

ASEAN INVESTMENT & TAX NEWS



FEATURE ARTICLE

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FOREWORD

Greetings and welcome to the second instalment of the ASEAN Investment & Tax News of 2021.

After almost a decade of negotiations, the Regional Comprehensive Economic Partnership ("RCEP") Agreement was signed on 15 November 2020 by 15 countries including all 10 ASEAN members, along with Australia, China, Japan, New Zealand and South Korea. Together, these RCEP participating countries account for about 30% of the global GDP and 30% of the world population. The ratification of the RCEP is expected to improve market access with tariffs and quotas eliminated in over 65% of goods traded and spur economic growth of the region which could be an important element of recovery from the COVID-19 pandemic.

Whilst RCEP presents opportunities in ASEAN, the military coup in Myanmar is a great concern and may have destabilising effects on the strategic environment of ASEAN. On 1 February 2021, the military in Myanmar declared a one-year state of emergency in Myanmar. According to the World Bank, Myanmar's economy is expected to contract by 10% this year. The forecast is a sharp reversal from the World Bank's previous economic update in October 2020, when it predicted Myanmar's economy would grow by 5.9%.

With hopes of a turnaround in the pandemic later this year, our tax experts continue to analyse and bring the latest in-depth updates and reforms from around the region.

Singapore is our feature article which discusses how Singapore is supporting businesses in Singapore to accelerate digital transformation, which are some of the key takeaways from the Singapore Budget 2021 announced on 16 February 2021.

In Malaysia, we discuss the recent Service Tax developments covering the Guide on Management Services and Guide on Information Services as well as the Service Tax (Amendment) (No. 2) Regulations 2020 gazetted on 31 December 2020.

Over in Thailand, our colleagues discuss the updates on transfer pricing in Thailand.

In Laos, we discuss the key highlights of recent instructions on the implementation of the income tax law covering profit tax, personal income tax, dividend tax and income tax on royalties and loan interest.

Meanwhile, in Cambodia, our colleagues talk about the Cambodia-Malaysia Double Tax Agreement ("DTA") which came into effect on 1 January 2021.

Finally, in Indonesia, we discuss the Regulation No. 237 PMK.010/2020 recently issued by the Indonesian Ministry of Finance providing guidance on tax facilities available to companies doing business in Special Economic Zones (Kawasan Ekonomi Khusus or KEKs).

I trust this publication will offer insights for your business and investment strategies in and around the region. BDO in our various offices across ASEAN are ready to assist you should you require any further information.

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FEATURE: SINGAPORE

DIGITAL TRANSFORMATION – SUPPORT FOR SINGAPORE BUSINESSES

Singapore Finance Minister unveiled the Singapore Budget 2021 on 16 February 2021. The Singapore Government rolled out measures to:

- a** spur the economy's recovery amidst the Covid-19 pandemic;
- b** help enterprises transform to seize opportunities and achieve growth; and
- c** continue its support for philanthropy and volunteerism, amongst others.

In this article, we shall focus on the key measures to accelerate digital transformation. The pandemic has, not only accelerated digitalisation amongst businesses in Singapore, but also brought to light the importance of adopting advanced technologies like 5G and artificial intelligence.

To support businesses to innovate and transform, the Singapore Government has introduced the following to create platforms for nurturing creative ideas:

- 1 Pilot Corporate Venture Launchpad**
Provides co-funding for corporates to build new ventures through pre-qualified venture studios
- 2 Enhanced Open Innovation Platform**
Facilitates the matching of companies and public agencies with solution providers according to challenges and problems faced, as well as co-funding prototyping and deployment of solutions

Accelerates digital innovation through the inclusion of two new technology offerings:

- a** Discovery Engine that facilitates the search and matching of technology solutions to challenges; and
- b** Digital Bench that aids faster Proof-of-Concept testing

- 3 Enhanced Global Innovation Alliance**
Expands cross-border collaboration between Singapore and major global innovation hubs, from 15 city links to more than 25 cities around the globe over the next 5 years

Includes the Co-Innovation Programmes which supports up to 70% of qualifying project costs.

The above would enable businesses to collaborate on a global scale and tap into a larger pool of resources and networks, to innovate, stay competitive and achieve critical success and growth. As part of Singapore Intellectual Property Strategy 2030, there will be tools for businesses to value and commercialise their intellectual property and intangible assets and train skilled professionals in these fields.

In addition to the above, mature enterprises will receive support from the Government under the following:

- 1** New Emerging Technology Programme where the Government will co-fund costs of trials and adoption of frontier technologies like 5G, artificial intelligence and trust technologies
- 2** Chief Technology Officer-as-a-Service where firms will have access to professional IT consultancies to enhance their adoption of digital solutions for their businesses

- 3** Digital Leaders Programme where help will be given to promising firms to hire a core digital team, and develop and implement a digital transformation roadmap
- 4** Continued support will be given to enterprises to innovate, transform and scale. Notably the level of support in schemes like Scale-up SG, Productivity Solutions Grant, Market Readiness Assistance and Enterprise Development Grant will be increased to 80% from September 2021 to March 2022.

As the Singapore Government has yet to announce details of some of the above measures, please stay tuned for further updates.

The support measures announced in this year's Budget are certainly welcomed by businesses especially the small and medium sized enterprises which should get a strong boost in their digitalisation and globalisation journey.



NEWS

CAMBODIA:

CAMBODIA-MALAYSIA DOUBLE TAX AGREEMENT NOW IN EFFECT

The Double Tax Agreement ("DTA")



between Cambodia and Malaysia



signed in 2019

come into effect on 1 January 2021, ushering in optimism and hope among the business communities in both countries to increase the bilateral trade and investment.



The director general of the Cambodia Chamber of Commerce has said that the main purpose of the DTA was made to prevent investors on both sides from paying income taxes on the same source of income. Under the DTA, tax paid by Cambodian companies in Malaysia will be deducted from the tax payable on the same income in Cambodia. Similarly, tax paid in Cambodia by Malaysian companies will be treated as a credit against the tax payable in Malaysia for the same income.

With the ratification of the DTA, the mechanism and system in DTA can be utilised by Malaysian companies and Malaysians living in Cambodia.

According to the Council for the Development of Cambodia ("CDC"),



Malaysia
was the **5th largest**
foreign investor
in Cambodia
in 2014 to 2018.

Cambodia's major exports to Malaysia are

- rice,
- ready-made apparels and agricultural products,

while the major imports from Malaysia are

- fabrics,
- petroleum products,
- electronic equipment and food products.

The ratification of the DTA is lauded as a new milestone in the two countries' bilateral trade relations and will greatly increase the inflow of foreign investments into Cambodia.

NEWS

INDONESIA:

IMPLEMENTATION GUIDELINES FOR TAX FACILITY IN SPECIAL ECONOMIC ZONES

On 30 December 2020, the Indonesian Ministry of Finance ("MoF") issued MoF Regulation No. 237 PMK.010/2020 ("PMK-237") as an implementing regulation for Government Regulation ("GR") No. 12 Year 2020 which was enacted from 24 February 2020. This regulation provides guidance on tax facilities available to companies doing business in Special Economic Zones (*Kawasan Ekonomi Khusus* or "KEK") and companies investing in certain business fields.



INCOME TAX FACILITIES

a Corporate Income Tax ("CIT") reduction facility

100% CIT reduction facility on CIT payable is available for companies making investments in KEK with the following time periods:

- 10 fiscal years for investment with an investment plan value of at least 100 billion rupiah;
- 15 fiscal years for investment with an investment plan value of at least 500 billion rupiah up to less than 1 trillion rupiah; and
- 20 fiscal years for investment with an investment plan value of at least 1 trillion rupiah.

Subsequent to the above fiscal years, the entity is eligible for an additional CIT reduction of 50% on CIT payable for 2 subsequent fiscal years.

The CIT reduction facility is provided for the following source of income:

- a Income from transfer of land and/or buildings in KEK;
- b Income from land and/or buildings rental in KEK; and
- c Income from main business activities in KEK other than point (a) and (b) above.

b Investment in Certain Business Fields and/or in Certain Regions

30% net income tax reduction facilities for 6 years (i.e 5% per year) on the total investment value in the form of tangible fixed assets, including land, used for main business activities.

In addition, there are tax facilities for accelerated fiscal depreciation and amortisation, reduction in withholding tax rate on dividends paid to non-residents from 20% to 10% (or may be lowered based on the prevailing tax treaty between Indonesia and the contracting state) and extension of tax loss carry forward extension from 5 years to 10 years from issuance of approval.

Criteria for CIT reduction facilities

To be eligible for CIT reduction facilities, an entity in KEK shall meet the following criteria:

- The entity is an Indonesian corporate taxpayer doing business activities in KEK with a minimum investment value of 100 billion rupiah;
- Has status of an Indonesian legal entity;
- Has never been issued any other tax facilities (e.g. KEK-tax holiday or KEK-tax allowance, tax holiday or tax

allowance provided to companies located in industrial zones; or additional deduction for labour intensive industry).

- Has commitment to realise the above investment within a period of not more than 4 years from issuance of approval.

VALUE ADDED TAX ("VAT") FACILITIES

VAT is not imposed on the following transaction:

- Import of certain taxable goods to KEK;
- Utilisation of intangible taxable goods or services in KEK;
- Delivery of certain tangible goods, intangible goods or services to KEK made by other places within the Customs Area, Free Trade Zone ("FTZ"), or Bonded Stockpiling Zone; and
- Delivery of certain goods, intangible goods or services between entities in the same KEK or between different KEK, excluding land and/or building rental for a period of less than 5 years.

However, VAT will be imposed on the delivery of domestic air transport services and telecommunications services (other than those using a fixed line to and from FTZ).

NEWS

LAOS:

INSTRUCTIONS ON THE IMPLEMENTATION OF THE INCOME TAX LAW

The Minister of Finance of Laos issued Instruction No.66/NA (the "Instruction") on 10 February 2021 to implement the Income Tax Law No. 67/NA dated 18 June 2019 (the "Law").

The key highlights are as follows:

PROFIT TAX

Under the Law, profit tax ("PT") is payable on an annual basis.

The prepayments of the PT are on 20 July and 20 January (of the following year) and is calculated using any one of 3 options i.e.

- i the actual profit generated during the period;
- ii an annual business plan; or
- iii the previous year's PT amount. The actual annual PT is based on the financial statements that are submitted by 31 March.

The Instruction introduces a new penalty

where should the outstanding annual PT amount due be **greater than 10%** of the prepaid PT, the excess will be subject to a **50% penalty**. The timing of when the penalty will come into effect is still uncertain.

PT will apply on goods supplied in Laos by non-residents, non-Lao-registered entities, and non-tax-registered entities either at importation or within 15 working days from the date payment is made. PT will also apply

on salaries that are paid to foreign employees overseas but are reverse charged to the Lao entity.

PERSONAL INCOME TAX

Under the Instruction, for the calculation of personal income tax ("PIT") it is calculated based on 30 working days in a month. Individuals that receive salaries from different sources must prepare and submit a monthly PIT declaration and recalculation summary of all salaries to the tax authority where they reside or where they submitted their last PIT calculation within 25 working days from the date of salary payment. Annual PIT audits will begin by 31 March 2021.

Under the Instruction, the employer is required to calculate the annual PIT and deduct the family support allowance for the employees based on the supporting documents provided by the employee. The annual PIT calculation and supporting documents must then be submitted to the tax authority. However, foreign employees are not entitled for the family support allowance.

In addition, the instruction also provides that **freelancers need to pay 5% PIT without any deduction.**

DIVIDEND TAX

Under the Instruction, dividends payable are subject to 10% dividend tax. However, gains of a Lao-registered holding company will not be treated as revenue and will be exempt from dividend tax. In addition, legal reserves that are set aside at a percentage greater than that required by an enterprise will also be subject to dividend tax.

INCOME TAX ON ROYALTIES

Royalties paid in Laos to both individuals and legal entities will be subject to **5% income tax regardless of their resident status.**

INCOME TAX ON LOAN INTEREST

Loan interest payable to non-resident and non-registered banks are subject to PT at a deemed rate. Furthermore, loan interest payable to resident, non-resident or non-registered individuals or legal entities that are not banks are subject to 10% income tax.



NEWS

MALAYSIA:

RECENT DEVELOPMENTS FOR TAX

OVERVIEW

During the 39th World Customs Day celebration held virtually on 2 February 2021, the Malaysian Finance Minister Tengku Datuk Seri Zafrul Tengku Abdul Aziz stated that the Royal Malaysian Customs Department ("RMCD") has collected a total of RM38.67 billion in revenue in 2020 which exceeded the initial projection of RM36.30 billion. In view of the even higher budgeted collection of RM42.50 billion in 2021, the RMCD may be relying on the enhanced enforcement provisions in the indirect tax legislation in order to meet the said budget.

RECENT DEVELOPMENTS FOR SERVICE TAX

1 Guide on Management Services which was updated on 15 January 2021 ("the Management Guide")

The Service Tax Act 2018 and Service Tax Regulations 2018 do not define the term "management services". Instead, the Management Guide (which is currently only available in the national language) sets out the RMCD's interpretation of "management services" which includes any arrangement or coordination activities to provide services to customers, and which are not categorised under any specific taxable service. These activities comprise of organising, supervising, monitoring, planning, controlling and directing various resources such as human resources, finance, technology, whether physical or otherwise.

"Maintenance management services" was specifically included as taxable services in the Service Tax Regulations 2018 effective from 1 January 2019

Based on the Management Guide, maintenance management services provided on goods, building or land **owned** by its customer is subject to service tax. It is also generally understood by the RMCD that maintenance management services refer to "preventive" maintenance services and not to "corrective" maintenance services. The RMCD would generally consider scheduled maintenance services as "preventive" in nature and

therefore be subject to service tax. Conversely, ad-hoc maintenance services which are not scheduled may be viewed as "corrective" in nature and therefore not be subject to service tax.

Previously, the RMCD had confirmed to some businesses that building management service charged to a tenant by the landlord is not subject to service tax. However, the RMCD has now clarified via Example 5A in the Management Guide that if the rental charges and maintenance service fee are charged **separately**, the maintenance service fee would be subject to service tax.

In view of the apparent change of interpretation and the potential increase in cost to businesses, we understand there will be further dialogues between businesses, professional bodies, RMCD and the Ministry of Finance on this matter.

2 Guide on Information Technology Services which was updated on 8 March 2021 ("the IT Guide")

The RMCD has updated the IT Guide to further clarify that any IT service acquired by a registered person from outside Malaysia where the registered person subsequently provides the same taxable service to its customers is not subject to service tax. This is in line with service tax policy 2/2020 issued by the RMCD on 1 January 2020.

AMENDMENT TO SERVICE TAX REGULATIONS

The Service Tax (Amendment) (No. 2) Regulations 2020 was gazetted on 31 December 2020 and came into effect on 1 January 2021.

A notable update in the Service Tax (Amendment) (No. 2) Regulations 2020 is the Amendment to Regulation 11 – Issuance of credit note and debit note:

- Sub-regulations (1), (2)(a) and 2(c) have been amended by substituting the words "a person" to "any registered person".

- Sub-regulation (2)(b) has been amended to the following paragraph:

"in the case of a registered person who has ceased to be a registered person, such person shall make a deduction or addition of service tax in the return for the last taxable period during which he was registered."

The amendment to Regulation 11 is only applicable to service tax registrants under Service Tax Act 2018.



ACTIONS TO BE CONSIDERED

Businesses especially in the real property industry should review their current terms of agreement with their tenants to take into account on any impact in relation to the interpretation of maintenance management services from the updated Guide issued by RMCD for service tax compliance.

At the same time, businesses are encouraged to review their transactions with their overseas suppliers to determine eligibility for service tax exemption as provided in the IT Guide issued by the RMCD.

NEWS

THAILAND:

COMPREHENSIVE UPDATES ON THAILAND TRANSFER PRICING

Since Thailand joined the Inclusive Framework on 'Base Erosion and Profit Shifting' (BEPS) in 2017, we have witnessed several developments in 'Transfer Pricing' (TP) legislation in the country. As a signatory to the framework, Thailand is required to implement certain international tax standards, focusing on Country-by-Country Reporting, exchange of information on request, and the automatic exchange of financial account information (the "Common Reporting Standards").

While Thailand has had TP guidelines (Departmental Instruction No. Paw 113) since 2002

the TP law was issued only in November 2018

and was made applicable for accounting years starting on or after 1 January 2019

The update includes the requirement for companies or juristic partnerships with an annual income of THB 200 million or above to file a 'disclosure form' along with the annual corporate income tax return. These taxpayers are now required to file online forms in 2021, the second year of filing the TP disclosure form. Manual submission may be allowed with approval from the 'Thai Revenue Department' (TRD). Failure to comply with the submission requirements, including submission of inadequate or inaccurate information, will result in a fine not exceeding THB 200,000.



In November 2020, the TRD issued a further regulation (Ministerial Regulation No. 369) providing the rules and conditions to be followed by tax assessment officers in performing adjustments of revenue and expenses of companies or juristic partnerships if the transactions, including commercial and financial arrangements between related parties, are not conducted independently and are believed to be shifting profits.

The regulation defines "commercial and financial arrangements" as agreements or contracts relating to purchase of goods or services, marketing, advertising, or any other commercial activities, loan, financial support, financial cooperation, or any other financial activities, regardless of whether or not made in writing.

The arrangement will be deemed shifting of profit if the price, conditions, method, etc. are different from what they would be if the arrangement was made with third parties in similar circumstances. The comparability of the arrangement may be checked using internal data of the company or juristic partnership having similar arrangements with third parties. If there are no internal data to check the comparability, external data may be used. The prescribed bases, procedures, and conditions for adjustment of income and expenses were issued in January 2021 (Notification of the Director-General of Revenue Department relating to Income Tax No. 400).

NEWS

THAILAND:

COMPREHENSIVE UPDATES ON THAILAND TRANSFER PRICING (Cont'd)



The Director-General Notification (DGN) applies to assessable income for accounting years starting on or after 1 January 2021. The DGN provides the methods for comparability and in determining the arms-length price. The comparability of transactions must satisfy the criteria provided in the regulation.

The prescribed methods for benchmarking and respective financial indicators are:

Price for the comparable uncontrolled price method;

Rate of profit from resale, for the resale price method;

Rate of profit from cost plus, for the cost-plus method;

Rate of net profit, for the transactional net margin method;

Share of profits from operations, for the transactional profit split method; and

Any other method, if the above methods cannot be applied.

If other methods are considered for benchmarking, the Director-General of Revenue Department must be notified and examined by the tax officer. An aggregated benchmarking approach will only be allowed for closely linked transactions that cannot be benchmarked or analysed separately.

For service transactions, the actual need and benefits derived from the services are also required to be considered and shown, in addition to the benchmarking analysis.

For transactions relating to intangible assets, the function, asset and risk analysis must be conducted. The functional analysis should include a study of the responsibility of each contracting party relating to development, enhancement, maintenance, protection, and exploitation (DEMPE analysis) of the intangible asset. If the transaction relates to the right to use, sale or transfer of the intangible asset, the expected benefits, geographical limitations, etc., must be considered.

Based on the adjustments carried out, following the methods prescribed in the DGN, the other party may have consequent adjustments, in accordance with the local regulations, if the other party is a Thai company or a juristic partnership, or in accordance with the applicable double tax agreements signed by Thailand, if the other party is a taxpayer registered under foreign laws.

BDO Insight:

In June 2020, Thailand participated in the international efforts against tax evasion and tax avoidance by signing up for the 'Multilateral Convention on Mutual Administration Assistance in Tax Matters' (Convention).

The Convention will enable Thailand to exchange information with other tax jurisdictions and get assistance in tax collection.

In order to adopt the international standards on taxation and in implementing transparency standards of the base erosion and profit shifting (BEPS), Thailand has been continuously updating its domestic laws. Thailand has also issued the draft regulation on Country-by-Country reporting, which is expected to be enacted before August 2021, and will be applicable for accounting years starting on or after 1 January 2020.

The TP disclosure form is being used as a risk assessment tool to check if multinational enterprises (MNEs) engaged in controlled transactions are transacting at arm's length. The now mandatory electronic submission of the form may ease preliminary evaluations on intercompany arrangements. It may later be subject to further examination in accordance with the DGN and consequent adjustments during a tax audit.

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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.

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