Rödl & Partner

QUARTERLY ASEAN NEWSFLASH

EYE-LEVEL EXCHANGE

Issue:
Q2/2023

Latest news on law,
tax and business in ASEAN

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Issue:
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Read in this issue:

→ Note from the editor

Dear reader

Welcome to the Q2/2023 edition of our ASEAN Newsflash.

In this quarter, we have seen an interesting political development in Thailand, as opposition parties won the national elections, which appears as clear rejection of the military-backed government that has been ruling the country since 2014.

Pita Limjaroenrat of the Move Forward Party is poised, upon forming a new coalition involving i.a. the Pheu Thai Party led by Paetongtarn Shinawatra, the daughter of 2006 ousted premier Thaksin Shinawatra, to become the next Prime Minister of Thailand. This is still subject to the decision of the military dominated senate in July, but a smooth political transition could further improve the business climate, and perpetuate Thailand's good standing as reliable investment destination in Southeast Asia.

Looking at the region, the 42nd ASEAN Summit took place in Labuan Bajo from 9-11 May, hosted by Indonesia. The members reiterated, among others, ASEAN's resilience as a key priority in a highly-evolving regional and global security environment, and underscored the necessity for ASEAN to be forward-looking, to anticipate and address emerging challenges.

A few days later, the G7 Leaders, who met in Japan for the annual Summit from 19-21 May 2023, announced in their Communiqué to coordinate their approach to economic resilience and economic security that is based on diversifying and deepening partnerships and on de-risking, not de-coupling.
In this light, we will conduct a German language forum and panel discussion on the diversification of supply chains and foreign investment in Cologne on 27 June. The aim of our event is to shed light on the background of these currently visible trends towards relocation of foreign direct investment and supply chains, and to outline a comparison of different practical and regulatory aspects for market entry as well as relocation incentives in selected ASEAN countries. An invitation will be sent out soon, and we are gladly looking forward to a personal exchange of thoughts.

Sincerely yours,

Markus Schlueter
ASEAN Desk
markus.schlueter@roedl.com

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→ Indonesia

Introduction to the set-up of a local presence

Investors are looking for alternatives to locations in China, and Indonesia has become an increasingly important investment destination for that very reason. This summary is intended to provide a brief introduction to Indonesia's investment environment, while clearing up some common misconceptions about investing in the country.

Generally, foreign investors have two options for establishing a local presence in Indonesia: (i) establishing a Foreign Investment Company (PMA Company); or (ii) establishing a Representative Office.

PMA COMPANIES

The only corporate form available as a vehicle for Foreign Direct Investment (FDI) is the PMA Company, which is basically similar to an LLC as commonly known in other countries in the region.

Business activities in Indonesia are classified according to a specific numerical code known as the **Indonesian Standard Business Classification**, or its Indonesian acronym "**KBLI**".

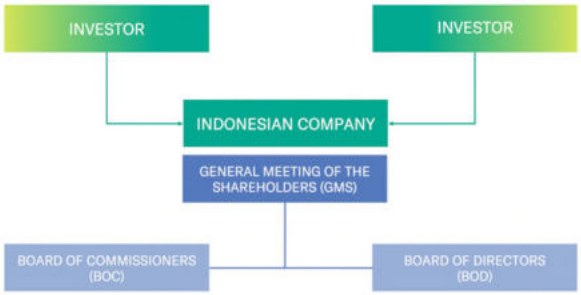
Investment List

Investors must refer to the "**investment list**" (i.e. the list of business activities that are open for foreign investment) to ensure that the KBLI for the targeted business activity is open (or partially open) to Foreign Direct Investment. Frequently targeted business activities that are open to 100 percent foreign investment are production, distribution and service, but the list goes on and it is definitely worth checking the specific investment requirements, as the list of open business lines is extensive. Sublicenses and potential additional requirements to each business line might apply.

Corporate Structure

PMA Companies need to have at least two shareholders (individual or corporate entities), and their organs include at least one director and one commissioner, while it is possible to appoint more of both.

Director(s) are responsible for the corporate management whilst the commissioner(s) supervise the director(s). Both, directors and commissioners have to be appointed by the General Meeting of Shareholders.



Investment Requirements

The minimum total investment is IDR 10 billion per KBLI Code per project location (excluding land and building), except if stipulated otherwise. An amount of at least IDR 10 billion (~600.000 EUR) shall be injected as equity, while the remaining balance may be injected as loan.

ESTABLISHMENT PROCEDURE

Foreign investors may establish a PMA company by signing a Deed of Establishment in the presence of a notary in Indonesia. Signatures may be performed by a representative of the investor (commonly the lawyer). Together with other supporting documents, the notary will submit this deed to the Minister of Law for approval. The PMA Company will obtain its legal entity status upon obtaining approval on its Deed of Establishment through the Minister of Law.

Subsequent to the company formation, the PMA Company needs to register itself in the national licensing system and apply for the required business and supporting licenses through the system. It is further required to obtain tax documentation - which includes Corporate Taxpayer Identification Number, tax registration letter and registration as taxable entrepreneur -, open a bank account, receive its capital injection and hold its initial General Meeting of Shareholders.

Ongoing statistical reports are required to be submitted on a regular basis throughout the duration of the operational activity of the PMA Company.

REPRESENTATIVE OFFICE

Foreign companies are permitted to set up Representative Offices of various types, depending on the department or agency issueing the authorizing Representative Office license. These Representative Offices are not permitted to conduct direct commercial activities or to render profits in any other way. They are primarily used for promotional, liaison and market research purposes.

Types of Representative Offices

These are the two most common types of representative offices:

TRADING REPRESENTATIVE OFFICE ("TRO")

The TRO describes an Indonesian or foreign national appointed by a foreign company or an overseas company group as representative in Indonesia for promotion and marketing of the company's products in Indonesia. Such TRO is strictly prohibited to engage in sales activities of any kind.

FOREIGN COMPANY REPRESENTATIVE OFFICE (KANTOR PERWAKILAN PERUSAHAAN ASING/"KPPA")

Foreign companies not engaging in trading business may set up a KPPA for :

- Handling interests of the company or its affiliates; and/or
- Preparing the establishment and business development of a foreign investment company operating in Indonesia or another country.

The KPPA is operated by one or more Indonesian or foreign citizens being appointed by a foreign company or an overseas company group as representatives in Indonesia.

Establishment Procedure

A Representative Office is established following a streamlined application procedure - compared to a PMA Company -, and is simply established by submitting a respective application through the national database ("OSS) to obtain the relevant license.

→ Indonesia

Overview of the transfer pricing documentation requirements in Indonesia

In Indonesia, transfer pricing compliance is regulated by the Directorate General of Taxes (DGT) under the Ministry of Finance (MoF). In accordance with Base Erosion Profit Shifting (BEPS) Action 13, Indonesia has adopted a three-tiered documentation, in which a proper transfer pricing documentation is supposed to comprise Master File, Local File and Country-by-Country Report (CbCR).

Transfer pricing documentation in Indonesia is governed by Regulation No. 213/PMK.03/2016 (PMK-213) issued by the Indonesian Ministry of Finance, which states that taxpayers that have met the threshold must prepare and maintain transfer pricing documentation that demonstrates the arm's length nature of their related party transactions.

Thresholds

A taxpayer is required to prepare Master File and Local File if:

- The annual gross revenue in the previous fiscal year exceeded IDR 50 billion; or
- The value of annual related-party transactions in the previous fiscal year exceeded:
  - IDR 20 billion for transactions involving the transfer of tangible assets; or
  - IDR 5 billion for each transaction involving services, interest payments, intangibles or other transactions defined as high-risk transactions; or
- The related party is based in a country or jurisdiction with a lower rate of Corporate Income Tax (CIT) than the rate applicable in Indonesia (22 percent).

Deadlines

Master File and Local File must be prepared within 4 months after the end of the fiscal year

and be submitted within 14 days after receiving a Request Letter for Explanation on Data and/or Information (SP2DK), and within 30 days after being requested by tax authorities during a tax audit.

Taxpayers must also submit a Transfer Pricing Documentation (TPD) form to the tax authorities no later than the deadline for filing the tax return. The TPD form contains a summary of the transfer pricing documentation and must be filed with the taxpayer's annual Corporate Income Tax return.

CbCR reporting duties

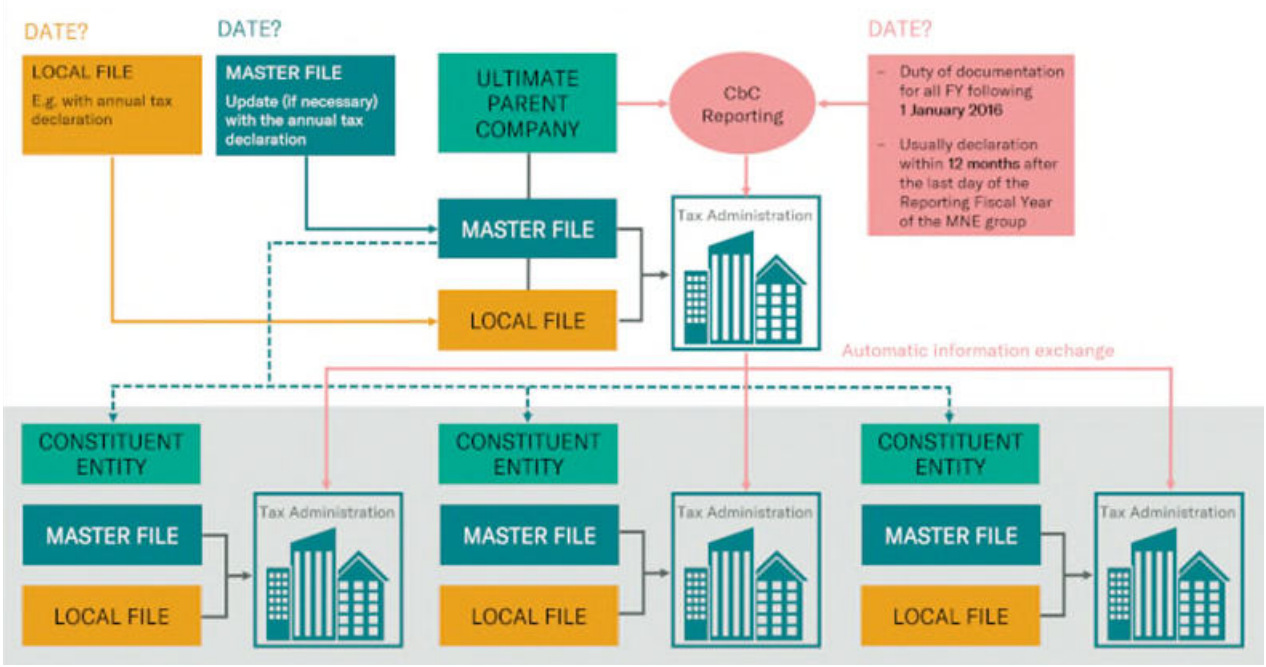
In addition to the Master File and Local File, a CbCR and additional "working papers" are required from the parent entity of a group of companies if a domestic taxpayer qualifying as the parent entity of the group has a consolidated gross turnover of at least 11 trillion rupiah.

The regulation may apply to corporations in Indonesia with subsidiaries abroad, even if they are not the parent entity. Liable taxpayers have 12 months from the end of the fiscal year to file their CbCR. An Indonesian entity that is part of a group of companies not falling under the aforementioned categories is also required to file a CbCR reporting form within 12 months after the end of the fiscal year.

Conclusion

It is important for taxpayers in Indonesia to ensure that their related party transactions are conducted at arm's length and that they have proper transfer pricing documentation in place to demonstrate compliance with the regulations.

Failure to comply with Indonesia's transfer pricing regulations can result in significant tax liabilities and penalties.



→ Indonesia

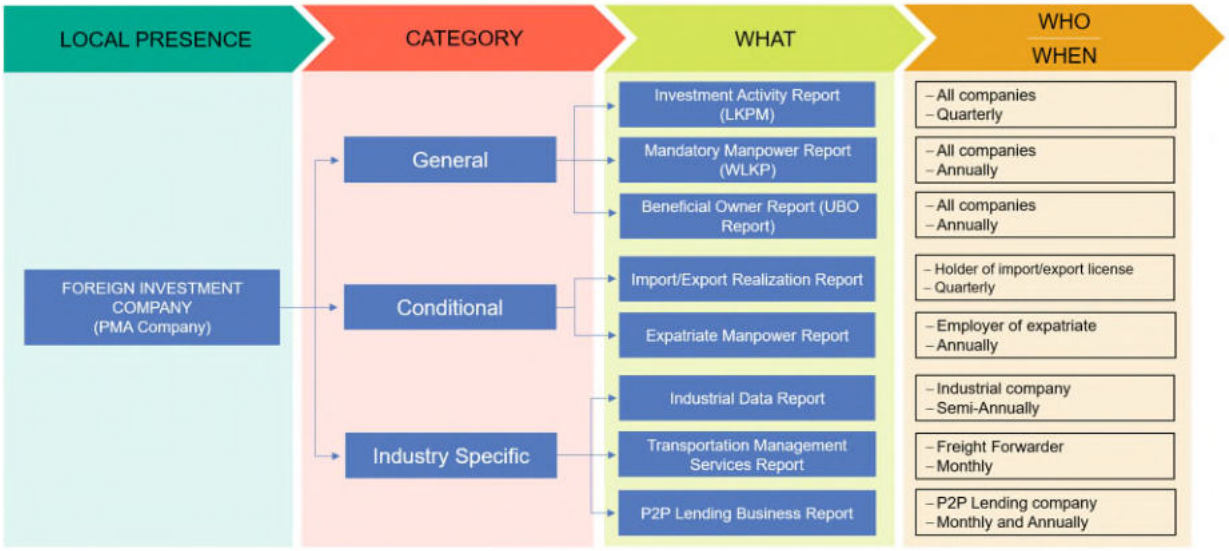
Compliance requirements for foreign investors

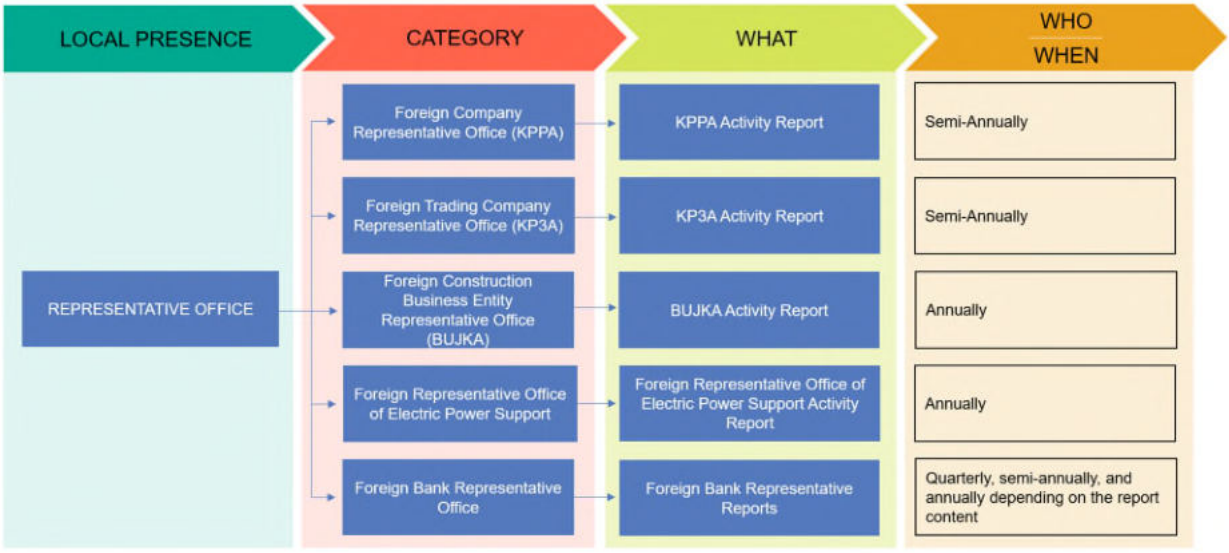
Once an investor has successfully established a local presence in Indonesia, they are required to perform ongoing compliance measures of different forms which will vary depending on the type of presence (i.e. Foreign Investment Company or Representative Office), on the satisfaction of certain conditions and on their specific business activities.

The following are the most common compliance measures that must be followed by any presence in Indonesia. We strongly recommend complying with these requirements to avoid related penalties.

Each compliance measure has its own form, deadlines, and platform/authority for filing. While most compliance measures are now submitted electronically via dedicated platforms, some are still submitted manually via email or certified mail. In both cases, the respective submission timeline must be considered.

The table below provides an overview of the compliance measures applicable to foreign investors (the list is not exhaustive).





Please contact Rödl & Partner Indonesia for further discussion on this topic.

→ Indonesia

Transfer Pricing Aspect of Intragroup Services

Transfer Pricing (TP) is a hot topic in Indonesia since the tax authority often raises challenges pertaining to affiliate transactions during tax audit, or during their formal procedure in obtaining information from the taxpayer. One of the tax authority's focus is the aspect of intragroup services.

On many tax audit occasions, intragroup services are a topic that sparks dispute between taxpayers and the tax auditors. In addition to TP Documentation, taxpayers - including multinational companies - are advised to start documenting their intragroup services in anticipation of TP scrutiny in future tax audits.

Prevailing regulations

Taxpayers can refer to the prevailing TP regulations (PER-43/2010 as lastly updated with PER-32/2011), which have adopted OECD TP Guidelines in determining arm's length principles. Article 14 of PER-32 provides the following pointers:

- Arm's length principles must be applied in transactions related to services between affiliate entities;
- The arm's length principle is deemed to be satisfied if the service is actually provided and the transaction is conducted between related parties as if it were conducted between independent parties.

Evidence or documentation is required to show that related services were actually incurred. The arm's length discussion will not begin if the provision of the related service is still in question.

Key Challenges

Profiling the service provider and the service recipient is essential in the documentation defending intercompany services to demonstrate that the service is necessary, actually performed, and of economic value to the recipient to maintain or improve their business position.

Without the aforementioned profiling, the taxpayer may have difficulties countering the tax authorities' challenges. If the tax authority has access to the service provider's website or other sources of information, it may claim that the service provider does not have sufficient staff or is unable to provide its services. In other cases, it may arbitrarily claim that redundancy exists because the service recipient is actually able to perform the task in-house.

Documentation

The usual documentation of service performance and activity report is required to document the intercompany services for defense to the Internal Revenue Service. If available, it is best to provide reliable documentation of costs incurred by the service provider. An agreed-upon procedure regarding such costs can be performed by an independent firm, which adds weight to the defense documentation.

Rödl & Partner Indonesia's transfer pricing team can assist you with all transfer pricing issues to ensure lower risk.

Contact for more information

Stefan Ewers
T + 62 21 5056 0405
stefan.ewers@roedl.com

→ Malaysia

Finance Bill 2023

The Finance Bill 2023 was passed at the Dewan Rakyat on 3 April 2023 with the following key changes:

CORPORATE TAX

Foreign Shareholding Condition for Reduction in Income Tax Rate for MSMEs

The preferential Income Tax rate for qualifying Micro, Small & Medium Enterprises ("MSME") is to be reduced by 2 percent, from 17 percent to 15 percent for the first RM150,000 of chargeable income with effect from year of assessment ("YA") 2023.

In order to enjoy this reduced tax rate, MSMEs need to comply with an additional shareholding condition from YA 2024, i.e., not more than 20 percent of its paid up capital in respect of ordinary shares (in case the MSME is a company), or its capital contribution (in case the MSME is an LLP) at the beginning of a YA is owned directly or indirectly by one or more companies incorporated outside of Malaysia or individuals who are not Malaysian citizens.

Definition of Plant for Capital Allowance Purposes

It is incorporated that intangible assets be included in the definition of plant. In addition, the Minister is empowered to impose any asset to be excluded from the definition of plant.

Deadline for Remittance of Withholding Tax on Payments made to Agents, Dealers and Distributors (ADD)

Effective 1 January 2023, companies making payments to individual ADD under Section 107D of the ITA are obliged to accumulate the tax deducted amounts on a monthly basis, and to remit these to the MIRB not later than the last day of the following calendar month.

Extension of Scope for Application for Relief to include Payments made to ADDs

The scope of relief under Section 97A and Section 131A of the MITA is expanded to include payments made to individual ADDs which are subject to Withholding Tax under Section 107D of the MITA.

PERSONAL TAX

Extension of Personal Income Tax Relief for National Education Savings Scheme (SSPN) Deposits

Personal Tax relief up to RM8,000 for contributions/deposits into SSPN account is extended to the year of assessment of 2024.

REAL PROPERTY GAINS TAX

Transfer of Real Property to a Former Spouse

The "no gain, no loss" principle, whereby the sale price of a property is deemed to be equal to the acquisition price, is to be extended to transfers of property between former spouses which are made pursuant to a court order as a result of the dissolution or annulment of their marriage and where the transferor is a Malaysian citizen.

Transfer of Chargeable Asset to a Company by an Individual

Currently, when real estate owned by an individual is transferred to a company controlled by the individual for consideration consisting of at least 75% of shares in that company, the individual is deemed to have transferred the real estate "without profit and without loss," i.e., the sale price is deemed to be equal to the acquisition price. The shares received in exchange are subject to RPGT in the event of a future sale.

It is now incorporated that in addition to the existing conditions, the 'no gain, no loss' treatment be granted only if the company which is controlled is incorporated in Malaysia.

STAMP DUTY

Stamp Duty Treatment for Education Loan and Scholarship Agreements

The fixed duty of RM10 on educational loan and scholarship agreements will be expanded to include education at all levels including certificate (education/skills/professional) in any educational and training institutions for agreements executed as of 1 June 2023.

Stamp Duty Treatment on Security Instrument in Relation to Discounting Invoices or Factoring Agreement entered into by Small and Medium Enterprises

The fixed duty rate of RM10 is extended to similar instruments entered into by small and medium enterprises in relation to discounting of invoices or installment purchase receivables or factoring agreements with government agencies/agencies that provide financing to small and medium enterprises.

TAX ADMINISTRATION

Mandatory e-Filing of Tax Returns and Amended Tax Returns

Effective as of YA 2024, e-filing will be mandatory for the following categories of taxpayers.

FORM TYPE	CURRENT MANDATORY E-FILING	PROPOSED MANDATORY E-FILING
Income Tax Return	Companies and LLPs	All categories of taxpayers
Amended Income Tax Return		Companies, LLPs, Trust Bodies and Co-operative Societies
Return Form of Employer (Form E)	Companies	LLPs, Trust Bodies and Co-operative Societies

Instalment Payments on Tax arising from Deemed Assessment

With effect from YA 2023, the power for the Director General of Inland Revenue ("DGIR") to grant instalment payments is to be expanded to include granting tax instalments for tax arising from deemed assessments.

Second Revision to estimate Tax Payable in CP500 Cases

Effective as of YA 2023, a second revision on tax payable for the YA (CP 500) for a person other than a company, LLP, trust body or co-operative society be allowed. The second revision can be made by 31 October of the YA.

→ Malaysia

Entry into force of the Double Taxation Agreement (DTA) between Malaysia and Poland

The Malaysia-Poland DTA, which was signed on 8 July 2013, entered into force on 12 January 2023, replacing the previous agreement. The DTA will become effective as of 1 January 2024, except for the provisions of Articles 25 and 26 (Mutual Agreement Procedure and Exchange of Information) which became effective on 12 January 2023.

Salient points of the new Malaysia-Poland DTA

Permanent Establishment

The provision deeming supervisory activities carried out for more than 6 months in connection with a construction, installation or assembly project to be a permanent establishment is no longer included in the new article on permanent establishments.

Business Profits

In the absence of information required to determine profits to be attributed to a permanent establishment, the state where the permanent establishment is situated may assess estimated tax on the permanent establishment according to its laws based on available information and the principles of the business profits article.

Labuan

Persons taxed under the Labuan Business Activity Tax Act 1990 are excluded from the benefits of the DTA. Companies that opt to be taxed under the Income Tax Act are entitled to treaty benefits.

Other Salient Points

CATEGORIE	EFFECT
DIVIDENDS	– Tax on dividend shall not exceed 5 % (previously exempted); – Exemption from Polish tax on Malaysian dividends paid out of income exempted from Malaysian tax due to special incentives in the hands of Polish shareholders resident in Poland, holding at least 25 % of share capital of the Malaysian company, will cease to have effect in respect of income derived after 31 December 2020.
INTEREST	– Tax on interest shall not exceed 10 % (previous DTA: 15 %)
ROYALTIES	– Tax on royalties shall not exceed 8 % (previous DTA: 15 %)
TECHNICAL SERVICES	– A new technical services article is introduced where the tax on fees for technical services shall not exceed 8 %.
CAPITAL GAINS	– A clause to tax capital gains from alienation of shares deriving more than 50 % of their value directly/indirectly from immovable property situated in a State by that State is now included.
OTHER INCOME	– A new article on other income is introduced and states that other income arising in a State may also be taxed in that State.

→ Malaysia

Deferment of the imposition on sales tax an low value goods

On 10 March 2023, the Royal Malaysian Customs Department ("RMCD") announced that the imposition of Sales Tax on Low Value Goods (“LVG”) - which was intended to be effective as of 1 April 2023, will be postponed. The RMCD has yet to provide details on the new implementation date.

→ Malaysia

Synthesized Texts of Malaysia´ s DTAs with Australia, Ireland, Romania and South Africa

The Inland Revenue Board of Malaysia (“IRB”) has uploaded the Synthesized Texts of Malaysia’s Double Taxation Agreements (“DTAs”) with Australia, Ireland, Romania and South Africa and their modifications made by the Multilateral Convention to implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“MLI”) to have effect as set out in the table below.

SYNTHESIZED TEXTS OF MALAYSIA´ S DTA WITH:	MODIFICATIONS MADE BY MLI (IN THE SYNTHESIZED TEXTS) TO HAVE EFFECT WITH RESPECT TO:	
	Withholding Tax (WHT)	All other taxes
AUSTRALIA	– where the event giving rise to WHT occurs on or after 1 January 2022	– for taxes levied with respect to taxable periods beginning or after 1 December 2021
IRELAND	– where the event giving rise to WHT occurs on or after 1 January 2022	– for taxes levied with respect to taxable periods beginning or after 1 December 2021
ROMANIA	– where the event giving rise to WHT occurs on or after 1 January 2024	– for taxes levied by Malaysia with respect to taxable periods beginning or after 5 October 2023; – for taxes levied by Romania with respect to taxable periods beginning on or after 1 January 2024
SOUTH AFRICA	– where the event giving rise to WHT occurs on or after 1 January 2023	– for taxes levied with respect to taxable periods beginning or after 1 July 2023

Please note:
The above effective dates apply unless it is stated otherwise elsewhere in the Synthesized Texts.

→ Malaysia

Implementation of e-invoicing

In early March 2023, during the National Taxation Seminar, The Inland Revenue Board of Malaysia ("IRB") shared a proposed timeline for the introduction and gradual implementation of electronic invoicing in Malaysia.

Timeline

The implementation would commence in 2023 for selected companies, and be gradually rolled out to other businesses based on their annual sales, with all businesses being required to adopt e-invoicing by January 2027.

The recent Federal Budget which has been re-tabled in February 2023, does not contain any details about the rollout of e-invoicing. However, during the National Taxation Seminar, IRB shared the e-invoicing implementation timeline as follows:

<table>
<tr><th>2023</th><th>June 2024</th><th>January 2025</th><th>January 2026</th><th>January 2027</th></tr>
<tr><td rowspan="2">Preparation of infrastructure for pilot projects with selected companies and/or companies joining on a voluntary basis</td><td>Mandatory implementation for businesses with an annual revenue in excess of RM 100 million</td><td>Mandatory implementation for businesses with an annual revenue in excess of RM 50 million</td><td>Mandatory implementation for businesses with an annual revenue in excess of RM 25 million</td><td rowspan="2">Mandatory implementation for all businesses</td></tr>
<tr><td colspan="3">Implementation on a voluntary basis from January 2024 onwards for businesses not falling within the above thresholds</td></tr>
</table>

Contact for more information

Priya Selvanathan
T +60 3 2276 2755
priya.selvanathan@roedl.com

Malaysia

Key Amendments to the Occupational Safety and Health (Amendment) Act 2022

The Occupational Safety and Health Amendment Bill 2020 as well as the Factories and Machinery (Repeal) Bill 2020 have been passed by the Senate. The amendments are expected to enter into force in June/July 2023, having considerable impact on employers in Malaysia.

Key Amendments

EXTENSION OF THE APPLICABILITY OF THE OCCUPATIONAL SAFETY AND HEALTH AMENDMENT ACT 2022 ("OSHA")

The existing Occupational Safety and Health Act 1994 ("Existing Act") only applies to specific industries such as manufacturing, mining and quarrying, construction, utilities, finance, insurance, real estate and business services.

The OSHA section 1(2), now extends to "all places of work throughout Malaysia...".

Employers´ duties now extend to any place where work is carried out. This applies to private and public sectors.

DUTIES OF PRINCIPAL

Under the new OSHA, a principal now has the duty to ensure the safety and health of any contractor engaged by the principal, any subcontractor or indirect contractor and any employee employed by such contractor or subcontractor when at work.

Section 3(1) of the OSHA defines a principal as "any person who in the course of or for the purposes of his trade, business, profession or undertaking contracts with a contractor for the execution by or under the contractor of the whole or any part of any work undertaken by the principal".

The duties of the principal are only imposed where the contractor, subcontractor or employee is working under the principal's direction as to the manner in which the work is carried out and not the specific works.

DUTIES ON EMPLOYERS TO CONDUCT RISK ASSESSMENT

The new OSHA, section 18B(1) provides a duty on employers and principals to conduct a risk assessment with regard to the health and safety risk affecting any person at their place of work. Furthermore, if the risk assessment indicates a risk control is required to reduce the safety and health risk, the employer or principal shall enforce such control. Employers and principals are encouraged to use the Guidelines for Hazard Identification, Risk Assessment and Risk Control 2008.

APPOINTMENT OF AN OCCUPATIONAL SAFETY OFFICER AND HEALTH COORDINATOR

The new OSHA provides a provision requiring an employer to appoint one of their employees to act as an occupational safety and health coordinator for places of work that are not included in any class or description of place of work in the Gazette requiring a safety and health officer. This is subject to the employer having five or more employees at the work place.

The role of the occupational safety and health coordinator is to coordinate occupational safety and health issues at the workplace. This role differs from the role of a safety and health officer. A safety and health officer is required to ensure the observance of the provisions of the OSHA and any regulation made thereunder, at the work place.

The penalty for not appointing a safety and health officer where required, or an occupational safety and health coordinator ensues a fine not exceeding RM50,000.00 or imprisonment for a term not exceeding six months, or both.

RIGHT OF EMPLOYEE TO REMOVE HIMSELF FROM IMMINENT DANGER

Prior to an employee being entitled to remove himself from imminent danger, there are two conditions to be satisfied:

- the employee must inform their employer or representative that they have a reasonable justification to believe that an imminent danger exists at their work place; and
- the employer fails to take any action to remove the danger.

An imminent danger is defined as "a serious risk of death or serious body injury to any person that is caused by any plant, substance, condition, activity, process, practice, procedure or place of work hazard."

INCREASED PENALTIES

The fine for employers, self-employed persons and principals (section 15-18A) for a breach of duties has been increased from RM50,000.00 to RM500,000.00.

Amongst other duties are:

- ensuring the safety, health and welfare to work for all their employees;
- providing a safety and health policy;
- conducting risk assessment in relation to the safety and health risk posed to any person who may be affected through their job at the place of work;
- developing and implementing procedures to deal with emergencies that may arise in the course of the employees' work.

Additionally, the fine for a breach of duties under section 20-22 which applies to manufacturers, designers, importers and suppliers, has also been increased from RM20,000.00 to RM200,000.00.

The duties of manufacturers, designers, importers and suppliers include the following:

- ensuring, as far as it is practicable, that the plant is so designed and constructed as to be safe and without risk to health when properly used;
- ensuring, as far as it is practicable, that any substance is safe and without risks to health when properly used.

DIRECTORS AND OFFICE BEARERS LIABILITY

Under Section 52 of OSHA, directors and certain office bearers such as partners, compliance officers and managers, may now be jointly and severely liable for offences committed by the company or other relevant bodies.

The amended section 52 also provides a defence mechanism for directors and office bearers which put the onus on the person to prove that the offence was committed:

- without their knowledge; and
- without their consent or connivance, and that they have taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

Furthermore, the new section 52A places a higher responsibility upon directors and office bearers to monitor the conduct of their employees, agents or agent's employees. The OSHA imposes a higher duty of care on directors and office bearers as the directors and office bearers will now be subject to the same punishment or penalty as the person's employee, agent or agent of the employee.

Conclusion

Employers should take note of the extension of the applicability of OSHA, as "all places of work in Malaysia" would include work from home. This suggests that employees working from home are protected under OSHA, too. Employers are urged to have strict policies and guidelines with regard to work from home as it is highly unlikely for employers to have control of an employee's home safety.

With the rapid work environment changes, it is no longer just the physical health and safety of the employees. Equal importance should be given to the psychological health of the employees.

Employers have a responsibility to conduct risk assessments and are strongly advised to have trainings and programs to ensure safety and to reduce the exposure to health and safety risks.

Contact for more information

Geetha Salva
geetha.salva@roedl.com

→ Vietnam

Global Minimum Corporate Tax´ s Impact on Tax Incentives in Vietnam

In 2013, the Organization for Economic Cooperation and Development (OECD) introduced the Global Minimum Tax (GMT) rate, which has been agreed upon by 142 countries and is to be officially implemented in 2024.

The global minimum tax rate is set at 15 percent, which means that affected businesses currently enjoying preferential tax rates in Vietnam may face additional tax liabilities once it is in place.

PILLAR 2 GMT

Vietnam has used low tax rates to attract foreign investment over the years, but many companies belonging to large multinational corporations will be affected by Pillar 2 GMT. These companies currently enjoy preferential Corporate Income Tax rates, which can be as low as 5 percent, 7 percent, or 9 percent depending on the investment sector, industry, scale, and location. Additionally, tax exemptions and 50 percent reductions are also available during the exemption period.

ADDITIONAL TAX LIABILITIES

However, these incentives will no longer apply once the GMT has been implemented, resulting in additional tax liabilities for affected businesses. This can be particularly challenging for companies that need to invest heavily in infrastructure, human resources, and other resources in the initial stages.

ALTERNATIVE INVESTMENT PROMOTION

As a result, Vietnam is exploring solutions such as cost-based incentives in the form of cash grants to help partially cover the cost of investment in infrastructure, machinery, and human resources, as well as to support activities such as research and development.

In conclusion, the global minimum tax rate is set to have a significant impact on affected businesses in Vietnam and around the world. While it aims to ensure a fair and consistent tax system, it also presents challenges for companies that have relied on preferential tax rates for foreign investment.

As countries explore solutions to mitigate the potential impacts of GMT, it remains to be seen how businesses will adapt to the changing tax landscape in the years to come.

Contact for more information

Thuy Le
thuy.le@roedl.com

Michael Wekezer
michael.wekezer@roedl.com

Update on immigration procedures

Following meetings with Eurocham on 20/02/2023 and 07/03/2023, the Ho Chi Minh City Department of Labor, Invalids and Social Affairs ("HCMC DOLISA") has changed the application procedure for issuing a work permit to foreign workers. In addition, the Immigration Department ("ID") is now putting into practice its online system - the Immigration Portal. Overall, the immigration procedure

for foreign workers and their family members has changed significantly.

Key contents

E-visa and Visa application procedures

E-VISA

After much discussion, the government decided to ease the entry and exit procedures for foreigners. Below are some positive innovations for foreigners coming to Vietnam to work:

- E-visa are now also available for foreigners coming to Vietnam for business purposes. The application procedure for e-visa has been fully digitalized and can easily be done online. Processing time is only 3 days.
- The validity period of e-visa will be extended from 30 to 90 days, with single and multiple entries being possible.
- E-visa will be granted to citizens of all countries and territories (list will be determined by the government).

These changes are expected to come into force soon.

VISA APPLICATION PROCEDURES

Starting February 2023, as part of its efforts to automate and simplify procedures, the Immigration Department has set up its own website with an online function for the submission of application dossiers.

To submit dossiers, companies must first register for an account, using an e-signature token/USB and the company's e-signature application. After that, companies can submit a dossier and apply for the Immigration Department´ s approval to use the company account in the immigration portal. After this initial approval, companies can apply for visas for their employees online through this account. This step can be overlooked easily, as it is different from the normal account registration process, which as a result can cause delays when the company wants to start applying for visas later on.

At first glance, this system offers some advantages. First, the immigration authority no longer requires companies to submit paper application documents when applying for business visas. In the past, this always led to exceptionally long queues at the immigration office. Especially for companies that do not have their headquarters in Ho Chi Minh City or Hanoi, this step was very inconvenient. In the future, only documents such as marriage certificates, birth certificates, work permit exemptions or investment registration certificates, etc., will need to be submitted in paper form for closer examination. This is possible without drawing a waiting stamp at the immigration office.

However, the new portal also has some disadvantages. For example, the portal sometimes suffers from glitches and errors that cause the page to restart after all the information has been entered or, even worse, the already submitted dossier gets lost. This can lead to serious consequences, especially in urgent cases. Another problem is the receipt of tax documents by Vietnamese embassies/consulates abroad. Although visa approval letters can be signed electronically and uploaded online, tax documents still need to be collected directly from the immigration office. This could be an attempt to get companies to pay taxes properly. For the tax certificates, one must once again join a long queue at the immigration office.

Work Permit application procedures

Currently, the following deadlines apply to the processing of work permit applications by government professionals:

- Application for a Job Position Approval: 10 working days
- Application for work permit/extension of work permit: 5 working days
- Re-application for work permit: 3 working days
- Application for exemption from work permit: 5 working days

In order to support enterprises and shorten the timeframe, HCMC DOLISA has proposed to the Ho Chi Minh City People's Committee to shorten the work permit processing time to 7 days, and the work permit re-application to 1 day. It is promised that HCMC DOLISA will continue to make proposals to shorten the processing time of other procedures (e.g. work permit renewal and work permit exemption application).

SPEEDING UP AND SIMPLIFYING THE CORE PROCEDURES

While waiting for the above regulations to be approved and officially endorsed by the Ho Chi Minh City People's Committee, HCMC DOLISA has also made some immediate changes to speed up the procedures for obtaining work permits. For example, enterprises can now submit their application documents directly to their office after submitting them online to speed up processing and review. In 2022, it usually took 1-2 weeks for online files to be

transferred from the Public Services website to HCMC DOLISA's internal database. From then on, processing took another 1-2 weeks, depending on the procedure. In total, the entire process of obtaining a work permit could take up to two months, and only if no additions or changes were requested by HCMC DOLISA. With the new unwritten rule, companies can save 1 to 4 weeks in the entire process of obtaining a work permit.

Furthermore, some additional formalities have also been simplified. Since last year, HCMC DOLISA has required three additional documents when applying for/changing workplace permits: a plan for using foreign employees, a plan for training domestic employees to replace foreign employees, and proof of hiring domestic employees. These documents are not mentioned in Decree No. 152/2020/ND-CP and were a sore point for companies. Due to numerous negative feedbacks, HCMC DOLISA recently agreed to repeal this unofficial regulation. Companies can already explain all the above contents in their application forms.

SECOND EMPLOYENT AUTHORIZATION REMAINING A LABORIOUS PROCEDURE

As for the second employment authorization application, companies will also be required to complete and submit Form 2/PLI instead of Form 1/PLI. In addition to this confusing change, companies must submit every workplace permit they have ever been issued. For companies with a long history, this can be a tedious search, especially if their headquarters has been moved multiple times. Even after two meetings with Eurocham, HCMC DOLISA has not been able to provide a plausible explanation on this matter.

In addition to these main issues, some minor problems were raised in the preparation of the work permit application dossier, related to the expatriates' work experience and educational background.

Our conclusions

These new unofficial HCM DOLISA and ID decrees represent efforts by the Vietnamese government to make the immigration process simpler and more transparent for foreign workers as well as for businesses and investors in Vietnam. Some changes to the relevant legal documents and Decree No. 152/2020/ND-CP are expected in the future.

→ Vietnam

Vietnam controls scrap imports for production

Vietnam's impressive economic progress has led to a sharp increase in the demand for scrap metal as production material, making enterprises highly dependent on imports. In response, Vietnam has enacted many specific regulations to support and facilitate enterprises while ensuring strict compliance with environmental protection standards. These are explained in more detail below.

List of Permissible Scrap

The Prime Minister has issued a list of permissible scrap for import as production material. The list is based on proactive prevention and control of imported scrap based on international standards, while taking into account practical conditions in Vietnam. Only scrap on this list may be imported and cleared at the port.

Environmental standards

National standards have been set for six groups of commonly imported scrap materials, including iron and steel, plastic, paper, glass, non-ferrous metals, and slag from the iron and steel industry. The standards, in conjunction with the list of acceptable scrap, ensure strict quality control of imported scrap through technical regulations, testing procedures and quality inspections.

Environmental protection deposit

The environmental protection deposit is designed to ensure that importing companies take responsibility for managing environmental risks posed by imported scrap. The amount of the deposit is up to 20 % of the total value of the shipment, depending on the type of scrap imported.

Facilities

Production facilities must have recycling and reuse technologies and equipment, especially warehouses and sites reserved exclusively for the collection of scrap, which comply with environmental protection requirements. A plan to deal with contamination associated with imported scrap is also required.

Environmental License

The Vietnamese government issues an environmental license to enterprises if they can prove that they meet the above conditions and are able to process the scrap as raw materials for their production activities. This license serves as an official document that records the amount and type of scrap allowed for import.

Contact for more information

Michael Wekezer
michael.wekezer@roedl.com

www.roedl.com/asean

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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 Herzog
bettina.herzog@roedl.com

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