KPMG

Technical Update

June 2023

Law on Taxation 2023

(Royal Kram No. NS/RKM/0523/004, dated 16 May 2023)

Effective from 16 May 2023, the new Law on Taxation (2023 LoT) abrogates the former LoT, dated February 24, 1997, the amended LoT dated 31 March 2003, and other regulations that are contrary to this 2023 LoT. This new LoT consists of 20 Chapters and 255 Articles, encompassing 15 types of existing taxes in Cambodia under one law and is promulgated to complement, ensure consistency, and close the gaps of the existing regulations.

Below are the salient changes in this 2023 LoT:

1. Significant updates on existing provisions/Articles

Updates	Details
Chapter 2 – Tax on Income **Article 5** – Definition	• **"Legal person"** now includes **association** and **political parties**. • **"Permanent establishment (PE)"** was expanded to include any person that has or habitually exercises the authority to sign contract in the name of the non-resident person or fulfill the main role in facilitating the conclusion of a contract. On the other hand, the PE definition under Prakas 098 covering **non-resident online businesses** providing goods or services in Cambodia was excluded in the PE definition under the 2023 LoT. • The term **"control"** under the definition of **"related person"** refers to the ownership of 20 percent or more in the value or voting power of the equity interest in the enterprise. • Added the term "**Joint Venture"** which refers to joint business activities between resident/non-resident taxpayers of two parties or more without establishing separate legal entities.
Article 10 – Determination of Income of Partnership and Joint Venture	This Article shall also be applicable to "Joint Ventures". Previously, this Article only applies to "Partnerships".
Article 18 – Allocation of Income and Deduction Among Taxpayers	Income attributable to the PE of non-resident taxpayers in Cambodia shall also include income from supply of goods or services that are the same or similar to the business activities supplied by the said PE in Cambodia.

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Updates	Details
Article 24 – Minimum Tax	QIP shall be exempted from MT and required to have audited financial statements.
Chapter 4 – Value Added Tax, **Article 68** – Input Tax Credit and Non-Taxable Supplies	VAT input credits shall be allowed for both taxable and non-taxable supplies without any conditions. However, this provision is only applicable to diplomatic missions, consular missions, international organizations, and agencies of technical cooperations of the government.
Article 75 – Implementation of VAT for Qualified Investment Project (QIP)	The supply of locally made production input for the implementation of QIP as stated in the provision in relation to Law on Investment of Cambodia shall be subject to VAT at the rate of 0 (zero) percent.
Chapter 5 – Specific Tax	The term "Specific Tax on Certain Merchandise or Services" (STCMS) is replaced by the term **"Specific Tax"** (ST).
Chapter 6 – Public Lighting Tax, **Article 97** – Time of Supply	Public Lighting Tax (PLT) shall be due and payable at the first stage of the supply chain. Previously, PLT is imposed on all stages of the supply chain.
Chapter 9 – Tax on Advertising Banner	The term "Stamp Tax" is replaced by the term **"Tax on Advertising Banner".**
Chapter 11 – Tax on Immovable Property Rental	The term "Tax on House and Land Rental" is replaced by the term **"Tax on Immovable Property Rental".**
Chapter 13 – Stamp Duty, **Article 157** – Definitions	"**Real estate company"** is defined to cover any companies with direct or indirect ownership of immovable properties that account for more than 50 percent of the total value of fixed asset of the company. The term "movable properties" refers to all means of transportation including ships, ferries, boats, motorboats, speedboats, cars, truck, semi-truck, motorcycle, tricycle, tractor, and similar vehicles.
Chapter 16 – Tax on Transportation Means	The term "Tax on Transportation and All Kinds of Vehicles" is replaced by the term **"Tax on Transportation Means".**
Chapter 17 – Rules and Procedures on Taxation, **Article 194** – Powers and Obligations of the Tax Administration	In addition to the existing powers stated in the former LoT, the tax administration shall also have the power to reject or re-determine the real elements of any transactions in case the taxpayer is found out to have submitted false information with intention to reduce or eliminate the tax payable.
Article 202 – Right to Receive Information	Below items were included under this Article: • Taxpayers or third parties including banks, insurance enterprises, and financial institutions shall submit reports or response letters to the tax administration within 30 days upon receiving the request for taxpayer's information • Any person shall report to tax administration on the related tax information. A *"person"* refers to both physical and legal persons, although the new LoT did not provide further criteria on who should be covered by this provision. • Professional confidentiality shall not restrain the implementation of any articles under this 2023 LoT.

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<table>
<tr><th>Updates</th><th>Details</th></tr>
<tr><td>Chapter 18 – Regulatory Penalties,
Article 235 – Cash Penalty for Obstruction of the Implementation of Tax Provisions under Administrative Sanctions</td><td>There is a significant increase in fines and penalties imposed upon the obstruction of the implementation of tax provisions.
<table>
<tr><th>Non-compliance</th><th>Penalty</th></tr>
<tr><td>• Failure to register, update tax information, and file a tax declaration, despite receiving a warning letter</td><td>KHR5M (~ USD1,250)</td></tr>
<tr><td>• Failure to use a recording system and keep proper accounting records and documents
• Failure to issue invoices
• Failure to provide requesting information and/or not permitting the tax administration to check the enterprise’s accounting records and any documents</td><td>KHR10M (~USD2,500)</td></tr>
<tr><td>• Taxpayers who have paid the above-mentioned fines and still repeat the behaviors that lead to the obstruction of the implementation of tax provisions</td><td>Criminal penalties</td></tr>
</table></td></tr>
<tr><td>Article 242 – Tax Evasion Offense</td><td>Imprisonment from 1 year to 5 years plus a fine of KHR100M to KHR200M (~ USD25,000 to USD50,000)</td></tr>
<tr><td>Article 243 – Criminal Sanctions for Obstruction of the Implementation of Tax Provisions</td><td rowspan="2">Imprisonment from 1 month to 1 year plus fine of KHR50M to KHR100M (~ USD12,500 to USD25,000)</td></tr>
<tr><td>Article 244 – Violation of Confidentiality</td></tr>
<tr><td>Article 245 –Practicing as a Tax Agent without a License</td><td>Imprisonment from 1 month to 1 year plus a fine of KHR10M to KHR20M (~ USD2,500 to USD5,000)</td></tr>
<tr><td>Article 246 – Failure to Pay the Collected Taxes</td><td rowspan="2">Imprisonment from 1 year to 3 years plus a fine from KHR50M to KHR100M (~ USD12,500 to USD25,000)</td></tr>
<tr><td>Article 247 – Collecting Taxes without Permission</td></tr>
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2. Newly added Articles

There are 61 newly added Articles – 30 of which are mainly about the objective, scope, and the rules and procedures in tax collection. Below are some noteworthy Articles that are newly added to the LoT:

Article	Remarks
Chapter 8 – Patent Tax, **Article 110** – Patent Tax Exemption	Patent tax exemption shall be provided to the following: • Government institutions, diplomatic missions, consular missions, international organization, agencies of technical cooperations of other governments • Organizations established for the purpose of religion, charity, science, literature, education (i.e., not for personal benefits) • All business activities having ‘turnover’ lower than the threshold as per taxpayer’s classification

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Article	Remarks
Chapter 14 – Capital Gain Tax, **Article 165** – Objective of Tax	The new LoT includes a provision covering the taxation of capital gains on the sale/transfer of capital in Cambodia and abroad by a physical resident person and on the sale/transfer of capital in Cambodia by non-residents. The term *"capital"* includes immovable properties, finance lease, investment assets, intellectual properties, and foreign currencies, which is adopted from the definition under the CGT regulation (Prakas 346).
Chapter 17 – Rules and Procedures on Taxation, **Article 196** – Rights and Power of the Country Under Emergency State	In case the country is in economic crisis or in a state of emergency, the government may decide to provide any tax incentives, or any tax exemptions based on the request of the Ministry of Economy of Finance (MoEF).
Article 215 – of Business or Share Transfer and Merger	In the case of business or share transfer or merger, the new owner or the incoming enterprise shall be responsible for all the enterprise's tax liability.
Chapter 18 – Regulatory Penalties, **Article 227** – Reason for Lawsuit Dismissal	The tax administration shall be able to intervene with the courts regarding the dismissal of a lawsuit on tax-related criminal offense in the case that the enterprise agrees to settle the tax payable, including penalties, additional tax, and interest.
Article 228 – Competence in Criminal Case	These two Articles were added to reflect the tax administration's rights and power to investigate and handle all tax-related criminal offense.
Article 229 – Judicial Police Rehabilitation of Tax Official Competence in Criminal Case	
Article 231 – Types of Administrative Sanctions	The administrative sanctions on the enterprise, including additional tax, interests, cash penalty, suspension of business license or business activities and others, shall be determined by the tax administration.
Article 234 – Written Warning Letter	The tax administration shall issue a written warning letter if the taxpayer fails to register or update with the tax administration or fails to file the tax declaration.

Our comments

This 2023 LoT has consolidated and expanded the previous tax laws promulgated since 1985 and other subsequent amendments throughout the years with the stated purpose of ensuring consistent and updated provisions under one law. Notably, there are several provisions under this 2023 LoT stating that the rules and procedures on the implementation of the tax collection shall be determined by MoEF's Prakas. We hope that the relevant Prakas and Instructions would be issued in a timely manner so that taxpayers are properly guided on how to implement the rules and adapt to the rapidly changing Cambodian tax landscape.

Meanwhile, below are some of our notable observations regarding the changes introduced under this 2023 LoT:

- **Broadening the tax base**

  The new LoT aims to minimize tax leakage arising from transactions that are not currently subjected to tax (or still a "grey area") under existing tax laws and regulations. For instance, the 2023 LoT has expanded the PE definition (and the rules on allocating income on the PE). It has also introduced the concept of 'Joint Venture' and has included the provision on taxing capital gains derived by

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non-residents. There may also be further developments on the tax rules regarding mergers and acquisition as the 2023 LoT has touched based on this concept.

- **Strengthening the powers of the tax administration**

  The new LoT grants explicit power to the tax administration to grant tax exemption/incentives (subject to specific conditions), undertake tax crime investigations, or even redetermine the nature/elements of the transaction.

- **Stricter enforcement of penalties for non-compliance**

  There are significant increases in the administrative penalties imposed by the tax administration for non-compliance, plus the added provisions imposing criminal penalties for tax evasion, and malpractices with the intention to defraud the government.

In light of the changes introduced under this new LoT, the tax administration should provide further guidelines and new regulations to clarify and/or implement the rules moving forward. It is vital for taxpayers to be aware of these changes and be able to assess how these changes may impact their tax position and tax obligations and compliance process. It is equally important to stress the importance of having a trusted tax advisor to help taxpayers navigate through these changes and ensure that proper compliance review and tax planning opportunities are optimized.

As a committed tax advisor to our clients, we welcome any opportunity to discuss the relevance of the above matters to your business.

Contact us

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