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Suspension of Prepayment of Tax on Income (“PTOI”) for the agricultural sector

(Prakas No. 100 MEF.PK dated 29 January 2019)

From January 2019 onwards, plantation companies and agricultural companies producing products for both domestic and export markets will be exempt from PTOI for a five years period. Agricultural products that the suspension of PTOI applies to includes paddy, rice, corn, bean, pepper, cassava, cashew and rubber.

To be entitled to the incentive, agricultural producers must comply with the following:

- ▶ Maintain proper accounting records in accordance with Law on Taxation and provisions of the accounting law and
- ▶ Declare and pay tax by the statutory deadlines

Agriculture producers that do not comply with the above obligations will have the above PTOI incentives withdrawn and be subject to various penalties.

Amendments relating to the expansion of business activities by companies with an existing Qualified Investment Project (“QIP”)

(Sub-Decree No. 33 SD.PK dated 13 February 2019)

Sub-decree No. 33 SD.PK amends Article 15 of Sub-Decree No. 111 to provide tax incentives for existing QIPs.

Article 15 New of the sub-decree clarifies that the 1% minimum tax (“MT”) exemption will only be granted to QIPs that maintain proper accounting records according to the tax laws and regulations.

The key amendments announced in the sub-decree relate to new tax incentives for existing QIP’s that expand their business activities. The sub-decree defines an “expansion” of a QIP’s business activities as follows:

- ▶ Expansion of the QIP’s existing production line to produce greater output
- ▶ Expansion of production lines to produce additional products that may be part of the same production line
- ▶ Expansion includes installing modern technology to improve productivity and environmental protection
- ▶ Expansion also includes the QIP expanding its telecommunications infrastructure

Where a QIP is purchased or transferred to another legal entity, the purchaser or new legal entity will not be entitled to claim additional tax incentives if the acquired or transferred QIP was exempt from Tax on Income (“TOI”) prior to the acquisition or transfer.

To qualify for these incentives the additional investment capital needed for the expansion of the QIP project must be at least equal to the minimum capital requirement stated in Section 2 of Annex 1 of Sub-Decree No. 111 ANK.BK dated 27 September 2005.

The TOI exemption period for expanded QIP projects includes a trigger period, a three-year period and a priority period. The trigger period starts from the date that the expanded

project is approved and ends when revenue is first generated from the expanded QIP project. The priority period is determined by the Law on Financial Management.

The revenue earned from the expanded QIP project that may be exempt from TOI is calculated as follows:

Exempt revenue = Total revenue x (ratio of expansion capital / total investment capital)

Recognition, approval and revocation of the tax incentives for expanded QIP's will be made by the inter-ministerial mechanism under the Ministry of Economy and Finance ("MEF") in conjunction with the Council for the Development of Cambodia.

Companies requesting an expansion of their QIP projects need to submit an application to the above inter-ministerial mechanism for their approval and a response will be provided by the MEF within 45 days of the application being lodged.

Procedures for tax audits

(Prakas No. 270 MEF.PK dated 13 March 2019)

The MEF issued Prakas No. 270 MEF-PK to provide further clarification on the procedures to be adopted for tax audits in order to improve transparency regarding tax audits and to create a more competitive business environment in Cambodia.

While the definition of tax audit remains unchanged, the Prakas provides the following clarification on how each type of tax audit will be conducted going forwards:

- ▶ A desk audit refers to an examination of the taxpayers' tax returns by the auditors at the General Department of Taxation ("GDT")'s offices. A desk audit may be initiated if the auditors identify inconsistencies between the taxpayer's tax returns and other information provided to the GDT. The Prakas indicates that if the auditors' findings are considered complex or high risk the desk audit may be terminated and replaced by an onsite tax audit. The time period for initiating a desk audit is within 12 months after the submission of the tax returns.
- ▶ A limited tax audit is conducted at the taxpayer's premises which is more detailed than a desk audit. The scope of a limited audit includes most types of tax including VAT refund but excluding income tax. A limited audit may only be conducted on the current tax year and the year immediately prior to the current tax year.
- ▶ A comprehensive tax audit covers all taxes and also includes a determination into whether the taxpayer maintains proper accounting records. A comprehensive audit may be conducted on the current tax year and the three tax years immediately preceding the current tax year.
- ▶ In the event the auditors detect evidence of tax evasion or there is any balance of tax losses carried forward or tax credits brought forward from previous years, the comprehensive audit may be extended to include a further two years.

- ▶ Where tax evasion is identified, and the evasion extends beyond the above timeframe, the MEF may grant the GDT permission to expand the audit to cover the years based on the statutory limitation as provided under the Law on Taxation.

In cases where evidence emerges during the audit that the taxpayer intentionally committed tax evasion, the GDT will assign a dedicated team with powers to initiate a tax crime investigation.

Prakas 270 also provides details on the criteria used by the GDT in selecting taxpayers for audits and the timelines in which audits should be conducted. Tax audit fieldwork will be conducted within 10 workdays after receiving a notice of the audit. Taxpayers can request an extension to start an audit fieldwork by up to 30 days if the taxpayers can provide reasonable grounds for the extension. Within the first 10 days after the date the audit fieldwork was supposed to have commenced, an extension can be requested and granted through a verbal discussion with the tax auditor in charge. After that a written request is required.

Once the audit commences, taxpayers are required to submit the additional requested information and documents (if any) within seven days. All original documents relating to the taxpayers' business should be kept in hard copy. In the event taxpayers are not able to maintain their documentation in hard copy, the taxpayer should provide the auditors with access to their computer systems and also allow the auditors to make electronic copies.

Under Prakas 270 there is no change to the process for issuing tax reassessments and the appeal process remains the same.

Lastly, the Prakas confirms that the monthly interest rate on underpaid tax has been reduced from 2% to 1.5% while penalty rates remains the same.

Instruction for the maintenance of documents in support of the interest rate on related party loan financing

(Instruction No. 4904 GDT dated 18 March 2019)

The GDT issued Instruction No. 4909 GDT which provides guidance to taxpayers with related party loans regarding the documentation taxpayers should prepare and maintain in support of the commerciality of the loans. This documentation includes:

- ▶ A loan contract which should clearly state the duration of the loan
- ▶ A business plan, which should outline the need for the loan and what the loan will be used for
- ▶ Documents explaining the basis of how the interest rate on the loan was determined and
- ▶ A board of director's resolution accepting the loan and the terms and conditions attached to the loan

Taxpayers are required to prepare and maintain the above documents regardless of the rate of interest charged on the loan.

The use of Cambodian currency on invoices

(Instruction No. 4908 GDT dated 18 March 2019)

On 18 March 2019, the GDT issued Instruction No. 4908 GDT to announce the use of Khmer currency on invoices to facilitate the E-VAT refund system as follows:

- ▶ The total amount on an invoice should be in Khmer Riel (“KHR”), while the individual or unit prices on an invoice may be recorded in KHR or United States Dollars (“USD”).
- ▶ If the underlying transaction was not conducted in KHR, taxpayers may either use the previous month’s average exchange rate, as issued by the GDT, or a market rate, which cannot be lower than the daily exchange rate as quoted by the National Bank of Cambodia.

If the conversion from USD to KHR results in a decimal point higher than or equal to 0.5 KHR, the taxpayer should round up to 1 KHR and rounded down to zero if the decimal point is lower than 0.5 KHR.

Amendment for the implementation of withholding tax on dividend distributions

(Prakas No. 372 MEF.PK released on 5 April 2019)

Prakas No. 372 MEF.PK was released by the MEF to amend and provide further guidance around the release of Prakas No. 518 MEF.PK, which was issued on 5 May 2017 and deals with Withholding Tax (“WHT”) on dividend distributions.

Prakas No. 372 MEF.PK deals with the implementation of WHT on the conversion of retained earnings into registered share capital. The conversion of a part or all of a company’s retained earnings into registered share capital is not considered as a dividend distribution and it is not subject to WHT. However, the conversion must be approved by a resolution of the board of directors or shareholders and must be approved by the competent authorities.

The key changes in the Prakas relate to share transfers or equity / capital distributions which are defined as follows:

- ▶ In the event of a whole or partial share transfer of the equity or registered capital of a taxpayer which has retained earnings, the retained earnings that relate to the transferred shares will be considered as a dividend distribution regardless of whether the retained earnings are converted into share capital or not.
- ▶ A company with retained earnings which reduces its equity or share capital during its operational phase will be considered to have made a dividend distribution although the deemed dividend cannot be of greater value than the retained earnings.
- ▶ The above share transfer and the reduction of equity / capital is subject to 14% WHT only on the proportion of shares / capital owned by the non-resident shareholder.

Online VAT refund and credit

(Instruction No. 001 MEF released on 9 January 2019 and Notification No. 776 GDT released on 16 January 2019)

The MEF's Instruction No. 001 and the GDT's Notification No. 776 on the implementation of an online VAT refund and credit is to inform and provide instructions to taxpayers regarding the implementation and use of GDT's online VAT refund and credit system.

The GDT also issued letter No. 4788 to provide further instructions on the implementation of the GDT's online VAT credit system by requiring taxpayers to print out the VAT online report / statement and attach it together with monthly tax returns to be submitted to the GDT on a monthly basis. This process commenced on 1 April 2019 for the March 2019 monthly tax return filing. However, due to issues relating to the implementation and effective operation of the online VAT system, the GDT issued Notification 6961 on 18 April 2019 informing taxpayers of a delay to the implementation of the system until the end of May 2019.

Tax exemption on seniority payments and recruitment fees for offshore employment of Cambodian nationals

(Circular No. 003 MEF released on 11 April 2019)

Tax on salary exemption on seniority payments:

The MEF released Circular 003 on 11 April 2019 following the introduction of the seniority payments in September 2018 with the introduction of Prakas 443 and amendments to the relevant sections of the labour law.

Circular 003 was released to provide clarity on whether Tax on Salary ("TOS") applies to the seniority payments.

Accordingly, Circular 003 confirms the following:

- ▶ Both the ongoing and retroactive seniority payments are not subject to TOS
- ▶ The ongoing and retroactive seniority payments are deductible expenses for the employer in its tax on income calculation when the payments are actually made and
- ▶ The TOS exemption only applies to Cambodian nationals. Therefore, expatriates or foreigners working in Cambodia under a local employment contract will be subject to TOS on their seniority payments.

VAT exemption on recruitment fees for offshore employment of Cambodian nationals:

Circular 003 also states that VAT shall be exempted on provision of services in relation to recruiting, training, sending and supervising Cambodian nationals for overseas employment by private recruitment agencies.

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