DRK LAW TALKS

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No. 161 : Thailand's New Labor Law Amendment No.6 B.E.2560(2017)

Amendment No. 6 B.E. 2560 (2017) to the Labor Protection Act B.E. 2540 (1998) ("**LPA**") came into effect on September 1 of this year. The law sets new standards for minimum wage rates for specific types of employees, eases burdens on employers when announcing work regulations, and sets a new statutory retirement age.

It is believed the Ministry of Labor upgraded certain aspects of the LPA in order to stay abreast with the occupations of an evolving labor market and popular digital technologies among workers, and to expand the rights and opportunities of an ever aging workforce.

Below, we discuss the changes.

New Standards for Minimum Wages

The Wage Committee will determine certain minimum wages according to new standards.

To determine minimum wages, the Wage Committee will consider current wage rates employees are receiving, together with other factors, including the cost of living, inflation, living standards, production costs and capacity, prices of goods and services, GDP, and economic and social conditions.

The Wage Committee can also determine minimum wages for certain types of employees in particular areas of business, work, or occupations by taking into consideration the nature of the particular work. However, the minimum wages for those specific employees must not less than the standard minimum wages as announced by the Wage Committee. For instance, where the work performed by disabled employees differs from that of non-disabled employees, the Wage Committee can prescribe a specific minimum wage for those disabled employees that deviates from minimum wages for non-disabled employees. Further, in doing so, the Wage Committee can also determine a specific wage rate for a certain locality.

Electronic Submission of Work Regulations

Newly amended Sections 108 and 110 of the LPA allow employers to electronically publish and announce new work regulations and their amendments in addition to the physical public announcements required at the workplace.

It is believed the Ministry of Labor has implemented this change to, among other things, widen the employee's access to work regulations and lessen the burden of the employer to submit work regulations to the Director-General. Authorities anticipate that this new flexibility will better facilitate doing business in Thailand.

New Statutory Retirement Age

A new statutory retirement age has been promulgated as Section 118/1 of the LPA.

Our summary:

1. An employee retiring upon reaching the retirement age set by the employer (or as may be agreed upon between employer and employee), will constitute a termination of employment.
2. Where the retirement age is not specified or the retirement age is over 60 years of age, the employee can retire by notifying the employer that he/she wishes to retire. Retirement will take effect 30 days from the notification date. The retiree will be entitled to receive severance pay pursuant to Section 118 of the LPA.

Section 118/1 is intended to protect the rights of the employee where work regulations do not clearly set a retirement age above 60 years. The new law enables an employee to express their intention to retire, yet still be entitled to receive severance pay at the rate under Section 118 of the LPA.

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No. 162 : New Excise Tax Act B.E. 2560(2017)

Excise tax is a form of consumption tax, imposed on certain ranges of services and goods (either on manufactured locally or imported) that are somehow considered as having negative impact on society. The tax payer is liable for excise tax on locally manufactured goods upon their removal from the factory, or, in the case of imported goods, at the time of importation.

Alongside of income taxes, excise is a contentious issue between tax payers and the revenue authorities as excise can impinge on some of life's pleasurable pastimes, but, arguably, for a greater social good. Previous excise tax laws, their amendments, subordinate laws, and related laws have also been chaotic, and points of contention themselves.

On 20 March 2017, the Royal Gazette announced the Excise Tax Act B.E. 2560 (2017) (**"New Act"**) to replace all previous excise tax laws and regulations. The Excise Department claims the New Act will reduce the complexities and complications of the laws. It also rescinds the ex-factory price as a tax base during the sale of the targeted goods because that applicable ex-factory price is one of the major contentious issue between tax payer and the Excise Department. This New Act became effective on 16 September 2017.

The major changes of the New Act are as follows:

1. Consolidation of all relevant excise tax laws

Previously, the following comprised Thailand's excise regulatory regime:

- Excise Tax Act B.E. 2527 (1984);
- Excise Tariff Act B.E. 2527 (1984);
- Liquor Act B.E. 2493 (1950);
- Tobacco Act B.E. 2509 (1966); and
- Playing Cards Act 2486 (1943).

Each law was enacted to control particular goods, along with its own sets procedures and interpretative principles.

The New Act repeals the above laws, but maintains certain principles, such as, definitions, taxation methods, tax payment, excise tax registration, tax return submissions, assessments, appeals, exemptions, fines and surcharges.

2. New tax base for the sale of goods

Previous excise laws required that the ex-factory price of goods be used as the tax base during the sale of goods. The New Act, however, uses the "Recommended Retail Price" (**"RRP"**) for all commodities as a tax base.

Section 17 of the New Act provides that the RRP is the tax base for the sales of goods. The RRP is exclusive of Valued Added Tax ("VAT") and is calculated by the sum cost of goods sold, operating expenses and appropriate profits. Hence, the current formula for the *ad valorem* rate on sales of goods subject to excise tax in Thailand is "Excise Tax Payable = Recommended Retail Price x Applicable Excise Tax Rate."

Business operators must submit the RRP and their formula to the Director-General of the Excise Department according to Section 18 of the New Act. Failure to do so will subject the business operator to a fine not exceeding Baht 20,000, according to Section 184 of the New Act.

3. No waiver of surcharge

Formerly, Clause 7 of Ministry Regulation No. 29 B.E. 2536 (1993), issued by virtue of Section 5 and Section 136 of the previous excise tax act, allowed the tax payer to request exemption from both the fine and surcharge. However, the Office of the Council of State excluded these provisions from the New Act as they were viewed as overly favoring tax payers who often neglected paying fair share of taxes.

Section 141 of the New Act disallows tax payers to request the Director-General of the Excise Department for a fine and surcharge exemption. Government's message is clear, "*ante up*."

Author's Note:

The Author believes that the New Act could potentially facilitate tax payment and more accurate tax calculations because it contains a clearer and more systematic approach to excise taxation.

However, the Author cannot speculate on the period of transition. Businesses must prepare for different tax treatments before and after the New Act comes into enforcement. They must be aware of the different procedures between portions of goods enforceable under the previous act and those enforceable under the New Act. Otherwise, the Excise Department may challenge whether those businesses are paying their fair share of tax according to the portion of goods, regardless of the tax payer's intention and despite the reasonable and necessary time frame needed for tax payers to adapt to the New Act.

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No. 163 : New Tax Law for Thailand's E-Payment System

Government recently issued its National e-Payment Master Plan to promote FINTECH (Financial + Technology). The electronic payment system is intended to ease Thailand's entry into the global, digital economy. The National e-Payment Master Plan also dovetails from government's touted Thailand 4.0 Policy.

The national plan includes the development and implementation of e-Payment and e-Tax, the latter an electronic payment system intended to eliminate all paper filing forms individuals and enterprises use to file tax returns and tax payments, among others. All business operators will be required to comply with these new payment systems.

In this edition, we address the primary features of the e-Tax.

Implementation Timeframes for e-Tax
e-Tax comprises e-Tax Invoice/e-Receipt, and e-Withholding tax and e-Filing. The Revenue Department intends to implement each of these components according to the following timeframes:

e-Tax Invoice and e-Receipt:
2019 for businesses with annual incomes of Baht 30 million or more;
2021 for businesses with an annual income exceeding Baht 1.8 million to less than Baht 30 million.

e-Withholding Tax and e-Filing:
2020 for businesses with an annual incomes of Baht 30 million or more;
2023 for businesses with an annual incomes exceeding Baht 1.8 million to less than Baht 30 million.

We discuss the legislative details of these components, grouped as follows:

1. e-Tax Invoices and e-Receipts
e-Tax Invoices and e-Receipts intend to replace invoices and receipts. The Revenue Department recently issued the following regulations to facilitate these components:

- Revenue Department Regulation B.E. 2560 Re: Issuance, delivery, and storage of electronic tax invoices and the electronic receipts;

- Revenue Department Regulation B.E. 2560 Re: Issuance, delivery and storage of electronic tax invoices and electronic receipts via e-tax invoice by e-mail.

Business operators can issue, deliver and store e-Tax Invoices and e-Receipts as an XML File with a digital signature; as other electronic documents, e.g. Acrobat ".pdf" and MS Word files with a digital signature; or in the RD Portal of the Revenue Department. Such e-Tax Invoice and e-Receipt must comply with the Revenue Code.

As of this writing, any business operator who intends to use e-Tax Invoices and e-Receipts must have the Ultimate Sign & Viewer program installed and must submit the appropriate registration form to the Revenue Department. Although not yet compulsory, some business operators are already registered and using e-Tax Invoices and e-Receipts. However, when using this system, businesses must correctly comply with the Revenue Code's tax points to issue an invoice and timeframes, among other requirements, in order to avoid surcharges.

2. e-Withholding Tax

e-Withholding Tax aims reduce long-term document storage costs, among others, with the use of electronic documents. The Revenue Department has prescribed persons who must issue withholding tax certificates under Section 50 bis (Revenue Code) using e-Withholding Tax, instead of paper.

Where that person makes a payment through commercial banks, the institution must deduct and remit the withholding tax from such payment. This includes cross border payments, under Section 70 of Revenue Code.

3. e-Filing

The Revenue Department plans to amend the Revenue Code to include e-Filing as a general provision and to allow paper submissions as an option. Basically, the data requirements for the e-Filing would be the same as those under the paper submission. This should ease the taxpayer's transition. The authority may also amend or issue subordinate law governing e-filing and electronic submission of financial accounts.

Author's Note:

Businesses should be proactive by preparing their operations in order to implement this upgraded system of payment. Those who do not would quite likely be legal and commercial risk.

Business operators contemplating using the e-payment system before it becomes compulsory under the relevant laws and regulation, may learn more from the manual provided the Electronic Transactions Development Agency ("ETDA") and Revenue Department website.

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