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Value Added Tax ("VAT") State charge on basic food products

(Prakas No. 361.MEF.PK released on 3 April 2018)

Effective 3 April 2018, VAT on basic food products will be considered as the State's burden in respect of locally supplied food for a period from 3 April 2018 to 31 December 2019. The Prakas defines basic food products as follows

- Poultry (chicken and duck), meat, either raw, marinated or smoked, including beef, buffalo, goat, lamb and pork
- All types of poultry eggs including raw, pickled and smoked
- All types of river fish and seafood including lobsters, prawns, shrimp, crab and artificial meat whether raw, marinated, or smoked
- All types of sugar which is not classified as candy (sweets)
- All types of salt
- All type of fish and soy sauce

Prakas 361 does not extend to the supply of the above food in restaurants.

Tax obligations for Associations and Non-Governmental Organisations ("NGOs")

(Prakas No. 464.MEF.PK released on 12 April 2018)

This Prakas provides clarity on the tax obligations of associations and NGOs and also provides a definition "Association" and "NGO"

Association:

- An association refers to membership organisations or similar organisations created by individuals or / and entities with the aim of representing and protecting the interests of its members without a profit seeking element or the sharing of any financial proceeds or gains amongst the associations members.
- Associations may include commercial, industrial or agricultural business chambers and
- For the purpose of the Prakas, an association formed in Cambodia is referred to "Local Association", while an association formed outside Cambodia is referred to as a "Foreign Association"

NGO:

- An NGO refers to a non-membership organisation or similar organization, including foundations created by individuals or / and entities other than government institutions with the aim of providing funds or services in one or more sectors that serve the public interest without a profit seeking or the sharing of any financial proceeds or gains amongst the NGO's members.
- For the purpose of the Prakas, an NGO formed in Cambodia is referred to "Local NGO", while an NGO formed outside Cambodia is referred to "Foreign NGO"

Tax registration procedures

All Associations and NGOs are required to register with the General Department of Taxation ("GDT") in accordance with Article 3 (New) and 101 of the Law on Taxation ("LOT").

Tax on Income ("TOI") exemption

NGOs and associations may be eligible for the TOI exemption if:

1. NGOs are established and operate exclusively for religious, charitable, scientific, literary and educational purposes. Furthermore, none of the NGO's assets and income should be directed at private interests or benefits and
2. An association's income should not be used for the private interests of the association's shareholders or individuals associated with the association.

TOI exemption

The exemption applies to:

- Funds and donations legally made to an association or NGO by a physical or legal person and
- Resources or assets belonging to the association or NGO

Exceptions

Article 8 of Prakas 464 requires that in the event an association or NGO generates income from business activities which are not exempt from TOI, the association or NGO is required to register for a separate VAT number and prepare separate accounting records to properly reflect this income.

The TOI exemption is not automatic. Accordingly associations and NGO's wanting the exemption need to apply for it from the GDT by submitting an application form which should be accompanied by supporting documents including:

- A memorandum or approval letter of registration from the Ministry of Interior for local associations and NGOs and
- A memorandum of understanding from the Ministry of Foreign Affairs and International Cooperation for international associations and NGOs

Once the TOI exemption is granted to an association or NGO it is a requirement to inform the GDT within 15 working days of any changes to the association or NGO's status that may occur after the exemption is provided. The TOI exemption will be revoked if the association or NGO does not adhere to the above requirements.

Monthly tax filing obligations:

Associations and NGOs that receive the TOI exemption are still required to declare withholding tax, tax on salary and other taxes that may apply and in accordance with the tax laws and regulations and within the statutory deadlines even where there is no tax liability.

Annual Tax Filing:

Regardless of the TOI exemption being granted to an association or NGO, there is still a requirement to file an annual TOI return along with the association or NGO's financial statements, bank account information, details of financing agreements that may be in place, if any, activity planning and reports and any other relevant documentation.

Implementation of Cambodia's Double Tax Agreements ("DTA")

(Instruction No. 4084.GDT released on 26 March 2018)

In order to provide greater clarity on the contents of Prakas 116, which was released by the Ministry of Economy and Finance on 2 February 2018, the GDT issued Instruction No. 4084 ("IN 4084") on 26 March 2018.

Prakas 116 confirmed the ratification of the DTA's between Cambodia and Singapore, China and Thailand respectively. The Singapore and Thailand DTA's became effective on 1 January 2018 while the Chinese DTA becomes effective from 1 January 2019. Furthermore, when the Brunei Darussalam DTA is ratified, it will come into force on 1 January of the year following its ratification.

IN 4084 was released to provide greater clarity regarding the administrative procedures that Cambodian taxpayers need to observe when applying the provisions of the DTA's to their cross border transactions.

IN 4084 provides guidance to taxpayers on the following areas:

1) Accessing treaty benefits in Cambodia:

To claim a treaty benefit or exemption in Cambodia, the Cambodian taxpayer needs to provide the following information to the GDT:

- Proof that the beneficiary of the payment to which the benefit or exemption applies is a resident taxpayer of the other contracting state
- Proof that the recipient of the payment to which the benefit or exemption applies is the beneficiary of the payment and
- The Cambodian taxpayer, as the withholding agent, is required to apply for permission from the Department of Law, Fiscal Policy and International Cooperation within the GDT by completing Annex II in IN 4084, before accessing the benefits or exemption in the DTA

To date the GDT has not released Annex II however it has indicated that it will consider written applications from Cambodian taxpayers wishing to access the benefits and exemptions on offer in the Singapore and Thai DTA's, where the application is supported by the above documentation.

2) Claiming a tax credit

Cambodian taxpayers wanting to claim a credit, and hence deduction for tax paid on the same income in the other contracting state should provide proof to the GDT in the form of a tax payment receipt issued by the tax authority in the other contracting state.

3) Obtaining a Cambodian residency certificate

Cambodian taxpayers may request a residency certificate from the Department of Administrative and General Affairs of the GDT by completing Annex I of IN 4084. As Annex I has also not been released by the GDT, taxpayers may submit their tax and VAT registration certificates to the Department of Administrative and General Affairs of the GDT if they wish to obtain the residency certificate. Once obtained, the residency certificate is valid for a period of one year.

Provisions and procedures regarding TOI and withholding tax obligations for general insurers, reinsurers and micro-insurers and life insurers and reinsurance companies offering savings products

(Prakas No. 490, MEF, PrK released on 30 April 2018)

Prakas 490 was released to provide guidance on the rules for taxing the income (TOI) and payments (WHT) of insurance and reinsurance companies providing insurance for property and other risks and life insurance products which offer a savings feature.

General insurance

TOI:

Insurance premiums earned from insuring property or other risks by a general insurer or reinsurer or micro-insurer are subject to TOI at a rate of 5% on the gross premium received during the financial year. The TOI should be declared monthly and payment should be made to the GDT by the 20th of the following month.

Insurance claims and commissions paid to a general insurer reinsurer or micro-insurer, along with interest income from bank deposits where withholding tax has been withheld are not subject to TOI. Any other income earned by a general insurer, reinsurer or micro-insurer besides the above payments is subject to TOI at the normal rate of 20% and expenses relating to this income may be claimed as a deduction and only against this income.

Withholding Tax ("WHT"):

Payments to non-resident reinsurance companies are not subject to WHT.

Life insurance and reinsurance companies offering products with savings features

TOI:

Premiums earned from providing life insurance or reinsurance products with savings features are subject to TOI at a rate of 20% on taxable profits. Furthermore, it is also a requirement to pay the 1% prepayment tax (the minimum tax) on the monthly turnover. The definition of "turnover" in the Prakas includes:

- Gross premiums and other income from life insurance and reinsurance activities offering a savings product except gross premium income which is cancelled or insurance compensation
- Income from other activities

Regarding the calculation of provisions, life insurance and reinsurance companies are allowed to calculate their provisions for technical reserves based on internationally accepted standards and a deduction may be claimed when the provision is booked in the life insurer or reinsurer's accounts.

We understand that the Ministry of Economy and Finance ("MEF") will issue rules and guidance for the calculation of the provisions within three years of the date of the Prakas, which was released on 30 April 2018.

- We further understand from Prakas 490 that to the extent the provision calculated by the life insurer or reinsurer is greater than the amount that will be allowed under the rules when they are released by the MEF, the difference will be treated as taxable income in the financial year in which the rules are released. Where the provision is less than what the rules allow for, a deduction may be allowed for the difference.

In the event that claims are not paid within the specified timeline and there is no complaint from the customer for a period of two years, the value of the claim will be considered as the insurance companies' taxable income.

WHT:

Payments from a resident life insurer or reinsurer to a non-resident reinsurer are subject to 14% WHT on net insurance premium. The term "net insurance premium" refers to the gross insurance premium from which compensation and commissions are deducted.

Changes to the process for claiming VAT refunds

(Prakas No. 576 and 577, MEF, PrK released on 19 June 2018)

Prakas 576 and 577 were released to announce changes to the process for claiming VAT refunds by Cambodian taxpayers that may be entitled to a refund.

The key points from Prakas 576 and 577 are as follows:

- The timeframe for claiming a VAT refund should take approximately 40 working days and the process may be quicker for taxpayers that have obtained gold tax compliance status
- The MEF has delegated its powers to His Excellency Kong Vibol, General Director of the GDT, to approve VAT refunds where the refund does not exceed 2,000 Million Riel (approximately USD 500,000), and this applies to all types of taxpayers
- For taxpayers that have obtained gold tax compliance status, there is no restriction on the size of the refund that His Excellency Kong Vibol has been delegated to approve.

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