

Technical Update TU006/2020

September 2020

This article covered a few important updates in recent months of tax and financial regulations issued by Ministry of Economy & Finance (MEF) and General Department of Taxation (GDT) which covers the following areas:

1. The Implementation on Reduction of Withholding Tax on Interest Payment on Loan obtained by Banks and Microfinance Institutions (MFIs) from Resident and Non-Resident lenders (Prakas no. 525 MEF.Prk, dated 19 June 2020)
2. The Implementation of VAT on the Disposal of Tangible Fixed Assets. (Instruction no. 15301 MEF, dated 22 June 2020)
3. Obligation of Submitting Financial Reports for Independent Audit (Prakas no. 563 MEF.Prk, dated 10 July 2020)

I. The Implementation on Reduction of Withholding Tax on Interest Payment on Loan obtained by Banks and Microfinance Institutions (MFIs) from Resident and Non-Resident Lenders (Prakas no. 525 MEF.Prk, dated 19 June 2020)

Further to the letter no. 12922 GDT dated 26 May 2020, the GDT has issued a Prakas on the guidance on reduction of withholding tax on interest payments on loan lend by resident and non-resident lenders to Banks and MFIs in Cambodia.

This Prakas aims to reduce the burden of interest expenses on local loan and foreign loan that obtained by Banks and MFIs in order to enhance the sustainability of financial institution in Cambodia. Therefore, the purpose of this Prakas is to enable the Banks and MFIs to have a relief of reduced withholding tax on interest payment payable to their residents and non-resident lenders.

This Prakas shall apply to Banks and MFIs who are governed by the laws and regulations of the banking and financial sector in Cambodia.

For Banks and MFIs that enter into loans with resident and non-resident lenders, the WHT rates will be reduced as follows:

- a. For new loans:
 - Reduce to 5% WHT on interest payments to resident and non-resident lenders from April 2020 to December 2020;
 - Reduce to 10% WHT on interest payments to resident and non-resident lenders for the 2021 tax year; and
 - Starting from 2022 tax year onwards, the WHT on interest payment shall be adjusted back to normal in accordance with Law on Taxation (LOT).

- b. For existing loans:
 - Reduce to 10% WHT on interest payments to resident and non-resident lenders from April 2020 to December 2020; and
 - Starting from 2021 onwards, the WHT on interest shall be adjusted back to normal in accordance with LOT.

The WHT reduction is considered as state burden to support the Banks and MFIs in Cambodia.

To enjoy for this tax relief, the Banks and MFIs must maintain the supporting document as described below:

- a. Loan agreement(s) which certified by lawyer of both parties;
- b. Fund transfer document related to the loan contract; and
- c. Proper accounting records.

All the supporting documents above are not required to be submitted with the tax returns, however, they are required to be maintained for future tax audit purpose.

II. The Implementation of VAT on the Disposal of Tangible Fixed Assets. (Instruction no. 15301 MEF, dated 22 June 2020)

The Instruction aims to clarify on the VAT implications regarding the disposal of tangible fixed assets that have been used in the business operation by an enterprise in Cambodia. The implementation guidelines are outlined as below:

1. Any enterprise that disposes a tangible fixed asset which was used for business purpose, either through sale or through donation, or transfer at value below the market price, is subject to 10% VAT on market price. The exception of this is when there is the business transfer when an enterprise transfers its business due to cease of business, VAT shall not be applicable on business transfer.
2. For any tangible fixed asset that VAT credit has been claimed and no longer used in the business of the enterprise, the asset shall be considered as being sold and will be subject to VAT on its market value at the time it is no longer used. But any tangible fixed asset for which input VAT credit has not been claimed, at the point at which it is no longer used in the business, shall not consider as being sold and not subject to 10% VAT, however if there is a real sale of that asset, the enterprise shall be subject to 10% VAT. 'Fixed assets that are no longer used in the business' are defined as fixed assets which are not used in business to create business output but are still kept and maintained by the enterprise.
3. Enterprises whose business activities are considered non-taxable supplies under the VAT regulations which are not able to claim a VAT input credit when they acquire tangible fixed assets still need to account for 10% VAT when they actually sell those tangible fixed assets, for the fixed assets that no longer used in business will not be subject to VAT as long as those fixed assets remained unsold.

III. Obligation of Submitting Financial Reports for Independent Audit (Prakas no. 563 MEF.Prk, dated 10 July 2020)

This Prakas determines the rules, criteria, and required conditions of having financial statements independently audited for obliged enterprises as well as determine any related obligation for the purpose of strengthen compliancy and management of having financial statement independently audited with effectiveness, accountability, transparency, and efficiency.

The scope of this Prakas shall applicable to enterprises, public enterprises, public limited enterprise, qualified investment project, and non-profit organizations in Kingdom of Cambodia.

In addition to the enterprises outlined above any enterprise in Cambodia that meets two (2) of the three (3) criteria in the table below will also be required to submit their financial reports for independent audit for each accounting period:

| | Prakas no. 563 (New Prakas) | Prakas no. 643 (Old Prakas) |
|------------------|--|---|
| Annual Turnover | Above KHR 4 billion (approximately USD 1,000,000) | Above KHR 3 billion (approximately USD 750,000) |
| Total Assets | Above KHR 3 billion (approximately USD 750,000) at the date of the close of the accounting period) | Above KHR 2 billion (approximately USD 500,00) |
| No. of employees | More than 100 (defined as average number for the year) | More than 100 |

Enterprises that do not meet two (2) out of the three (3) criteria above can also voluntarily submit their financial reports for independent audit.

For non-profit organization shall submit its financial statements for each accounting period for independent audit if it meets 2 criteria as below:

- Total annual expense exceeds KHR 2,000,000,000 (two billion); and
- Having total of employee of at least 20 people or above

For non-profit organization which does not meet the above 2 criteria can voluntarily submit its annual financial statement for independent audit.

Enterprise having obligation as stated above, which used to be audited shall continue to submit its financial statements of each accounting period for independent audit at least for 3 more consecutive years even if that enterprise ceases to meet the criteria.

If obligated person ceases commercial activities or operating activities for consecutive 12 months starting from the end of the last accounting period, that obligated enterprise can submit a request to National Accounting Council (NAC) to exempt from submission of financial statement for independent audit.

The independent audit and issuance of independent audit opinion on annual financial statements shall be completed not later than 6 months after accounting closing date. In case of the enterprise could not meet this deadline, the obliged enterprise can apply to NAC for delay of submission with proper reason. Hence, the audited financial statement shall be sent to the secretarial office of the NAC no later than 6 months 15 days from the accounting closing date.

The independent audit on financial statement for the accounting period of 2020 shall be determined as 1st year independent audit for the purpose of rotation of auditors. Auditors must not provide service to any enterprise or non-profit organization more than five consecutive years.

Penalties

Obliged enterprises that fail to comply with this Prakas shall be penalized by the NAC as stated in Sub-Decree no. 79 SDMO dated 1 June 2020 on fine on violation of the Law on Accounting and Audit.

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