



AMCHAM
CAMBODIA

KEY TAX UPDATES - 2023



Wed, 26 April 2023

12:00 PM- 2:00 PM



Rosewood Phnom Penh



Mr. Casey Barnett

*President, CamEd Business
School and Treasurer of
AmCham Cambodia*



Mr. Clint O'Connell

*Tax Partner, DFDL and
Chairman of
AmCham Tax Committee*



Moderator

Ms. Vajiravann Chamnan

*Tax Director,
DFDL*

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Tax Updates – 2023 Edition

26 April 2023

Rosewood

Organized by AmCham Cambodia & DFDL Cambodia

AGENDA

01



New Law on Taxation

02



PSWG - Updates

03



Future Updates

New Law on Taxation



- **Approved by the Cambodian Council of Ministers – 31 March 2023**
- **Approved by the Cambodian National Assembly – 19 April 2023**
- **Next step promulgation by the King of Cambodia**

- **20 Chapters (previously 7 Chapters)**
- **255 Articles (previously 155 Articles)**

“The tax law is not a complete overhaul, but is designed to facilitate, improve, fill gaps and ensure consistency by compiling a set of tax laws and regulations under the decree

The law is amended and supplemented with gaps in the provisions based on the implementation of laws and regulations on taxation in force, the implementation of agreements on the avoidance of double taxation and other international practices.”

Press release – Cambodia Royal Government

1. General Provisions
2. Provisions on Tax on Income
3. Provisions on Tax on Salary
4. Provisions on Value Added Tax
5. **Provisions on Specific Tax**
6. **Provisions on Public Lighting Tax**
7. **Provisions on Accommodation Tax**
8. **Provisions on Patent Tax**
9. **Provisions on Tax on Advertising Billboard**
10. Provisions on Tax on Petroleum & Mineral Resource Operations
11. **Provisions on Rental Immovable Property**
12. **Provisions on Tax on Immovable Property**
13. **Provisions on Stamp Duty**
14. **Provisions on Capital Gains**
15. **Provisions on Tax on Unused Land**
16. **Provisions on Tax on Transportation**
17. Provisions on Tax Rules and Procedures
18. Violations of Tax Provisions
19. Inter-Provisions
20. Final Provisions



- **Permanent Establishment**

*A person may be considered to create a permanent establishment in Cambodia of a non-resident if that person has and regularly exercises the rights to sign contracts on behalf of that non-resident **or performs the main duties in facilitating the process toward the signing of any contracts.***

- *Agency PE which follows the DTA's that Cambodia has signed to date*
- *Goes further than most DTA's to include someone who **plays a key role** in the execution of the agreement*
- *Implications – if a non-resident creates a PE in Cambodia provides an obligation to pay tax on Cambodian sourced income*



Significant Updates:

*“An enterprise which **directly or indirectly controls** the taxpayer or is directly or indirectly controlled by the taxpayer, or is under common control with the taxpayer”*

*The term “control” refers to the ownership **of 20 percent (20%)** or more in the value or voting power of the equity interests in the enterprise.*

“Regardless of the above condition, the Tax Administration can determine whether or not direct or indirect control exists on a fact and circumstance basis.

- *Direct/indirect control*
- *From 51% to 20%*
- *GDT can make a judgement call*



The term “Business alliance” refers to joint business activities between a resident taxpayer and a resident taxpayer or a resident taxpayer and a non-resident taxpayer or non-resident taxpayer and a non-resident taxpayer from two or more persons without forming a separate legal entity.

Regarding a partnership and business alliance, each member in determining one’s income for any tax year shall consider separately one’s distributive share of the items of income, gain, loss, deduction, credit, and charitable contributions for such year.

- *Unincorporated joint ventures*
- *Taxed as a partnership*



Deductible Expenditure

Article 11(6)

The expense deduction of the Qualified Investment Project that is received under the Law on Investment.

Article 24: Minimum Tax

.....For Qualified Investment project that receive the minimum tax exemption must have an independent external audit report.

Article 75: Value Added Tax Implementation for Qualified Investment Project

The supply of Production Inputs for Qualified Investment Project as stated in the relevant provisions of the Law on Investment in Cambodia shall be subject to 0% VAT.

Article 33(7)

Gains from the sale of moveable or immovable properties, including intangible assets, located in the Kingdom of Cambodia or gains from the transfer of any interest in moveable or immovable properties, including intangible assets, located in the Kingdom of Cambodia.





Article 58: Taxable person

For the purpose of this article, a non-resident taxpayer who supplies digital goods or services to the Kingdom of Cambodia shall be treated as a taxable person.

Article 59: Taxable supply

Except for contrary provisions in this chapter, the term “taxable supply” means:

(4) The Supply of digital goods or digital services to the Kingdom of Cambodia as stated in Article 58 of this law;

Article 97: Time of Supply

*The public lighting tax shall be determined and paid **at the first time of supply.***





- Stamp duty

Article 157(8)

- *The term “property companies” refers to all companies that occupy properties directly or indirectly with a direct or indirect property value of more than 50% of the value of the companies’ total assets*

Article 158(1)

- *4 % of the property value for the transfer of ownership of or the right to occupy properties as constructions and/or land or the placement of shares as properties in the companies, or the transfer of shares or similar interests of property companies*

Article 195(3)

The tax administration has the authority to decide on the administrative penalty. The decision to remove whole/part of the administrative penalty is the right of the Ministry of Economy and Finance. The tax administration can decide to reduce some/all of the administrative penalty if approval is obtained from the Ministry of Economy and Finance.





Article 198.- Delivery of information to the taxpayer

The delivery of information to the taxpayer shall be as follows:

*1. A letter or notification that the Tax Administration provides to the taxpayer shall impose an obligation on the taxpayer to the Tax Administration only when that letter or notification is made in written form and is delivered to the taxpayer. The letter or notification as stated in this Paragraph includes a **electronic notice, including fax or email etc.***

*The electronic notice as stated in Paragraph 1 of this Article 1 shall be considered to have been properly delivered **if it was sent to the last address provided by the taxpayer to the Tax Administration.***

*In the case of electronic notice, the date of notice **is the date on which the notice was sent out.***



Article 215.- Transfer of business or transfer of interests and merger of enterprises

- 1. In the event of transfer of businesses or transfer of interests, the new owner shall be held responsible for all tax debts of the businesses or enterprises;*
- 2. In the event of merger of two or more enterprises, the enterprise that continues or is born from the merger of two or more enterprises shall be held responsible for all tax debts.*

GAAR



A GAAR is a set of broad and general principles-based rules within a country's tax code that enables tax authorities to counteract perceived avoidance.

A GAAR empowers the GDT to act against schemes that are designed for tax avoidance (substance over form codified).

Article 194: Powers and obligations of the tax administration

The powers and obligations of the Tax Administration shall be as follows:

*(i) to reject and/or re-determine the real elements of any transactions if it is found that the taxpayers have prepared or had any transactions that represent **false or unreal intention to reduce or eliminate the tax payable** contrary to the intention of the tax provisions*

Penalty Adjustments

Obstruction Types	Obstruction Amount- KHR
<ol style="list-style-type: none"> 1. Failure to register with the Tax Administration in accordance with this law and other legal instruments in force; 2. Failure to inform the Tax Administration of any change in the information of the registration; 3. Failure to file a tax return; and 	<p>5,000,000 KHR* Approx. USD1,250</p>
<ol style="list-style-type: none"> 4. Failure to use the recording system as determined by the Tax Administration. 5. Failure to issue an invoice; 6. Failure to provide information or submit reports as per the request; 7. Not permitting the Tax Administration to check accounting records or any documents; and 8. Failure to keep accounting records and other documents. 	<p>10,000,000 KHR* Approx. USD2,500</p>
<ol style="list-style-type: none"> 9. Attempt to obstruction the tax assessment and collection; 10. Producing or providing fake records, documents, reports or information; 11. Concealment or intentional destruction of accounting records, records, documents, reports, or any information; 12. Issuance of fake invoices; 13. Not permitting the Tax Administration to enter their business premises to assess and collect taxes 	<p>Penalize under Art. 243: Regardless of the other criminal offenses:</p> <ul style="list-style-type: none"> - Sentence from 1 (one) month to 1 (one) year in prison and - Fine from 50,000,000 (fifty million) riels to 100,000,000 (one hundred million) riels

**In the event that a person who has been required to pay the fine as stated in Point 1 to Point 8 and he/she still commits any obstruction of the implementation of the provisions on taxation as stated from Point 1 to Point 8 above, he/she shall be criminally penalized as stated in Article 243 of this law.*



Article 245.- Professional practice as a tax agent without a license

Regardless of other criminal offenses, any person who professionally practice as a tax agent without a license shall be sentenced from 1 (one) month to 1 (one) year in prison and fined from 10,000,000 (ten million) riels to 20,000,000 (twenty million) riels.

Article 246.- Failure to pay the collected tax

Regardless of other criminal offenses, any person who fails to pay the collected tax shall be sentenced from 1 (one) year to 3 (three) years in prison and fined from 50,000,000 (fifty million) riels to 100,000,000 (one hundred million) riels.



PSWG-D Updates



- Article 7 of the LOT
- Taxable Income – ‘capital gains’ included in 2007
- Implementing Prakas (apparently not Prakas 346)
- Share transfers – who derives the gain?
- GDT view vs Private Sector view
- Next step – clarifying regulation



Prakas 270 defines a Limited Tax Audit as an on-site audit on monthly taxes, including VAT **and VAT refunds**.

A Limited Tax Audit can only be carried out by the GDT on the current year (N) of a taxpayer and the tax year prior to the current year (N-1).

Consequently, the GDT contends that a taxpayer applying for a VAT refund when all or some of the VAT input tax that makes up the request was recorded before (N-1) may have that VAT input credit rejected.



General Department of Taxation confirmed that non-resident directors who only had their names in the patents and had not performed any tasks for an enterprise in Cambodia shall not be subject to tax on salary and the General Department of Taxation will issue a further instruction to clarify this case.

Furthermore, if non-resident directors perform tasks on behalf the parent companies for subsidiaries in Cambodia shall be subject to non-resident withholding tax 14%.

- Non-executive/Executive
- BOD meetings – nominal fee – clearly list the tasks



Anticipated Updates





Taxation of Trusts - Prakas



Individual Taxation - Prakas



Double Tax Agreements – Laos, Myanmar, Philippines, Japan



E-Commerce Permanent Establishment – Non-Resident

KEY CONTACTS



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- *Has extensive experience in tax advisory, mergers, and acquisitions, transfer pricing, tax controversy advises, tax audit and tax compliance*
- *Advises a number of large MNCs and regional businesses*
- *Chairman of Tax and Legal Advocacy Committee of the American Chamber of Commerce in Cambodia*
- *Widely recognized in tax as a distinguished practitioner by Asialaw, highly regarded in the IFLR 1000 and World Tax*





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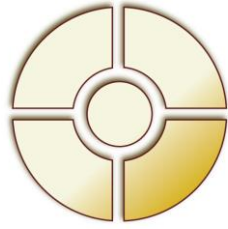
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Tax Incentives for Educational Establishments

Casey Barnett, CFA, FCCA
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AMCHAM TAX COMMITTEE

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26 APRIL 2023



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Higher Education Tax Incentive 2020 - 2023

In December 2019, the Prime Minister renewed the tax incentive to higher education institutions until the end of 2023:

Exempting the obligation to pay:

1. Income tax,
2. Prepayment of income tax,
3. Minimum tax,
4. VAT,
5. Withholding tax on services, interest and dividends.

Higher education institutions must pay only:

1. Tax on salary,
2. Withholding tax on rent,
3. Property tax,
4. Patent tax.

References

Notification Letter No. 1883, Council of Ministers, *Results of discussion between Prime Minister Hun Sen and the Cambodian Higher Education Association*, 19 December 2019.v

Khmer: https://drive.google.com/file/d/11PW1FfJNG6L72p2VGL-YIm_VSWxv58GQ/view?usp=sharing

Circular No. 2141, MEF, *Fulfilling tax obligations of higher education institutions*, 24 March 2020.

Khmer: https://drive.google.com/file/d/1zYS_z8dZIEEeXz_YzntdbjHVRMFsWWVE/view?usp=sharing

Education Tax Incentive 2024 - 2028

In February 2023, the Prime Minister awarded a tax incentive to educational establishments until the end of 2028:

Exempting the obligation to pay:

1. Income tax,
2. Prepayment of income tax,
3. Minimum tax,
4. VAT,
5. Withholding tax on services, interest and dividends.

Educational education institutions must pay:

1. Tax on salary,
2. Withholding tax on rent,
3. Property tax,
4. Patent tax.

Reference

Notification Letter No. 252, Council of Ministers, *In the case of approving to provide exemption to facilitate public and private educational establishments across the country, exempting them from income tax, prepayment of income tax, minimum tax, value added tax, and withholding taxes on services, interest and dividends from 2024 to the end of 2028*, 27 February 2023.

English: https://drive.google.com/file/d/1VHm-n8ov3SKzI_TOPajg7IWzeegLYNNK/view?usp=sharing

Khmer: <https://drive.google.com/file/d/13znHHuKMD5YkFFz-z98ajoYNufUOwsjd/view?usp=sharing>

Ministry Order (ប្រកាស) 209

Ministry Order 209 (March 2, 2020) provided incentives and clarification to educational establishments, including:

1. Exemption from prepayment of income tax (until the end of 2023),
2. Exemption from minimum tax (until the end of 2023),
3. Exemption from withholding tax on payments to resident taxpayers for management and consulting services directly related to education, and interest
4. Exemption from withholding tax on payments to non-resident taxpayers for management and consulting services directly related to education, and interest and dividends
5. Scholarships and discounts for tuition are not treated as taxable income (Article 6) ,
6. Clarification that the VAT is not charged on educational services which includes provision of food and accommodation to students (MO 209 Article 8; included in 2023 Draft Law on Taxation Article 63).

Reference

Ministry Order 209, MEF, Ministry Order on Tax Incentives for Educational Establishments, 2 March 2020.

Khmer: <https://drive.google.com/file/d/1Na3Yn8lN8b-hXX0D49vAvlDDN3PFTKRb/view?usp=sharing>

Obligations

Ministry Order 209

Educational establishments may lose their tax incentives under Ministry Order 209 if they do not (Article 10, 11):

1. Register for tax,
2. Make timely annual and monthly tax declarations
3. Keep accounting records required by law
4. Submit to the GDT an audit report from an independent auditor if the educational establishment has turnover of 5 billion riel or more (approximately \$1,219,000).

2023-2028 Council of Ministers Incentive

Requirements are the same as Ministry Order 209, but there is no statement that the incentives may be lost.

Reference

Ministry Order 209, MEF, Ministry Order on Tax Incentives for Educational Establishments, 2 March 2020.

Khmer: <https://drive.google.com/file/d/1Na3Yn8lN8b-hXX0D49vAvlDDN3PFTKRb/view?usp=sharing>

Notification Letter No. 252, Council of Ministers, *In the case of approving to provide exemption to facilitate public and private educational establishments across the country, exempting them from income tax, prepayment of income tax, minimum tax, value added tax, and withholding taxes on services, interest and dividends from 2024 to the end of 2028*, 27 February 2023.

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Thank you.



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