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Acknowledgement obligation of supply of goods and services by an agent as principal

(Prakas No. 597.MEF.PK released on 27 June 2018)

The Prakas provides further clarification on the procedures and tax obligations on the supply of goods and services by an agent on behalf of a principal, which is a resident taxpayer conducting business in Cambodia.

To qualify as an agent supplying goods and services on behalf of a principal, the agent needs to fulfill the following conditions:

- ▶ An agent that supplies goods and services on behalf of a principal must be a medium or large taxpayer
- ▶ There needs to be a contract between the principal and agent and other supporting documents covering the relationship between the principal and agent
- ▶ The principal should set the price of the goods and/or services as well as the commission to be received by the agent for distributing the goods
- ▶ Ownership of inventory must remain with the principal until the goods are sold
- ▶ When goods or services are supplied to the customer, the agent may either issue a tax invoice which records the principal's name or the agent may use the principal's tax invoice. Whichever invoice the agent chooses to use must be used for the entire tax year. Invoices should be in chronological order for each principal where the agent distributes goods for multiple principals.
- ▶ The agent should issue a tax invoice to the principal for their commission and the resident principal is allowed to claim an input Value Added Tax ("VAT") credit on the commission payments.
- ▶ Agents are required to submit a detailed table of their supplies of goods and services and the table should be similar to the sample provided in this Prakas.
- ▶ The table should include a list of inventory movements and this table should be submitted to the tax authority every quarter and by 20th of the following month at the end of each quarter.

An agent meeting the above conditions should submit an application letter for acknowledgment from the General Department of Taxation ("GDT") by attaching with the following documents:

- ▶ Agency contract to supply goods and services on behalf of the principal
- ▶ Tax registration documents issued by the tax administration as a medium or large taxpayer
- ▶ Sample of invoice as stated in this Prakas

The GDT will issue an agent certificate which is valid for two years. Taxpayers may request a renewal which should be done of at least 30 days before the expired date on the agent's certificate.

Agents are allowed to collect all taxes including specific tax, public lighting tax and VAT on behalf of principal but they have no obligation to file tax returns on behalf of the principal.

Rules and procedures for the implementation of income tax and other taxes relating to qualified investment projects performing cut, make and trim activities

(Prakas No. 741 MEF.PK released on 3 August 2018)

The Prakas aims to provide further clarification on the rules and procedures relating to income and other taxes that apply to Qualified Investment Project's ("QIP") engaged in Cut, Make and Trim ("CMT") activities.

This Prakas cover QIPs in the garment, textile, footwear, back-pack, hand-bag and hat sectors that perform CMT services under contract and for export.

This Prakas does not apply to local supporting industries or contractors that supply goods or services to CMT's in the above sectors, which was originally stated in Prakas 311 MEF.PK dated 19 March 2014.

Enterprises performing CMT services should comply with the following conditions:

- ▶ The CMT service provider should notify the GDT of its services within 30 days after signing a contract with the owner of the finished products by attaching the CMT service contract which should disclose details of the scope of work, service fee and payment conditions
- ▶ The CMT should maintain accounting records and information on the services they perform in accordance with Cambodian International Financial Reporting Standard ("CIFRS") and the relevant tax provisions

For tax purposes, a CMT's business activity should be the production of goods for export and CMT enterprises should be entitled to the same income tax incentives that apply to other QIPs that produce goods for export.

CMT service providers should maintain records of inventory management, which should include information relating to inventories of raw materials, finished products and also an inventory of reject and/or excess products. Enterprises that perform CMT services should provide annual reports of inventory inspections together with an income tax return to the GDT.

CMT enterprises that have submitted tax returns that do not reflect their actual operations should amend those returns and for the past three years, as applicable. If the amendment results in additional tax to be paid, the CMT enterprise will be exempt from interest and additional penalties.

The Prakas also provides further guidance on a CMT's obligations in regards to income tax and VAT as these taxes apply to CMTs and the required documents that should be submitted to claim CMT service status.

Withholding tax implementations under Cambodia's double tax agreements

(Instruction No. 11815.GDT released on 16 August 2018)

In order to apply the reduced withholding tax ("WHT") rates in Cambodia's Double Tax Agreements ("DTA"), the GDT issued Instruction No. 11815 on 16 August 2018 to provide further guidance as follows:

- ▶ Cambodian tax residents must comply with CIFRS for recording the payment of dividends, interest, royalties, and technical and management service fees in their financial statements. Amounts will be considered paid if the transaction is booked in the appropriate financial statement.
- ▶ The reduced WHT rates on dividends, interest, royalties and payments of technical and managerial services under the DTA's becomes effective either on 1 January of the year following the year in which the DTA is ratified, or the following day of the year in which the DTA is ratified. The decision on which time frame applies to a particular DTA is usually announced by the GDT once the DTA is ratified by the respective Parliaments.
- ▶ The payment of dividends, interest, royalties, technical and managerial service fees to non-residents are subject to WHT and the rate cannot exceed the rate in the applicable DTA, as stated in instruction No. 4084.GDT dated 26 March 2018.

Arm's length interest now applies to related party loans

(Instruction No. 11946.GDT released on 21 August 2018)

Cambodia's GDT released Instruction 11946 (Instruction 11946) on 21 August 2018, which requires an arm's-length interest rate to be charged on related party loans to reflect Prakas 986 (Prakas 986) which was issued in October 2017.

Instruction 11946 conforms to Prakas 986 by removing the inconsistency between Prakas 986 and Instruction 151 and requires that terms and conditions of a loan between a Cambodian taxpayer and its related party should be at arm's-length.

Accordingly, the interest rate, terms and conditions of the interest payments on a related party loan should be determined by reference to the interest rate and payment terms and conditions in place between third parties. Instruction 151 still applies to third party loans.

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