KPMG

Technical Update

January 2023

2022 and 2023 Annual Tax, Corporate, and Accounting Compliance Obligations

As the **2022** and **2023** annual tax, corporate, and accounting compliance deadlines are fast approaching, we would like to take this opportunity to highlight the key compliance obligations and how KPMG can assist as below:

2022 Annual Tax on Income (ToI) Compliance:

All self-assessment regime taxpayers are required to lodge an annual ToI declaration with the General Department of Taxation (GDT) within three months, following the year-end. Accordingly, the ToI for year-ended 31 December 2022 must be lodged with the GDT by 31 March 2023.

It should also be noted that a ToI declaration is required to be prepared and lodged with the GDT, irrespective of whether the taxpayer has made a profit or a loss for the year. The declaration must also include the taxpayer's profit & loss statement, balance sheet, and other supporting schedules. For the taxpayer who has local branch is also required to complete local branch form and lodge it with the GDT.

Potential mistakes and common issues in preparation of ToI:

- Incorrect adjustments in the tax computation, such as over claimed deductible expenses, or insufficient adding back expenses that is not deductible for tax purposes for the year;
- Different recognition of income between the company's accounting requirement and the tax requirement under the tax law;
- Inappropriate allocation of income and expenses between tax exempted project and non-exempted project activities (i.e. QIP and non-QIP activities);
- Inappropriate allocation of expenses among related parties
- Claiming incorrect tax losses carried forward;
- Incorrect claim of deductible interest expenses or interest carried forward
- Incorrect claim for capital allowance (i.e. tax depreciation)
- Incorrect assessment of tax holiday due to the result of the prior year tax audits conducted by the GDT which has changed the counting of the tax holiday period for taxpayer (i.e. QIP activity);
- Cross border transactions without clear commercial or contractual structures or proper evidence of cost and service performance, etc.

Potential exposure for non-compliance with ToI

One of the most non-compliance areas identified through tax audits in the recent years are associated with the annual ToI compliance. Under the pressure of revenue collection, the extent and intensity of tax audits are often increased at both Provincial/Khan Tax Branch and the GDT level.

In the above tax compliance matters, taxpayer(s) should also be aware that the tax law operates under the self-assessment system, and provide the GDT with the power to carry out an audit of a taxpayer's activities and to reassess tax, if the taxpayer(s) has not complied with the tax laws and regulations in the tax declarations. The periods, in which tax audits can be conducted, are the current and one year back for limited audits and up to 3 years back for comprehensive audits, or can be 5 years if there is evidence of fraud, losses or tax credit carried forward from longer than 3 years ago, etc. (i.e. the 4th or 5th year); or longer, if there is clear evidence of tax evasion, but the GDT must request the Ministry of Economy and Finance for approval.

Failure to comply with the tax compliance requirements may result in an additional tax penalty being levied by the tax auditor, ranging from 10%, 25% and 40% on any unpaid/under-declared tax which is dependent on the nature of the violation, together with interest that is charged at 1.5% per month (no cap on interest penalty).

Therefore, it is strongly recommended that management should take the most appropriate possible actions to ensure that the tax declaration is prepared in accordance with the current tax laws for the current tax year, as well as any previous years that are still "Open" for tax audits, and records maintained to support such compliance.

Annual 2023 Patent Tax Compliance

Self-assessment regime taxpayers are also required to lodge and pay an annual patent tax to the GDT within three months following the year-end. The 2023 patent tax is payable by 31 March 2023.

The patent tax payable will depend on the status of the taxpayers' classification as follows:

Type of Taxpayers[1]	Patent Tax Fee
Small	KHR400K (approx. US$100)
Medium[2]	KHR 1.2 million (approx. US$300)
Large[3]	KHR 3 million (approx. US$750) KHR 5 million (approx. US$1,250) for turnover of over KHR10 billion (USD2,500,000)

If turnover declared by the taxpayer is found to not accurately reflect their real turnover, the Prakas also provides that the GDT has the power to reassess the classification of taxpayers using the size of the taxpayer's business asset criteria.

Late lodgement of the patent tax declaration or late payment of the patent tax could result in financial fines being imposed by the GDT.

[1] If the taxpayer carries out any branch, warehouse or business activities in different cities or provinces, a separate Patent Tax Certificate for each location is required. However, the entity classified as a Large Taxpayer is required to pay KHR3,000,000 (~US$750) for each additional Patent Tax Certificate, if carrying out any branch, warehouse or business in different cities or provinces.

[2] Includes registered legal entities and Representative Offices, national and sub-national government institutions, associations or non-government organizations, or projects under any of these institutions; or, diplomatic missions and foreign consulate, international organizations and technical cooperation agency of other governments or projects under those institutions.

[3] Includes all subsidiary of multi-national corporation, Branches of foreign legal entities and QIP registered entities.

Certificate of Compliance (CoC) for Qualified Investment Project (QIPs)

On an annual basis, the Council for the Development of Cambodia (CDC) requires all QIPs to apply for a Certificate of Compliance (CoC) within 90 working days after each tax year-end. A QIP is not entitled to any investment incentives unless a QIP is issued with the CoC.

The CoC may also be revoked by the CDC if the QIP fails to provide all the information required by the CDC. The QIP will then lose all incentives and entitlements from the date of the revocation of the CoC.

In practice, the CDC normally requests the QIP to fulfill all the outstanding requirements/obligations (i.e. submitting additional documents, requesting any missing CoC from the previous year(s), etc.), rather than revoking the QIP status and investment incentives.

Renewal of Foreign Work Permit for the year 2023

All foreigners working in Cambodia must have a work permit. In order to get the work permit, the foreigner's employer in Cambodia must first apply for an annual foreign manpower quota from the Labour Office (LO) by **30 November** each year.

Once the employer has the quota approved by the LO, the foreigner can apply for the work permit through the employer. The work permit is valid until the end of the calendar year and must be renewed by 31 March of the following year.

The work permit applications are made online. Ad-hoc foreign work permit applications can be made during the year, subject to the available quota approval.

For non-compliance with the Labour Law, the foreigner may be fined from 200,000 to 500,000 Khmer riels (in practice, an on-the-spot fine of approximately US$125), or in the event of a subsequent offence, to imprisonment from one month to three months. The Ministry of Interior may also expel foreigners who work without a work permit.

According to the Labour Law, the employer that employs a foreigner without a work permit is liable to a fine of sixty-one to ninety days of the base daily wage (from about US$610 to US$900) or to imprisonment of six days to one month. In the event of a subsequent offense, such person is liable on conviction to imprisonment of one month to three months.

Preparation and filing of annual financial statements (audited or non-audited)

All Enterprises are required to prepare financial statements in compliance with the applicable accounting standards on an annual basis and lodge them with the Accounting and Auditing Regulator (ACAR). The deadline to complete these requirements shall be based on the type of entity as follows:

1. Entities obliged to submit their financial statements for financial audit: Audited Khmer language financial statements are required to be lodged in the ACAR E-filing system within 6 months and 15 days following the financial year end, and these audited Khmer financial statement should be completed (and approved) within 6 months following the financial year end. If the Company expects to fail to complete its financial audit by the deadline, it is required to submit a request to ACAR for an extension of the deadline to complete the financial audit, which is subject to approval by ACAR. Such requests must be made at least 15 days before the 6-month deadline to complete and approve the financial statements.

2. Entities not obliged to submit their financial statements for financial audit: Unaudited Khmer language financial statements must be filed in the ACAR E-filing system within 3 months and 15 days following the financial year end, and the unaudited Khmer financial statement should be completed (and approved) within 3 months following the financial year end.

As a committed 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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