

Technical Update

Tax and Corporate Services

January 2017



Prakas on the Tax Obligation of Multi-Project Enterprises

(Prakas no. 1127 MEF, dated 11 October 2016)

The Ministry of Economy and Finance (MEF) issued a new Prakas no. **1127** MEF, on the tax obligation of enterprises with multi-projects, mainly intended for Qualified Investment Project (QIP) enterprises.

The Prakas covers QIP enterprises with multiple projects, non-QIPs subject to different rate of Tax on Profit (ToP) and enterprises with QIP and non-QIP activities (multi-project enterprises).

For ease of reference, we summarize the obligations and requirement of the “multi-project” enterprises detailed in the Prakas as follows:

Obligation	Requirement for multi-project enterprise
Registration	<ul style="list-style-type: none"> – register each project, with the Tax Office, separately and obtain different Tax Identification Number (TIN), – each project shall be treated as a separate taxpayer.
Patent	<ul style="list-style-type: none"> – register and declare patent tax for each project, within 15 days of the start of each project’s economic activity.
Bookkeeping	<ul style="list-style-type: none"> – separate capital, asset, property, staff, management and other financial activities for each project, – keep separate accounting record of each project’s income and expense, <ul style="list-style-type: none"> – if income and expense cannot be split, use proportionate method, based on turnover. – if there is no turnover yet, proportion according to the usage of assets or based on expense (include expenses for administration, office, management salary, joint supervisors or other expenses) – keep separate accounting record of stock of goods, finished products, WIP, raw material and other equipment – if a non-current asset cannot be split and is used for all projects, enterprise shall keep track, allocate depreciation of the asset into the first project it was used for, or the proportion of turnover or usage of the asset if there is not turnover, – record and calculate loss carried forward from previous years, separately for each project, – divide subsidiary income base on the source of the income, proportionate method based on turnover, or record into the project under the highest ToP rate or earliest tax holiday deadline, – divide subsidiary expense based on the source of the expense, proportionate method based on turnover, or record into the project under the lowest ToP rate or latest tax holiday deadline,

Obligation	Requirement for multi-project enterprise
Value Added Tax (VAT)	<ul style="list-style-type: none"> – use different VATTIN in import-export, local purchase-sale of goods and service, – prepare separate purchase-sale records, and record VAT input and output of each project separately, – record VAT input from purchase of non-current asset into the first project the asset is used for, if the non-current asset is used for all projects and cannot be separated, – VAT input credit carried forward as at 31 December 2015, that cannot be separated, shall use proportionate method based on turnover or based on the usage of asset or expense, if there is no turnover yet, – VAT input credit carried forward as at 1 January 2016 to the date this Prakas come into effect, enterprise shall separate into each project and amend each month's VAT return accordingly.
Tax return declaration	– monthly and annual tax returns shall be declared separately for each project.

Meanwhile, non-QIP enterprise with multiple projects that are subject to the **same ToP rates**, shall be considered as a single project and is not subject to “multi-project” compliance as above.

Our Comment

The above Prakas is proposed to assist detailed tax compliance and accounting requirements. As a result, it is supposed to increase 1) transparency in tax filing and payment for each activity of “multi-project” enterprises and 2) efficiency and effectiveness in taxes collected by the GDT from QIP and non-QIP activities.

On the other hand, there are a number of concerns/issues resulting from this Prakas. There will be increase in tax and accounting compliance requirements, such as splitting accounting records by separating income, expenses and assets depreciation to each project and separate tax declaration and splitting of taxes for each project. Also, the costs for taxpayers will be higher in terms of preparing separate accounts, declaring separate monthly and annual returns for each project. Moreover, the practicality of splitting VAT credit carried forward and having to amend VAT returns since January 2016 onward will impose a burden on taxpayers.

We have attempted to clarify with the GDT's officials on the above concerns, i.e. any guideline for separating accounts, tax declaration and the requirement to amend. However, the tax officials at present can only advise enterprises to begin to register their separate activities, as instructed in the Prakas. The officials were not able to provide any further comments. They did verbally advise that there will likely be more detailed regulation in the near future to further clarify this Prakas implementation, once there is more high level discussion.

We will keep a close track on the development of this tax obligation and provide any update as we are able to.

Instruction on the Implementation of Withholding Tax on Business in the Cinema Industry and Real Estate Industry

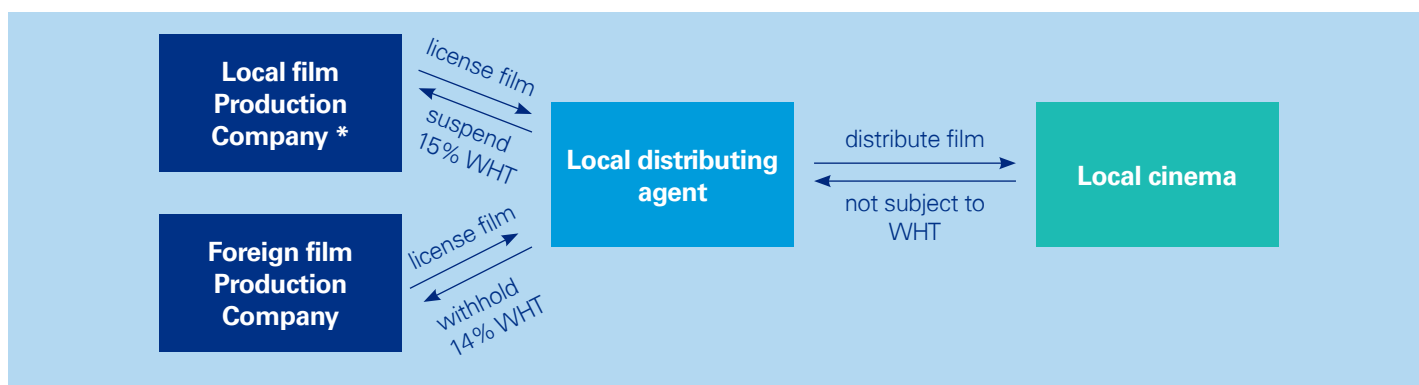
(Instruction no. 18410 GDT dated 3 November 2016)

The General Department of Taxation (GDT), issued an **Instruction no. 18410**, in relation to Withholding Tax (WHT) collection on the Cinema Industry and Real Estate Industry.

According to the new Instruction, WHT shall be implemented on the two industries as follows:

I) Cinema industry

For your ease of reference, we have illustrated the WHT implementation on the Cinema industry as follows:



*** Condition:** to be eligible for suspension, the company is required to register with the Tax Office, declare and pay taxes to the Tax Office and keep proper accounting record in accordance with the law in force.

II) Real Estate Industry

For your ease of reference, we have illustrated the WHT implementation on the real estate industry as follows:



Our comment

It is noted that **Instruction no. 18410** indicated that the payment for the film licence to resident or non-resident film Production Company is considered as a payment for royalty and subject to the 14% or 15% WHT based on Article 25 (new) and Article 26 (new) of the LoT. Therefore, this WHT obligation was stated under existing tax law from the GDT's perspective. However, this instruction stated that the Local film production shall receive an incentive in the form of a **three-year tax suspension until the end of 2018** as indicated above.

By nature, WHT is withheld from the income recipient, but the obligation to withhold rests with the payer. However, in respect of Cambodian tax residents, the income recipient can get a WHT credit to offset with the year-end profit tax payable, if they are a registered taxpayer. As such, WHT essentially has no effect on the taxes of both payer and payee so long as they are tax registered. However, for the recipient to claim credit, the payer also has to request WHT certificates from the Tax Office which may incur time and cost.

By eliminating and/or suspending the WHT obligation in respect of the cinema and real estate industries, the Tax Office effectively eliminates the above burden on the local film production and distribution companies and similarly on the real estate industry by allowing property management services companies to be exempt from WHT, if they sub-lease the property to their clients. As WHT has no effect on the taxes of a company, effectively, the GDT has not lost any tax revenue.

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



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