

Technical Update

Tax and Corporate Services

June 2016



Singapore / Cambodia Agreement for the Avoidance of Double Taxation

On 20 May 2016, Cambodia and Singapore signed an Agreement for the Avoidance of Double Taxation (DTA), with entry into force pending ratification of the agreement by both countries. This is Cambodia's first DTA which is a welcomed development, and is expected to reduce barriers to cross-border investment and trade between the two countries, as well as fostering future economic growth for Cambodia.

For Cambodian tax purposes, the treaty will allocate taxing rights in respect of:

- Tax on profit, including withholding tax, Additional Profit Tax on Dividend Distribution and Capital Gains Tax; and
- Tax on salary.

It is important that you consider how these changes may apply to your business if you are a tax resident of either Singapore or Cambodia and carry on business activities in the other jurisdiction. As a committed tax advisor to our clients, we welcome any opportunity to discuss the relevance of the above matters to your business.

Summarized below are some of the key features of the new DTA.

Withholding taxes

The DTA provides for a reduction in the Cambodian withholding taxes rates when one of the following amounts is paid to a Singaporean resident:

	Domestic rate	Treaty rate
Dividends	14%	10%
Interest	14%	0%* to 10%
Royalties	14%	10%
Fees for technical services	14%	10%

*An exemption from withholding tax may be available in certain limited circumstances where interest is paid to the Government of Cambodia or Singapore, respectively.

Importantly, the Articles concerning interest, royalties and technical services fees include provisions relating to non-arm's length dealings, which limit the application of the concessional rates under the DTA. In this regard, to the extent that any payment exceeds an "arm's length rate," the excess amount will be subject to the domestic non-resident withholding taxes rate of 14%.

We note, the DTA is silent on branch profits tax.

Permanent Establishments

In addition to the usual tests that generally indicate there is a Permanent Establishment (PE) in a particular country (i.e. fixed place of business, branch, presence of agent acting on behalf of company, etc), the DTA includes some very specific tests in which a Singaporean resident will be considered to have a PE in Cambodia (and vice versa), including where that entity:

- Has a building, construction, assembly or installation project or provides supervisory activities in connection with such a project where those activities last for 6 months;
- Furnishes services through employees or other personnel engaged by the enterprise for a period aggregating more than 183 days in any 12 month period; and
- Carries on activities for exploration or exploitation of natural resources for a period or periods aggregating more than 90 days in any 12 month period.

The inclusion of these tests implies that for entities which do not meet the time based criteria, a PE in Cambodia will not arise.

Income from immovable property

The DTA clarifies that immovable property which is located in Cambodia shall be taxed in Cambodia, and vice versa for property which is located in Singapore.

For Cambodian tax purposes, the term immovable property includes land, houses, buildings and other constructions built on land. The DTA specifies this definition also extends to property which is accessory to immovable property.

Ships, boats and aircraft are excluded from the definition of "immoveable property". The taxation of income and gains arising from these assets will be subject to the article for "International transport".

International transport

The profits of Singaporean resident entities which operate in the airline industry will be taxable only in Singapore (and vice versa for Cambodian resident entities).

Importantly, there is an exception for the taxation of profits derived from the operation of ships in international traffic which may be taxed in both jurisdictions. However, the country in which the entity is not tax resident, may only tax these profits at 50% of the normal income tax rate. That means a Singaporean entity will only be subject to tax at a rate of 10% in Cambodia (i.e. 50% of Tax on Profits rate of 20%).

Capital gains

An interesting aspect of the DTA is the inclusion of a provision relating to the disposal of shares which derive greater than 50% of their value directly or indirectly from property situated in Cambodia (or vice versa, Singapore). In these circumstances, the gain from disposal will be taxable in the location of where that property is situated.

The taxation of gains from immoveable property, and moveable property (in connection with a PE) shall be taxable in the jurisdiction of their location.

All other gains will be taxable in the country of residence (including those relating to the alienation of ships or aircraft used in international traffic).

Independent personal services

Singaporean resident individuals who provide independent personal services (i.e. professional services or activities of an independent character) in Cambodia will be taxable in Singapore, and vice versa for Cambodian resident individuals.

However, where such an individual maintains a fixed base in Singapore / Cambodia, respectively, or is present in that country for a period of 183 days in any 12 months, income derived from independent personal services may be taxed by that country.

It is important that individuals providing independent professional services consider how the DTA may alter or affect the taxation of their income in these tax jurisdictions.

The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Dependent personal services

Employees of a company who are sent to work overseas in either Cambodia or Singapore will not be taxed in that country where the employee is:

- Overseas for an aggregate period of less than 183 days in any 12 month period; and
- Paid by the company, and not an overseas subsidiary; and
- The income is not paid by a PE of the company in the overseas country.

It is important that Cambodian and Singaporean employers consider these criteria when sending their employees to work overseas, to ensure that no unexpected tax outcomes occur.

Methods for elimination of double taxation

Double taxation in Cambodia shall be alleviated by the allowance of a tax credit for any tax suffered in Singapore (subject to certain limitations).

A similar approach will be adopted by Singapore. Of note, certain dividends will receive a credit for underlying taxes paid.

Exchange of information

The DTA gives wide authority for the Tax Offices of Singapore and Cambodia to exchange and request information for the purpose of administration and enforcement of the Tax laws.

It will be important to understand to what extent the Cambodian Tax Office will utilize these provisions to gather information regarding operations of Singaporean companies in Cambodia, and how this information will be applied.

Our comments

Whilst the introduction of the DTA is a welcomed development for Cambodia, it is not without its challenges, particularly relating to inconsistencies between the taxation systems of a developed economy like Singapore, versus those of a developing economy like Cambodia. Key challenges include the administration of the DTA and the required sophistication of the Tax Office in Cambodia to give effect to the intended outcomes of the DTA.

The DTA itself includes a number of provisions which deal with international tax concepts and principles, an area which is yet to be fully developed in Cambodia. It will be important to understand how the Cambodian Tax Office will deal with these provisions and whether these will be aligned to the practices adopted by the Singaporean Tax Office.

Additionally, the DTA includes "mutually agreed processes" to resolve any uncertainties which arise from application of the DTA, however is silent on how these processes will be administered. In this regard, the Cambodian Tax Office generally adopts quite an aggressive approach to tax revenue collection and, therefore, a key challenge will be how the Cambodian and Singaporean taxation authorities come to a mutual agreement in circumstances where the DTA does not provide a clear answer.

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