Rödl & Partner

QUARTERLY ASEAN NEWSFLASH

EYE-LEVEL EXCHANGE

Issue:
Q4/2024

Latest news on law,
tax and business in ASEAN

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Note from the editor

Dear reader

Welcome to the Q4/2024 edition of our ASEAN Newsflash.

As another year rapidly draws to a close, we delve into the latest legislative developments in this edition. It was a pleasure meeting many of you at our Forum events in Kuala Lumpur and Ho Chi Minh City in November, where we discussed current legal, tax, and financial topics, and exchanged insights on upcoming regional trade dynamics. For those who could not attend, our presentations are available upon request.

In Indonesia a draft regulation has been issued requiring local corporations and foreign investment companies to conduct an annual legal audit, aiming to enhance legal certainty. The practical impact on companies remains to be seen after the law's full implementation. Additionally, the Indonesian government continues its efforts to attract domestic and foreign investments to the new capital, Nusantara, by offering new incentives. The Malaysian 2025 Budget announcement includes an increase in labor costs, which employers need to prepare for. Other key initiatives include a dividend income tax for individuals, an exemption from tax on certain foreign-sourced income received in Malaysia for resident individuals, and the introduction of a carbon tax on the iron and steel, as well as energy industries, by 2026. In Singapore, the Ministry of Manpower has banned non-Singaporean entities from using Employer of Record services to sponsor work visas, closing a common loophole for foreign businesses without a local presence. Additionally, the Income Tax Amendment Bill 2024 introduces new tax credits for companies.

We wish you a pleasant year-end and a joyful festive season!

Markus Schlueter
ASEAN Desk
markus.schlueter@roedl.com

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→ Indonesia

Indonesia to mandate Compulsory Annual Legal Audit

In an effort to enhance legal certainty, the Indonesian government is planning to introduce a new regulation mandating an annual legal audit for Indonesian legal, business and public entities (collectively referred to as 'Corporation').

In the second quarter of 2024, the government began more intensive discussions on a draft regulation on legal compliance in the preparation and implementation of laws and regulations ('draft regulation').

Mandatory Annual Legal Audit

The draft regulation requires Indonesian Corporations, including foreign investment companies (or PT PMA), to conduct an annual legal audit. This audit must be performed by a certified legal auditor. Details regarding the scope of such legal audit have not yet been disclosed.

The result of the audit, as well as any recommendations and their implementation by the Corporation, must be reported to the Ministry of Law and Human Rights ('Ministry of Law'), other line ministries and the regional government(s) (if and as applicable). Failure to do so will result in sanctions, which will be detailed in subsequent ministerial regulations to be issued as the implementing regulation of the draft regulation.

Certified Legal Auditor

According to the draft regulation, a legal auditor is defined as an individual with competencies in the field of legal auditing who obtained a specific certification from the Ministry of Justice. The draft regulation also provides that the Ministry of Justice will perform mentoring and supervisory activities for the legal auditor profession.

In addition, the Ministry of Justice is authorised to issue regulations or guidelines regardingg the conduct of such legal audits, the improvement of the skills and competencies of legal auditors through training and continuing professional development, and the evaluation of the standard of services provided by legal auditors through certification, accreditation and other means.

Our View

The intention behind the draft regulation is commendable, however it will bring about drastic changes to current practice and its full implementation may take some time. Many of the instruments referred to in the draft regulation do not currently exist, meaning that the government will need to develop these instruments from scratch.

Rödl & Partner will monitor the situation closely and provide regular updates. Please do not hesitate to contact us if you have any questions on this topic.

→ Indonesia

Nusantara Investors are to receive (more) incentives

In an effort to boost the development of Nusantara, the new capital of Indonesia, the government is trying to attract investments (both domestic and foreign) to Nusantara by offering some enticing incentives – an initiative that shows no signs of slowing down.

Latest Development

Initially, the government introduced, among others, a 30-year tax holiday (100 %), a 10-year work permit for expatriates (ten times longer than a typical work permit for expatriates) and a waiver of import duties and/or other import-related taxes for investors willing to invest in Nusantara.

These incentives were offered in March 2023 by Government Regulation No. 12 of 2023 on the Granting of Business Licences, Ease of Doing Business and Investment Facilities for Entrepreneurs in Nusantara ('GR 12/23').

In July and August 2024, just over a year later, the government released another set of incentives by amending GR 12/23 and enacting the Regulation of Chief of National Capital Authority (NCA) No. 7 of 2024 ('NCA Reg 7/24').

The (amended) GR 12/23 and NCA Reg 7/24 provide that an investor in Nusantara is entitled to enjoy, among others, the following incentives:

- Land and building acquisition fee: The acquisition and transfer of certain types of land will be subject to a land and building acquisition fee (locally known as "BPHTB") in the amount of 0 % (instead of 5 %) from the acquisition cost.
- The application for a building permit and building worthiness certificate will be subject to permit retribution in the amount of IDR 0 (nil) until 2035.
- The waiver of expatriate utilisation fee until 2035.

Such incentives go beyond the borders of Nusantara, as the government also offers investors some facilities in certain business areas in Nusantara's partner regions. A 'partner region' is defined as a region in Kalimantan that was specifically established for the development of the economic superhub Nusantara, cooperating with Nusantara and determined through a decree by the Chief of the NCA. So far, no information is available on the officially established partner regions.

Key Findings

Despite delays in the construction schedule and a series of setbacks, the Indonesian government's commitment to the 'Nusantara project' appears to be unwavering. Although public investment in Nusantara is expected to decline in the 2025 financial budget, investment in Nusantara is still - at the very least - worth considering. Investors interested in Nusantara should carefully formulate a suitable business strategy to optimise the use of the numerous incentives and facilities that have been made available.

Rödl & Partner will monitor the situation closely and provide regular updates. Please do not hesitate to contact us if you have any questions on this topic.

Contact for more informatio

Veranica Astri
veranica.astri@roedl-indonesia.com

Cahya Buana Arief
cahya.buanaarief@roedl-indonesia.com

Indonesia signs Subject to Tax Rule

On 19 September 2024, the Minister of Finance (MoF) Sri Mulyani Indrawati, representing Indonesia, officially signed the Multilateral Instrument Subject to Tax Rule (MLI STTR) alongside representatives from 42 other countries.

Definition of STTR

The Subject to Tax Rule (STTR) is one of three instruments under Pillar 2 aiming at minimizing tax avoidance practices. The STTR grants jurisdictions the right to impose an additional tax of 9 % on certain income payments made between related parties. This additional tax applies to specific income that is either untaxed or taxed at a rate of less than 9 %.

The STTR is implemented on transactions conducted by related parties or connected persons. Entities and persons are considered related or connected if they are under common legal control, both direct or indirect ownership of more than 50 %, or based on other relevant facts and circumstances.

Scope

The STTR applies to the following types of "covered income":

- Interest;
- Royalties;
- Payments made in consideration for the use of, the right to use, distribution rights in respect of a product or service;
- Insurance and reinsurance premiums;
- Fees to provide a financial guarantee, or other financing fees;
- Rent or any other payment for the use of, the right to use, industrial, commercial or scientific equipment; or
- Any income received in consideration for the provision of services.

Threshold

The STTR will only apply if the total amount of covered income generated in the source country and paid to related parties in the resident state exceeds a materiality threshold of EUR 1 million or EUR 250,000 per year. For Contracting States with a GDP equal to or greater than EUR 40 billion, the threshold will be EUR 1 million. For Contracting States with a GDP of less than EUR 40 billion, the threshold will be EUR 250,000.

Furthermore, aside from interest and royalties, the STTR is applicable only when the covered income received by the recipient exceeds the relevant costs incurred in earning that income, plus a mark-up of 8.5 %. Indirect costs, which are costs not directly tied to a specific transaction, also need to be factored into this calculation to determine the total cost basis.

Exemptions

However, the STTR does not apply to recipients in the following categories:

- an individual;
- an entity that is not connected to the payer;
- a recognized pension fund;
- a non-profit organization;
- state and government entities performing government functions;
- international organizations;
- investment funds that meet certain conditions, including pension funds; or
- holding vehicles that are entirely or nearly entirely owned by an excluded recipient.

Implementation of STTR in Indonesia

Indonesia's signing of the MLI STTR reflects its commitment to enhancing fairness and transparency in global economic cooperation. According to Sri Mulyani, one of the problems that the world is currently facing is unfair competition for tax rates. Indonesia, as one of the developing countries, is affected because such competition leads to significant losses in potential tax revenues. The MLI STTR is considered to be one of the keys to overcome this challenge by ensuring that cross-border income is taxed in a fair manner.

This initiative aims at creating a level playing field between local and multinational companies, ensuring that local businesses can compete effectively in the market. Additionally, it seeks to strengthen anti-tax avoidance measures

within Indonesia's tax system, providing the government with greater fiscal capacity to address other macroeconomic challenges. The MLI STTR provisions will be integrated in Double Tax Avoidance Approval ("P3B") simultaneously and systematically without going through bilateral negotiations. The implementation of this instrument is expected to have an impact on 29 P3B of Indonesia and partner countries. As with other international agreements, the implementation of the MLI STTR is carried out after going through a ratification process in accordance with applicable provisions.

Legal Basis

The legal basis for the implementation of STTR in Indonesia refers to Law No. 7 of 2021 concerning the Harmonization of Tax Regulations, and Government Regulation No. 55 of 2022 which serves as a guideline for the GloBe and Commentary Model Rules. The implementation of STTR in Indonesia will take effect in 2026 at the earliest, but previously the government will implement QDMTT (Qualified Domestic Minimum Top-Up Tax) in 2025.

Through the implementation of STTR, Indonesia hopes to prevent tax evasion by large companies and to increase state revenue. The existence of this rule will encourage multinational companies to be more attentive in managing cross-border revenues and to adjust their tax strategies to remain compliant with applicable rules.

STTR's implementation adds a new layer of compliance that could impact tax liabilities on intra-group payments. As a result to this rule, companies need to carefully evaluate their current tax structures and cross-border intra-group payment arrangements to identify potential STTR exposures. Such measure is crucial to maintain tax efficiency and avoid unforeseen costs.

Our team is equipped to support your business by reviewing the compliance status and ensuring that the arrangements align with the recent regulatory requirements. For an in-depth discussion and tailored solution of how STTR might affect your business, please contact us.

Contact for more information

Wahyu Indradi
wahyu.indradi@roedl-indonesia.com

Samuel Reinaldo
reinaldo.samuel@roedl-indonesia.com

→ Malaysia

Increase in labor costs for employers following the Budget 2025 announcements

The Budget 2025 announcement raised some concerns for employers with regard to the cost of labor in Malaysia. With the implementation of the following, employers would now need to be prepared for an increase in labor cost:

Raise in Minimum Wage

In May 2022, the minimum wage was increased from RM1,200 to RM1,500. Now, two (2) years later, it has been increased once again. With effect from 1 February 2025, the minimum wage for all employment sectors in Malaysia will be increased from RM1,500 to RM1,700.

Employers with the head count of less than five (5) employees will be granted a six (6) months deferment period, making the new wage effective 1 August 2025.

In view of the definition provided in the National Wages Consultative Act 2011, those under apprenticeship will be not be entitled to the minimum wage.

Employees Provident Fund (EPF) Contributions for foreign workers

During the Budget 2025, it was announced that EPF contributions will be made mandatory for all foreign workers. This is to promote wage equality in the country. The term foreign workers is to include expatriates following the Employment Act 1955.

No time line or further details have been provided by the Government at this juncture. We expect this implementation to be phased gradually.

Contact for more information

Geetha Salva
geetha.salva@roedl.com

→ Malaysia

Malaysia´ s Budget 2025

On 18 October 2024, the Malaysian Government presented the 2025 Budget ("the Budget") in Parliament , under the slogan of "Reinvigorating the Economy, Driving Reforms, and Prospering the Rakyat".

With a record allocation of RM421 billion, the Budget is designed to bolster revenue growth through tax reforms and targeted subsidies. This substantial allocation is divided into two key components: RM335 billion allocated to operating expenditure and RM86 billion for development expenditure. The Government has projected that revenue collection will rise to RM322 billion for 2024, up from RM308 billion in 2023, with further growth expected to reach RM340 billion in 2025. This growth in revenues is expected to reduce the budget deficit to 3.8 % of gross domestic product, compared to the 2024 target of 4.3 %.

Key initiatives

- In alignment with the Budget's theme, numerous initiatives, including tax-related measures, have been proposed to achieve these objectives. Below are the key tax measures and policies outlined in the Budget:
- Dividend income of individuals exceeding RM100,000 per annum will be subject to tax at the rate of 2 %, effective from the year of assessment 2025;
- Resident individuals will be exempt from tax on foreign-sourced income received in Malaysia up to the year 2036, provided such income has been subjected to income tax in the country from which it was received;
- Carbon tax will be introduced on the iron and steel, and energy industries by 2026 to encourage the adoption of low-carbon technologies;
- To mitigate the impact of Global Minimum Tax, the Government is committed to streamlining existing incentives, introducing non-tax incentives and studying the feasibility of a "Strategic Investment Tax Credit";
- The Sales Tax and Service Tax regime will be expanded to include commercial service transaction between business ("B2B") and non-essential goods;
- The minimum wage will be increased from RM1,500 to RM1,700, effective 1 February 2025.

For further details on Malaysia´ s Budget 2025 please refer to the November Tax Edition of our Malaysia Newsflash.

Contact for more information

Chiu Yen Lim
chiuyen.lim@roedl.com

→ Singapore

Workplace Fairness Bill proposed

Singapore has proposed a new Workplace Fairness Bill aimed at addressing workplace discrimination in hiring, terminations, and appraisals. The bill targets discriminatory practices based on key characteristics and introduces stronger punitive measures for employers. It seeks to entrench fair employment practices and build on existing guidelines while balancing business flexibility. The proposed legislation would take effect by 2026 or 2027.

Objectives

The proposed Workplace Fairness Bill (No. 50/2024), introduced in Singapore's Parliament on 12 November 2024, aims to combat workplace discrimination and ensure merit-based practices in employment. It addresses discriminatory practices in hiring, termination, and appraisals by making it unlawful to base such actions on discriminatory characteristics like nationality, age, sex, race, and disability. The proposed legislation is split into two parts. The first phase establishes principles, dispute resolution mechanisms, and enforcement tools. The second phase will outline claims procedures through amendments to the Employment Claims Act. The legislation is expected to take effect by 2026 or 2027.

Measures

This law introduces significant changes by enforcing punitive measures, including fines and civil lawsuits, for serious violations. It also protects employees against retaliation and requires employers to establish confidential grievance-handling processes. Employees can file claims up to SGD 20,000 or SGD 30,000 if union members. Workers filing frivolous claims may be required to bear the costs and may face lawful disciplinary action by the employer. The law will also exempt small businesses with fewer than 25 workers for five years and permit certain exceptions, such as hiring based on specific traits for job needs or religious roles.

Ministry of Manpower (MOM)

The Ministry of Manpower (MOM) emphasized that education and existing guidelines, such as the Tripartite Guidelines on Fair Employment Practices, remain central to maintaining fair workplace practices. MOM highlighted progress, with reported workplace discrimination cases decreasing significantly over recent years. However, the new legislation aims to bolster existing protections, address gaps in enforcement, and strengthen dispute resolution processes.

→ Singapore

Singapore bans Employer of Record visa sponsorship

The Ministry of Manpower (MOM) has banned non-Singaporean entities from using Employer of Record (EOR) services to sponsor work visas. This closed a common loophole for foreign businesses without a local presence. Foreign companies must now use the traditional alternatives of setting up a company or representative office in Singapore or hiring foreign workers who qualify for special types of work visas such as the Overseas Networks & Expertise Pass.

EOR services have been a popular option for international businesses seeking to hire employees in foreign countries without establishing a local entity. In Singapore, EORs historically acted as legal employers, and sponsored work passes for foreign employees. The EOR managed compliance while the foreign entity retained operational control of

employees without setting up a local presence. With this ban, EORs can now only hire local employees, and foreign workers must be directly employed by a Singapore-registered company.

MOM´ s position

MOM's position is that work passes are intended for foreigners working for companies with a local presence in Singapore, such as subsidiaries, representative offices, or other registered entities. Non-Singaporean companies using EORs to sponsor work passes must transition to alternative solutions to retain foreign employees. These options include incorporating a company or setting up a representative office.

Note that the MOM's clarification applies only to the use of EOR services for hiring foreign workers. MOM remains silent on using EOR services for employing Singaporean citizens or permanent residents.

Contact for more information

Paul Weingarten
paul.weingarten@roedl.com

Nikolaus Letsche-Fried
nikolaus.letsche-fried@roedl.com

→ Singapore

Income Tax (Amendment) Bill 2024

The Income Tax (Amendment) Bill 2024 ("Amendment Bill") proposes 15 amendments to legislate measures announced in the 2024 Budget. The salient amendments are highlighted below.

Refundable Investment Credit ("RIC")

The RIC provides that upon approval, a company which incurs qualifying expenditure will be entitled to tax credits that may be utilized as follows:

- To offset (including interest, penalties and surcharges) levied on or due from the company under the Income Tax Act ("ITA");
- To offset Domestic Top-Up Tax ("DTT") or multinational enterprise top-up tax ("MTT") (including interest, penalties and surcharges) that is levied on or due from the company under the Multinational Enterprise (Minimum Tax) Act 2024 ("Minimum Tax Act"), when it enters into effect;
- To offset tax levied on or due from one or more companies of the same group; or
- Where the RIC cannot be fully utilized, paid to the company.

The RIC may be utilized against income tax payable under the ITA, and DTT or MTT under the Minimum Tax Act.

OTHER SALIENT FEATURES:

- The RIC should be granted in respect of expenditure which is incurred;
- The RIC is to be granted only by reference to expenditure, i.e., value added inputs to the business;
- If the awardee company contravenes a provision of the ITA or a condition in its letter of award, the relevant authority may require the company to show cause why its letter of award should not be amended or revoked, giving 30 days to the taxpayer to respond.

Extension and revision of tax incentive schemes for funds managed by Singapore-based fund managers

The various tax incentive schemes for funds, the Goods and Services Tax ("GST") remission, and the withholding tax exemption schemes will be extended until 31 December 2029.

A significant change is the revision of the economic conditions for qualifying funds under Section 13O and Section 13U of the ITA. The economic conditions relate to the level of assets under management, the amount of annual business spending and the number of investment professionals employed by a Singapore fund management company.

The Monetary Authority of Singapore ("MAS") has issued a circular on this on 1 October 2024.

Introduction of additional concessionary tax rate tiers for certain tax incentive schemes

The Amendment Bill also proposes to introduce an additional 10 % concessionary tax rate tier to the Finance and Treasury Centre incentive and Aircraft Leasing Scheme, and an additional 15 % tax rate tier to the Intellectual Property Development Incentive, Development and Expansion Incentive and Global Trader Programme.

The Amendment Bill also provides that the Minister or an authorized body may, on their own initiative or by application of the company, substitute the currently approved concessionary rate with another prescribed rate.

Contact for more information

Priya Selvanathan
priya.selvanathan@roedl.com

→ Thailand

Reduction of Social Security contribution rates

On October 22, 2024, The Thai Cabinet resolved to approve the draft Ministerial Regulation of the Ministry of Labor regarding the reduction of compulsory Social Security contribution rates for both employers and employees for 6 months in 42 provinces affected by the flood.

Reduction of Social Security contributions Rates for 6 months, details as follows:

Contributor	Normal Rate	Reduced Rate	Extended Period
Employer under Section 33 (mandatory)	5 % (maximum rate at THB 750)	3 % (maximum rate at THB 450)	October 2024 - March 2025
Insured person under Section 33 (mandatory)			
Insured person under Section 39 (voluntary)	9 % (THB 432)	5.9 % (THB 283)	

Extending the period for submitting Social Security contributions for 3 months, details as follows:

The Salary	Normal Contribution Period	Extended Contribution Period
September 2024	within October 15, 2024	within January 15, 2025
October 2024	within November 15, 2024	within February 15, 2025
November 2024	within December 15, 2024	within March 15, 2025
December 2024	within January 15, 2025	within April 15, 2025

List of 42 provinces:

Regions	Province
Northern	1) Kamphaeng Phet
	2) Chaing Rai
	3) Chaing Mai
	4) Tak
	5) Nakhon Sawan
	6) Nan
	7) Phayao
	8) Phichit
	9) Phitsanulok
	10) Phetchabun
	11) Phrae
	12) Mae Hong Son
	13) Lampang
	14) Lamphun
Central	15) Kanchanaburi
	16) Nakhon Nayok
	17) Nakhon Pathom
	18) Saraburi
	19) Sukhothai
	20) Ang Thong
Northeastern	21) Kalasin
	22) Khon Kaen
	23) Chaiyaphum
	24) Nakhon Phanom
	25) Nakhon Ratchasima
	26) Bueng Kan
	27) Maha Sarakham
	28) Mukdahan
	29) Roi Et
	30) Loei
	31) Nong Khai
	32) Nong Bua Lamphu
	33) Udon Thani
	34) Uttaradit
Southern	35) Krabi
	36) Chumphon
	37) Trang
	38) Nakhon Si Thammarat
	39) Phang Nga
	40) Phuket
	41) Satun
	42) Surat Thani

Contact for more information

Martin Chrometzka
martin.chrometzka@roedl.com

→ Vietnam

General Department of Taxation focuses on tax inspection of 9 business groups in 2025

On October 23, 2024, the Government Inspectorate issued Document No. 2220/TTCP-KHTH, outlining the inspection program for 2025, which includes the focus of the General Department of Taxation on nine specific business groups.

According to the program for 2025, the Government Inspectorate will conduct inspections to ensure compliance with policies and laws, as well as the responsibilities of ministries and government agencies. This initiative aims to enhance state management, detect and prevent violations, and improve management mechanisms and policies in the inspected areas.

The business groups targeted for inspection include:

- High-Risk Industries: Sectors with significant revenue potential or risks, such as oil and gas, petroleum, electricity, telecommunications, banking, insurance, securities, financial leasing, pharmaceuticals, real estate, construction, gold and gemstone trading, entertainment, advertising, and e-commerce;
- Large Enterprises not inspected for years: Businesses that have not undergone inspection or audit for an extended period;
- Enterprises with Capital Transfers: Companies involved in capital, brand, or project transfers;
- Companies Issuing Securities: Businesses that issue dividends in the form of shares or bonus shares;
- Related Party Transactions: Enterprises with transfer pricing issues, consistent losses, or significantly lower business results compared to peers in the same industry;
- High-Risk Invoice Issues: Companies with a high risk of invoice-related problems;
- Fraud Indicators: Businesses showing signs of fraud, high risk of tax refunds, or benefiting from tax incentives;
- Tax Exemption Applications: Companies with tax exemption applications under double taxation avoidance agreements;
- Suspicious Transaction Information: Businesses flagged by the banking inspection and supervision agency or customs authorities.

This inspection program aims to ensure transparency and fairness in business operations while enhancing the effectiveness of tax management in Vietnam.

→ Vietnam

Draft Law on Personal Data Protection

On September 24, 2024, the Vietnamese Government released the Draft Law on Personal Data Protection (Draft PDPL) for public consultation. This draft aims to enhance and clarify data protection regulations previously established in Decree No. 13/2023/ND-CP on Personal Data Protection (PDPD).

Key updates include:

- Expanded Scope: The Draft PDPL explicitly extends its scope to include agencies, organizations, and individuals processing the personal data of foreigners within Vietnam;
- Stricter Consent Requirements: The Draft PDPL restricts organizations from requiring consent for data transfers to unrelated services. For intra-group transfers, consent granted to a parent company does not automatically extend to subsidiaries. Each entity within the group is independently responsible for the protection of personal data;
- Sector-specific Requirements: The Draft PDPL sets clear standards across multiple sectors including marketing, big data, artificial intelligence, cloud computing, labor and recruitment, financial services, health and insurance, social network and OTT services;
- Personal Data Protection Services: The Draft PDPL establishes new regulations and administrative procedures for personal data protection services, defining business categories like personal data protection organizations, certification organizations, and trust rating organizations;
- Appointment of Data Protection Department (DPD) and Data Protection Officer (DPO): Under the Draft PDPL, the obligation to appoint a DPD and DPO applies to all organizations handling personal data, whether basic or sensitive. Micro, small, and medium-sized enterprises (MSMEs) are granted with a two-year exemption from this requirement, except for MSMEs involved in data protection-related sectors;
- Data Processing Impact Assessment (DPIA) and Cross-border Data Transfer Impact Assessment (TIA): The DPIAs and TIAs must be updated and resubmitted every six months, or immediately when certain changes occur (e.g., dissolution, merger, etc.).

The Draft PDPL is expected to be presented to Vietnam's National Assembly by the end of 2024, with implementation by January 1, 2026. Businesses should prepare and align early to avoid disruptions and strengthen their market position in Vietnam's increasingly regulated data environment.

Contact for more information

Michael Wekezer
michael.wekezer@roedl.com

www.roedl.com/asean

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Publisher:
Rödl & Partner Bangkok
Empire Tower 3, 25th Floor, 1 South Sathorn Road
Yannawa, Sathorn, 10120 Bangkok
Phone: +66 2 0263 258
E-Mail: bangkok@roedl.com
www.roedl.de
www.roedl.com

Responsible for the content:
Markus Schlueter
markus.schlueter@roedl.com

Layout/Type:
Bettina Herzog
bettina.herzog@roedl.com

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