

# Rödl & Partner

THAI LEGAL NEWS FLASH

CAPTURING MARKETS

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Latest News on Law, Tax and Business in Thailand

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## → Amendments to Labor Protection Act

In December 2018, the National Legislative Assembly of Thailand passed an amendment to the Labor Protection Act. The amendment will become effective 30 days after being published in the Royal Gazette. Amongst others, the following amendments have been made.

### SEVERANCE PAY

Employees who have been employed for more than 20 years are now entitled to 400 days of severance pay )prior to the amendment, 300 days of severance pay was the maximum(. This is particularly important in light of the recently passed amendment that severance has to be paid to retiring employees. Companies are well advised to review whether they need to increase their respective accounting reserves.

### MATERNITY LEAVE

Pregnant employees and new mothers are now entitled to 98 days of maternity leave (previously 90 days). However, the employer still only has to pay a share of 45 days of maternity leave.

### TEMPORARILY CEASING BUSINESS OPERATIONS

Employees are entitled to a payment of 75 per cent of their current wage while the employer is temporarily ceasing business in whole or at part for a certain specific reason. Time and place for this payment must be clearly stated.

### TERMINATION PAYMENTS

Wages and "other money which an employer is required to pay under the LPA" must be paid within three days from the termination effective date. Previously, severance had to be paid on the last day of employment.

### INTERESTS ON OUTSTANDING PAYMENTS

Employees are entitled to interests at the rate of 15 percent on outstanding payments by the employer )for example wages, severance pay or payment in lieu of notice(.

## → International Business Center

In the last quarter of 2018, the Thai government replaced the investment schemes "International Trading Center" and "International Headquarter" by the "International Business Center". The reason for the replacement were concerns regarding international taxation raised by other countries in ASEAN.

On 29<sup>th</sup> December 2018, the Royal Decree No. 674 became effective, governing the following requirements and tax incentives )by the Thai Revenue Department( for the IBC:

## Requirements for obtaining the tax incentives

### PAID-UP CAPITAL

On the last day of each accounting period, the IBC needs to have a paid-up capital of at least THB 10 million.

### EXPENSES IN THAILAND

The IBC needs to have expenses of at least THB 60 million paid to recipients in Thailand in each accounting period (note that existing Regional Operating Headquarters and International Headquarters can – if they wish to apply for the new tax scheme – benefit from certain special conditions).

### EMPLOYEES

An IBC needs to have at least 10 qualified employees (at least bachelor degree or similar relating to IBC business); if the IBC conducts financial management, 5 qualified employees can be sufficient.

Please note that the Revenue Department may announce additional requirements.

## Tax incentives

The IBC may benefit from the following tax incentives for a maximum of 15 accounting periods.

### REDUCTION OF CORPORATE INCOME TAX

Depending on the expenses of the IBC business (paid to Thai recipients), the CIT rate can be substantially lowered:

IBC EXPENSES	CIT RATE
>THB 60 million	8 per cent
>THB 300 million	5 per cent
>THB 600 million	3 per cent

### EXEMPTION OF CORPORATE INCOME TAX

Dividends received from affiliated enterprises are exempted from Corporate Income Tax.

### EXEMPTION OF SPECIFIC BUSINESS TAX

If the IBC renders financial management services to affiliated companies, income from such services can be exempted from the Specific Business Tax.

### WITHHOLDING TAX

The payment of certain qualified dividends (i.e. income derived from certain services provided by IBC) are exempted from withholding tax.

### PERSONAL INCOME TAX

Certain employees may apply for a Personal Income Tax Flat Rate of 15 percent.

### PLEASE NOTE

If a company does not comply with the requirements necessary to receive the tax incentive in a given accounting period, the incentive will only be rescinded for such accounting period.

Tax incentives granted to IBCs are independent from the general BOI promotion: Rescinding the tax incentive does not necessarily mean that the BOI will terminate the general IBC promotion.

Companies not eligible for the tax incentive may still apply for the IBC promotion in order to do wholesale in Thailand 100-percent foreign owned (promoted companies will receive additional non-fiscal incentives such as investment protection and eased requirements to obtain visa and work permits for foreigners).

## → Smart Visa Change

The Smart Visa was introduced in early 2018 to further facilitate employment of expats in specially targeted industries. The main advantage of the Smart Visa is the combination of visa and work permit for a period of up to 4 years.

In late 2018, the BOARD OF INVESTMENT (BOI) announced new conditions and incentives for the Smart Visa:

### General changes

#### ADDED ELIGIBLE ACTIVITIES

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The BOI added several new eligible activities in the following targeted industries:

- Alternative Dispute Resolution                      NEW
- Human Resource Development in Science and Technology                      NEW
- Environmental Management and Renewable Energy                      NEW
- Next-Generation Automotive
- Smart Electronics
- Affluent, Medical and Wellness Tourism
- Agriculture and Biotechnology
- Food for the Future
- Automation and Robotics
- Aviation and Logistics
- Biofuels and Biochemicals
- Digital
- Medical Hub

#### FAST-TRACK SERVICES AT INTERNATIONAL AIRPORTS

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Smart Visa holder will be allowed to use fast-track services at all international airports where available.

### Specific changes

#### SMART “T” – TALENTS

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The minimum monthly income for experts is decreased to THB 100,000 (previously THB 200,000). The minimum income can be reduced to THB 50,000 if the expert works for a local startup. In certain cases, even retired experts can be eligible for a Smart Visa “T”.

#### SMART “E” – EXECUTIVES

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For high level professionals and executives the minimum monthly income STAYS AT THB 200,000 but consideration now includes all income and bonuses.

#### SMART “I” – INVESTORS

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If invested in a startup which is endorsed by the relevant authorities, the minimum investment requirement is lowered to THB 5 million (otherwise THB 20 million).

#### SMART “S” - STARTUP

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Startups can apply for Smart “S” visa now for three different periods: 6 months, 1 year and 2 years. The requirements for obtaining a 6 months visa have been reduced. The applicant does not have to deposit THB 600,000 in Thailand, and participating in a startup camp (or similar activities) is, if recognized by the relevant authorities, sufficient to be eligible for a Smart Visa.

## → Amendment to tax deduction for children

The personal income tax allowance for children was increased. Taxpayers with children may now deduct THB 60,000 for a second child and every following child born in 2018 or after (without limitation of the number of children).

This applies to the personal income tax for tax year 2018 onwards. Previously, taxpayers could only deduct THB 30,000 per child up to three children.

## → Transfer pricing law enacted

The new transfer pricing law was enacted and applies to accounting periods starting on or after 1 January 2019. Taxpayers with revenues equal to or exceeding THB 200 million are now required to submit a transfer pricing disclosure form outlining details of related party transactions together with their tax returns in early 2020.

This form is used by the Thai Tax department to identify targets for tax audits. Companies have to provide a full transfer pricing documentation within 60 days upon request.

Taxpayers not in compliance with such documentation requirement may be fined up to THB 200,000.

In case the Revenue Department determines during a tax audit that transfer prices do not comply with the arm's length principle and thus lead to a shortfall of taxation in Thailand, the Department may adjust the pricing which will require the taxpayer to pay additional taxes.

### PLEASE NOTE

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The Revenue Department may additionally impose a penalty of 100 to 200 per cent of the tax shortfall in such case as well as interest surcharges.

Under the rules of the Thai Revenue Code, irrespective of the above new rule applied to bigger entities, companies of any size can become subject to tax audits and assessments, and be required to disclose information to the tax authorities *including related party transactions* if requested to do so. Therefore it is recommendable to keep records and documentation to deal with such requests in a timely manner for all companies.

## → Extension of filing period for financial statements via DBD e-filing

The period for filing of financial statements via DBD e-filing for registered partnerships, joint ventures as defined under the Revenue Code, juristic persons incorporated under foreign law, limited companies and public limited companies has been extended to 7 June 2019 (normally 31 May 2019).

This does only apply to companies with due dates for filing scheduled before 31 May 2019.

## → Contribution to social and security fund via electronic system

Effective as of end of November 2018, the Social Security Committee has announced that employers employing a staff of 50 or more are obliged to make contributions to the social

security fund via an electronic payment system. Other employers are not obliged to utilize the system, however, they may choose to use it anyway.

## → Medical Cannabis – Amendment to the Narcotics Act

Effective as of 19 February 2019, an amendment to the Narcotics Act came into force after being published in the Royal Gazette on 18 February 2019.

Under a special license, the production, import, export, distribution and ownership of cannabis and kratom (Category 5 narcotics) are now legalized. Companies and organizations applying for such license have to comply with various requirements provided in the amended Narcotics Act.

Permitted uses include medical purposes, patient care, research and development.

Details regarding the production, processing, further development and research will be issued by Royal Decree. In practice, commercial application does not yet appear to be possible.

However, private individuals are still prohibited from possessing or transporting cannabis unless prescribed by a specifically licensed physician. And in any case, private individuals are prohibited from growing cannabis and kratom.

## → Retirement visa extension

Applicants for an extension of a retirement visa have to prove that they have sufficient funds to sustain themselves in Thailand. They either need to have a certain deposit in a Thai bank account, or receive a fixed monthly income of a certain amount, or a combination of the aforementioned methods. Effective as of 1 March 2019, applicants for an extension of a retirement visa have to comply with the following requirements:

### DEPOSIT

The applicant is required to have a balance of THB 800,000 in a Thai bank account two months before the application and three months after the extension is granted.

Over the entire duration of the extension the balance has to be at least THB 400,000.

### INCOME

The applicant has to receive a monthly income of THB 65,000 from abroad. The applicant has to provide a bank statement and a certificate from a Thai bank regarding the reception of such funds.

### COMBINATION

A combination of the two above methods which equals a total of at least THB 800,000 per year.

In order to be granted a retirement visa, applicants have to be at least 50 years old, must not suffer from certain diseases and must not have a criminal record, neither in the applicant's home country nor in Thailand.

## → Amendment of Arbitration Act

So far, Thailand has not been known as an international arbitration hotspot. A major obstacle was, that foreign arbitrators were required to obtain a work permit to conduct an arbitration in Thailand. Thus, from a practical point of view, parties were obliged to appoint local arbitrators. Furthermore, foreign representatives were excluded from representation if the case was arbitrated in Thailand under Thai law.

Now, the cabinet confirmed a bill amending the Arbitration Act with the goal to make arbitration more attractive to foreign parties.

Under the amendment, foreigners taking part in arbitration can obtain a certain certificate which is issued by licensed arbitration institutes such as the Thai Arbitration Center. The certificate will include information on the subject and the expected duration of the arbitration in Thailand. The certificate will grant a right to the foreigner to

be issued a visa and a work permit for the duration specified in the certificate.

The practical application of the amendment is yet to observe when it enters into force. A due date for publication in the government gazette has not yet been provided.

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