

# Rödl & Partner

# OPENING DOORS

## INTERNATIONAL TURNKEY CONTRACTING IN ASEAN

Quick Guide on Essential Aspects of Engineering,  
Procurement and Construction Operations (EPC)  
in selected Southeast Asian countries

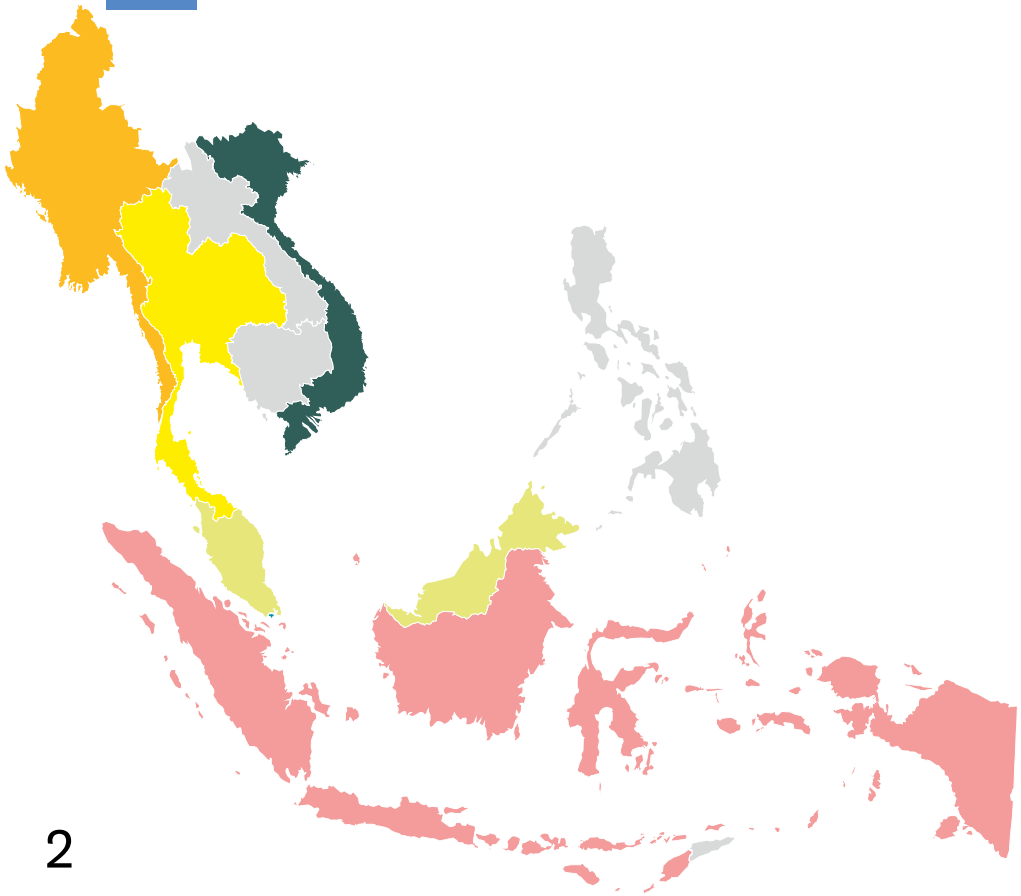


# Abbreviations

## ABBREVIATIONS

ID	Indonesia
MY	Malaysia
MM	Myanmar
SG	Singapore
TH	Thailand
VN	Vietnam

DTA	DTA refers to the Double Taxation Agreement between Germany and the respective country.
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## PART I: TAX CONSIDERATIONS

When is a permanent establishment (PE) generally triggered for on-site works? Is this issue treated differently in a double taxation agreement between your jurisdiction and Germany?

ID	Based on Indonesian Income Tax Law, on-site works related to construction, installation and assembly automatically trigger PE without any time test. However, based on the double taxation agreement (DTA) between Indonesia and Germany, a building site or construction or installation project constitutes a permanent establishment only if it lasts for more than six months.
MY	PE triggered with fixed place of business to conduct business operations, incl. place of management, branch, office, factory, workshop. Under DTA, building site, construction, installation or assembly project constitutes PE only if duration exceeds nine months.
MM	Under Myanmar Companies Law foreign natural or legal persons doing business onshore for more than 30 days and / or involving more than one transaction, need to register legal entity with Directorate of Investment and Company Registration. No DTA with Germany.
SG	Under domestic tax law, PE is triggered where i.a. a person (incl. corporations) carries on supervisory activities in connection with a building or work site or a construction, installation or assembly project. No minimum time threshold for PE exclusion, but under DTA, PE is deemed if project duration exceeds 12 months.
TH	Under the Thai Revenue Code, a foreign company is deemed to carry on business in Thailand and therefore has to pay tax in Thailand if this foreign company has an employee, agent or go-between for carrying on business and receives income onshore. DTA deems PE after (i) 6 months in case of installations or setting up of plant equipment or machinery including auxiliary construction and (ii) 3 months in all other cases.

VN	Under DTA, PE is defined as building site or construction or installation project which lasts more than six months. Under Vietnamese guidance on DTAs, a 6 months period is calculated from the date contractor commences preparation for onshore construction, including time of discontinuance of project.
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Is it a common approach in your jurisdiction to split EPC contracts in on and offshore parts to mitigate tax risks?

ID	Yes. In case EPC project triggers PE, taxable income of foreign contractor would consist of contracted goods and services value, which can be differentiated through splitting to limit local taxable income to onshore services. Particularly under DTA Protocol, supply of goods is not attributable to taxable profit of PE.
MY	Yes, contract split is commonly based on supply of goods / services onshore or offshore. Besides mitigating tax risks aspects such as limiting liability for contractor and local licensing cost are considered.
MM	Due to transition period and changing legal framework as well as current political situation, there is no common approach for split contracts yet.
SG	Yes, commonly based on supply of goods / services. Besides mitigating tax risks considerations include limiting liability for contractor and cost reduction to comply with local licensing regulations.
TH	Yes, generally to minimize withholding tax. Simplified, offshore part typically covers delivery of goods and materials and onshore part services and works, the latter being subject to a 3% WHT. Otherwise, the entire contract value is generally subject to 5% WHT (including the offshore part).
VN	EPC contractors can choose to declare Foreign Contractor Withholding Tax under one out of three methods: (i) the Credit Method, (ii) the Hybrid Method and (iii) the Withholding Method. In Withholding or Hybrid Method, EPC contract splitting might optimize FCWT, esp. if machinery and equipment are supplied by EPC contractors, while other services like construction, supervision are performed by onshore personnel.

Are there any specific taxes to be observed for EPC contracts in your jurisdiction?

ID	PE with EPC activities is subject to final tax, collected largely through withholding tax mechanism, whereby owner withholds 2.65% – 6% from contractor's gross income (contract value). PE is also subject to branch profits tax of 20% (comparable to dividend taxation) under domestic Income Tax Law; under DTA 10%.
MY	No specific tax regime for EPC contracts, income tax would be major issue for consideration followed by sales and service tax as well as withholding tax.
MM	Commercial Tax, Corporate Income Tax, Withholding Tax, Special Goods Tax, Personal Income Tax and Stamp Duty should be considered; no further specific taxes for EPC contracts apply.
SG	No specific tax regime. Income tax would be major for consideration, followed by goods and services tax depending on type and extent of supply. Other taxes/fees include withholding tax, import and stamp duties, local construction and property license fees and duties.
TH	The main relevant taxes are withholding tax, 7% value added tax and stamp duty at commonly 0.1% on contract value. Further, corporate income tax will apply in case of PE at a rate of 20%.
VN	Foreign Contractor Withholding Tax is generally applied, consisting of CIT and VAT elements. Besides, import tax applicable to imported machinery and equipment imported for the purpose of project execution and personal income tax on income earned by individuals working onshore for the projects.

## PART II: INVESTMENT CONSIDERATIONS

Are there specific investment or other permits/licenses necessary for EPC works in your jurisdiction?

ID	EPC is deemed as a construction service which requires business licenses in the form of business registration number (NIB), verified standard certificate and business entity certificate (SBU). Depending on the type of construction services offered, other permits may apply.
MY	Yes, companies are required to apply for contractor license with Construction Industry Development Board. There are different license types, subject to equity shareholding, which respectively apply to local, foreign, international or joint venture / consortium contractors.
MM	Depending on business sector, investment amount, necessity of long term property lease agreements and other factors, permits and licenses may be required or beneficial from tax perspective.
SG	No specific investment permits/licenses required, but several permits, approvals and licenses to set up a construction company to provide EPC works e.g. professional engineering services must be licensed by Professional Engineers Board.
TH	Foreign Business License required prior to engaging in construction works or services, respective admin proceedings may be complex and time-consuming; engineering services practically not possible for foreigners due to vast local requirements for engineering services.
VN	Works must be formalized in an EPC contract with the investor/contractor, which is legally regarded as sub-category of a construction contract. Foreign contractors must be granted a construction operation license to operate legally, subject to certain requirements like professional licenses and minimum experience requirements of key staff.

Would a mere tax registration of a PE be sufficient or is a certain investment vehicle required in your jurisdiction?

ID	No, to obtain business licenses, foreign contractor needs to either (i) open a representative office and subsequently form a joint operation with local licensed large scale construction service provider(s), or (ii) establish a foreign investment company (PMA).
MY	Mere tax registration not sufficient as foreign company performing onshore EPC works needs to register under Companies Act 2016 as a registered foreign branch office.
MM	Despite statutory registration with tax authorities, certain kinds of investment require permit from Myanmar Investment Commission.
SG	A mere tax registration of PE is sufficient whereby PE needs to file income tax return as separate entity for tax purposes. No mandatory investment requirement or investment vehicle required in relation to PE.
TH	Foreign Business License application requires a local company or branch. Doing business without license can be a criminal offence with punishments up to imprisonment; authorities can also ban the foreign company from engaging in further business in Thailand. Violations are usually sanctioned with daily fines for the duration of the violation.
VN	Under Vietnamese regulations many foreign activities will be regarded as constituting a PE. After granted the construction operation license, almost all EPC activities require an operational office to be established subject to the conducted works. Tax registration is required only in case EPC contractor applies credit or hybrid method, otherwise employer needs to file tax registration and withhold FCWT.

Can the PE get own bank accounts and handle local currency payments as well as FOREX transactions for the project?

ID	Technically, PE could open bank account in Indonesia and handle IDR or forex payments. However, since in practice EPC project must be carried out by joint operation or PMA, payments shall be handled by respective entity.
MY	PE could generally open bank account subject to particular requirements of banks. Practically, however, certain banks require at least a justification for account opening if company is not registered with Companies Commission of Malaysia with one Malaysian citizen as resident director.
MM	Opening and handling of local as well as forex accounts for PEs is possible but banking sector provides very limited services, especially after the coup. Transactions to and from Myanmar are still very cumbersome, if possible at all.
SG	Yes.
TH	Yes.
VN	Yes. The PE operated in specific form (i.e., branches, operational offices of foreign contractor to perform the EPC contract) may open bank accounts and make payment in local and foreign currency to implement the project in accordance with the laws.

### PART III: MANPOWER CONSIDERATIONS

Which immigration requirements commonly apply for foreign staff temporarily deployed to work on-site in your jurisdiction?

ID	Foreigners working temporarily on-site in Indonesia must obtain the appropriate visa and stay permit based on their intended activities. For general work activities, a work visa and stay permit for employment purposes are required. These documents are issued based on a work permit granted by the Minister of Manpower.
MY	Certain types of employment passes are available for foreign staff. For short term employment, i.e. not exceeding 12 months, a Professional Visit Pass can be applied, subject to several requirements. PVPs usually issued to foreigners with accepted professional qualifications or specialist skill, and only issued once in lifetime.
MM	Business visa required. Due to ongoing pandemic and political situation, additional recommendation letter from responsible line ministry to be acquired. Work permit not required but depending on place of employment (e.g. SEZ or restricted areas) further registrations may apply despite those with the Social Security Board and Labor Department.
SG	Foreign staff performing certain activities for a short period of time, such as commissioning or audit of new plant and equipment as well as installing, dismantling, transfer, repair, or maintenance of machine or equipment, can come to Singapore without work pass. Exemption requirements include foreign staff i.a. to be engaged to perform activity before entering Singapore and have valid short term visit pass.

TH	Foreign staff needs business visa and work permit. Capital requirement per work permit in PE is increased from commonly 2 to 3 Mio THB and minimum salary requirements need to be observed. Capital requirements can be reduced if it can be shown that the project has a clearly defined timeline with a clear starting and end date. If the stay is up to 90 days, normal business visa is sufficient, otherwise longstay visa can be issued up to 1 year. Usual employment ratio of 4:1 Thai to foreign staff lowered to 1:1 in case of PE. Short term work can be covered by Urgent Duty Work permits (up to 45 days in a calendar year).
VN	Foreign employees normally require visa and work permit, issued to managers, experts and technicians. No work permit required i.a. if their duration of stay is less than 30 days per stay and not more than 3 times a year. Working visa is normally 3 months while the duration of a temporary residence card in compliance with duration of work permit is maximum 2 years.

Can work permits, if required, be applied by an overseas company or the foreign individuals directly or is the involvement of a local entity required?

ID	Work permit can only be applied by a local entity employing a foreign national.
MY	Employment passes must be applied through a local entity, which must be registered with the Expatriate Service Division of the Immigration Department of Malaysia.
MM	Currently no work permits required.
SG	A local sponsor needs to submit work pass application on behalf of foreign staff. Relationship between overseas employer and local sponsor and need for foreign staff on-site have to be explained. Employer of Record providers are not able to sponsor work visas.
TH	Application requires local entity or registration, e.g. Thai company or registered PE; outsourcing to service providers is possible.

VN	In principle, local entity must be sponsor who signs necessary documents in order for foreign individuals to obtain work permit issued by Department of Labor, Invalids and Social Affairs. In case of establishing the PE (e.g., operational office), the PE would become the sponsor to obtain work permit for the foreign staff to work in Vietnam.
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Are there taxes or social security contributions applicable for foreign staff temporarily working on-site in your jurisdiction? Under which conditions are foreigners required to pay income tax?

ID	Employer /sponsor in Indonesia must register foreign worker working on-site with national social security program (if work period is 6 months or more) or in insurance programs (if work period is less than 6 months). Foreigners working 183 days or less in 12-month period with limited stay permit are categorized as non-tax resident whose subject to income tax of 20% from gross amount of income sourced domestically. If local stay exceeds 183 days, categorization as resident taxpayer with obligation to obtain tax-ID and file tax return based on worldwide income, slide tax rate from 5 – 35%.
MY	Individuals are taxed on income accruing in or derived from MY. Tax residency considered from 182 days or more in a calendar year. Employees are taxed on income for work in MY regardless where payment is made. Income includes salary, allowances, perquisites, benefits-in-kind, tax reimbursements, and rent-free accommodation. Social security applies for onshore work duration.
MM	Foreigners earning income onshore are generally tax liable. Work exceeding 183 days per domestic financial year (1st April to 31st March) changes status of non-resident to resident-foreigner which entitles to certain tax deduction, but worldwide income may be taxable in Myanmar. Companies with 5 or more employees need to register with Social Security Board and file regular monthly social security contributions.

SG	<p>Foreigners are exempted from participation in Singapore's social security scheme, except permanent residents. Employment income of non-residents working onshore for (i) 60 days or less in a calendar year is tax exempt, (ii) 61 – 182 days taxed at 15% or progressive resident rates, whichever gives rise to higher tax amount and (iii) 183 days or more considered tax resident and taxed at progressive resident rates.</p>
TH	<p>Income received for work onshore is taxable in Thailand, personal income tax at progressive rates from 0 – 35%. Employees in Thailand are required to contribute to social security; general rate 5%, capped at THB 750.</p>
VN	<p>Foreign staff working for EPC project are subject to personal income tax, irrespective of presence in Vietnam. Local customer needs to inform tax authorities about their names, nationalities, passport numbers, working duration, positions, and incomes. Compulsory social, health insurance scheme applicable to foreign individuals under labor contracts with an employer like the PE in Vietnam.</p>

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