

Technical Update TU011/2024

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This article covers the important regulations issued by:

- Ministry of Economy and Finance (MOEF)

This newsletter covers the following areas:

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I. PRAKAS NO. 574 ON RULES AND PROCEDURES FOR THE DISTRIBUTION OF INCOME AND EXPENSES AMONG RELATED PARTIES DATED 19 SEPTEMBER 2024

This instruction might be interested to all general taxpayers for business operation among related parties

The Ministry of Economy and Finance (MEF) has just released a new Prakas No. 574 MEF.Prk.GDT dated 19 September 2024 has introduced some key exemptions for taxpayers, especially concerning the requirement to maintain annual Transfer Pricing (TP) documentation which the Prakas No. 986 MEF.Prk shall be abrogated.

1. Taxpayers who prepared a TP report for the prior tax year may reuse this report for the current tax year if the nature of related party transactions, benchmarks, and analysis remains the same. However, the report must be updated with current-year financial information.
2. Related party loan transactions are exempted from the arm's length principle, provided that specific documentation is maintained per Instruction No. 10979 issued by the General Department of Taxation (GDT) in May 2022.
3. Resident taxpayers (excluding Banks or Microfinance Institutions) are not required to prepare transfer pricing documentation to determine related-party loan interest, provided they meet any one of these conditions:
 - a) Within three years of tax registration,
 - b) Operate as a Single Member Private Limited Company with loans from related parties under KHR 3,000 million (USD 750,000),
 - c) Are a Sole Proprietorship with loans involving the owner, spouse, or children.
4. A taxpayer is fully exempt from preparing TP documentation for any tax year if they meet all the following conditions:
 - a) Annual turnover is under KHR8,000 million (USD2 million) and total assets are under KHR4,000 million (USD1 million),
 - b) Related party transactions are under KHR1,000 million (USD 250,000) for goods or assets or services and royalty includes other related transactions excluding loan transactions.

The new Prakas shall take effect from 1 January 2025 onwards which the existing prakas shall be abrogated.

II. PRAKAS NO. 575 ON TAX ON SALARY DATED 19 SEPTEMBER 2024

This instruction might be interested to all general taxpayers

Further to the Prakas no. 543 MEF.Prk, the MEF has just issued a new Prakas No. 575 MEF.Prk.GDT dated 19 September 2024 and shall take effect from the date of signing the Prakas onwards which the existing prakas shall be abrogated.

The Prakas No. 575 MEF.Prk.GDT has updated from the previous Prakas as summarized below table:

OLD PRAKAS	NEW PRAKAS
<p>Article 3.2: , the term "employer" includes public institutions, resident legal entities, resident partnerships, permanent establishment in the Kingdom of Cambodia, non-profit organizations or resident natural persons who run a business.</p>	<p>Article 3.2: the term "employer" includes public institutions, resident legal entities, resident partnerships, permanent establishment in the Kingdom of Cambodia, association, organizations, political party, or resident natural persons who run a business.</p>
<p>Article 3.3: the term "employee" refers to a natural person who has received a salary from performing their works including those who are responsible for enterprises or directors of enterprises, civil servants, elected officials except members of the National Assembly and Senate.</p>	<p>Article 3.3: the term "employee" refers to a natural person who has received a salary from performing their works including those who are responsible for enterprises or directors of enterprises, public civil servants, and citizens granted public mandates by election except members of the National Assembly and Senate.</p>
<p>Article 8: Tax exempted salary includes:</p> <p>2. Indemnities for the lay-off within the limit as provided in Labor Law</p>	<p>Article 8: Tax exempted salary includes:</p> <p>2. Indemnities in case of contract termination within the limit as provided in Labor Law and types of indemnity which are exempted from tax shall be determined by a separate Prakas from Minister of the MOEF</p>
<p>3. Additional remuneration with social characteristics where there is provision in Labor Law</p>	<p>3. Additional remuneration for creating pension fund & social welfare or with social characteristics where there is provision in Labor Law and Social Security Schemes Law shall be determined by a separate Prakas from Minister of the MOEF</p>
<p>Article 16: the use of vehicles for employees' transportation shall not be subject to Fringe Benefit Tax ("FBT") if it meets the following 3 conditions:</p> <ul style="list-style-type: none"> i. The vehicle is parked in the business location after working hours and on day-off; ii. The vehicle is not specifically handed over to any employee or member of any employee after working hours; iii. The vehicle is not used by an employee or dependent individual of employee to do personal work. 	<p>Article 16: the use of vehicles for employees' transportation, the provision of accommodation, and provision of food for performing the works as a whole in reasonable manners regardless of positions are not subject to FBT.</p>
<p>Article 22: tax returns may be reviewed and be subject to tax re-assessment, if any. In case the employer fails to submit tax return on tax on salary, the Tax Administration may assess the unilateral tax reassessment.</p>	<p>This paragraph has been removed.</p>

III. PRAKAS NO. 577 ON TRANSFER TAX DATED 19 SEPTEMBER 2024

This instruction might be interested to all general taxpayers

The MEF has issued a new Prakas No. 577 on the Transfer Tax on 19 September 2024. It contains the same practice as before which shall be determined by the same tax rate.

The new Prakas has also mentioned that the transfer of ownership of or holding rights to vehicles or other means of transportation with up to 150HP shall not be subject to transfer tax. In addition, the following points have been added:

“Succession” refers to the transfer of ownership or possession of immovable property from a deceased person to their relatives. It can occur through:

- A written will or an authentic act if there is no dispute; or
- A court verdict or order in case of disputes among the heirs.

For contracts involving the supply of goods or services funded by the state budget, the stamp tax base is determined based on the contract value excluding Value-Added Tax (VAT).

Tax Exemptions and Allowances for Specific Transactions:

1. Securities Transactions:	<ul style="list-style-type: none"> • Tax exemptions apply to the acquisition or holding of shares by securities investors in the primary or secondary market. • This includes transactions such as share transfers, share acquisitions, dissolution of joint ventures, and shareholder restructuring.
2. Property Transfers Between In-Laws:	<ul style="list-style-type: none"> • A deduction of KHR 200 million is allowed from the tax base for property transferred through succession. • A deduction of KHR 100 million is allowed for property transferred as a donation or gift. • Eligible relationships include parents-in-law and children-in-law, grandparents-in-law and grandchildren-in-law, and siblings.
3. Property Transfers Between Direct Relatives:	<ul style="list-style-type: none"> • A deduction of KHR 100 million is allowed from the tax base for property transfers through donations or gifts between parents and children, spouses, grandparents and grandchildren, and their spouses. • This deduction applies only from the second transfer onward.

IV. NOTIFICATION NO. 014 ON THE EXTENSION AND ADDITIONAL OF TAX INCENTIVES FOR THE REAL ESTATE SECTOR DATED 9 OCTOBER 2024

This instruction might be interested to real estate sectors

The MEF has extended the tax incentives for real estate sector includes:

1. All transfers of ownership of or holding rights to immovable property with characteristic as Borey which value is less than or equal to USD70,000 are exempted and relief on transfer tax **until the end of 2025** and shall meet conditioned as mentioned in this notification.

2. To extend the implementation of Capital Gain Tax (CGT) on real estate for physical persons **until the end of 2025**. As for the five (5) types of capital gains taxes, including leases, investment assets, goodwill, intellectual property, and foreign currencies, shall still begin from **1 January 2025** onward.

3. Tax on Immovable Property (TIP) exemptions for agricultural land used for cultivation and construction directly serving agricultural activities, even in urban areas, without requiring permits, but non-agricultural portions of such land remain taxable. It also grants amnesty for penalties and interest on unregistered or under-declared TIP if corrected and paid by June 2025

4. The Tax on Unused Land (TUL) will suspending up until end of 2024, meaning that the owner or occupant or final beneficiary of land that defined as unused under the Prakas has no obligation to declare TUL until end of 2024.

V. PRAKAS 625 ON THE AMENDMENT OF ARTICLE 3 OF PRAKAS 071 REGARDING INCENTIVES FOR VOLUNTARY TO AMEND TAX RETURN DATED 10 OCTOBER 2024

This instruction might be interested to all general taxpayers

Prakas No. 625, issued on 10 October 2024, extends tax incentives from Prakas No. 071, allowing taxpayers or withholding agents who voluntarily request amendments to their accounting records and tax returns to be exempt from administrative penalties, including additional taxes, interest, and fines, **until the end of June 2025**, as follows:

1. For requests to amend the accounting records and tax returns on transactions that occurred before August 2024 only. Even so, the request to amend the tax return on transactions that occurred from August 2024 onwards shall not be applicable.
2. For the request to amend the accounting records and tax returns during the tax audit which the amendment was made before the tax auditor found the fault of the taxpayer or the withholding agent only (in case the auditor has not yet shown and no confirmation on the audit results).

If the tax return is amended on the audit results that found by the auditor during the tax audit, the taxpayer or withholding agent shall be subject to additional tax 10% and 1.5% in accordance with the tax laws and regulations. In this case, the taxpayer or withholding agent will be subject to additional tax and interest based on the procedure and results of the tax audit by the additional tax and interest paid through the amendment of the tax return are allowed to be deducted with additional tax and interest which resulted from tax audit.

VI. PRAKAS 626 ON TAX INCENTIVES FOR ENTERPRISES IN THE TOURIST SECTOR IN SIEM REAP PROVINCE DATED 10 OCTOBER 2024

This instruction might be interested to tourist sector

For enterprises in the tourism sector, including hotels, guesthouses, restaurants and travel agencies located in Siem Reap, receive the following tax incentives:

1. Exemption all kinds of monthly tax, except VAT and accommodation tax from July 2024 until the end of June 2025.
2. Exemption from tax on income for the year 2024. For the paid PTOI will be allowed as a tax credit to offset with tax on income for the year 2025.
3. Shall not subject to tax audit for the year 2024.

During the tax incentive period, the enterprises still need to submit tax returns to the GDT.

VII. INSTRUCTION NO. 025 ON SUPPLY OF FREE GOODS AND/OR PRIZES BY LOCAL ENTERPRISES DATED 10 OCTOBER 2024

This instruction might be interested to all general taxpayers

The GDT has issued an instruction no. 025 to clarify the tax treatment of Free of Charge (“FOC”) goods and/or prizes given to customers. The instruction has mentioned the main trigger points as below:

	The Provision Of Promotional Goods And Prizes In The Form Of Inventory For Sale	The Provision Of Promotional Goods And Prizes That Are Not Part Of The Inventory For Sale Or Prizes Other Than Goods
Tax Obligation	For Specific Tax (SPT) and Public Lighting Tax (PLT), at 5% for the initial supply by the manufacturer/importer, SPT will be calculated based on the market value of taxable goods.	These goods are not considered a supply of goods subject to VAT, PTOI, and TOI.
	For 10% Value-Added Tax (VAT) and 1% Prepayment Tax on Income (PTOI), the tax amounts will be determined based on the cost of the goods.	Taxpayers are not allowed to claim the VAT paid on purchasing these goods or rewards as an input tax credit. However, this VAT may be treated as a “deductible expense” in calculating the TOI.
	For Tax on Income (TOI), the tax will be calculated based on cost of the goods.	

Taxpayers must fulfill following requirements to carry out these promotional programs:

- Maintain proper records and sufficient documents are required to substantiate the granting of the above benefits.
- Maintain proper procedure and internal documentation on these promotional programs, approved by the Company’s management with detailed criteria or conditions (quantity, price, other terms for sale transactions to qualify for the promotion, and specify the program’s duration including start and end dates for the purpose of market expansion.
- Generally applicable to customers in accordance with the terms and conditions for sale transactions to qualify for the promotion, and
- Publicly announced.

For monthly tax declaration purposes, taxpayers are required to input the FOC data in a separate form – “Tax Sale Voucher” which is included as a annex to the Instruction No.025.

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