Technical Update TU007/2020

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This article covered one of the important tax regulations issued by Ministry of Economy & Finance (MEF) and General Department of Taxation (GDT) recently on the following area:

I. Prakas on Capital Gain Tax (Prakas no. 346 MEF. Prk, dated 01 April 2020)

The purpose of this Prakas is to set out the rules and procedures of collecting the Tax on Capital Gain.

This Prakas shall applicable to the resident physical persons, non-resident physical persons and non-resident legal entities, who gain profit from selling and transferring of capital with flat tax rate of 20%, which shall be declared and paid to the tax administrative within the period no later than 3 months after realizing the Capital Gain.

This Prakas supposed to be in effect from 1st July 2020. However, the implementation of this Prakas had been delayed until 1st January 2021 since the GDT wishes to allow longer period to enhance public awareness in gradual manner amongst the taxpayers.

Definitions of Capital

In term "capital" refers to immovable property, leases, investment, trademark, Intellectual property and foreign currency. The term is defined as below:

a. Immovable property refers to land, house, building and other constructions which are assessed and subject to regulations of tax on immovable property.
b. Leasing refers to the right of use which lessor sign agreement with lessee. In that case, the lessee is given rights of own and use the immovable property within the duration based on rental payment or annual payment. Leasing also includes sub-lease except financial lease of movable property and special lease that stated in the Law on special lease.
c. Investment refers to share, bonds and securities issued by the private entities.
d. Trademark refers to the license, customer list and logo of the company
e. Intellectual property including literary and artistic, signs, photography and arts which were used for commercial purpose.
f. Foreign currency refers to other currency other than Khmer Riels.

Exemption

Tax on Capital gain is exempted for the sale and transfer of immovable assets listed below:

1. Immovable Assets owned by government institutions;
2. Immovable Assets owned diplomatic mission, foreign consul, international organization or technical cooperation agency of other governments,

3. Principal place of abode of taxpayers which was occupied at least 5 years before selling or transferring. In case, taxpayers have more than one residence or taxpayers and his/her spouse having different residence, only one residence will be allowed as a principal place of abode.
4. Immovable property within family as stated in the stamp tax regulation except for transferring of ownership or rights of use on immovable property between siblings to siblings, father-mother in-law to son-daughter in-law and between grandmother-grandfather in law to grandson-granddaughter in-law.
5. Immovable Assets that was sold or transferred regarding public benefit according to the Law on Expropriation.

Time of Realised Capital Gain

For the purpose of this Prakas, taxpayers who realized capital gain when:

1. Selling or transferring or giving the rights to occupy on the property
2. Register for the transferring of ownership or the rights of the property at the competent authority
3. Achieving the ownership or the rights of assets by verdict or final judgement of the court.

Method of Calculation of Tax Base for Tax on Capital Gain

In order to calculating the capital gain tax of 20% on the capital gain, of which the gain representing the difference derived by subtracting sales proceeds with deductible cost for determination of tax base for tax on capital gain. Thus there will be two important factors as follows:

a) Sale Proceeds

For immovable property, sale proceeds refers to the selling price indicated in Sale and Purchase Agreement (SPA), of which the selling price must be reflected the market price. In the event that GDT is of an opinion that the selling price is below the market price, GDT has the right to re-assess the selling price in accordance with:-

- Market Value; or
- Value defined in the annex of the Prakas on the Transfer of Ownership or Occupancy Right over Immovable Property, by make reference to the approximate location of the subject immovable property; or
- Value that assessed by the committee for the evaluation of capital gains tax on immovable property.

b) Deductible Cost Method

Once the sale proceeds is determined, the taxpayers can have option to choose one of the following two cost deduction method to establish the deductible cost.

Method of cost deduction can be defined as below:

1. If the capital is immovable property, the taxpayers are permit to choose any method among the 2 methods below:

    a. Fixed cost deduction: allowed cost deduction is 80% of sale proceeds received from selling or transferring assets without the need to provide any supporting documents on the cost, under this method in another word the capital gain tax will be equal to 4% of selling price of the immovable property; or

    b. Actual cost deduction: cost deduction to be allowed based on actual expenses incurred. For this option, the tax payers need to provide all evidences and supporting documents on the costs and expenses that incurred in relation to the purchase of the concerned immovable property.

2. Regarding other kind of capitals other than immovable property, the taxpayers are allowed on cost deduction only by Actual Cost Deduction method.

3. In case taxpayers choose Actual Cost deduction method and the actual cost exceeds the selling or transferring revenue, the exceeded amount is not allowed for refund or deducting from the capital gain of other assets.

Tax administrator has the rights to inspect in order to do the tax reassessment on tax base and amount of tax need to be paid in the case that taxpayer do not provide sufficient supporting documents.

If there is no conformation on paying the tax on capital gain, every transaction such as transfer of ownership or the rights of holding the asset are not recognized as a legal transaction.

The taxpayers will be responsible for any penalty according to the Law on Taxation in any case of late submission of tax returns and tax payment on capital gain.

Special Note

It is to be noted that for resident physical person in Cambodia, in respect of immovable property, the tax on capital gain on immovable property shall be taxable on property situated in Cambodia as well as outside of Cambodia, i.e. for the resident physical persons, beside their immovable property located in Cambodia, all their other immovable property outside of Cambodia also subject to capital gain tax, and for those immovable property outside of Cambodia, tax credit is available for taxes paid on the disposal of the overseas immovable property if it was subject to tax in the jurisdiction that is located.

The term of resident physical person as per definition of Cambodia tax law, can be Cambodian or foreigners who are residing in Cambodia who meet one or more of three criteria as defined in article 3.1.a. of Law on Taxation.

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