



# UPDATES TO TRANSFER PRICING REGULATIONS IN CAMBODIA

Date: 21 November 2024  
DFDL Mekong (Cambodia) Co., Ltd



# SPEAKER



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Vandana is the Director in the Transfer Pricing team at DFDL Singapore. She has extensive experience in transfer pricing compliance and documentation requirements in Singapore and the APAC region.

She has assisted clients in designing and implementing appropriate transfer pricing policies including the preparation of global, regional and country specific transfer pricing documentation as well as planning studies. The clients serviced vary across industries including manufacturing, distribution and services companies. In addition, Vandana has assisted clients with their transfer pricing audits and defense, in the Asia Pacific region.

Vandana is a Chartered Accountant and a Fellow Member of the Institute of Chartered Accountants of India. In addition, she holds a Master's degree in Commerce.

# AGENDA

- 01 Transfer Pricing (“TP”) – Basic guidelines**

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- 02 Transfer pricing documentation (“TPD”) requirements**

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- 03 Updates to TP regulations in Cambodia**

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- 04 Related party loans & Intragroup Management services**

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- 05 Permanent establishment**

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- 06 Key takeaways**

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# TRANSFER PRICING – WHAT/ WHY

- Transfer pricing (“TP”) regulations aim to ensure that transactions between related parties are conducted at arm's length.
- Significant for both taxpayers and tax administrations.
- Also used by tax authorities to attribute profits to their jurisdictions.
- Applies to **related party transactions (“RPT”)**.
- Related parties include parent; subsidiaries; entities which **directly or indirectly** control or are controlled by another entity; entities with common control; **connection between Permanent establishment and non-resident taxpayer.**

# TRANSFER PRICING REGULATIONS IN CAMBODIA

- **Prakas 986** - issued by the Cambodia Ministry of Economy and Finance on 10 October 2017, applied from FY 2018.
- **Prakas 574** – issued in Sept 2024, applies from FY 2025.
- Taxpayers who have entered into RPT (not exempt under the provisions) are obligated to comply with:
  - **TP Annexure** – *part of the annual corporate tax return form.*
  - **TPD report.**
- In Cambodia, TPD comprises the local file only.

# TRANSFER PRICING REGULATIONS IN CAMBODIA – Contd.

- When are taxpayers expected to prepare TPD?
  - TPD should be contemporaneous.
    - Prepared prior to or at the time of entering into the transaction.
    - On or before the due date of filing of corporate tax return.
- Not required to be filed with the tax authorities, unless requested for.
- Language – English accepted.



# MEDIAN & ARM'S LENGTH RANGE

## ARTICLE 3: DEFINITIONS

- **Median** refers to the middle value of the data set, arranged in ascending order.

## ARTICLE 7: ARM'S LENGTH RANGE

- Controlled transaction will be not adjusted if tested using 'correct' method and the results are within the arm's length range.
- Adjustment will be made to the median provided it **does not decrease the tax amount.**

# MEDIAN & ARM'S LENGTH RANGE – Contd.

**Parent.**  
("Co. P")  
*Foreign jurisdiction*

*S provides toll manufacturing services to P.*

**Subsidiary**  
("Co. S")  
*Cambodia*

| EXAMPLES   |   |  |  |
|--|---|--|--|
| TP policy  | Cost plus mark-up.                      |  |  |
| <b>ALR based on benchmarking analysis</b><br><i>(GDT accepted the method and bm results)</i> | 3.00% to 8.60%, with a median of 5.04%. |  |  |
|  | Co S - Scenario 1                       | Co S - Scenario 2                            | Co S - Scenario 3  |
| Revenue  | 105.00                                  | 102.50                                       | 109.00   |
| - Operating exp  | 100.00                                  | 100.00                                       | 100.00   |
| <b>Operating profit</b>  | <b>5.00</b>                             | <b>2.50</b>                                  | <b>9.00</b>  |
| <b>Mark-up</b>   | <b>5.00%</b>                            | <b>2.50%</b>                                 | <b>9.00%</b>   |
| <b>Conclusion</b>  | <u>Within</u> range.<br>No adjustments. | <u>Below</u> range.<br>Adjustment to median. | <u>Above</u> range.<br>No adjustment, <b>as this will decrease tax</b> . |



# PRIMARY AND SECONDARY ADJUSTMENTS

## ARTICLE 3: DEFINITIONS – Contd.

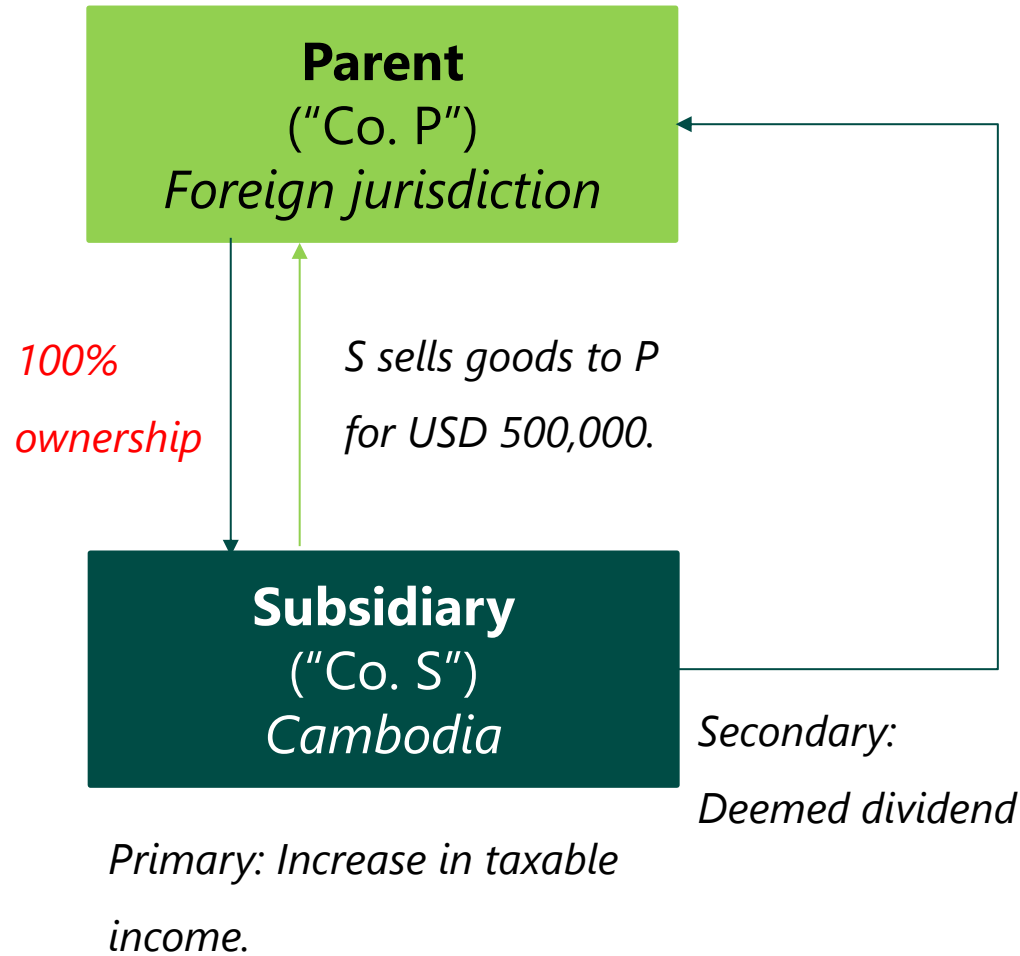
### ▪ **Primary Adjustment**

- Initial adjustment made on taxable income after applying arm's length principle on RPT.
- Potentially increases taxable profits.

### ▪ **Secondary Adjustment**

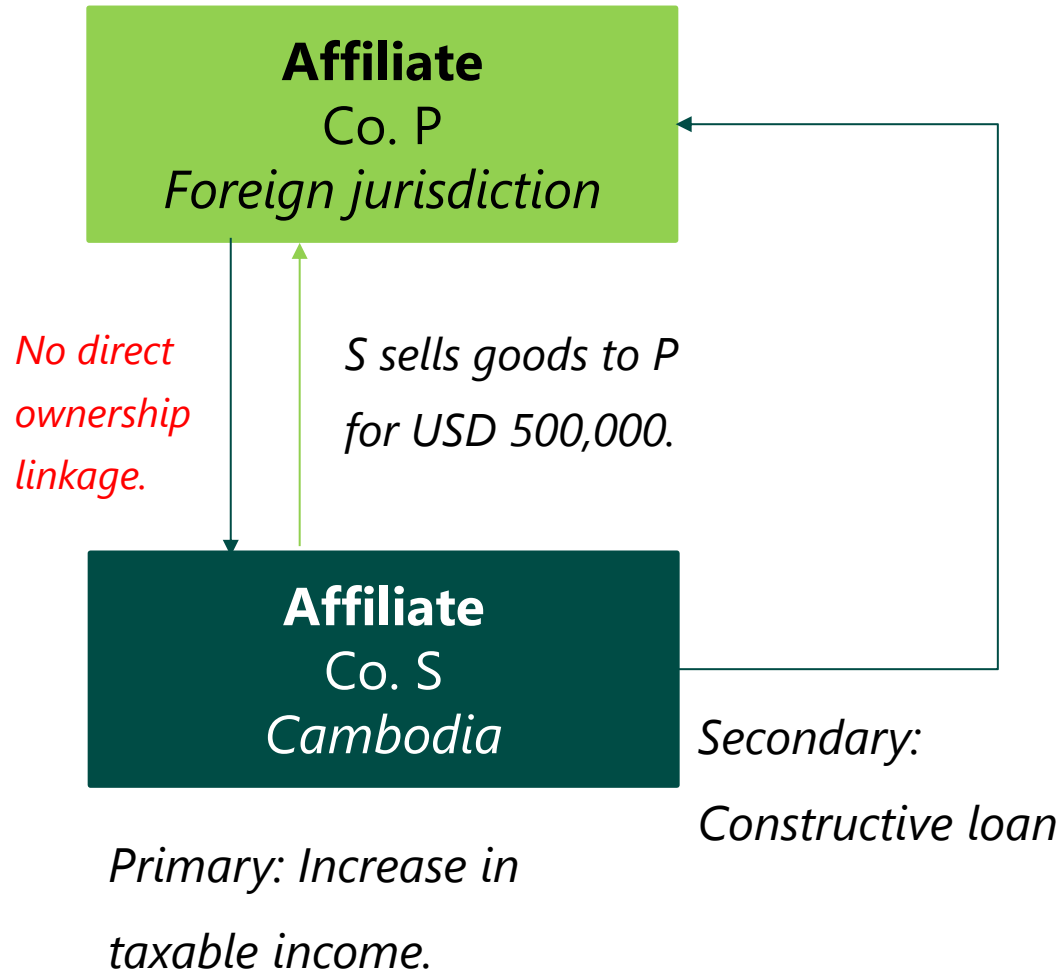
- An adjustment that arises from imposing tax on a secondary transaction.
- More complex in nature.
- Potentially triggers WHT obligations/ Double taxation.

# PRIMARY AND SECONDARY ADJUSTMENTS – Contd.



- *Upon review, the GDT adjusts the revenue to USD 700,000.*
- **Primary adjustment:** *USD 200,000 increase in taxable income of Co. S.*
- *Additional corporate income tax would apply.*
- **Secondary adjustment:** *USD 200,000 of primary adjustment is treated as a deemed dividend from S to P.*
- *WHT would apply on the deemed dividend.*

# PRIMARY AND SECONDARY ADJUSTMENTS – Contd.



- *Upon review, the GDT adjusts the revenue to USD 700,000.*
- **Primary adjustment:** *USD 200,000 increase in taxable income of Co. S.*
- *Additional corporate income tax would apply.*
- **Secondary adjustment:** *USD 200,000 of primary adjustment is treated as a deemed loan by S to P.*
- *Impute an arm's length interest rate.*



# ARTICLE 17: DOCUMENTATION – TP THRESHOLDS

- A taxpayer is **exempt** from the obligation to prepare TPD provided **both** the following conditions are met:
  - a) Annual turnover not exceeding **8 billion** Riels (approx. USD 2 million) and total assets not exceeding **4 billion** Riels (approx. USD 1 million);  
**and**
  - b) Total RPT value (*other than loans*) not exceeding **1 billion** Riels (approx. USD 0.25 million).
- Provision for update of TPD introduced.
  - Need to update the financial data of the comparable companies.

# ARTICLE 17: DOCUMENTATION – TP THRESHOLDS – Contd.

| Particulars                        | Prakas 574<br>Amt in Riels | Case 1<br>Amt in Riels | Case 2<br>Amt in Riels | Case 3<br>Amt in Riels |
|------------------------------------|----------------------------|------------------------|------------------------|------------------------|
| ▪ Annual turnover                  | <8 billion                 | 6 billion              | 10 billion             | 6 billion              |
| ▪ Total assets                     | < 4 billion                | 2 billion              | 2 billion              | 2 billion              |
| ▪ Related party transactions:      | <1 billion                 |                        |                        |                        |
| ○ Management fee paid to parent co | -                          | 0.20 billion           | 2 billion              | 0.75 billion           |
| ○ Sale of goods to related parties | -                          | 0.50 billion           | -                      | 0.75 billion           |
| <b>Condition a</b>                 |                            | <b>Met</b>             | <b>Not met</b>         | <b>Met</b>             |
| <b>Condition b</b>                 |                            | <b>Met</b>             | <b>Not met</b>         | <b>Not met</b>         |
| <b>Conclusion</b>                  |                            | <b>Exempt</b>          | <b>Not exempt</b>      | <b>Not exempt</b>      |

# OVERVIEW OF TRANSACTIONS AND TP METHODS

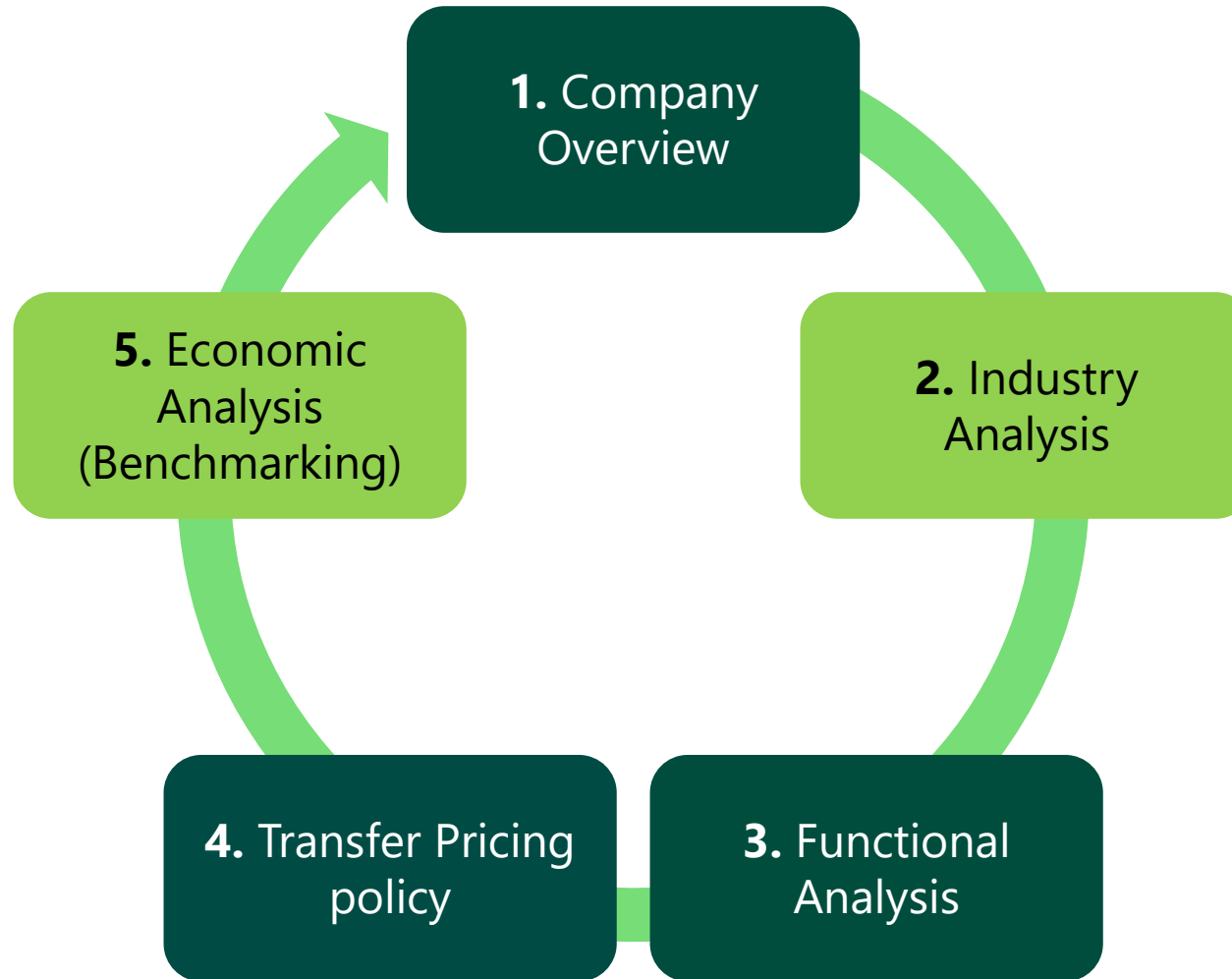
- Overview of transactions:
  - *Tangible goods* : Sale/ purchase of products; Contract manufacturing; etc.
  - *Services* : Management support services; etc.
  - *Intangibles*: R&D; license of intellectual property; etc.
  - *Financing*: Loans; Treasury; etc.

- *Transfer pricing methods*: Comparable Uncontrolled Price method, Resale Price method, Cost Plus method, Profit Split method, and Transactional Net Margin Method.

- The TP method adopted for pricing and testing the transaction will depend on the facts and circumstances of each case.



# COMPONENTS OF TRANSFER PRICING DOCUMENTATION REPORT



# ARTICLE 18: ATTRIBUTION OF PROFITS TO PERMANENT ESTABLISHMENTS

Applies to non-resident entities with a Permanent Establishment ("PE") in Cambodia.

Income allocation between PE and the non-resident taxpayer, based on PE's activities in Cambodia.

Treated as a separate entity.

Taxable income includes income of independent enterprises with similar business activities/ operating under similar conditions.

# INTEREST ON RELATED PARTY LOANS

- **Instruction No. 10979 GDT** - issued on 25 May 2022, on the *“Required Documents to Support the Interest Charge on Related Party Loans”*.
- Related parties can follow the interest rate under the loan agreement and will be **exempt from arm’s length principle**.
- The interest rate **must not exceed** the market rate at the time of borrowing.
- Instruction No. 10979 provides further clarification on the documentary requirements provided under the previous Instruction No. 4909.
  - *Loan agreement specifies the terms of loan and repayment obligations.*
  - *Business plan or ‘current and forecasted financial statements’ at the time of borrowing that provides evidence of the purpose of the borrowing together with an explanation.*
  - *Approval of the Board of Directors.*
- **Short cash advances** are not considered to be loans and are **exempt from arm’s length principle**.



# INTEREST ON RELATED PARTY LOANS – UPDATES

- RP loans are exempt from the arm's length principle if taxpayer has supporting documents to determine interest as indicated in GDT's instruction .
- Resident taxpayers (other than banks and financial institutions) are exempt from the implementation of arm's length principle for RP loans and are not required to prepare interest documents provided the following conditions are met:
  - a. An enterprise incorporated for less than 3 taxable years; or
  - b. A single member private limited company that has shareholder loan not exceeding three billion Riels; or
  - c. A sole proprietorship with loan transaction from the owner, spouse or dependent children.

# INTRAGROUP MANAGEMENT SERVICES

Transaction should be structured in line with arm's length principles.

Traditional pricing model vs Alternative models.

Determination of cost base.

"Mark-up" on low value-added services vs high value-added services.

Benefit test.

Sufficient practical documentation.



# PENALTIES FOR NON-COMPLIANCE

## Failure to comply with the TP requirements would lead to:

Transfer pricing adjustments.

Tax penalties.

Criminal charges being filed (imprisonment or monetary punishment).

Withdrawal of taxpayer's certificate of tax compliance.



# KEY TAKEAWAYS

1 Annual contemporaneous TPD

2 Focus is also on operating results of taxpayers who engage in RPT

3 Ensure “correct” disclosures of RPT in the audited accounts and TP annexure that forms part of the annual Tax on Income form

- 4
- Ensure all RPT are consistent with the arm’s length standards
    - How can a taxpayer demonstrate it without TP analysis?

5 Ensure that supporting documents exist

6 Recharacterization of RPT may lead to a transfer pricing adjustment, disallowance of expenses, WHT implications, penalties and even double taxation

# TRANSFER PRICING SERVICES AT DFDL – HOW CAN WE HELP YOU?

**We provide comprehensive support to clients throughout the entire value chain of their RPT and intercompany activities.**

Transfer Pricing **Design & Advisory**

Transfer Pricing Documentation

Transfer Pricing **Defense & Audit Support**



**EXCELLENCE · CREATIVITY · TRUST**

Since 1994

BANGLADESH | CAMBODIA\* | INDONESIA\* | LAO PDR | MALAYSIA\* | MYANMAR | PHILIPPINES\* | SINGAPORE | THAILAND | VIETNAM

\*DFDL collaborating firms







# **PRACTICAL TIPS FOR TAX AUDIT - TP**

**Date: 21 November 2024**  
**DFDL Mekong (Cambodia) Co., Ltd**

# SPEAKER



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*DFDL Cambodia*

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Vajiravann is a Tax Partner based in DFDL's Phnom Penh office. She has worked professionally in Cambodia for over 10 years with expertise in compliance, tax audits, and tax advice.

Ravann has guided our client on tax dispute, support them in tax compliance and registration and general tax advisory work.

She holds a Bachelor of Accounting degree from Paññāsāstra University and a degree in Cambodian Tax Law from CamEd Business School. She is currently pursuing her ACCA qualification at CamEd.



# AGENDA

- 01 Common Transfer Pricing Challenges**

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- 02 Penalties/Risk Of Non-compliance TPD**

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- 03 Recommendation to Reduce Transfer Pricing Risk**

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# COMMON TP CHALLENGES

Incorrectly complete **Annex 1**: List of Related Party of the TOI Return – Not consistent with other documents.

**ក្រសួងសេដ្ឋកិច្ចនិងហិរញ្ញវត្ថុ**  
**MINISTRY OF ECONOMY AND FINANCE**  
**គ្រូទូទៅសេដ្ឋកិច្ចនិងហិរញ្ញវត្ថុ**  
**GENERAL DEPARTMENT OF TAXATION**

**ព្រះរាជាណាចក្រកម្ពុជា**  
**KINGDOM OF CAMBODIA**  
**ជាតិ សាសនា ព្រះមហាក្សត្រ**  
**NATION RELIGION KING**

**ឧបសម្ព័ន្ធ ១**  
**Annex 1**

**តារាងប្រតិបត្តិការជាមួយភាគីទាក់ទង**  
**LIST OF RELATED-PARTY TRANSACTIONS**

ឈ្មោះសហគ្រាស : \_\_\_\_\_ ឈ្មោះអក្សរឡាតាំង : \_\_\_\_\_  
Name of Enterprise: \_\_\_\_\_ Name in Latin: \_\_\_\_\_

លេខអត្តសញ្ញាណកម្មសហគ្រាស : \_\_\_\_\_ - \_\_\_\_\_  
Tax Identification Number (TIN): \_\_\_\_\_

**ក. ប្រតិបត្តិការចំណូល/លក់ (ទៅឱ្យភាគីទាក់ទង) / REVENUES/SALES (TO RELATED PARTIES)**

| ល.រ<br>No. | ឈ្មោះភាគីទាក់ទង<br>Name of Related Party | ប្រទេសដែលភាគីទាក់ទងបានចុះបញ្ជី<br>Country Where the Related Party Has Registered | បរិយាយពីលក្ខណៈ និងប្រភេទប្រតិបត្តិការ<br>Description of Nature and Type of Transactions | ចំនួនទឹកប្រាក់ (រៀល)<br>Amounts (Riels) |
|------------|--|--|---|---|
|            |  |  |   |   |

**សម្គាល់:** សហគ្រាសត្រូវកត់ត្រាចំណូលដែលបានទទួលបានពីភាគីទាក់ទង។  
**Note:** Enterprise must also record the other revenues received/income from related parties.

**ខ. ប្រតិបត្តិការចំណាយ/ទិញ (ពីភាគីទាក់ទង) / EXPENSES/PURCHASES (FROM RELATED PARTIES)**

| ល.រ<br>No. | ឈ្មោះភាគីទាក់ទង<br>Name of Related Party | ប្រទេសដែលភាគីទាក់ទងបានចុះបញ្ជី<br>Country Where the Related Party Has Registered | បរិយាយពីលក្ខណៈ និងប្រភេទប្រតិបត្តិការ<br>Description of Nature and Type of Transactions | ចំនួនទឹកប្រាក់ (រៀល)<br>Amounts (Riels) |
|------------|--|--|---|---|
|            |  |  |   |   |

**សម្គាល់:** សហគ្រាសត្រូវកត់ត្រាចំណាយដែលបានទទួលបានពីភាគីទាក់ទង។  
**Note:** Enterprise must also record the other paid or accrued/incurred with related parties.

**គ. កម្ចីកម្ចីកម្មប្រាក់ចំណាយ / LOANS TO RELATED PARTIES**

| ល.រ<br>No. | ឈ្មោះភាគីទាក់ទង<br>Name of Related Party | ប្រទេសដែលភាគីទាក់ទងបានចុះបញ្ជី<br>Country Where the Related Party Has Registered | ចំនួនទឹកប្រាក់ (រៀល)<br>Amounts (Riels) | អ្នកកាត់ប្រាក់ (%)<br>Interest Rate |
|------------|--|--|---|-------------------------------------|
|            |  |  |   |                                     |

**ឃ. កម្ចីកម្ចីកម្មប្រាក់ចំណាយ / LOANS FROM RELATED PARTIES**

| ល.រ<br>No. | ឈ្មោះភាគីទាក់ទង<br>Name of Related Party | ប្រទេសដែលភាគីទាក់ទងបានចុះបញ្ជី<br>Country Where the Related Party Has Registered | ចំនួនទឹកប្រាក់ (រៀល)<br>Amounts (Riels) | អ្នកកាត់ប្រាក់ (%)<br>Interest Rate |
|------------|--|--|---|-------------------------------------|
|            |  |  |   |                                     |

**ង. ឯកសារផ្ទេរតម្លៃ / DOCUMENT OF TRANSFER PRICING**

តើសហគ្រាសបានរៀបចំ និងរក្សាទុកឯកសារផ្ទេរតម្លៃប្រតិបត្តិការ ក្នុងចំណោមប្រតិបត្តិការទាក់ទង តាមគោលការណ៍ដើម្បីការពារលក់ដី ដូចដែលបានកំណត់ក្នុងប្រកាសលេខ៩៥៤ ស.ប.វ.ប្រក. ដើម្បីទេ?  បាទ  ទេទេ

Has the Enterprise prepared and kept the Document of Transfer Pricing of Related Party Transactions in accordance with the main's principle as stated in the Proclamation No. 954 SEZ/07?

បើបើស្តីសម្រេចបានក្នុងការចុះបញ្ជីប្រតិបត្តិការទាក់ទងដែលបានប្រកាសខាងលើនេះ គឺពិតជាត្រឹមត្រូវ។  
We ensure that the disclosures of related-party transaction as stated above are correct.

**សម្គាល់ / NOTE:**

យោងតាមប្រកាស ១៩ ត្រីមាសស.ប.វ.ប.ក. ៩៥៤ ស.ប.វ.ប.ក. ចុះថ្ងៃទី១០ ខែតុលា ឆ្នាំ២០១៧ ស្តីពីការ និងនីតិវិធី សម្រាប់បែងចែកចំណូល និងចំណាយក្នុងចំណោមភាគីទាក់ទង ក្នុងករណីមានភាគីទាក់ទងចំណូល និងចំណាយក្នុងចំណោមភាគីទាក់ទង ត្រូវបានដកហូតពីលក្ខណៈ ផ្ទេរ ប្រែប្រួល ឬ អនុលោមតាមសេចក្តីណែនាំ ប្រតិបត្តិការទាក់ទងដែលបានប្រកាសខាងលើ និងត្រូវ ទទួលបានចំណូលប្រចាំឆ្នាំ ក្នុងករណី ១០៣ ត្រូវបានផ្តល់ស្តីពីសហគ្រាស។

According to the Article 19 of Proclamation No. 954 SEZ/ PK dated on 10 October 2017 on "Rules and Procedures for Allocations of Income and Expense Among Related Parties", if the taxpayers fail to provide the above-mentioned information for the Tax Administration, the Tax Administration will revoke the Tax Compliance Certificate or will re-evaluate the status of tax compliance and will penalize them as stated in article 133 of the Law on Taxation.

**ធ្វើនៅ** \_\_\_\_\_  
**ថ្ងៃទី** \_\_\_\_\_  
**លោកស្រី គឺជាប្រធានសហគ្រាស**

# COMMON TP CHALLENGES – Contd.

- Not frequently update the TP report- financial indicator/benchmark
- The TP report does not clearly outline the detailed steps of the TP process.
- Evidence of arm-length behavior:
  - Taxpayers are not ready or lack to keep and maintain the supporting documents related to RPT (ie Agreement/contract; Invoices; email correspondence, timesheets, any documents which can prove/justify the actual work performance, etc)
- Loan with related party is not required to follow arm-length principal provided that the transaction is supported by loan agreement, a business plan detailing the purpose of borrowing, and approval from the board of directors (Instruction 10979) – But in practice it could be a challenge for taxpayer to follow requirement as per instruction.

# PENALTIES/RISK OF NON-COMPLIANCE TPD

- Incorrect disclosure RPT in the Annex of the TOI/ insufficient or un-updated TP study report
  - Tax Reassessment resulting from GDT's adjustment on TP transactions adjustment including:
    - TOI- disallowed expense/adjusted income, etc,
    - VAT- adjusted income, etc,
    - WHT – adjusted expenses among RPT;
    - Etc.
    - Penalty rate is ranged from 10%, 25%, or 40% and interest rate of 1.5% per month;
  - May lead to Double Tax
  - Attract the GDT's Attention

Revoked the tax compliance certificate or re-evaluate the tax compliance status of the taxpayers

Other penalties as stated under Art. 225 of the LOT

Criminal Charge

# RECOMMENDATION TO REDUCE TP RISK

Seek assistance from firms specializing in tax and transfer pricing compliance - tailored advice on documentation preparation, audit defense strategies, and help navigate complex regulatory requirements.

Be Prepared and properly Keep for Supporting Documents – By tax law 10 years (For Medium and large taxpayers).

Review the current RPT and TP report if any material issues to be adjusted/updated- amend tax returns if necessary or discuss on compromised tax approach with the GDT if the issue of RPT is currently identified during the tax audit process.



# THANK YOU



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