

Technical Update

Tax and Corporate Services

June 2018

Implementation of the Double Taxation Avoidance Agreements

(Prakas No. 116 MEF, dated 2 February 2018 and Instruction no. 4084 GDT, dated 26 March 2018)

On 2 February 2018, the Ministry of Economy and Finance (MEF) issued Prakas No. 116 MEF on the implementation of the Double Taxation Agreements (DTAs) with Singapore, China, Brunei Darussalam, and Thailand.

In accordance with Prakas No. 116, the above DTAs are effective from the following dates:-

- 1st January 2018 for Singapore and Thailand;
- 1st January 2019 for China; and
- 1st January of the year following the agreement becoming enacted with Brunei.

Subsequently, on 26 March 2018, the General Department Taxation (GDT) issued Instruction No. 4084 ("IN4084") to provide clarity on the administrative rules and procedures on utilising the above DTAs.

- From a practical perspective, IN4084 outlines: How a Cambodian resident taxpayer in its capacity as a withholding agent should make an application to apply a reduced rate of withholding tax ("WHT") under a DTA for certain payment types to be made to a foreign person.
- How a Cambodian resident taxpayer can claim a **tax credit** to deduct from tax payable in Cambodia for tax already paid in another contracting state.
- How a Cambodian resident taxpayer can obtain a Certificate of Residence ("CoR"), which will likely be required when availing of a tax treaty benefit in another contracting state.

Request for tax exemption or benefit in Cambodia under the DTAs

In order to obtain a treaty benefit in Cambodia, persons in another contracting state are generally required to:-

- Be a resident taxpayer of the other contracting state, with demonstrable proof in the form of a CoR from the competent authority of the other contracting state;

- Be the beneficial owner of the benefit being received;
- Make an application through the withholding agent (Cambodia resident taxpayer which is making payment) with the relevant department in the GDT, namely the Department of Law, Fiscal Policy and International Cooperation (DLPIC) using the prescribed form (referred to as Annex II in IN4084).

Claiming a tax credit deduction

- In case, the taxpayer has income that is subject to tax by both contracting states, **tax credit** is allowed to offset with the tax payable in the taxpayer's resident country. In Cambodia, the taxpayer will need to have a tax payment receipt from the other contracting state to justify any tax credit claimed.



Obtaining a Cambodia CoR

To obtain a residency certificate, a resident person of the Kingdom of Cambodia must submit an application to the Department of Administration and General Affairs, of the GDT, following a prescribed form and attach relevant documents as stated in the prescribed form (Referred to as Annex I in IN4084). While Annex I is yet to be released by the GDT, we understand that a Cambodia resident taxpayer, should at a minimum submit its tax registration certificates including its Value Added Tax (VAT) certificate.

Note: The residency certificate is valid for 1 year counting from the date of issuance.

Our comments

We welcome the rules and procedures to implement the DTAs, particularly as there has been a lack of clarity on how tax treaty benefits should be claimed under the DTAs with Singapore and Thailand, which became effective on 1 January 2018.

However IN4084 does not fully clarify the process as it details that resident taxpayers are required to submit certain documents and forms, which shall

be outlined in Annex I and II. However, Annex I and II are yet to be made publically available as of the date of this publication.

We have therefore sought practical guidance from tax officials of the GDT and understand that Cambodian resident taxpayers should submit a formal administrative request letter and attach related documents such as invoice, payment receipt, CoR of the payee in the other contracting state (e.g. Singapore or Thailand), etc., to the GDT for their review. The GDT official will review and respond to the taxpayer on a case-by-case basis. Our experience is that such administrative requests often take a prolonged amount of time to be processed and approved. It is therefore advisable for taxpayers to submit an application to the GDT now, rather than waiting for the issuance of Annex I and II, particularly in the case of WHT rate reduction as GDT practice on claiming WHT refunds remains uncertain, thus any WHT paid at the non-treaty rate prior to application approval may not be refunded.

Tax Obligations of Associations and Non-Governmental Organisations

(Prakas no. 434, MEF,PrK, dated 12 April 2018)

On 12 April 2018, the Ministry of Economy and Finance (MEF) issued the Prakas No. 434 MEF to provide instruction to implement tax obligations of Associations and Non-Governmental Organisations (NGO) in Cambodia. The Prakas clarifies the existing tax law and add additional requirements to strengthen the Associations and NGOs' tax obligations.

We have summarised certain key areas of the Prakas below for your reference:

Tax on Income (Tol) exemption

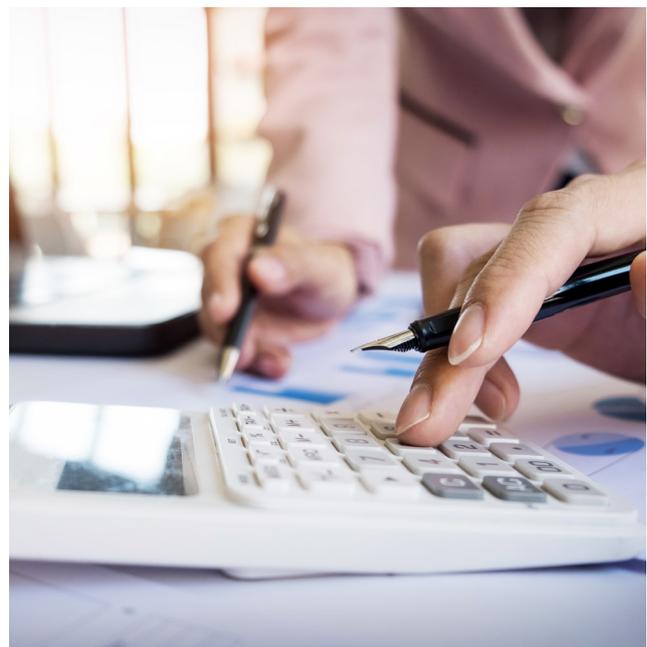
Tol is exempted for Associations and NGOs if they are solely operated for religion, charity, science, education, donation, etc., and no part of the incomes are used for private interest.

The exempted income includes legal fund, gift, resource and property, donation, income from other legal sources, except the income from separate business activities as stated in the Prakas.

To be eligible for the Tol exemption, Associations and NGOs must submit the request and attach with Memorandum of Article of Association (MAA) and Memorandum of Understanding (MoU) to the General Department of Taxation (GDT). Moreover, any change of the Associations and NGOs information, they are required to notify the GDT within 15 working days. Otherwise, the exemption will be revoked for any non-compliance or obstruction of implementation of the tax provisions.

Activities not exempted from Tol

The activities which are not in the sole objective of the Association and NGOs are considered as separate business activities and subject to tax in accordance with the existing law and provisions such as restaurant, repairing workshop or training centre, etc. Moreover, Associations and NGOs are required to maintain separate accounting records and register the business activities with the GDT separately based on the annual turnover.



Other obligations

Associations and NGOs still have the obligation to withhold and pay Withholding Tax and Tax on Salary and other taxes. They must also submit monthly and annual tax returns with the Tax Administration, whether there is any tax payable or not.

Our comments

The Prakas does not mention specifically the monthly Prepayment of Tol (PTol) or VAT. However, because PTol is related to the Tol, it is likely also exempted, as it would be pointless to pay PTol for activities that are exempted from Tol. Additionally, there is also a tax ruling from the GDT specifically clarifying that income(s) by non-profit seeking organisation and association is not subject to the PTol and VAT. Finally, it is also not clear, if Association and NGOs can claim VAT and must charge VAT. However, in practice, they are not allowed to claim any VAT and since it could be argued that they are not making taxable supplies, being a non-profit organisation. It should be noted that these assumptions would not apply to any other activities that may not be exempted from Tol as noted above.

Within the Prakas, it clearly indicates that all Associations and NGOs are required to register with the Tax Administration and comply with all the tax obligations by declaring monthly and annual tax returns to the Tax Administration as per required timeframe, and while the Tol is exempted, the administrative process is required to be eligible for the exemption.

Other activity should be treated as normal business operation and subject to tax in accordance with the existing law and provisions, even if those activities are operated to support the purpose of Associations and NGOs.

Because certain income seeking activities of Associations and NGOs could potentially be considered and interpreted as separate activities by the Tax Administration and be subject to tax, the Associations and NGOs should take conservative approach to seek for agreement from the Tax Administration before proceeding with any income generated activities other than the stated exempted income as per this Prakas.

Rules and Procedures for Tax on Income on Insurance Enterprises

(Prakas No. 490, MEF, PrK, dated 30 April 2018)

On 30 April 2018, the MEF issued Prakas No. 490, to determine rules and procedure for Tax on Income (Tol) for insurance enterprises, which covers all insurance or reinsurance activities on property or other risks and life insurance with saving features activities in the Kingdom of Cambodia.

We have summarised certain key areas of the Prakas below for your reference:

General insurance, general reinsurance and small scale insurance enterprises

Gross insurance premium is subject to Tol at the rate of 5% and payable on a monthly basis, which shall be declared and paid to the GDT by 20 of the following month after the insurance premium is received (i.e. implying no 1% prepayment of tax on income (PTol) is required).

Income from other activities, beside the above, is subject to Tol at rate of 20% as normal and deduction of expenses are only allowed on payments that relate directly to the transactions of this income from other activities. However, the following income are not subject to Tol:-

- Commissions, insurance claim and repayments from reinsurance companies.
- Interest income which already withheld and paid Withholding Tax (WHT) by financial institutions.

There shall be no WHT obligation for payments to

non-resident on reinsurance of general insurance. However other payments that are the subject to WHT as stated in Article 25 new and Article 26 new (one), the insurance enterprises shall have the obligation to withhold and pay to taxes, by the due date.

Life insurance or reinsurance enterprises with saving features



Income from insurance activities, income from deposits at bank, income from investment, rental, royalty, other claims and income from financial or investment assets, capital gain, etc., except gross insurance premium written off and insurance claims repayment, are subject to Tol at rate of 20% in accordance with the existing tax law and provision.

The above incomes are subject to 1% PTol and required to be declared and paid to the GDT on a monthly basis.

Insurance claims not paid by time specified, with no protest from the insured or the beneficiary, within 2 years, will be recorded as income for the tax year.

Technical reserve for life insurance or reinsurance activities provision is allowed in accordance with international standard recognised by the MEF. The rule and procedure to calculate this technical service will be issued by the MEF's Prakas no more than 3 years after the issuance of this Prakas and any difference between the provision above and the amount in the reserve account will be recorded as either income or expense for the tax year accordingly.

WHT on net reinsurance premium payments to non-resident on reinsurance of life insurance is subject to WHT as stated in Article 26 new (one) of the tax law.

* Net reinsurance premium = gross insurance premium less expenses related to claim repayments and commission on reinsurance

Our comments

Prior to the changes, all insurance enterprises were subject to Tol at the same rate of 5% on gross premium based on the Law on Taxation. That life insurance enterprise is now subject to 20% rate of Tol which seems that the GDT considers life insurance activities (with saving features) as very similar to other financial institution enterprises such as banks and

similar concept is applicable in another jurisdiction.

Tol for insurance enterprises, covered under Article 21 of the Law on Taxation, was amended by the 2017 Law on Financial Management (LoFM), promulgated since the end of year 2016. However, the rules and procedures to be determined was just issued in the form of the above Prakas in April 2018.

With the absence of the rules and procedures, insurance enterprises may have found it hard to comply with the regulation; and thus, the GDT has also issued a notification no. 6715 to all tax related departments to waive the penalty for insurance enterprises on any late tax payment during the period absence of the rules and procedures for Tol above.

Upon the issuance of the rules and procedures for Tol by this Prakas, in accordance with previous instruction by the Director General of the GDT, all insurance enterprises are required to amend previous tax returns (i.e. tax return from 1 January 2017, except for 2016 Tol return) to be in accordance with the 2017 LoFM. Therefore, insurance enterprises should review and consider preparing amendment of the tax returns during the period after 1 January 2017 to avoid future risk during the tax audit event.

As a committed tax advisor to our clients, we welcome any opportunity to discuss the relevance of the above matters to your business.

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