the People's Committee will be responsible and the regulations of Law on Real Estate Business will apply.

- Another important improvement is that Decree 02 defines the responsibilities of the relevant authorities in charge of collecting opinions and contents of required appraisal opinions to be collected in more detail. This also includes a timeline for the opinion collection process, which facilitates planning of the process and helps the involved parties to estimate the milestones for the transaction.

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→ Vietnam

Reduction of quarantine duration and current immigration regulations for foreigners

In February 2022, the government enacted a more favorable quarantine regime for foreigners. After entering Vietnam, they will be isolated for 3 days instead of 7 days if they have a certificate of full vaccination, or have recovered from Covid-19.

In Hanoi and Ho Chi Minh City, foreigners can stay at home during quarantine and do not have to stay in a certain hotel or resort. However, in some provinces (Bac Ninh, Haiphong), the authority still requires quarantine in hotels. Unvaccinated or not fully vaccinated persons must be isolated for 7 days.

Visa Proceedings

Those who already have a valid visa and TRC are entitled to enter Vietnam without having to reapply for identity verification, visa/visa waiver or entry permit from central or local authorities.

For those who still need a visa, the following applies:

Step 1: Application for approval of the People's Committee and the Department of Health;

- Step 2: After getting the approval, submitting the visa application to the Immigration authority;
- Step 3: After getting the visa approval buying an air ticket.

The duration of the procedure is at least about 4-7 weeks.

International Tourism

Since 15 February 2022, Vietnam has lifted all restrictions on regular international flights with all markets. This means, there will be no more limitation on the number of passenger flights. However, the regulations on entry and epidemic prevention for passengers entering Vietnam still follow the guidance of the Government and relevant authorities from time to time.

The Vietnamese Ministry of Culture, Sports, and Tourism has just proposed to fully reopen international tourism by mid-March. It is expected that the restrictions on visa issuance will be lifted, and visa exemption and E-visa will be conducted same as before the pandemic. However, it is expected that it will be required to present either proof of Covid-vaccination within the last year, or proof of recovery within the last 6 months upon entering Vietnam.

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→ Vietnam

Value Added Tax reduction/Deductible Expenses in relation to Covid-19 donations and sponsorship

On 28 January 2022, the Government issued Decree No. 15/2022/ND-CP providing guidance on tax reduction and exemption as part of the financial and monetary policies supporting the Program for Socio-Economic Recovery and Development provided under the Resolution No. 43/2022/QH15 issued by the National Assembly on 11 January 2022.

The following highlights are noteworthy:

VAT reduction in 2022

From 1 February 2022 to 31 December 2022, VAT on goods and services subject to 10 percent VAT will be reduced by 2 percent to 8 percent, with the exception of the following groups of goods and services:

- Telecommunications; finance, banking, securities, insurance; trading of real estate, metal, precast metal products, mining products (excluding coal mining), cokes, refined petroleum, chemical products. The detailed product names and HS codes are listed in Annex I of Decree No. 15/2022/ND-CP;
- Products subject to Special Consumption Tax. The detailed product names and HS codes are listed in Annex II of Decree No. 15/2022/ND-CP;
- Information technology under the Information Technology Law; the detailed product names and HS codes are listed in Annex III of Decree No. 15/2022/ND-CP.

For taxpayers who calculate and declare VAT as percentage on the total revenue, a 20 percent VAT reduction will be applied on the invoices which are issued for goods and services subject to VAT reduction.

Taxpayers are required to separately issue invoices for goods and services subject to VAT reduction. Otherwise, VAT reduction will not be allowed.

In case seller and buyer failed to outline the VAT reduction on an invoice which has already been declared, seller and buyer are allowed to make adjustment minutes/agreement in order to claim the reduction. According to the adjustment minutes/agreement, the seller may issue an adjusted invoice. Based on the adjusted invoice, seller and buyer will amend their VAT declaration accordingly.

Taxpayers will declare goods and services subject to VAT reduction on the Form 01 as per Annex IV of Decree No. 15/2022/ND-CP together with the routine VAT declaration forms.

Deductible expenses for donations and sponsorship for Covid-19 epidemic control operation

Donations and sponsorship for preventive measures both, in cash and in kinds, which are made by taxpayers for Covid-19 for epidemic control operations in Vietnam are allowed to be included in deductible expenses when calculating Corporate Income Tax for the tax year 2022, if they are made through means specified in Clause 2 Article 2 of Decree No. 15/2022/ND-CP.

Required supporting documents include Minutes of confirmation of support or sponsorship made according to Form No. 02 in Appendix IV of Decree No. 15/2022/ND-CP, or documents (in paper or electronic form) confirming the support and sponsorship with the signature and seal of the representative of the sponsor and the means through which the sponsoring/donations are made; accompanied by legal invoices and documents as prescribed by law of donations or sponsorships in cash or in kind.

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→ Vietnam

Compulsory Social Insurance contributions for foreign employees in Vietnam

Any foreign nationals employed for more than a year in Vietnam, and who have obtained a work permit are required to participate in the compulsory social insurance.

From January 2022 onwards, the Social Insurance contribution rate for foreign employees has been increased to match the rate applied to local employees. This measure is intended to level the playing field for local employees and to prevent systematic advantages for foreign employees.

The contribution rates for foreign employees and their employers are as follows:

		CONTRIBUTION LEVEL			
Type of Insurance	Fund	EMPLOYER		FOREIGN EMPLOYEE	
		Dec 1st, 2018 to Dec 31st, 2021	From Jan 1st, 2022	Dec 1st, 2018 to Dec 31st, 2021	From Jan 1st, 2022
Social Insurance	Retirement and death insurance benefit fund	0 %	14 %	0 %	8 %
	Sickness and parental insurance benefit fund	3 %	3 %	0 %	0 %
	Occupational accident and disease benefit fund (*)	0.5 %	0.5 %	0 %	0 %
Health Insurance		3 %	3 %	1.5 %	1.5 %
Unemployment Insurance		0 %	0 %	0 %	0 %
TOTAL		**6.5 %**	**20.5 %**	**1.5 %**	**9.5 %**

(*) *Enterprises are entitled to a premium rate of 0% contribution to the occupational accident and disease benefit fund from July 1st, 2021 to June 30th, 2022 as a support measure for employers due to the coronavirus pandemic according to Resolution 68/NQ-CP of the Government.*

The base for calculating the contributions is the monthly salary as stipulated in the labor contract. However, the salary for the calculation/payment of social insurance and health insurance is capped at 29.8 million VND, the equivalent of 20 times the official base salary.

Currently, the national base salary applied in 2022 is 1,490,000 VND/month.

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