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ASEAN INVESTMENT & TAX NEWS

FEATURE ARTICLE

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FOREWORD

Greetings and welcome to the second 2018 edition of our regional quarterly newsletter – the ASEAN Investment & Tax News (AITN).

As we continue into 2018, ASEAN continues to be a hive of activity, with Australia's Prime Minster Malcolm Turnbull hosting a special summit in March that was aimed at deepening business and security ties between Australia and ASEAN.

Several initiatives were announced during the summit, for example new digital standards to make it easier for businesses to conduct cross-border digital trade. On top of that, a US$24 million investment was announced by Mr Turnbull to develop smart cities through the setting up of a knowledge bank of sustainable urbanisation ideas.

Since becoming a dialogue partner of ASEAN in 1974, Australia and ASEAN continued to work together closely and in 2014, the comprehensive partnership was elevated to a strategic partnership.

With trade and regional partnerships high on the regional bloc's agenda, our tax experts once again analyse and share the latest tax developments from around the region.

In this issue, our feature article delves on Singapore's 2018 budget, especially the Budget's focus on fostering the island nation's position to develop into an enterprise, innovation and R&D hub. Specific enhancements to three existing schemes were made to facilitate this.

Meanwhile, our Malaysian colleagues look at the common pitfalls during tax audits given the increased tax compliance activities in the country. Our team has highlighted three common areas of dispute between the authorities and the taxpayers, to look out for.

In Indonesia, we take a closer look at the tax treatment that affects all upstream oil and gas operators or Production Sharing Contracts. Termed as *Government Regulation No. 53 Year 2017 (GR-53)*, it mandates the adoption of a new gross-split method.

Over in Cambodia, the Double Tax Agreements (DTAs) which were signed with Singapore and Thailand officially came into effect on 1 January 2018. The DTAs' represent major milestones in Cambodia's ongoing tax evolution, including the reduction of withholding taxes on certain cross-border transactions.

Due to increasing cost of living as well as development in Myanmar, the country's National Committee for Designating Minimum Wage has increased the basic daily salary of workers at 4800 Myanmar Kyat a day from 3600 Myanmar Kyat set previously. While it is still under evaluation by Myanmar's government, companies that are looking to expand towards the nation will need to take heed of this latest development.

Finally, our Lao PDR team takes a look at the new excise tax rates that applies to fuel, alcohol, tobacco and selected types of entertainment services.

We believe the updates shared will give you an overview of some of the insights on the region. Do contact our regional offices if you would like to have more information.

DATO' GAN AH TEE DNS JP
Regional Senior Partner
agan@bdo.my

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FEATURE: SINGAPORE
ENCOURAGING INNOVATION

With the recent announcement of the Singapore Budget on 19 February 2018, the Singapore Government has placed special emphasis on developing the nation into a hub of enterprise, innovation and technology. Faced with an ever-changing global landscape, it is no wonder that one of the key areas of focus is to make innovation prevalent in the local scene so as to ensure that the local companies' relevance in today's competitive economy.

In order to encourage taxpayers to innovate and create digital solutions through collaborations, the Singapore Government has made enhancements to three existing schemes:

a **Enhanced deduction for intellectual property (IP) registration costs**
b **Enhanced deduction for IP in-licensing costs**
c **Enhanced deduction for qualifying research and development (R&D) projects performed in Singapore**

a Enhanced deduction for intellectual property (IP) registration costs

Currently, IP registration costs qualify for 100% deduction under Section 14A of the Singapore Income Tax Act (SITA) and this scheme will lapse after Year of Assessment (YA) 2020. In the recent Budget announcement, the scheme has been extended until YA 2025.

In addition, with effect from YA 2019, the deduction will be enhanced to 200% on the first S$100,000 of qualifying IP registration costs incurred for each YA. This may prove attractive to some small and medium enterprises in the South East Asian region to move their operations to Singapore and register their IPs here to take advantage of the favourable tax treatment.

b Enhanced deduction for IP in-licensing costs

Expenditure incurred on IP licensing currently qualifies for 100% deduction. For qualifying licensing costs incurred between YA 2019 to YA 2025, the deduction will be enhanced from 100% to 200% for the first S$100,000 per YA. Costs incurred in excess of S$100,000 shall continue to enjoy 100% deduction.

It has been clarified that this enhancement will not apply to all related party licensing arrangements and any IP rights where writing down allowances under Section 19B of the SITA has been previously granted. Costs incurred on the transfer of ownership of IP rights, legal fees and expenditure that has been subsidised by the Singapore Government have been specifically excluded from the definition of qualifying expenditure. Payments made for the use of trademarks are also excluded as it does not serve to promote innovation.

c Enhanced deduction for qualifying R&D projects performed in Singapore

R&D forms the foundation of innovation and the Singapore Government has introduced multiple tax incentives to encourage R&D activity in Singapore. Previously under the popular Productivity and Innovation Credit (PIC) scheme, companies could enjoy up to 400% tax deductions on qualifying R&D expenditure. However, the PIC scheme is scheduled to expire after YA 2018 and companies can only enjoy deductions of up to 150%. In view of this, it has been announced during the Singapore Budget that the deduction amount will be enhanced to 250% for R&D projects performed locally so as to continually spur R&D efforts.

The above enhancement is poised to boost Singapore's position as an innovation hub and together with the other existing tax incentives, the nation is well placed to receive foreign investments and expand local businesses.

If you are considering expanding your business to Asia and would like to explore the option of creating a business presence in Singapore, please feel free to contact us.

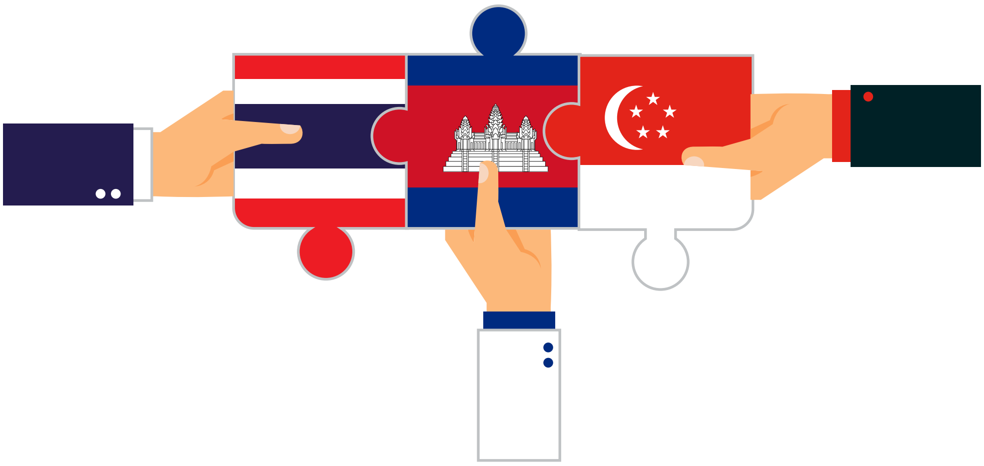
FRANKIE CHIA
frankiechia@bdo.com.sg
+65 6828 9113

NEWS

CAMBODIA:

TAX TREATIES WITH SINGAPORE AND THAILAND COME INTO EFFECT

Since the beginning of 2018, there has been a major milestone in the development of tax rules in Cambodia. The Cambodia General Department of Taxation (GDT) announced that the Double Tax Agreements (DTA) which were signed with Singapore in 2016 and with Thailand in 2017 were officially effective from 1 January 2018. The Thailand and Singapore DTAs officially came into force on 26 and 28 of December 2017 respectively, after they were publicised into law in Cambodia on 9 December 2017. One of the main provisions of these DTAs is the reduction of withholding taxes on certain cross-border transactions.



The main aim of a DTA is to eliminate the double taxation of income arising in one country and paid to tax residents of another country. Under the provisions of the DTAs which came into effect in January 2018, Cambodian tax residents will be able to enjoy the double taxation relief through a tax credit for taxes that were paid in other jurisdictions.

For example, when a Cambodian tax resident receives an income which has been taxed in Singapore, the tax resident would be able to claim a tax credit on the tax paid in Singapore, up to the amount of tax that would be payable in Cambodia on the same income. The DTAs provide a clear picture of the taxing rights of the countries administrated under the treaties and set out the types of income that are covered under the treaties.

Furthermore, the exchange of information provision allows the contracting countries to obtain information in order to ensure their taxing rights are preserved and when a difference of opinion on taxing rights arises between the contracting countries, the Mutual Agreement article attempts to provide for such eventualities.

One of the main provisions in the DTAs signed with Singapore and Thailand is that Cambodian tax residents will be able to enjoy a reduced withholding tax (WHT) rate of 10% on payments relating to dividends, royalties, interests, or technical service fees made to tax residents in Thailand and/or Singapore as opposed to the standard WHT rate of 14%. However, there are no formal procedures set out yet on how Cambodian tax residents may enjoy the reduced WHT rate on payments made to Thai or Singaporean tax residents after 1 January 2018 but it is anticipated that the GDT will issue a Prakas to provide guidelines on the implementation of the DTAs in Cambodia which includes guides on:

- a. The determination of the tax residency of a person or legal entity in Cambodia;
- b. The procedures to obtain a Certificate of Tax Residence from the GDT; and
- c. The procedures to obtain pre-approval on using the reduced withholding tax rate stipulated in the DTAs on cross-border transactions.

Early indications, however, suggest that Cambodian tax residents would need to obtain a Certificate of Tax Residence from the GDT, before submitting an official request to the GDT seeking approval to apply the reduced WHT rate, accompanied by supporting documentation.

NEWS

INDONESIA:
TAX TREATMENT ON UPSTREAM OIL AND GAS ACTIVITY UNDER PRODUCTION SHARING CONTRACTS

The Indonesian Government recently issued Government Regulation No. 53 Year 2017 (GR-53) on 28 December 2017. This regulation is related to Ministry of Energy and Mineral Resources (MoEMR) Regulation No. 8 Year 2017, mandated in early 2017 which stated that all Production Sharing Contracts (PSC), including extensions to existing PSC, were to follow a new gross-split method effective from 1 January 2017. This method is also available to existing PSC holders if they elect to convert their traditional PSCs.

Under GR-53, the Government confirmed the tax treatment for the contractor or operator of upstream oil and gas activity under the PSC in gross-split method. A PSC in gross-split method is a contract between the contractor or operator and the Government regarding the upstream activity (exploration and exploitation) of oil and gas based on gross production sharing principal with non-refundable operating expenses mechanism.

GR-53 confirmed that for the tax calculation of the contractor or operator, it follows the Income Tax Law No. 36 Year 2008 which states that taxable income arising from direct PSC activities is gross income deducted by operating expenses. Taxable income in this case, is income relating to liftings, as well as sales of by-products and other economic gains. The taxable income is then subject to tax at the rate which is currently 25% and where applicable, a Branch Profits Tax at the rate which is currently 20% on after tax profits.

The gross-split taxing point begins at the point of transfer of the oil and gas to the contractor or operator. The value of oil is determined using the Indonesian Crude Price and the value of gas is determined via the price agreed under the relevant gas sales contract.

Income arising from uplifts is subject to final income tax rate of 20% on the uplift amount, while income arising from PSC transfers is subject to tax of 5% or 7% on the transfer income (according to whether the PSC is in exploration or exploitation) and with no additional tax due on after tax income.

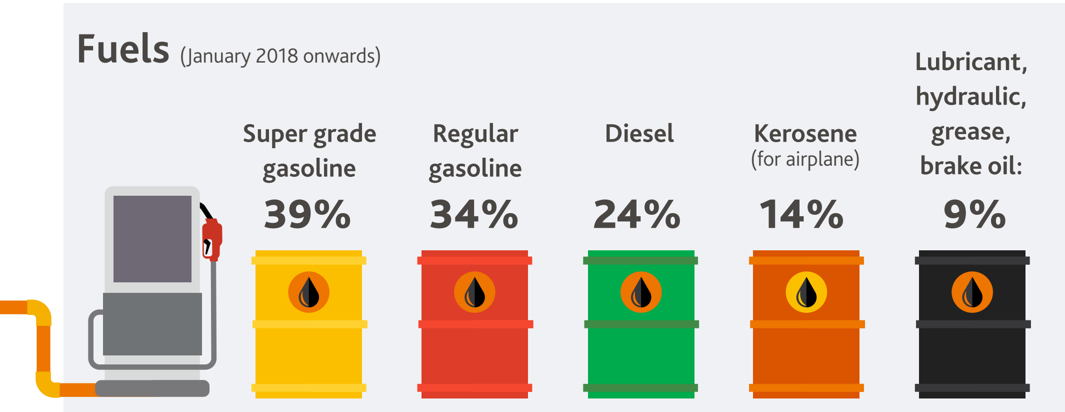
Tax losses can be carried forward up to ten years, which is greater than the five years available under the income tax law, however, it is a significant reduction from the unlimited tax loss carry forward entitlement under traditional PSCs.

Incentives are also provided during the pre-production period (i.e. at the exploration and exploitation stage up to the commencement of commercial production) which includes:

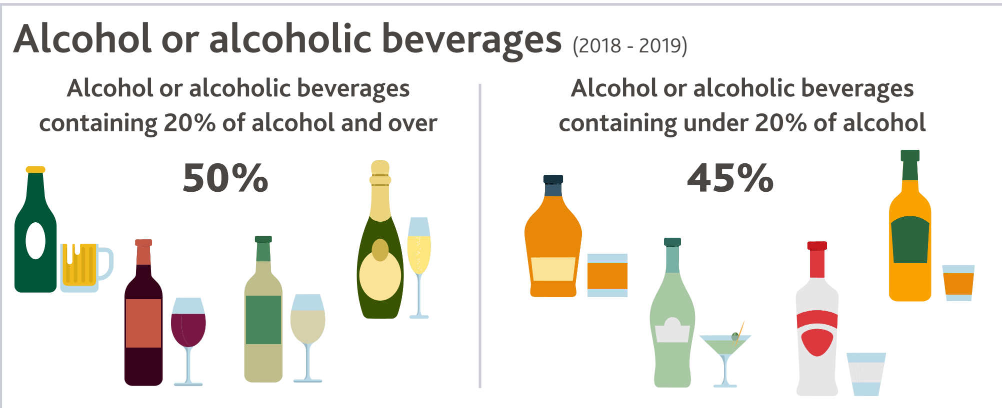
- a) Exemption of import duty on the import of goods used in oil and gas operations.
- b) Exemption on collection of Value Added Tax on the import or local procurement of taxable goods and services used in oil and gas operations.
- c) Exemption on collection of Income Tax Article 22 on the import of goods entitled to an Import Duty exemption referred to in point (a) above.
- d) 100% reduction in land and building tax.

NEWS
LAO PDR:
NEW EXCISE TAX RATES

On 11 January 2018, the Tax Department of the Ministry of Finance in Lao PDR issued a new regulation No.169/TD which implements new excise duty rates on fuel, alcohol, tobacco and certain entertainment services for 2018. The new applicable rates are as follows:



Fuels (January 2018 onwards):
- a Super grade gasoline: 39%
- b Regular gasoline: 34%
- c Diesel: 24%
- d Kerosene (for airplane):14%
- e Lubricant, hydraulic, grease, brake oil: 9%



Alcohol or alcoholic beverages (2018 – 2019):
- a Alcohol or alcoholic beverages containing 20% of alcohol and over: 50%
- b Alcohol or alcoholic beverages containing under 20% of alcohol: 45%

Entertainment services (2018 – 2019):
- a Dancing hall, discotheque and karaoke: 20%

NEWS
MALAYSIA:
WORRIED ABOUT TAX AUDITS?

The Inland Revenue Board (IRB) led by Dato' Sri Sabin Samitah announced late last year that the IRB is targeting a tax collection of RM134.7bil for 2018. Alongside the abovementioned target, tax authorities are stepping up on its tax compliance activities to improve the country's revenue collection.

Emphasis in 2018 is placed on tax compliance by way of desk audits as opposed to the field audits to minimise disruption to the taxpayer's business. However, the IRB has noted that this decision is not to reduce tax compliance activities but instead to increase them as the IRB has improved its data matching processes. Some of the common disputes resulting from the tax audits are highlighted in this article.

DISPOSAL OF PROPERTY

"Capital" or "Revenue"? Generally, any gains derived from the disposal of real property which is capital in nature will be subject to Real Property Gains Tax Act 1976 (RPGT) whereas any gains which is revenue in nature will be subjected to the Income Tax Act 1967 (ITA). The question on whether a transaction amounts to carrying on trade or merely a capital transaction is a question of fact and degree.

In recent reported tax cases, subsidiary companies of property developers such as MK Land Holdings Bhd and SP Setia Bhd have received additional tax assessments of RM80.77mil and RM75.38mil respectively. Both of the above companies contended that their disposals of land and properties held under investment properties were capital transactions which should fall under the purview of RPGT, instead of ITA.

Prior cases show that scrutiny is placed on the intention of the taxpayer at the time of acquisition of the property. Therefore, where possible, taxpayers should clearly define their intention in writing i.e. in board meeting minutes and resolutions, management accounts and/or the company's Memorandum of Association.

DEDUCTIBILITY OF INTEREST EXPENSE

The deductibility of interest expense is governed under Section 33(1)(a) and interest restriction under Section 33(2) of the ITA, both of which are further explained in the IRB's Public Ruling No. 2/2011. In general, if an advance/loan is employed in the production of gross income or laid out on assets used or held in the production of gross income, the interest expenses arising therefrom are fully tax deductible.

However, in the absence of concluding evidence thus far, companies such as Magnum Holdings Sdn Bhd and MMC Corp Bhd are in dispute with the IRB regarding the tax treatment for the interest expense on certain transactions resulting in additional tax assessments of RM476.47mil and RM45.9mil respectively.

Therefore, to avoid disputes with the tax treatment for interest expense, taxpayers should ensure they have the supporting documentation to clearly demonstrate the purpose and usage of borrowed funds.

NEWS

MALAYSIA: WORRIED ABOUT TAX AUDITS? (Con't)

STATUTE OF LIMITATION

With effect from 1 January 2014, the five-year statutory time limit stipulated in the ITA shall be applied by the IRB for issuance of notice of assessment, except for the recovery of any tax loss which results from fraud, negligence or wilful evasion. However, in practice negligence is highly subjective, rarely conclusive and difficult to prove, whereas evidence of fraud and wilful default are much more empirical.

Looking at recent cases, the IRB has raised time-barred assessments to Magnum Bhd, MK Land Holdings Bhd, Bandar Setia Alam Sdn Bhd and Aeon Credit which went as far back as year of assessment 2008. The rationale behind the raising of time-barred assessments by the IRB has not been revealed.

Drawing attention to the case of *Infra Quest Sdn Bhd v LHDN*, it was held that the taxpayer cannot be deemed negligent where the taxpayer has taken all reasonable steps and had been prudent in complying with the law.

As highlighted above, due to the complexity, wide coverage and continuous revision of the tax laws and regulations, coupled with the IRB's vigorous tax compliance activities, taxpayers need to be mindful that the tax positions that they adopt are in line with the tax laws and regulations and ensure that their documents are properly kept so that they can be made available when requested by the IRB.

In conclusion, taxation is highly technical in nature and commonly results in differing interpretations and perceptions. Hence it would be advisable for companies to mitigate their tax risks by seeking professional advice to ensure proper compliance with the law while minimising business disruption in view of the IRB's initiative towards their targeted RM134.7bil revenue collection for 2018.

MYANMAR: NEW MINIMUM WAGE

In order to answer the requests of the workers in Myanmar to increase the minimum wage due to the increase in the cost of living as well as country development, the government of Myanmar formed the National Committee for Designating Minimum Wage for Myanmar Employees (the National Committee) on 16 February 2017 with the purpose of drawing up processes and policies to set the minimum wage of workers in Myanmar.

Previously, on 25 August 2015, the National Minimum Wage Determination Committee issued Notification 2/2015 which stipulated that the minimum wage for workers in Myanmar was set at MMK3,600 (US$2.80) per day, calculated at a rate of MMK450 (US$0.35) per hour. On 2 January 2018, the National Committee announced that minimum wage will be set at MMK4,800 per day or MMK600 per hour. However, the committee has announced that this increase in the minimum wage is still up for discussion. Organisations or persons who are oppose to the increase in minimum wage may express their objection by filling up the Form for objection to the proposed minimum wage and submitting the Form to the Union Territory Committee and the Region or State Committee for Minimum Wage within two weeks of the announcement date. From then on, these committees will have 30 days from the submission date to review all comments received and subsequently submit them to the National Committee.

Upon receiving the comments, the National Committee will proceed to review all proposals for objection or amendment and upon consultation with representatives of the Government as well as employers and employees within 60 days from the date of the announcement to increase the minimum wage, the minimum wage for the employees in Myanmar will be confirmed by the Government of Myanmar.

NEWS

THAILAND:
NEW SMART VISA PROGRAMME LAUNCHED

Thailand has launched a new visa programme, called SMART Visa to attract foreign experts and investors to work or invest in ten targeted industries. The programme's main attraction is a four-year visa with no requirement to obtain a work permit.

THE FOUR TYPES OF VISA OFFERED

Smart "T"

TALENTS
Highly skilled professionals in the fields of science and technology

Smart "E"

EXECUTIVES
Senior executives working in companies using technology in manufacturing or delivering services

Smart "I"

INVESTORS
Investors in companies using technology in manufacturing or delivering services

Smart "S"

STARTUP ENTREPRENEURS
Foreign startup entrepreneurs who wish to invest in targeted industries

TARGETED INDUSTRIES

The SMART Visa is designed to attract foreign experts and investors to accelerate development of ten targeted industries, also called the S-Curve industries, listed below.

- Next-Generation Automotive
- Automation and Robotics
- Smart Electronics
- Aviation and Logistics
- Affluent, Medical and Wellness Tourism
- Biofuels and Biochemicals
- Agriculture and Biotechnology
- Digital
- Food for the Future
- Medical Hub

WHO ARE ELIGIBLE FOR SMART VISA?

For each type of SMART Visa, the applicant is required to meet the following qualifications and criteria to receive the visa and the benefits shown.

SMART VISA

SMART VISA TYPE	QUALIFICATIONS	BENEFITS
Smart "T" for Talent (highly skilled experts)	• Salary of at least THB 200,000 or equivalent per month (exclusive of other benefits) • Employment contract or service contract with an entity in Thailand with a remaining term of at least one year • Endorsed by a government agency as an expert in science and technology relevant to the targeted industries (except for an expert who works in a government agency) • The employer must be certified by a relevant government agency, e.g. the National Innovation Agency or the Digital Economy Promotion Agency, as being engaged in a targeted industry. If the employer is a government agency, the government agency is required to certify that the expat is engaged in a targeted industry.	• Maximum four-year visa, but not exceeding the remaining employment or service contract term • No work permit required for working in the endorsed company or a Thai government agency. In case of any change or addition of jobs, official approval must be obtained. • Ninety-day reporting to Immigration extended to one year • No re-entry permit required for re-entering Thailand on the same visa • Spouses and children are granted the same rights to stay in Thailand and may work without requiring a work permit (children wishing to work must be at least 18 years old)

NEWS

THAILAND:

NEW SMART VISA PROGRAMME LAUNCHED (Con't)

SMART VISA		
SMART VISA TYPE	**QUALIFICATIONS**	**BENEFITS**
SMART "E" for Senior Executives	• Salary of at least THB 200,000 or equivalent per month (exclusive of other benefits) • Holder of a bachelor's degree or higher with at least ten years of work experience in the relevant field • Have an employment contract with a company in Thailand or in a foreign country with an assignment to work in Thailand. The remaining term of employment contract must be at least one year. • Holding a senior management position e.g. Chairman or Managing Director • The employer must be certified by a relevant agency, e.g. the National Innovation Agency, the Digital Economy Promotion Agency and the National Science and Technology Development Agency, for using technology in manufacturing or delivering services in targeted industries	• Maximum four-year visa, but not exceeding the employment contract term • No work permit required for working in the endorsed positions and companies. In case of any changes or addition of jobs, official approval must be obtained. • Ninety-day reporting to Immigration extended to one year • No re-entry permit required for re-entering Thailand on the same visa • Spouses and children granted the same rights to stay in Thailand • Spouses are granted permission to work in Thailand without a work permit (the work must not be prohibited for foreigners)
SMART "I" for Investors	• Directly investing as an individual investor at least THB 20 million in one or more companies in Thailand using technology in manufacturing or delivering services in targeted industries. The investment must be maintained for the entire period of the visa. • The companies invested in must be certified by a relevant agency, e.g. the National Innovation Agency, the Digital Economy Promotion Agency and the National Science and Technology Development Agency, for using technology in manufacturing or delivering services in targeted industries	• Maximum four-year visa • No work permit required for working in the endorsed companies. In case of any changes or additions of jobs, official approval must be obtained. • Ninety-day reporting to Immigration extended to one year • No re-entry permit required for re-entering Thailand on the same visa • Spouses and children are granted the same rights to stay in Thailand • Spouses are granted permission to work in Thailand without a work permit (the work must not be prohibited for foreigners)

NEWS
THAILAND:
NEW SMART VISA PROGRAMME LAUNCHED (Con't)

SMART VISA

SMART VISA TYPE	QUALIFICATIONS	BENEFITS
SMART "S" for Startup Entrepreneurs	• A fixed savings account in Thailand or overseas with a balance of not less than THB 600,000 or equivalent and a remaining maturity term of at least one year • An additional amount of fixed savings of THB 180,000 or equivalent per person shall be required in case of accompanying spouse and children • A health insurance policy covering the entire of period of stay in Thailand for the applicant and the accompanying spouse and children • Participating in an incubation or accelerator programme, or similar programme in the targeted industries. The programme must be certified by a government agency e.g. the National Innovation Agency and the Digital Economy Promotion Agency. In the case where the applicant does not participate in an incubation or accelerator programme, the applicant must receive joint venture funding from a government agency or endorsement from a government agency e.g. the Digital Economy Promotion Agency. • The applicant must set up business in Thailand within one year after being temporarily permitted to stay in Thailand. The applicant is also required to hold at least 25% of the registered capital of the company or be the company's director. The business must be certified as engaged in the targeted industries by a government agency, e.g. the National Innovation Agency (Public Organization) and the Digital Economy Promotion Agency.	• One-year visa is granted for the first application and is renewable for up to two years provided certain requirements are met • No work permit required for working in the endorsed companies. In case of any changes or addition of jobs, official approval must be obtained. • Ninety-day reporting to Immigration extended to one year • No re-entry permit required for re-entering Thailand on the same visa • Spouses and children are granted the same right to stay in Thailand • Spouses are granted permission to work in Thailand with no work permit required (the work must not be prohibited for foreigners)

Spouses and children of SMART Visa holders receive an "O" type visa.

HOW TO APPLY FOR A SMART VISA?

1. The first step requires an applicant to apply for endorsement of their qualifications for obtaining a SMART Visa.
2. Applications can be filed at the One-Stop Centre for Visas and Work Permits (OSS) located at Chamchuri Square Building in Bangkok or at a Thai embassy or consulate, in cases where the applicants are residing outside Thailand.
3. The process of qualification endorsement would take thirty working days. Applicants that already hold another type of visa must submit their application for qualification endorsement at least ninety days before expiration.
4. After obtaining the qualification endorsement, the applicant may proceed with the SMART Visa application at the OSS or Thai embassy or consulate in case of residence outside of Thailand. he endorsement letter will be valid for sixty days.

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BDO has a dedicated team of Tax specialists who are committed to delivering a consistently high quality of services. With a wealth of global resources within our grasp while possessing an in-depth understanding of local business needs and regulations, combined with the quality of staff and experience with clients, multi range of industries and projects, we can provide excellent value proposition for any business.

For more information, please contact the following BDO offices in ASEAN.

BRUNEI
T: +673 333 6589
F: +673 334 0010
E: info@bdo-bn.com
www.bdo.com.bn

CAMBODIA
T: +855 23 218 128
F: +855 23 993 225
E: info@bdo.com.kh
www.bdo.com.kh

INDONESIA
T: +62 21 5795 7300
F: +62 21 5795 7301
E: bdoidn@bdo.co.id
www.bdo.co.id

LAO PDR
T: +856 21 265 609
F: +856 21 265 608
E: info@bdo.com.la
www.bdo.com.la

MALAYSIA
T: +603 2616 2888
F: +603 2616 2970
E: bdo@bdo.my
www.bdo.my

MYANMAR
T: +95 9 952143899
E: info@bdo.com.mm
www.bdo.com.mm

PHILIPPINES
T: +63 2 844 2016
F: +63 2 844 2045
E: makati_user@bdo-roxascruztagle.ph
www.bdo-roxascruztagle.ph

SINGAPORE
T: +65 6828 9118
F: +65 6828 9111
E: info@bdo.com.sg
www.bdo.com.sg

THAILAND
T: +66 2 260 7290
F: +66 2 260 7297
E: bdo@bdo.co.th
www.bdo.co.th

VIETNAM
T: +84 28 3911 0033
F: +84 28 3911 7439
E: bdo@bdo.vn
www.bdo.vn

ASEAN Investment & Tax News is published by:
BDO Tax Services Sdn Bhd
Level 8
BDO @ Menara CenTARa
360 Jalan Tuanku Abdul Rahman
50100 Kuala Lumpur, Malaysia
T: +603 2616 2888
F: +603 2616 2970
E: bdo@bdo.my

www.bdo.my

@bdomalaysia1
BDO Malaysia
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