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ASEAN INVESTMENT & TAX NEWS

FEATURE ARTICLE

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FOREWORD

Greetings and welcome to the second issue of the 2019 ASEAN Investment and Tax News (AITN). As we round up the first quarter of the year, there are positive signs regarding the trade talks between China and America, as new deals have been struck between the economic superpowers that are aimed at de-escalating the trade war.

Meanwhile, in the ASEAN region, South Korean president Moon Jae-In, made a three-nation visit to Malaysia, Brunei and Cambodia to forge stronger ties. South Korea remains an important economic and trading partner with ASEAN, with president Moon advancing South Korea's New Southern Policy, which aims at reducing South Korea's reliance on the United States, China, Japan and Russia by expanding ties with Southeast Asian nations and India.

Malaysian Prime Minister, Tun Dr Mahathir Mohamed has met with the premier to discuss various bilateral interests and a push towards a Free-Trade Agreement (FTA) between the two nations. Both countries hope to sign an FTA by the end of 2019.

Bilateral trade volume between the two countries has grown from USD 15.76 billion in 2017 to USD 17.98 billion last year with South Korea becoming Malaysia's eighth-largest trading partner, globally, according to the South's trade ministry.

With another exciting quarter in the ASEAN economic environment, our tax experts continue to analyse and bring the latest in-depth updates and reforms from around the region.

Our feature article touches on Lao's Amended Law on Value Added Tax (VAT). Our Lao colleagues summarise key points to note from the Amended Law, with the changes touching on taxable supplies, VAT exemptions, VAT refunds and more.

In Malaysia, the Minister of Finance has introduced a new Special Voluntary Disclosure Programme (SVDP) for eligible taxpayers during the 2019 Budget announcement. This programme aims to encourage taxpayers to voluntarily disclose any unreported income and settle the tax arrears. Malaysian taxpayers' should find this an important read before the 30 April deadline.

Our Indonesian colleagues, meanwhile discuss the updated Certificate of Domicile for Foreign Tax Residents. Called PER-25, it merges the existing DGT-1 Form and DGT-2 Form into a single DGT Form. Be sure to read on to find out about the changes.

In Cambodia, we look at the Sub-decree No. 01 on Tax Incentives for the Securities Sector, which provides that companies listed in the local bourse would be entitled to a 50% deduction on their income tax. The main aim of the Sub-decree is to encourage more companies to the CSX and to incentivise companies that are already in it.

Finally, in Thailand, we discuss the New International Business Centre (IBC) Regime. The new tax regime was in response to an OCED report that pointed out 4 previous tax regimes in Thailand were 'harmful'. The new regime dictates that companies must meet a higher expenditure threshold to qualify for tax incentives, with a minimum annual expenditure in Thailand of THB 60 million a year.

We trust the updates shared here will give you insights into key developments on tax and investment, in and around the region. Please contact us if you would like to have more information or comprehensive advice on any of the news or articles presented in this publication.

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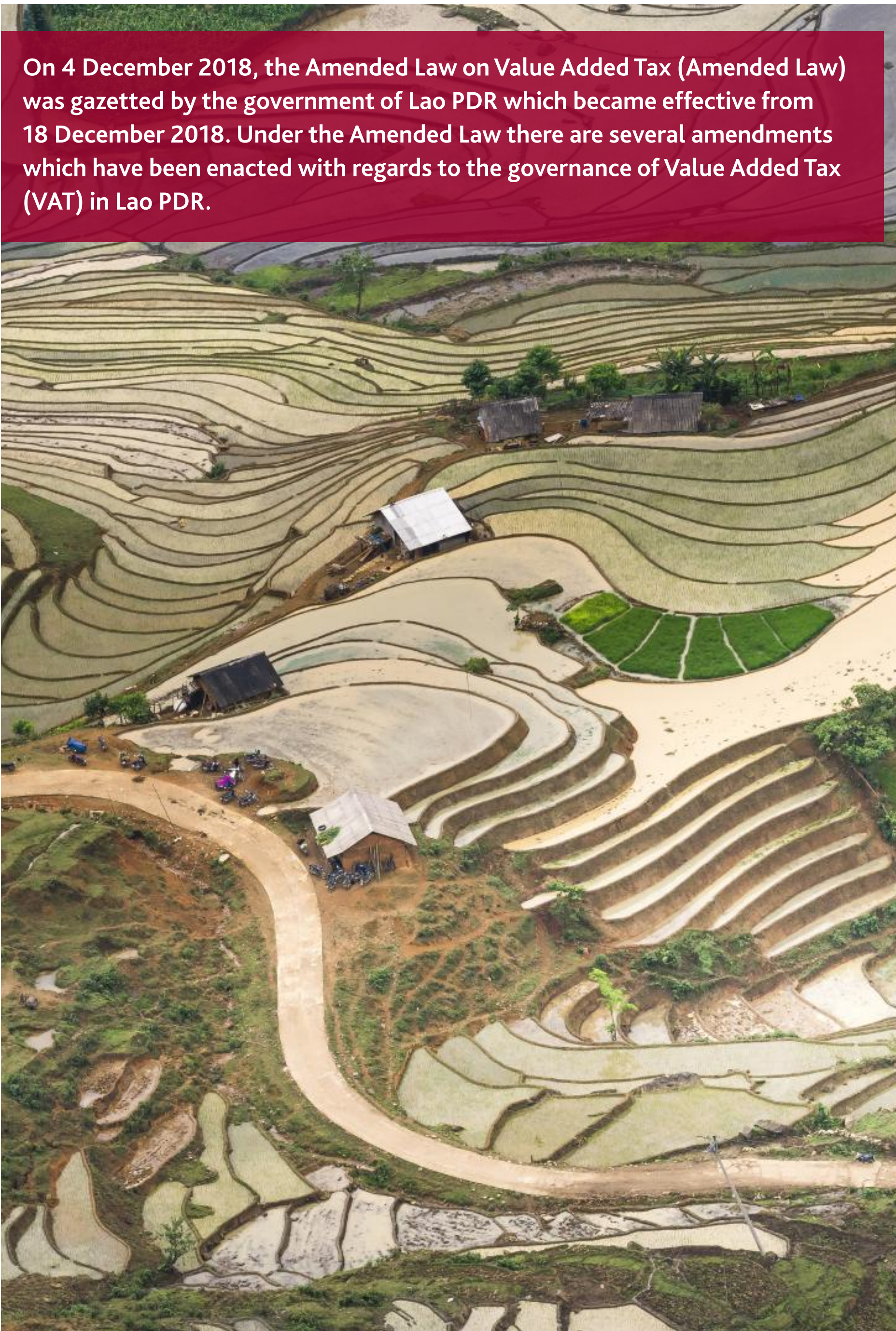
FEATURE: LAO PDR

NEW AMENDED LAW ON VAT

On 4 December 2018, the Amended Law on Value Added Tax (Amended Law) was gazetted by the government of Lao PDR which became effective from 18 December 2018. Under the Amended Law there are several amendments which have been enacted with regards to the governance of Value Added Tax (VAT) in Lao PDR.



Firstly, the Amended Law applies to individuals, legal entities or organisations who operate business activities under the VAT system, customs authorities and purchases of goods and services from non-residents or residents that are not registered in according to the laws of the Lao PDR.

The filing dates for VAT under the Amended Law are as follows:

1. For individuals and businesses carrying on business in the Lao PDR: 15th day of the following month.
2. VAT on imports: Paid at the time of importation.
3. For payments relating to services from non-resident suppliers:
   a. 15th day of the following month for individuals and businesses in the VAT system
   b. Within 15 days from the date of payment for individuals and business that are not in the VAT system.

Under the Amended Law, the following are deemed as taxable supplies for VAT purposes:

1. Importation of goods;
2. Supplies of goods and services in the Lao PDR by individuals, legal entities or organisations who are registered under the VAT system in the Lao PDR;
3. Supplies of service by non-residents who are not registered in the Lao PDR;
4. Supplies of services outside of special economic zones; and
5. Supplies of goods and services by electronic means.

FEATURE: LAO PDR
NEW AMENDED LAW ON VAT (Cont'd)

The Amended Law also provides a list of products which are exempted from VAT. The examples of items exempted from VAT are as follows:

1. Health and life insurance;
2. Equipment and machinery used in agriculture;
3. Materials and equipment that could not be produced in the Lao PDR;
4. Machinery that is to be used as fixed assets in production;
5. Goods for embassies and international organisations in the Lao PDR (however, pre-authorisation by the relevant Ministry is required);
6. Learning and teaching text books;
7. Animal medicines;
8. Medical tools and equipment for hospitals and health centres; and
9. Deposit and lending interest and financial transactions of commercial banks.

With regards to the deemed place of supply for VAT, the Amended Law provides several special rules that are used to determine where the supply of the goods or services occurs:

1. The place of supply of goods that are not transported is deemed to be where the goods are at the moment of supply;
2. If goods supplied includes installation or assembly, the supply is deemed to take place where the installation or assembling takes place;
3. For services, the place of supply will be where the receiver of the services has their usual evidence and is established;
4. Consulting services that relate to information in the Lao PDR will be supplied in Lao PDR regardless of where the receiver of the service resides;
5. Post and telecommunications services are supplied in Lao PDR if the supplier is established in the Lao PDR irrespective if the receiver is located abroad;
6. Services that relate to immovable assets such as design, maintenance, repair are deemed to be supplied in Lao PDR if the assets are located in the Lao PDR; and
7. Tourism services sold as a package is supplied where the tours take place.

Under the Amended Law, the rates of VAT are as follows:

1. 10% for imports and the supply of goods and services within Lao PDR; and
2. 0% for the exporting of goods to other countries.

The Amended Law provides that input credits are available on VAT that is directly related to goods and services used in production, business operations or supply of services that are subject to VAT. In order to be eligible for the input credit, there are several criteria that a taxpayer must fulfil which includes having proper invoices.

Finally, under the Amended Law VAT the following persons are eligible to claim VAT refunds:

1. Businesses that are exporting goods;
2. Businesses that merge or cease activities;
3. Businesses that have not claimed deduction for VAT credits within three months from the date that the VAT was due;
4. International organisations and embassies that have been certified by the Ministry of Foreign Affairs;
5. Tourists at international airports in the Lao PDR who have bought goods in Laos for consumption in other countries; and
6. Businesses and individuals who have overpaid VAT.

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NEWS

CAMBODIA: TAX INCENTIVES TO ENCOURAGE LISTINGS IN BOURSE

On 4 January 2019, the Prime Minister of Cambodia, signed and issued Sub-decree No. 01 on Tax Incentives for the Securities Sector (the Sub-decree) which provides that companies listed in the local bourse would be entitled to a 50% deduction on their income tax.

Furthermore, the Sub-decree also provides exemptions on withholding taxes and value-added taxes, among others, for companies that launch an initial public offering (IPO) at the Cambodian Securities Exchange (CSX) in the next 3 years. The main aim of the Sub-decree is to encourage more companies to the CSX and to incentivise companies that are already in it.

Besides the 50% income tax deduction, the Sub-decree also provides that companies that launch IPOs with the next 3 years shall receive exemptions from income tax, withholding tax, value-added tax, specific tax, tax on certain merchandises and services and the public lighting tax for the companies in the primary and growth markets. Furthermore, the Sub-decree also states that investors of the listed companies are entitled to a 50% deduction on the withholding tax on interest and dividends received for 3 years from the date of issuance of the Sub-decree.

However, the incentives under the Sub-decree do not apply to Qualified Investment Projects (QIPs) that already enjoy tax exemptions under the Investment Law.

INDONESIA: NEW CERTIFICATE OF DOMICILE FOR FOREIGN TAX RESIDENTS

The Indonesian Directorate General of Tax (DGT) has issued Regulation No. PER-25/PJ/2018 (PER-25) on 21 November 2018 which revokes DGT Regulation No. PER-10/PJ/2017 (PER-10), effective on 1 January 2019. Previously prepared Form DGT-1 and Form DGT-2 are valid until 31 December 2018.

The new Form DGT is valid for a maximum twelve months and may cover different fiscal years which are not on a calendar basis. For example, the new Form DGT is valid for a twelve-month (12-month) period from February 2019 to January 2020, covering fiscal years 2019 and 2020. PER-25 does not require the new Form DGT to be furnished for every transaction and the amount of income and type of transaction are not required to be declared on the new Form DGT.

Pursuant to PER-25, the new Form DGT combines both Form DGT-1 and Form DGT-2. The new Form DGT consists of seven (7) parts covering two (2) pages, that must be filled by foreign tax residents in accordance with the criteria set out in the Attachment of PER-25.

Regarding the anti-tax treaty abuse tests in Part V of the Form DGT, PER-25 has been updated to include Question No. 6 which states that "The entity has the same legal form and economic substance either in the entity's establishment or the execution of its transaction". In addition, Question No. 11 has been updated which states that "The purposes of the transaction is to directly or indirectly obtain the benefit under the convention that is contrary to the object and purpose of the DTC".

Regarding the beneficial ownership tests in Part VI of the Form DGT, PER-25 limits the exception on Question No. 3 which states that "No more than 50 per cent of the entity's

income is used to satisfy claims by other persons". The exception is limited to giving fair compensation to employees or payments to other parties for costs incurred in carrying out their business.

Form DGT reporting is now available online via the DGT's website or certain channels determined by the DGT. For the first transaction between the foreign tax resident and the Indonesian tax withholder for the tax period stated in Form DGT, the foreign tax resident must provide Form DGT to the related Indonesian tax withholder. Thereafter, the tax withholder shall input the information on Form DGT and submit to the DGT. Upon submission, the tax withholder will receive an Electronic Receipt Note which is treated as a Form DGT and forward to the foreign tax resident.

If the foreign tax resident has received the Electronic Receipt Note, only copies are required to be provided to the other Indonesian tax withholders, in accordance with the tax period stated in Form DGT. The Indonesian tax withholder should prepare a withholding tax slip for every transaction made with foreign tax residents and attach the Electronic Receipt Note together with the Monthly Article 26 Income Tax Return for submission.

NEWS
MALAYSIA:
SPECIAL VOLUNTARY DISCLOSURE PROGRAMME

During the 2019 Budget announcement, the Minister of Finance introduced a new Special Voluntary Disclosure Programme (SVDP) for eligible taxpayers. This programme is offered to encourage taxpayers to voluntarily disclose any unreported income and settle the tax arrears, if any, within the period of 3 November 2018 until 30 September 2019. The programme was further updated on 7 April 2019.

This programme is in line with the implementation of the Common Reporting Standard (CRS) for the Automatic Exchange of Financial Account Information (AEOI) on 30 September 2018 where the Inland Revenue Board of Malaysia (IRBM) will exchange through AEOI with the participating foreign tax authorities of those non-residents and would also be receiving AEOI on Malaysian residents from other countries' tax authorities.

The IRBM has indicated that it will accept in good faith all voluntary disclosure made during this programme period and no further review will be made on the reported information.

In line with this introduction, the IRBM has issued the Operational Guidelines No. 1/2018 and a set of frequently asked questions on the SVDP to public. Under these guidelines, SVDP covers the following cases:

a. Unreported income, under-declared income and over-claimed expenses/ reliefs/ deductions/rebates, under the Income Tax Act (ITA) and the Petroleum Income Tax Act (PITA);
b. Unreported real property gains under the Real Property Gains Tax Act (RPGTA);
c. Instruments not stamped exceeding six (6) months after stamping period; and
d. Cases under audit or investigation.

Under the existing Tax Audit Framework 2018, penalty imposed by the IRBM are as follows:

a. If there is understatement or omission of income arising from the audit findings, a penalty under Section 113(2) will be imposed under the ITA equal to 100% of the amount of tax payable. However, the DGIR may use discretion to impose a penalty at a reduced rate of 45% on the understated tax under Section 124(3); and

b. Penalty for a taxpayer that meets its tax return filing deadline and makes a voluntary disclosure before the commencement of an audit are as follows:

Timing of Voluntary Disclosure	Penalty Rate
Within 60 days from the tax return filing deadline	10%
After 60 days but less than 6 months from the tax return filing deadline	15.5%
More than 6 months from the tax return filling deadline	5%

NEWS
MALAYSIA:
SPECIAL VOLUNTARY DISCLOSURE PROGRAMME (Cont'd)

After the introduction of SVDP, the abovementioned penalty rates are further reduced according to payment deadlines as follows:

Category	Period of SVDP	Penalty rate	Payment to be made on or before
Under-declared income and over-claimed expenses/ reliefs/ deductions/rebates, under ITA and PITA; and Unreported real property gains under RPGTA	3 November 2018 until 30 June 2019	10%	1 July 2019
	1 July 2019 until 30 September 2019	15%	1 October 2019
Unstamped instruments	3 November 2018 until 30 June 2019	10% or a minimum of RM50	1 July 2019
	1 July 2019 until 30 September 2019	15% or a minimum of RM100	1 October 2019

Failure to settle the tax within the stipulated SVDP deadlines will result in an increase in tax and legal action to be taken.

A minimum penalty rates of 45% and up to 300% will be imposed after the expiry of SVDP on 30 September 2019 to those taxpayers who fail to file their respective tax returns correctly and accurately.

In a nutshell, the SVDP provides taxpayers with an opportunity to report and pay Malaysian tax on undeclared income at much lower penalty rates than the existing penalty rates with less stringent procedures given the IRB's willingness to accept the SVDP in good faith and no further review will be made on the reported information.

NEWS

THAILAND:
NEW INTERNATIONAL BUSINESS CENTRE REGIME (IBC)

Strategically located within Southeast Asia with networks of modern infrastructure, quality skilled labour and easy access to raw materials, Thailand has strived to compete with other regional contenders for the regional hub status. This has led to the introduction of a number of tax incentive packages to attract multinationals to locate their headquarters and shared service centres in Thailand.

In 2017, Thailand joined the OECD's Inclusive Framework on Base Erosion and Profit Shifting (BEPS). BEPS Action 5 is one of the four BEPS minimum standards which all Inclusive Framework members have committed to implement. One part of the Action 5 minimum standard relates to preferential tax regimes where a peer review is undertaken to identify features of such regimes that can facilitate base erosion and profit shifting, and therefore have the potential to unfairly impact the tax base of other jurisdictions

In the OECD's 2017 Progress Report on Preferential Regimes that feature harmful tax practices, it identified Thailand's International Headquarters, Regional Headquarters, Treasury Centre and International Trade Centre regimes as Preferential Regimes that feature harmful tax practices.

In response to this, the four regimes were suspended in October 2018, paving way for the New International Business Centre (IBC) Regime.

The tax incentives offered to an IBC are contained in Royal Decree no. 674 issued under the Revenue Code (Royal Decree).

Now companies must meet a higher expenditure threshold to qualify for tax incentives, with a minimum annual expenditure in THB 60 million a year.

Conditions to qualify for the scheme

- The company must be setup under Thai law to provide qualifying support services or treasury services to its affiliates
- The company must have paid up capital of at least THB 10 Million on the last day of each accounting period
- The company must have annual operating expenditure in Thailand of at least THB 60 Million
- The company must have at least 10 qualified employees or at least 5 if it acts only as a treasury centre

NEWS

THAILAND:
NEW INTERNATIONAL BUSINESS CENTRE REGIME (IBC) (Cont'd)

Tax Benefits/Incentives available

Under the Royal Decree, qualifying companies under the new IBC regime will be eligible for a number of benefits/incentives for a standard period of 15 years, including:

- Reduced corporate tax rate on qualifying income as follows:
  1. A 3% rate if the IBC incurs at least THB 600 Million expenditure locally per annum;
  2. A 5% rate if the IBC incurs at least THB 300 Million expenditure locally per annum;
  3. A 8% rate if the IBC incurs at least THB 60 Million expenditure locally per annum
- Tax exemption on both domestic and foreign sourced dividend income derived from affiliates
- Withholding tax exemption on dividends paid to offshore shareholders and on interest payments to foreign beneficiaries in relation to loans for treasury activities
- Exemption from specific business tax on qualifying treasury centre income
- Flat personal income tax rate of 15% for eligible expatriate employees

A company must apply to the Revenue Department in order to obtain approval to use the tax incentives.

Revocation of benefits

Where any of the conditions are not met in a particular year, the incentives would cease to apply for that year.

However, if the IBC does not meet the prescribed conditions in consecutive years as well, the IBC status may be revoked and the incentives granted in previous years withdrawn.

Conversion to IBC

For companies that have been approved for incentives under the prior regimes, those incentives will generally continue to apply until the approval expires except for certain Regional Headquarter companies, that may only apply incentives until 2020. Companies under the prior regimes may also apply to convert to the IBC regime, subject to meeting the prescribed conditions.

Non-Tax Benefits available

In accordance with the government's policy to promote the new IBC regime, Thailand's Board of Investment (BOI) also offers non -tax incentives.

An IBC promoted by the BOI would be entitled to receive non-tax incentives, such as:

- Permission for 100% foreign ownership of the IBC
- Visa and work permit privileges for foreign nationals working for the IBC
- Permission to own land for use in the business of the IBC

Machinery used for R&D or in training can receive import duty exemption.

Other key considerations

Thailand has recently legislated transfer pricing rules for related party transactions. It will therefore be imperative for businesses contemplating to establish an IBC in the Kingdom, to adequately consider the pricing of its transactions with related parties.

Taxpayers are suggested to be cautious while framing policies for inter-company services as these charges are highly likely to be reviewed by recipient country(s) tax authorities as well. It is recommended that an IBC establishesand documents specific protocols for identifying chargeable costs to each affiliate. A benchmarking exercise should be undertaken to determine the appropriate pricing of charges to affiliates.

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