

Technical Update TU006/2021

ISSUED IN DECEMBER 2021

This article covered one of the important regulations issued by MEF on the following area

THIS NEWSLETTER COVERS

1. RULES AND PROCEDURES FOR IMPLEMENTATION OF VAT FOR E-COMMERCE
2. PRAKAS ON TAX ON SALARY

I. PRAKAS NO. 542 AND NOTIFICATION NO. 20522 ON RULES AND PROCEDURES FOR IMPLEMENTATION OF VAT FOR E-COMMERCE DATED 8 SEPTEMBER 2021 AND 8 DECEMBER 2021

This Notification might be interest to Taxpayers who purchase digital goods or service from non-residents suppliers and Non-resident taxpayers who supply goods or service through electronic platform operator.

Subsequence to the issuance of Prakas no. 542 dated 8 September 2021, The Ministry of Economy and Finance (MEF) has issued another Notification no. 20522 GDT dated 8 December 2021 by ruling out the procedure of registration on VAT for E-commerce.

Referring to Prakas no. 542, the supply of digital goods or services through E-commerce from non-resident taxpayers to resident taxpayers in Cambodia, and the supply of digital goods or services via E-commerce to resident taxpayers in Cambodia shall apply VAT 10%, except non-taxable supply.

A. Tax Obligation

1. **Simplified VAT Registration**

- Non-resident taxpayers supply digital goods or services through E-commerce to resident taxpayers in Cambodia are required to do VAT registration as below:
 - o Register with the GDT **within 30 days** with an estimation of annual turnover from **KHR250 Million** or expected to have turnover from **KHR 60 Million for any three consecutive months** in a calendar year
 - o Non-resident taxpayers that **performing** their business operation through E-commerce from **1 January to 31 December 2021** with an **estimation** of annual turnover of **KHR 250 Million** shall registered latest by **31 December 2021**.

2. **Tax declaration and payment**

- The supplied of digital goods or services from Business to Consumer transaction (**B2C**): The Non-resident taxable person supplying digital goods or services through E-commerce to consumer who is not tax registered entity in Cambodia has obligation to declare and pay VAT to GDT the latest by 20th of the following month that the supplying takes place.

- The supplied of digital goods or services Business to Business transaction (**B2B**):

1. The Non-resident taxable person supplying of digital goods or services through E-commerce to a resident taxable person has to obligation to declare the VAT to the GDT on the VAT return form NR-VAT01 by 20th of the following months.

The Non-resident taxpayer does not have the obligation to pay the VAT to the GDT under this arrangement if the payment of goods or service was made through both Company's bank account.

2. The resident registered taxable person that purchased the digital goods or services through E-commerce from non-resident taxpayers has to collect the VAT in the form of VAT Reverse Charge Mechanism, and has to declare the VAT in the VAT return form NR-VAT02 and pay the VAT to GDT the latest by 20th of the following months by manual submission or by the 25th of the following month by e-filing. The VAT reverse charge will be allowed for VAT input credit.

Until now, the VAT return from NR-VAT01 and NR-VAT02 has been discussing and finalizing by the GDT and Tax Working Group. The Prakas on VAT on E-commerce is not only a challenging for non-resident supplier, yet, resident purchaser shall be aware of the obligation when purchasing the goods and services via E-commerce platform. Failure to comply with all the requirements shall be subject to the penalties in accordance with the Law on Taxation.

II. PRAKAS NO. 543 ON TAX ON SALARY DATED 8 SEPTEMBER 2021

This Prakas might be interest to General Taxpayers.

The MEF issued a new Prakas no. 543 about Tax on Salary, dated 8 September 2021. The Prakas has intention to amend and update on previous TOS Prakas 1173 and other regulation in which related to the tax on salary to ensure the effectiveness in tax collecting.

The new Prakas no. 543 comes to affective on 8 September 2021 and for other regulations beside this Prakas on Tax on Salary are being abrogated.

a. Salary definition

The term salary refers to the salaries, remunerations, severance pay, bonuses, overtime, compensations, and fringe benefits which are paid to an employee or which are paid for the direct or indirect advantage of the employee for the fulfillment of employment activities. The term employee is included the director of the Company, which was absent in Prakas 1173.

b. Rules of residence and source

A physical person who meets at least one of the following three criteria is regarded as a resident in Cambodia:

- a. Has a place of resident in Cambodia, referring to a person has ownership or rent or lease, house, building, rent room, boarding school, etc. that can be used and where that person always stays or occupies;

- b. Has principle abode in Cambodia, which is determined by the real residence based on sundry factors such as the person's place of business, stay duration, stay characters, place of residence of the individual family, bank account of the individual, place where the individual does principal and social activities;
- c. Physical presence in Cambodia for more than 182 days once or many times within any 12 months terminating in the current calendar year.

Additionally, in Prakas no. 543 added that in case of uncertainty, the physical presence as per criteria C above shall be the final condition in determining the residency status for TOS and FBT purposes, regardless of the person's immigration status.

d. Taxable and Non-taxable Salaries for TOS

- Taxable salary:

For resident employees:

- a. Salary from Cambodia sources
- b. Salary from foreign sources
- c. Advance money, loan or installment made by the employer to the employee

For non-resident employees: taxable salary includes Cambodia source salary that is subjected to flat tax rate of 20%

- Non-taxable Salary:

- Real refund on professional expenses made by the employee which shall met the 3 conditions in the Prakas
- Indemnities for the layoff within the limit as provided in Labour Law;
- Additional remuneration with social characteristic where there is provision in Labour Law;
- Supplying of uniform or professional equipment are exempted from TOS if it is being provided equally to all employees who has the same position and expected to return back to the company when employee is resign; and
- Flat allowance for mission and travel expenses which cannot exceed the stat's allowance for the same work.

d. Taxable fringe benefits

The determination of fringe benefits mentioned in article 15 of the new TOS Prakas is added one criteria of "Provision of any part of shares or company capital" into the list which was previously not mentioned in the old Prakas no 1173.

The new Prakas is also added a new article 17, Rate of Fringe Benefits Tax, every month the employer shall withhold and pay tax by the time specified at the rate of 20% of the total value of fringe benefit provided to all employees. The value of fringe benefits is at the fair value inclusive of all taxes.

Prakas 543 provides an update to Prakas 1173 which there are no significant changes. The notable changes are:

- Term of employee
- The provision of shares shall be considered as Fringe Benefits
- Reinforcement the rule of residency
- TOS exemption on the non-resident person who perform the technical and other service if the conditions are met.

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