Rödl & Partner

QUARTERLY ASEAN NEWSFLASH

EYE-LEVEL EXCHANGE

Issue:
Q3/2023

Latest news on law,
tax and business in ASEAN

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→ Note from the editor

Dear reader

Welcome to the Q3/2023 edition of our ASEAN Newsflash.

In this edition we look at current employment regulations for domestic and foreign staff in Indonesia as well as in Singapore, where work visa application proceedings have recently been revamped. Singapore will further increase its Goods and Services Tax from currently 8 percent to 9 percent from January 2024 on, which will require adaption of accounting, invoicing and sales systems as well price lists to the new rate.

We will discuss these and many other topics in our upcoming ASEAN Forum on 7 September, which will be held in Bangkok this time. Various sessions on current topics will include current aspects of regional cross-border staffing, de-risking practices amid tensed trade politics and selected M&A case studies. And next to our panel discussion on economic outlook and strategies in the ASEAN region, there will of course be plenty of networking opportunity.

We are gladly looking forward to an interesting exchange of thoughts; if you would like to join the event you can find more information and register online HERE.

Looking forward to meeting you in person in Bangkok!

Sincerely yours,

Markus Schlueter
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→ Indonesia

Indonesian Labor Regulations at a glance

The country of Indonesia is on the rise as an investment destination from overseas. As the investment grows, investors are increasingly faced with the complex particulars of labor regulations in Indonesia.

The following provides a brief overview aiming to give investors an idea as to where to focus on when it comes to labor matters:

KEY POINTS	DESCRIPTIONS
EMPLOYMENT ARRANGEMENT	PERMANENT – Can be agreed verbally – Can include probation period of max. 3 months
	TEMPORARY – Must be based on written agreement and registered with local manpower authority – Reserved for certain types of works – Limited by time or completion of work – Cannot be transferred into a permanent labor relation after expiry
EXPATRIATE WORKER	– Permissible for certain positions only; work permit is required – Prohibited to handle HR matters, which are commonly performed under a POA by a local colleague – Can only be hired under temporary arrangements
SALARY	– Minimum wages are determined by regional government and may vary from one region to another – Minimum wages can only be implemented for first year of employment; afterwards, adjustment is necessary – Religious holiday allowance (13th salary) is mandatory
PAID LEAVE	– At least 12 days per year; for white collar 14 days is common – Entitlement kicks in after working for 12 months consecutively, before that the days count pro rated – Statutory paid leaves due to employee’s private affairs are available
WORKING HOURS	– 7 hours/day for 6 working days/week – 8 hours/day for 5 working days/week – Deviation is permitted depending on the nature of the business
OVERTIME	– Will trigger additional payment and benefit – Cannot exceed 4 hours/day and 18 hours/week – Some positions may not be entitled to overtime payment
SOCIAL SECURITY	– Employees must be registered with the mandatory social security program – Contributions to the social security program are to be paid jointly by the employer and the employee

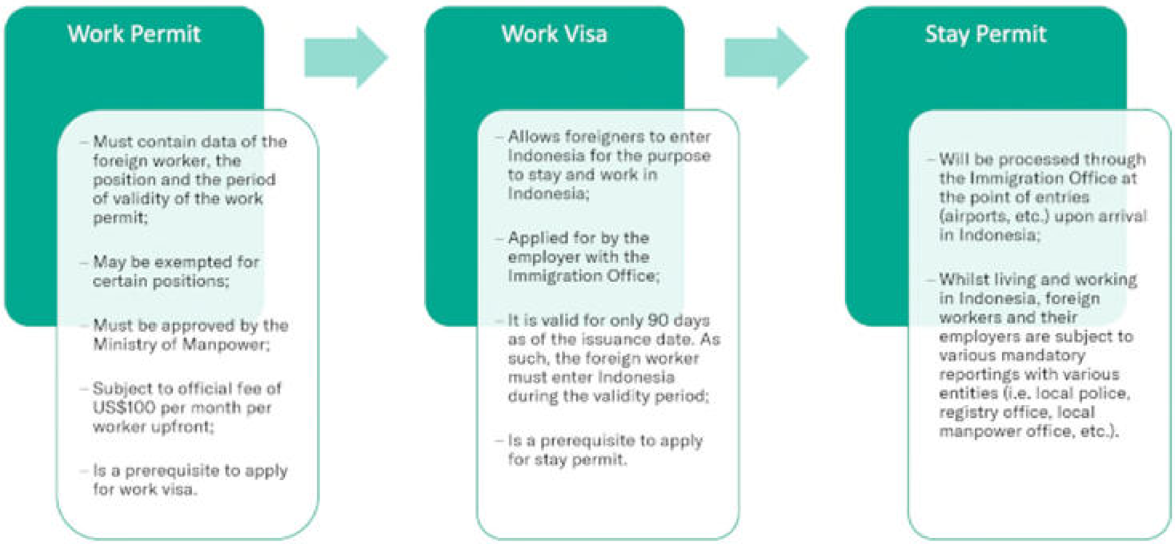
TERMINATION	– Must be preceded with notification and align with the mandatory procedure as per the employee handbook or general regulations – Immediate termination is possible for certain actions as set out in the regulations and/or employment contract
END OF SERVICE PAYMENT	– Amount would vary depending on the type of employment, last salary, length of service period and reason of termination – Consists generally of severance, service reward pay, and substitution of rights
RETIREMENT	– Retirement age is not regulated, but can be stipulated in the employment contract, employee handbook/company regulations – Will entitle employee to end of service payment and pension benefits
EMPLOYEE TRANSFER AND SECONDMENT ARRANGEMENT	– Less regulated but commonly found in practice – Performed on contractual basis between employee and current/ future employer
INDUSTRIAL RELATION DISPUTE	– Require multiple layers of resolutions procedures before brought into court (i.e. Industrial Relation court)
LABOR UNION	– May be established by at least 10 employees – Establishment must be notified to local manpower authority
EMPLOYEE HANDBOOK	– Mandatory for employer with 10 or more employees – Lines out all regulations related to the employment relation between the employer and their employees, and aims to clarify uncertainties and differences in the general employment regulations of Indonesia, e.g.: – Termination procedures and reasons for termination – Working time – Retirement age – Additional restrictions and regulations applicable to the work environment at the company – Additional benefits granted to all employees – Must be re-registered every 2 years

→ Indonesia

Employment procedure for foreign workforce in Indonesia

Indonesian companies are allowed to employ foreign workforce in Indonesia. There are several limitations and requirements that need to be observed, e.g. foreign workers shall only be employed for a certain period of time and for certain positions, as permitted under the prevailing laws and regulations.

Below please find a schematic representation of how to obtain the necessary documents to satisfy the statutory requirements for the employment of foreign workforce. These required documents are issued by the Ministry of Manpower and the Immigration Office based on the application by the employer:



→ Indonesia

Tax implications of computer software payment

Crossborder transactions with regard to the sale of computer software often raise tax controversies as to whether or not these are regarded as royalty payment.

In general, purchasers often categorize the sale of computer software as royalty payment and impose certain Withholding Tax with reference to the Tax Treaty articles.

However, is it correct to assume that software-related sale transactions shall result in royalty payment?

A question of rights

In order to determine if a transaction can be defined as royalty transaction, it is important to consider the legal rights that are received by the payor in exchange for the payment.

The rights can be limited to merely operating the software, or cover the copyright to publish, reproduce or transform the computer software.

If a purchaser is only allowed to operate the software program, or to resale in case of a distributor, then the transaction should be viewed as transfer of "copyrighted articles" rather than transfer of "copyrights".

Terminology

The above is also consistent with the prevailing Indonesian Copyright Law. Since the term "copyrights" is not specifically defined in a Tax Treaty, recourse to a domestic law is also required to define the copyright terminology.

The Law refers to "copyrights" as the exclusive economic right to publish, reproduce, transform, distribute, perform, rent or publicly display the copyrighted article.

Conclusion

Therefore, if the sale of computer software does not provide the purchaser with any rights to reproduce, alter, transform, modify or exploit the software in any other form, it should not be regarded as royalty transaction. Therefore, such transaction falls within the scope of the Business Profit article in the Tax Treaty rather than Royalty.

→ Indonesia

Transfer Pricing aspects of Intangible Assets

With the business landscape becoming more global, technology-driven and service-oriented, intangible assets are becoming an increasingly crucial component of a multinational company's value and growth strategy. These assets provide a unique competitive edge, enhance revenue streams and significantly contribute to a company's overall success and market positioning in the modern economy.

According to the OECD Transfer Pricing Guidelines (OECD TPG), intangible assets are defined as something that is neither physical nor a financial asset, which is capable of being owned or controlled for use in commercial activities, and the use or transfer of which would be compensated if it occurred in a transaction between independent parties under similar circumstances.

The arm´ s length principle

In order to comply with the Indonesian transfer pricing regulation, transactions involving intangible assets between related parties must be conducted at arm's length. According to the national Transfer Pricing regulation (PMK-22/2020), the application of the arm’s length principle involving intangible assets must involve a set of “preliminary steps” in order to prove:

- the existence of intangible assets economically and legally;
- types of intangible assets;
- value of intangible assets;
- parties who legally own the intangible assets;
- parties who economically own the intangible assets;
- the explanation on the use or the right to use the intangible property;
- parties who contribute and carry out development, enhancement, maintenance, protection and exploitation activities of the intangible assets (DEMPE analysis); and
- economic benefits obtained by the use of the intangible assets.

Intangible Development, Enhancement, Maintenance, Protection and Exploitation (DEMPE)

The Indonesian tax authority explicitly emphasizes several aspects of intangible Development, Enhancement, Maintenance, Protection and Exploitation (DEMPE).

The analysis helps determine the allocation of profits and risks between related parties based on their respective contributions and activities in the intangible assets' life cycle. It ensures that related-party transactions involving intangible assets are conducted on an arm's length basis, and that the appropriate allocation of profits and risks aligns with the functions performed and the risks assumed by the relevant entities.

The party performing the DEMPE function in this regard shall be deemed as a party that is entitled to the remuneration of income derived from the DEMPE functions. This is in accordance with the recommendations of the BEPS Action Plan and the OECD TPG, which emphasize the importance of information regarding the roles, functions, assets and risks of each member of the business group.

The arm's length principle plays a vital role in ensuring fair and transparent pricing of intangible assets transactions within multinational companies operating in Indonesia.

Conclusion

By following this principle, companies can avoid transfer pricing disputes, enhance tax compliance, and foster a favorable business environment, both domestically and internationally, while maintaining their unique competitive edge through the development or utilization of intangible assets.

Contact for more information

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→ Malaysia

E-Incoice Guideline 2023

Further to the announcement of the Government's implementation of electronic invoicing in 2024, the Inland Revenue Board ("IRB") issued the e-Invoice Guideline 2023 on 21 July 2023 to enable instant/nearly instant validation and storage of transactions, catering to Business-to-Business ("B2B"), Business-to-Customer ("B2C") and Business-to-Government ("B2G"). The implementation of e-Invoice will not only provide seamless experience to taxpayers but also improve the business efficiency and increases tax compliance.

Implementation timeline

The e-Invoice will be implemented in phases, based on the turnover or revenue thresholds of business as follows:

<table>
<tr><th>1 June 2024</th><th>1 January 2025</th><th>1 January 2026</th><th>January 2027</th></tr>
<tr><td>Mandatory implementation for taxpayers with an annual turnover or revenue in excess of RM 100 million</td><td>Mandatory implementation for taxpayers with an annual turnover or revenue in excess of RM 50 million and up to RM 100 million</td><td>Mandatory implementation for taxpayers with an annual turnover or revenue in excess of RM 25 million and up to RM 50 million</td><td rowspan="2">Mandatory implementation for all taxpayers and certain non-business transactions</td></tr>
<tr><td colspan="3">Implementation on a voluntary basis for taxpayers regardless of their annual turnover or revenue</td></tr>
</table>

Transmission mechanisms

To facilitate taxpayer's transition to e-invoice, the IRB has developed two distinct e-invoice transmission mechanisms:

- A portal (MyInvois Portal) hosted by IRB that enables the individual generation through a comprehensive form and the option for batch generation through spreadsheet upload for processing multiple transactions; and
- An Application Programming Interface ("API") that enables businesses to conveniently transmit a high volume of transactions.

Taxpayers can select the most suitable mechanism to transmit e-invoices to the IRB, based on their specific needs and business requirements.

Assessing readiness for e-Invoicing

To ensure that businesses are ready for the implementation of e-invoicing, below are a few key steps that can be carried out to assess the readiness and standardization:

- Allocate and equip personnel with the necessary capabilities to adopt and oversee the implementation of e-invoicing;
- Determine the availability of data sources and structure, current IT capacities to support system readiness and processes to comply to e-invoice requirements and obligations; and
- Review current processes in issuing transaction documents (i.e. invoice, debit note, credit note, refund).

→ Malaysia

New Transfer Pricing Rules and Advance Pricing Arrangement Rules

The Income Tax (Transfer Pricing) Rules 2023 (TP Rules 2023) were gazetted on 29 May 2023 (replacing the Income Tax (Transfer Pricing) Rules 2012), and will take effect from year of assessment ("YA") 2023.

Separately, the Income Tax (Advance Pricing Arrangement) Rules 2023 (APA Rules 2023) were also gazetted on 29 May 2023 (replacing the Income Tax (Advance Pricing Arrangement) Rules 2012, and are applicable with immediate effect.

The key highlights set out in the new TP Rules 2023 and APA Rules 2023 are summarized in the table below:

	Key Highlights
TP RULES 2023	– Transfer Pricing Documentation ("TPD") is considered contemporaneous when it is brought into existence prior to the due date for furnishing the income tax return (i.e., 7 months after the close of the financial year); – Additional requirements for content of the local TPD including information on the Multinational Enterprise Group (similar to the content of the Master File); – Requirement to date the contemporaneous TPD when it is completed; – The Malaysian tax authorities will issue a separate "notice" for taxpayers to furnish the contemporaneous TPD within 14 days from the date of issuance of the notice. Penalty provisions will apply for non-compliance; – The results of taxpayers shall be compared against the comparables' results at the same basis period. Application of prior year data for the selection of comparables is allowed to prove the effect of life cycles or business cycles but not for the use of multiple year averages for comparison purposes; – Definition of arm's length range being between the value of 37.5 percentile and 62.5 percentile of the data set. Where the price falls outside the arm's length range, an adjustment shall be made to the median which is determined as the mid-point of the arm's length range.
APA RULES 2023	– Taxpayers that carry on cross-border transactions may apply to the Director General for an APA subject to conditions; – Taxpayers are required to furnish documentation requested by the tax authorities for the pre-filing meeting and for the formal application; – A roll-back application, i.e., application of terms and conditions of an APA to prior YAs shall be allowed for not more than three YAs immediately preceding the covered period; – Taxpayers are given six months from the receipt of notification from the Director General to submit the formal application. Timeline for renewal application is two months; – The Director General may revoke the APA if the taxpayer fails to disclose any occurrence of voluntary disclosure, investigation, audit or incentive approval; – Application for new APA will incur a non-refundable application fee of MYR 5,000 (if application is made within two months after receipt of the notification from the Director General to proceed); or MYR 10,000 (if the application is made after two months but within six months after receipt of the notification from the Director General. Application for renewal of APA will incur a non-refundable fee of MYR 5,000.

→ Malaysia

MADANI Economy: Empowering the People

On 27 July 2023, the Malaysian Prime Minister has launched the MADANI Economy: Empowering the People economic framework for a better and sustainable Malaysia, which aims to achieve the following targets within 10 years:

1. Malaysia as the top 30 largest global economy;
2. Malaysia as the top 12 in global competitiveness;
3. Increase share of labor income to 45 % of total income;
4. Increase female labor force participation rate to 60 %;
5. Malaysia as the top 25 on the Human Development Index;
6. Improve Malaysia's position in the Corruption Perception Index to top 25;
7. Moving towards fiscal sustainability, targeting a deficit of 3 % or lower.

In addition, the following tax measures were re-emphasized.

FOCUS 1: Restructuring the economy towards Malaysia as a leading Asian economy

- Introduction of outcome based tax incentives to support companies that focus on high-impact activities;
- Special incentives to encourage new green energy activities (e.g. Sarawak's initiative in Carbon Capture, Utilization and Storage);
- Reduction in stamp duty for shares traded on Bursa Malaysia which was implemented on 13 July 2023 to rejuvenate the capital market.

FOCUS 2: The enlargement of wealth is benefitted equitably by the Rakyat

- Strengthening the development of Iskandar Malaysia through the introduction of a special financial zone with incentives to be offered, including a special 15 % income tax rate to eligible knowledge workers;
- More tax incentives and special tax treatment will be offered to develop the social enterprise sector.

→ Malaysia

Update on the Malaysia Digital Tax Incentive

On 28 June 2023, the Malaysian Digital Economy Corporation ("MDEC") has published an announcement that the new Malaysia Digital ("MD") tax incentive is currently being reviewed and is expected to be finalized this year.

The upcoming MD Tax incentive will be offered to eligible MD Status companies that undertake qualifying activities by utilizing MD promoted tech enablers. Under this new incentive, eligible MD Status companies may enjoy either reduced tax rates on qualifying intellectual property income and non-intellectual property income for up to 10 years, or investment tax allowance for 5 years.

→ Malaysia

Instalment payments for outstanding taxes

On 26 July 2023, the IRB issued a media release to inform taxpayers that they are eligible to apply for instalment payments for outstanding income tax and real property gains tax for prior years without a tax increase being charged from 6 June 2023 to 31 May 2024.

Taxpayers may submit an application in writing to the nearest IRB branch or the branch that handles the taxpayer's income tax file, or through the MyTax portal. Taxpayers are not required to provide any supporting documents, provided the amounts are settled within the application period.

Taxpayers will be given a temporary release from travel restrictions where instalment payments for outstanding taxes are made consistently and in accordance with the payment schedule set by the IRB. Failure to comply with the payment terms may result in increase in tax.

→ Malaysia

Further extension of time for filing tax returns in Labuan

A further extension of time for the submission of tax returns has been granted by the IRB's Labuan branch on 26 July 2023. The submission deadline of the tax returns for YA 2023 has been extended from 31 July 2023 to 30 October 2023.

The IRB reiterated that they are in the process of digitalizing the LBATA tax filing, with full digitalization being expected by 2025. To facilitate the process, Labuan entities are required to submit a scanned copy of the relevant documents such as the Form LEs and audited accounts, together with the hard copies, to the IRB's Labuan International Section from YA 2023 onwards.

Contact for more information

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→ Philippines

President Marcos´ s Second Report to the Nation

On 24 July 2023, President Ferdinand Marcos Jr. delivered his second State of the Nation Address at the at the House of Representatives in Quezon City. The President enumerated the administration's achievements in the past year and laid out his priority measures for the future. Below are some key points relevant for the business and investment sector in the Philippines.

"WHILE THE GLOBAL PROSPECTS WERE BLEAK, OUR ECONOMY POSTED A 7.6 PERCENT GROWTH IN 2022 – OUR HIGHEST GROWTH RATE IN 46 YEARS."

Inflation has always been a problem, not just in the Philippines but all over the world in the post-pandemic economic recovery. Nevertheless, the President claimed a partial victory from the economic impact of the pandemic through the policies created and stated in the Medium-Term Fiscal Framework that led to the increase of the GDP. As mentioned above, the Philippines has currently one of the highest economic growth rates, not only compared to its own history but also within Asia and the world. The e-commerce industry has boomed, contributing 2 trillion pesos, the equivalent of 9.4 percent of the country's GDP.

"THE FUND SHALL BE USED TO MAKE HIGH-IMPACT AND PROFITABLE INVESTMENTS, SUCH AS THE BUILD-BETTER-MORE PROGRAM."

With a 8.3 trillion peso allotted fund for the 194 projects under the Build-Better-More program, this program covers investments in the areas of physical connectivity, water resources, agriculture, health, digital connectivity, and energy. In principal, the program is a continuation of the Build-Build-Build program under the previous administration.

"FROM JANUARY TO JUNE THIS YEAR, WE HAVE RECEIVED 3 MILLION INTERNATIONAL

VISITORS. THE NUMBER IS ALREADY 62 PERCENT OF OUR 4.8 MILLION TARGET FOR THE ENTIRE YEAR."

Philippine tourism has been a great contributor to the country´ s economic growth through the years. This has improved the livelihood of more than 5 million citizens, and continuously provides more resource generating opportunities. This also attracts foreign visitors to invest in the Philippines, therefore keeping the business environment in order and governed by the rules of law is a priority.

"I URGE THE GOVERNMENT TO ENACT A NEW GOVERNMENT PROCUREMENT LAW AND A NEW GOVERNMENT AUDITING CODE."

The current Philippine Procurement Law is 10 years old and has ostensibly not prevented issues over the years with regard to the questionable contracts and biddings. The aim is for the law to ensure transparency in the process of procurement and to be more attuned to these changing times.

"A FRIEND TO ALL AND ENEMY OF NONE – HAS PROVEN EFFECTIVE."

It is to be noted that the economic missions have yielded an estimated total investment value of 3.9 trillion pesos or 71 billion US dollars with a potential to generate 175,000 jobs.

President Marcos capped off his speech with his administration´ s new slogan, "The 'New Philippines' has arrived."

→ Philippines

Minimum daily wage in Metro Manila increased

On 16 July 2023, the Php40 minimum wage hike in the National Capital Region took effect.

Under the Wage Order No. NCR-24 which was published on 30 June 2023, the daily minimum wage in NCR increased from Php570 to Php610 for the non-agricultural sector, and from Php533 to Php573 for the agriculture sector, service and retail establishments employing 15 or less workers, and manufacturing establishments regularly employing less than 10 workers.

→ Philippines

EU to invest in PH

In his press briefing in Malacanang on 12 July 2023, Alfredo Pascual, Secretary of Department of Trade and Industry, reported the success of his three-week investment roadshow in Europe.

Amongst others countries, the delegation led by the DTI Secretary visited Berlin where Dr. Marian Majer, our head of office in the Philippines, was invited and present. Secretary Pascual mentioned that the trip resulted in 48 potential investment leads which generated 73 billion pesos in investment leads from the renewable energy and infrastructure development sectors among others, thus potentially generating more than 4,300 jobs.

The Department of Trade and Industry is committed to develop an enabling environment attracting investments by wielding efforts to foster and sustain businesses that will uphold the influx of investments in the country.

→ Philippines

EU-Philippines Free Trade Agreement

On 31 July 2023, the European Commission President Ursula Von der Leyen paid the Philippines a two-day official visit to strengthen the cooperation in areas of trade and economics but also maritime safety and other areas.

The high-level visit represents the growing importance of the Philippines for businesses and investors from Europe. It also "kick-starts" the negotiations to a sustainable EU-PH Free Trade Agreement (FTA).

The negotiations for an EU-PH FDA were put on hold for various reasons in previous years. The negotiations between the Philippines and EU will (re-)start soon and are expected to be finalized within the term of the current President of the Philippines.

It shall provide, amongst others, secure market access for key products and business sectors, including garments and agricultural sectors, as well as a collaboration in critical mineral investments. Other key topics added to the agenda for the negotiations are digital trade, energy and sustainability.

Contact for more information

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→ Singapore

GST Increase in 2024

Following an increase in the GST from 7 percent to 8 percent on 1 January 2023, the GST will now increase again from 8 percent to 9 percent on 1 January 2024. For any standard-rated goods or services that are supplied on or after 1 January 2024, businesses must charge GST at 9 percent.

Change Management

The increase in GST rates may affect systems, documents, and data automation. To ensure a smooth change management, you may need to adapt your accounting, invoicing and sales system, as well as changing your price lists to the correct rate, check your contracts and terms of conditions, and consider whether there are any customers that need to be informed of the changes (e.g. customers who have already placed an order in 2023 but for one of the reasons below the new rate will apply (partly) to their purchase).

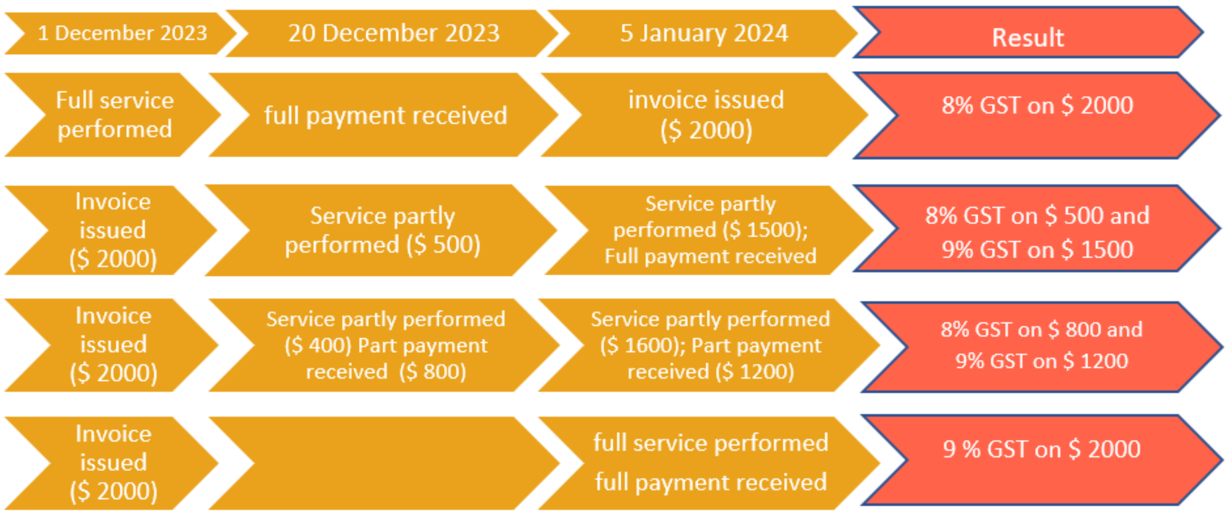
In principle, a supply will include the change in the GST rate where either the issue of an invoice, the receipt of payment (or the making of payment if there is a reversed charge supply) or the supply of goods or services occur in whole or in part on or after 1 January 2024.

However, there are transitional rules in place for supplies of goods and services, that will be implemented partly in 2023 and partly in 2024 to ensure an easier transition and fair taxation.

For any full payment received before 1 January 2024, the supply is subject to GST at 8 percent, even if the invoice is issued in 2024.

If a business has not received full payment in 2023, there is the option to charge GST at 8 percent on the portion of goods/services fully or partially supplied in 2023 or the payment received in 2023 (whichever is higher), even if the date of supply or received payment and issue of invoice is (partially) after 1 January 2024. If applicable, GST of 9 percent will apply to the remaining value of the supply.

Please see examples below:



→ Singapore

Work visa and COMPASS

From September 2023, Singapore will introduce the so-called COMPASS (Complementarity Assessment Framework) system for new Employment Pass applications. COMPASS is a points-based system where applicants must meet both individual- and firm-related criteria in addition to the minimum salary to be eligible for the Employment Pass. From September 2024, the system will also apply to Employment Pass renewals.

Objectives

COMPASS aims to enable employers to hire high-qualified professionals in a more transparent system, while improving workforce diversity and promoting the employment of local employees.

An employee must receive at least 40 points in the criteria

- salary (fixed monthly salary compared to local PMETs[1] in sector by age);
- qualification (highest points earned with a degree from a Top-tier[2] institution);
- diversity (share of candidate's nationality among firm's PMETs) and
- support for local employment (firm's share of local PMETs within sector).

Bonus Criteria

Besides the foundational criteria, there is the possibility of gaining additional points through bonus criteria. On the one hand, there is a "Skills Bonus" with up to 20 bonus points if the candidate wants to work in Singapore in an occupation that is on the Shortage Occupation List (SOL).

The SOL is a list developed by MOM[3] and MT[4] in consultation with sector agencies and tripartite partners that recognises occupations requiring highly specialised skills that are currently in shortage in the local workforce. Professions currently on the list include among others those in the food industry, such as novel food biotechnologist, in the green economy sector, such as carbon project/program manager and infocomm technology, such as cybersecurity specialist.

On the other hand, there is the possibility for 10 bonus points, if the business, that wants to hire the applicant, receives a Strategic Economic Priorities (SEP) Bonus for partnering with the Singaporean government on ambitious investment, innovation, internationalization, or company and workforce transformation activities.

Self Assessment

To check whether a candidate is likely to pass COMPASS, employers can check the SAT (Self-Assessment Tool) before the application. If the SAT is positive, there is according to MOM a 90% chance of passing COMPASS.

Minimum Salary Requirements

In addition to the changes to Employment Passes under the COMPASS system, the minimum salary required for a successful application will also increase from September 2023, not only for the Employment Pass (S$ 5,000 instead of S$ 4,500), but also for the Personalized Employment Pass (S$ 22,500 regardless of whether the person is already an EP holder or not, instead of S$ 12,000 for existing EP holders and S$ 18,000 for foreign professionals) and the S Pass (S$ 3,150 instead of S$ 3,000).

[1] Professionals, Managers, Executives and Technicians
[2]Top 100 universities based on QS World University Rankings, and other highly reputed universities in Asia, Singapore's Autonomous Universities, Institutions that are highly-recognized in a particular field
[3] Ministry of Manpower
[4] Ministry of Trade and Industry

→ Singapore

Workplace Fairness Legislation

The Workplace Fairness Legislation (WFL), a law against discrimination in the workplace, is expected to come into force in 2024. The Government of Singapore has just accepted the recommendations of the Tripartite Committee on Workplace Fairness in August 2023.

The legislation is intended to strengthen Singapore's anti-discrimination framework as protection against discrimination which currently exists only through the ratification of ILO Convention No. 100 on equal pay for male and female workers and through the so-called "Tripartite Guidelines on Fair Employment Practices", which, however, do not have the force of law.

Discrimination Protection

It provides for discrimination protection for age, nationality, sex, marital status, pregnancy status, caregiving responsibilities, race, religion, language, disability, and mental health conditions. The legislation will cover all stages of employment, from recruitment to termination.

It includes a ban on discriminatory job advertisements, as well as legislate the requirement for a job advertisement for Employment Pass and S-Pass applications under the existing Fair Consideration Framework, and a ban on retaliation against people who report cases of discrimination or harassment in the workplace.

In case of infringements, the law is intended to provide monetary compensation for the employee as well as a range of penalties including corrective work orders, financial penalties, and work pass curtailment.

However, exceptions are planned for companies with fewer than 25 employees, which will be exempt for at least the first five years, and for religious organisations that make employment decisions based on religion. It is also not a violation if the characteristic is a genuine and reasonable job requirement or if the employer favours people with disabilities and seniors (55 years and above) over other groups in employment decisions, even if another candidate is equally or more qualified.

Therefore, monitoring future legislation and ensuring compliance with WFL requirements for all employees from the recruitment process onwards should be on the to-do list for companies in Singapore.

→ Singapore

Digital signing of documents and taking official oaths

In August 2023, the Singaporean parliament passed two bills that allow legal documents to be signed, and statutory declarations, official oaths and affirmations, and notarisations to be done digitally, e.g. via video conferencing. By amending the Constitution and the Oaths and Declarations Act, the parliament has created room to use digital alternatives instead of signing a document by hand or taking an oath in person.

However, the law will not contain an obligation to choose an electronic option and the existing processes in person/with signatures by hand will remain possible. Nevertheless, it should facilitate the daily work of many businesses that already have experience with digitising their work processes and who will choose the digital option wherever possible.

In addition to these bills, specific requirements for the security of the video conferencing platforms used as well as the permissible modes of electronic signature are to be stipulated in subsidiary legislation in order to reduce any risks resulting from digital processing, for example through deepfakes or the like.

Digital statutory declarations or notarizations that have already been made, for example during the Covid-19 pandemic, are not to be affected by the amendment and will remain valid.

Contact for more information

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→ Thailand

Work from Home

The Thai Labour Protection Act (LPA) governs the rights and duties of employers and employees in Thailand. During the Covid Pandemic, many employers permitted their employees to work from home or remotely. Even after the pandemic, we are seeing many companies in Thailand, shifting to a permanent option for working from home. In fact, many employees working in offices request the option to work from home, at least on certain days during the week. Thus, permitting work from home has become a vital factor in attracting talent for office jobs.

Now, the 8th amendment of the LPA has introduced section 23/1 to the law to outline formal requirements for work from home agreements. Such agreement shall be made in writing or by electronic means and should include the following:

- Starting and ending date of the agreement
- Date, working hours, recess hours and overtime work
- Criteria of overtime work and work on holidays and other types of leave
- Scope of duties and work of the employee and control or supervision by the employer
- Obligations and duties concerning procurement of work tools or equipment, including necessary expenses for work

Notably, employees working from home have the right to reject communication from the employer outside of the agreed working hours. Thus effectively preventing encroachment of office hours into the private life of an employee.

Furthermore, the regulations state that employees working from home enjoy the same rights as employees working at the place of work, preventing establishing a two-tiered system of employees.

Please note:

Even though the LPA now regulates certain conditions of work from home, it does not grant a general right to an employee to work from home. In fact, work from home is contingent on a specific agreement. On the flipside, an employer cannot simply order an employee to work remotely. From our point of view, section 23/1 main purpose is to protect employees working remotely, especially when it comes to office hours. Thus, section 23/1 mainly strengthens the colloquially called “right to disconnect”, thereby adding a necessary layer of protection to Thai labour laws.

→ Thailand

Thai Land Act and owning properties via a majority Thai-owned company

The Thai Land Act restricts the rights of foreigners to own land in Thailand. Chapter 8 of the Land Act states that owning land in Thailand by a foreigner is only permitted under certain limitations, for example a promotion by the Thai Board of Investment. Thus, most foreigners are not permitted to own land. They may, however, sign a long-term lease or have other rights regarding a piece of land.

In 2022, there were discussions on permitting holders of certain types of Long Term Residency Visa to own land. However, these proposals were all abandoned after political pushback.

Given these requirements, foreigners sometimes use a company with a Thai shareholder to own land in Thailand. In this case, the Thai shareholder holds most of the shares in the company, thereby making it formally a Thai company and thus not subject to the special regulations on foreigners owning land in Thailand.

Legal or illegal?

While it is not illegal for a jointly owned company to own land in Thailand, if the sole purpose of the Thai shareholder is to enable a foreigner to de-facto own land, such structures could be considered a circumvention of the Land Act and therefore illegal. The Thai Land Act in its penalty provisions clearly states that using such a nominee shareholder is illegal for the foreigner, for the nominee and for the company itself.

Risks and consequences

Now, in June of 2023, the Department of Special Investigation raided a company in Phuket for the suspicion of enabling foreigners to own land via a company. The reports indicate that significant numbers of foreigners were engaged in owning, transferring and renting land in Phuket, and that further investigations have been launched. Furthermore, the officers in charge reported that they will continue to work with the local authorities to prevent violations of the Thai laws.

It remains to be seen how the case will develop in the future. However, these cases illustrate the risks of a cavalier approach to owning land in Thailand as a foreigner. Especially high net-worth individuals considering acquiring luxury properties in Thailand should not simply go ahead with acquiring properties in Thailand by using a Thai company as the risks are significant.

Contact for more information

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→ Vietnam

Adoption of Power Development Plan VIII – Implementation Measures

On 15 May 2023, the Prime Minister issued Decision No. 500/QD-TTg approving the National Power Development Master Plan for the period from 2021 to 2030 with a vision to 2050 (“PDP8”).

Long-term electricity development

In the PDP8, the Vietnamese government recognizes the importance of a well-functioning energy sector for the overall development of the country. The PDP8 is guided by principles of competition and market mechanisms determining the electricity prices. This is important as up to now, at least the Vietnamese energy distribution sector was liberalized and subject to market mechanisms.

Continuation of prioritizing the development of renewable energy sources

The PDP8 also prioritizes the development of renewable energy sources for electricity production. This power source will reach the rate of about 30.9 - 39.2 % by 2030 and raise to 67.5 - 71.5 % by 2050.

To achieve the stated goals, it is estimated that the total investment needed to develop power sources and transmission networks in the period of 2021 - 2030 will amount to approximately $134.7 billion. Looking ahead to the period from 2031 to 2050, this estimated investment capital ranges from $399.2 billion to $523.1 billion.

This is important in the light of the net zero carbon emission target by 2050 to which Vietnam has recently subscribed and the fact that Vietnam – similar to many other countries – still heavily relies on fossil fuels for energy generation. Finally, the requirement for investment in the electricity grid has also been recognized to remove a major obstacle in respect of the transition to renewable energies.

Completing the legal framework on electricity development

The Ministry of Industry and Trade together with other ministries and branches are assigned to finalize and submit to the Government the revised Electricity Law and the Law on Renewable Energy for submission to the National Assembly in 2024. The Ministry of Industry and Trade is also assigned to (i) submit to the Government policies on direct electricity purchase and sale, (ii) work with investors to progress and finalize projects that are having difficulty in implementation, and (iii) report to the Prime Minister any issues beyond their authority.

In conclusion, though the PDP8 provides a specific development orientation for the electricity industry, we still must wait for detailed implementation plan from the Ministry of Industry and Trade and relevant agencies to have enough grounds for performance in practice. Nevertheless, companies interested in doing business in the renewable energy sector in Vietnam should start analyzing the market and the technical and regulatory (including tax incentives) frameworks now, so they are ready to take action, as soon as implementation plans are in place.

→ Vietnam

Update on immigration regulations

As of 15 August 2023, Law No. 23/2023/QH15 amending regulations regarding entry, exit, transit, and residence of foreigners in Vietnam has come into effect, with some significant changes, facilitating the visa application process, entry and reentry for many foreign nationals.

Visa Exemption

Visa exemption for now up to 45 days (instead of 15 days) can be issued for citizens of 13 countries: Germany, France, Italy, Spain, UK, Russia, Japan, Korea, Denmark, Sweden, Norway, Finland, and Belarus upon arrival at an international border of Vietnam. Foreign nationals can enter and remain in Vietnam for the duration of the visa exemption granted for tourist and business purposes.

E-Visa

As of 15 August 2023, all nationals of all countries and territories are eligible for a Vietnamese e-visa and can apply online for such e-visa to be issued prior to arrival in Vietnam. There is no requirement for such visa to be collected at a Vietnamese embassy or consulate.

In addition, the maximum duration of the e-visa has also been increased from 30 days to 90 days with single entry or multiple entry being available options.

Conversion

Visa exemption and e-visa can now be converted directly into a Temporary Residence Card or TRC (if duration of stay is one year or longer), or to visa with a longer term (if stay duration is less than one year). Foreigners are not required to leave and re-enter the country for this procedure. In case of e-visa, the new TRC or visa will be the same type with the granted e-visa.

PLEASE NOTE:
All above-mentioned changes shall apply for visa exemptions or e-visas issued after 15 August 2023. Visas and exemptions that have been issued before this date will not be extended automatically and are subject to the old conditions applicable at the time of issuance.

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→ Vietnam

New decree on Personal Data Protection

Vietnam has issued a new decree on Personal Data Protection - Decree No. 13/2023/ND-CP on the Protection of Personal Data was issued on 17 April 2023 ("PDPD"), and took effect on July 1, 2023. The PDPD applies to both local and foreign entities that collect and/or process personal data of individuals residing in Vietnam or being Vietnamese nationals.

- SCOPE OF APPLICATION: It applies to both local and offshore entities that handle personal data of individuals residing in Vietnam or Vietnamese nationals;
- BROAD DEFINITION OF PERSONAL DATA: The PDPD defines personal data broadly to include any forms of information that can be used to identify an individual. It also classifies personal data into two categories: general personal data and sensitive personal data;
- PRINCIPLES: The PDPD sets out principles for Personal Data Protection, which follow a similar approach like the data protection principles stipulated in the EU's General Data Protection Regulation (the "GDPR"): Lawfulness, Individuality, Transparency, Minimization, Data Quality, Limited Use, Security and Confidentiality and Accountability;
- VALID CONSENTS: Companies handling personal data should obtain valid consents. This means that companies must obtain a documented consent of the individual before collecting or using their personal data. The consent must be freely given, specific, informed, and unambiguous. The data subject's silence or non-response is not considered as a "consent";
- MANDATORY REQUIREMENTS TO CONDUCT THE IMPACT ASSESSMENT: The PDPD also requires companies that handle personal data to conduct Impact Assessments of their data processing activities, including for any transfers of relevant Data out of Vietnam. These assessments must be submitted to the Ministry of Public Security and the Department of Cybersecurity and Hi-tech Crime Prevention;
- MANDATORY REQUIREMENTS TO CONDUCT THE TRANSFER IMPACT ASSESSMENT: For outbound transfers of personal data from Vietnam, a transfer impact assessment must be carried out. These assessments must also be submitted to the Ministry of Public Security and the Department of Cybersecurity and Hi-tech Crime Prevention.
- More detailed implementation and enforcement regulations are not yet available, but it seems likely that companies violating the provisions of

- the PDPD may be fined up to 5 % of their annual turnover

What to do:

Companies that process personal data should review their policies and procedures to comply with the new regulation. This includes ensuring that they have a process for obtaining valid consents, conducting Impact Assessments, Transfer Impact Assessment, as well as protecting personal data from unauthorized access, use, disclosure, or destruction.

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→ Vietnam

The Vietnamese Ministry of Finance (MOF) aims to apply the Global Minimum Tax Policy as of 2024

The draft resolution on the Global Minimum Tax policy is currently under preparation by the Ministry of Finance (MOF) to be submitted to the National Assembly of Vietnam in October 2023. The draft is proposed in light of the OECD's publication of the BEPS Pillar 2 model issued by the OECD. Accordingly, each multinational corporation that is subject to Pillar 2 will have to pay a minimum tax rate of 15 percent in each jurisdiction.

The draft resolution provides important orientation on the implementation of the Global Minimum Tax policy in Vietnam. The resolution is expected to be passed in October 2023 and take effect from January 1, 2024.

Objective

In the draft resolution, the MOF clearly stated the overall goal to develop a global minimum tax policy to apply from 2024, including:

- regulations on Qualified Domestic Minimum Top-Up Tax ("QDMTT") and
- regulations on Income Inclusion Rules ("IIR");

accompanied by appropriate support solutions to retain existing investors and attract new investors, ensuring equality between domestic and foreign investors (FDI), direct investors and indirect investors.

Both rules are intended to protect Vietnam's tax revenue in the context of Pillar 2 being rolled out globally, specifically:

- The QDMTT rules target inbound investment of foreign investors in Vietnam, this is to ensure the taxing right of Vietnam as well as to limit the transfer of tax amounts to other countries; ensure progress and transparency in the tax administration system and business investment environment in line with international standards. At the same time, achieving the goal of keeping the current preferential policies applicable to businesses that are not subject to the global minimum tax.
- The IIR targets outbound investment of Vietnamese investors: this policy aims to increase the state budget revenue for the additional corporate income tax collected from Vietnamese groups that invest abroad; to gain the right to tax as the country of the parent company making the offshore investment. In addition, to ensure equality between domestic and foreign investors, direct investors and indirect investors; to prevent Vietnam's multinational corporations from transferring profits and transferring prices to countries with low tax rates to avoid taxes.

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