

# Technical Update

## Sales Agent, VAT refund & Petroleum Operations

August 2018

### Obligation of agent being supplied goods or services on behalf of Principal

*(Prakas No. 597, MEF,PrK, dated 27 June 2018)*

The Ministry of Economy and Finance (MEF) issued Prakas No. 597, dated 27 June 2018, to provide conditions for Sale Agents (the Agent) who supply goods or services on behalf of a principal enterprise (the Principal) and covers resident medium and large taxpayers in Cambodia.

The conditions and other details can be summarised as follows:

<b>Conditions</b>	<p>The Agent must fulfil the following conditions:</p> <ul style="list-style-type: none"> <li>– must be a <b>medium</b> or <b>large</b> taxpayer;</li> <li>– must have contract with the Principal;</li> <li>– must be the Principal who determines the price of goods or services;</li> <li>– must be the Principal who retains ownership of the stocks;</li> <li>– can use own invoices or issue by the Principal;</li> <li>– must issue tax invoice, for commission fee, to the Principal; and</li> <li>– must provide detailed schedule of goods or services, and report movement of stocks by the 20th day after every quarter.</li> </ul>
<b>Application for certificate</b>	<p>Submit letter to the General Department of Taxation (GDT) and attach with the following documents to apply for Agent Certificate<sup>1</sup>:</p> <ul style="list-style-type: none"> <li>– Contract with the Principal;</li> <li>– Tax registration documents; and</li> <li>– Sample invoices.</li> </ul> <p><sup>1</sup>Be valid for 2 years for Agent Certificate and must notify for change or termination of contract within 15 working days, to the GDT.</p>
<b>Renewing certificate</b>	<p>Renewal request must be done 30 days before expiry date and attach with the following documents:</p> <ul style="list-style-type: none"> <li>– Copy of the Agent certificate;</li> <li>– Tax registration documents; and</li> <li>– Contract with the Principal.</li> </ul>
<b>Registration fees</b>	<p>The Agent's fee are:</p> <p>KHR400,000 (~USD100) for registration; and</p> <p>KHR200,000 (~USD50) for any renewal fee.</p>
<b>Tax obligations</b>	<p>The Agent:</p> <ul style="list-style-type: none"> <li>– must collect taxes on behalf of the Principal including Specific Tax on Certain Merchandises and Services, Public Lighting Tax (PLT) and Value Added Tax.</li> <li>– is not required to declare taxes on behalf of the Principal.</li> <li>– must issue tax invoices to the Principal and then declare Prepayment of Tax on Income on commission fee earned. These sales are not subject to PLT, if any.</li> </ul>

For more details, please refer to the Prakas.

## Our comments

Prior to this Prakas, the tax obligations and requirements for the Agent and the Principal were prescribed in the 1999 Sub-Decree on Value Added Tax (VAT). However, this was lacking and without any clear rules and procedures to support, and thus in certain instances, the Sale Agent is treated the same as any other enterprise making supply of goods or services, i.e. being subject to all relevant taxes, even though, in fact they only supply on behalf of the Principal and are not even allowed to determine the price of goods or services.

With this Prakas, there are now detailed rules and procedures for recognition and certain tax obligation for the Sale Agent. The Prakas also clearly states that if the Sale Agent supplies goods or services on behalf of the Principal, relevant taxes applicable on those goods or services are the burden of the Principal, not the Agent (provided they meet the conditions as set above).

Given this, it will facilitate the GDT to closely monitor and properly manage the Agent's tax compliance related matters, if they are really acting as the Agent. Furthermore, the GDT may also be able to collect more tax revenue, because in practice, there are certain supplier(s) who do not act as Agent but claim that they are acting as the Agent of the Principal (e.g, distributor), and only paid taxes on their commission fee to the GDT.

However, there are few issues/concerns for consideration in relation to the Prakas above, especially those Sale Agent(s), who are currently registered as small taxpayer(s) and have fulfilled its tax obligations as small taxpayer(s), and are required to only keep the accounting records under the simplified accounting system (i.e. maintain daily purchases and sale, etc). With this Prakas, if they are still acting as the Sale Agent(s), they may be required to upgrade to be medium or large taxpayers. This requirement could also be a potential challenge or concern for them, because the tax compliance as well as the accounting records requirements for medium or large taxpayer(s) are largely different from the small taxpayer(s) and they may also need to incur more costs to maintain such compliance requirements. Therefore, it is advisable that those existing Sale Agent(s) who are small taxpayer(s) should also consider the impacts of this Prakas in term of relevant changes in its compliance requirements for both tax and accounting records as mentioned above.

## Mechanism and Authorisation to sign for Value Added Tax Refund

*(Prakas No. 576, 577, MEF,PrK, dated 19 June 2018)*

The MEF issued Prakas No. 576 and 577, dated 19 June 2018, to provide mechanism for VAT refund and the authorisation to sign on money order for VAT refund respectively.

As per Prakas No. 576, the conditions and features of request for VAT refund can be summarised as follow:

Prakas No. 577 provides that the authorisation to sign on money order documents is delegated to His Excellency Kong Vibol, Delegate of the Royal Government in charge as the Director General of the GDT for

<b>Scope</b>	<ul style="list-style-type: none"><li>– Enterprises registered with the GDT</li><li>– Medium and large taxpayers</li><li>– Diplomatic mission or foreign consuls, international organisation and technical cooperation agencies of other government (Diplomatic mission).</li></ul>
<b>Conditions</b>	<p>The conditions for refund request for enterprise include:</p> <ul style="list-style-type: none"><li>– have excess monthly VAT input credit, for conducting primary activity as export or investment enterprise;</li><li>– have excess monthly VAT input credit for 3 consecutive months for other taxpayers;</li><li>– have evidence of VAT input payments (i.e. custom declaration forms, custom receipts, VAT original invoices);</li><li>– have evidence of export with taxes at rate of zero;</li><li>– have reliable accounting records (i.e. purchase-sale records, and other supporting invoices);</li></ul> <p>For diplomatic missions, refund request must be implemented as follows:</p> <ul style="list-style-type: none"><li>– register with the GDT</li><li>– submit request to the GDT;</li><li>– must be purchases of 200,000 riel and above, each (exclusive of tax);</li><li>– must be refund request of 2,000,000 riel and above, each (exclusive of tax); and</li><li>– verified by mission director to the GDT that goods are purchased for use in the authentic fulfilment of official functions of the mission.</li></ul>

<b>Workflow of Request for VAT refund</b>	<p>Requests by companies:</p> <ul style="list-style-type: none"> <li>– complete and submit the tax return and request VAT refund following format determined by GDT (by the taxpayer).</li> <li>– input data into the “Document Tracking System” and then send back to the Taxpayer Control Unit (TCU) of the GDT (by Department of Administration and General Affairs (DAGA) of the GDT).</li> <li>– conduct an audit and send the request to the GDT for review and approval (by the TCU). This audit can be skipped for gold taxpayer status</li> <li>– prepare and record the money order and monitor the credit status on receipt, after the approval above; then record the expense and review the money order documents and send to the National Treasury (by the Department of Finance and Personnel (DFP) of the GDT)</li> <li>– send a notice to the taxpayer when the refund is transferred to the account of the GDT at the National Bank of Cambodia (NBC) (by the GDT).</li> </ul> <p>Requests by diplomatic missions:</p> <ul style="list-style-type: none"> <li>– submit request directly to the DAGA (by the diplomatic missions).</li> <li>– input data for tracking (by the DAGA).</li> <li>– review the accuracy and send result to the GDT for review and approval (by the TCU);</li> <li>– prepare money order and other related works then send to National Treasury (by the DFP)</li> <li>– send a notice to the taxpayer when the refund is transferred to the account of the GDT at the NBC (by the GDT).</li> </ul>
<b>Obligations of refund requestor</b>	The taxpayers must provide accounting records and other required document as stated above; otherwise the refund request will be suspended until the GDT receives sufficient documents.

all enterprises requesting a VAT refund at 2,000 million riel and below, and for all diplomatic mission and gold status taxpayers at any amount. For the VAT refund over 2,000 million riel, Minister of the MEF will approve and sign on the money order documents as the authorised official.

*For more details, please refer to the Prakas.*

### **Our comments**

Prior to Prakas No. 576, the workflow of the refund process and taxpayers’ obligation are not provided in such details, which has been a lack of clarity on the process of VAT refund request and as a matter of practice, VAT refund process is a very time consuming process and there is no guarantee that the taxpayer would finally obtain the VAT refund.

This guidance on the VAT refund should provide more clarity in term of the process for VAT refund request and the newly determined workflows as set out above should help to expedite the process of the request significantly.

The delegation of authorization to the Delegate of the Royal Government in charge as the Director General of the GDT to approve and sign on the money order documents for VAT refund request should also save time, at least for relevant requests.

## **Guidelines for the Implementation of the Provisions for Tax on Petroleum Operations**

*(Prakas No. 536, MEF,PrK, dated 4 June 2018)*

As previously highlighted in our February 2018 Technical Update, the tax law for petroleum and mineral resource operations has been recently introduced and promulgated in the 2018 Law on Financial Management (LoFM) dated 9 December 2017. On 4 June 2018, the MEF has also issued Prakas No. 536 to determine rules and procedures for the calculation of tax on petroleum operations in accordance with 2018 LoFM. This Prakas applies to taxpayers who conduct petroleum operations only in the territory of the Kingdom of Cambodia.

We have summarised additional key areas provided by this Prakas as follow:

### **Tax on Excess Income (ToEI)**

Tax on Excess Income (ToEI), i.e. the Tax on Excess Income, is a progressive tax rate by tranche, based on the **excess income ratio (EIR)** as per the table below:

\*EIR = cumulative revenues / cumulative expenses

The calculation of TEoI by tranche is done in the example indicated below:

**Example:** A taxpayer's income and expense situation was calculated into excess income ratio (EIR) as follows:

Tranche	Excess income ratio*	Rate of Tax on Excess Income
1	up to 1.3	0%
1	above 1.3 up to 1.6	10%
3	above 1.6 up to 2	20%
4	above 2	30%

In the case of year **2022**, the taxpayer has 1,020,000,000 cumulative income and 620,000,000 cumulative expenses resulting in EIR of 1.65. Thus, taxable income of 130,000,000 is subject to ToI and ToEI at the rate of 10% and 20%.

Please refer the Prakas no.536 for more examples.

Tax year	Income		Expense		Net income	EIR e = b/d
	Current year	Cumulative	Current year	Cumulative		
	a	b	c	d		
2017	100,000,000	100,000,000	80,000,000	80,000,000	20,000,000	1.25
2018	130,000,000	230,000,000	90,000,000	170,000,000	40,000,000	1.35
2019	150,000,000	380,000,000	100,000,000	270,000,000	50,000,000	1.41
2020	200,000,000	580,000,000	120,000,000	390,000,000	80,000,000	1.49
2021	210,000,000	790,000,000	130,000,000	520,000,000	80,000,000	1.52
<b>2022</b>	230,000,000	1,020,000,000	100,000,000	620,000,000	130,000,000	1.65

### Interest expense

Taxpayer is allowed to deduct interest only at the amount calculated following the rule of Debt to Equity ratio of 3:1. However, withholding tax must be implemented on actual interest expense.

$$\text{Basis for ToEI at 10\%} = 130,000,000 \times (1.6 - 1.3)/1.6 = 24,375,000$$

$$\begin{aligned} \text{ToEI at 10\%} &= \text{Basis for ToEI} \times \text{ToEI at 10\%} \\ &= 24,375,000 \times 10\% = 2,437,500 \end{aligned}$$

$$\text{Basis for ToEI at 20\%} = 130,000,000 \times (1.65 - 1.6)/1.65 = 3,939,394$$

$$\begin{aligned} \text{ToEI at 20\%} &= \text{Basis for ToEI} \times \text{ToEI at 20\%} \\ &= 3,939,394 \times 20\% = 787,879 \end{aligned}$$

$$\begin{aligned} \text{Total ToI payable} &= \text{ToI} + \text{ToEI} \\ &= (130,000,000 \times 30\%) + (2,437,500 + 787,879) \\ &= \mathbf{42,225,379} \end{aligned}$$

**Example:** A taxpayer operating with a capital of 100 million US\$ and borrows 500 million US\$ at 5% interest rate per annum, resulting in interest of 25 million US\$ annually.

For ToI's taxable income and based on the stated rules above, the taxpayer cannot fully deduct all 25 million interest expenses. The interest allowable for deduction in this case shall be as follows:

Furthermore, this Prakas also defines the term "debt" as a sum of money that is owed or due by the taxpayer including loan, financial instrument, finance lease or any financial instrument which gives rise to interest, discount and other financial charges that are deductible for calculation of taxable income.

Meanwhile, the term “equity” means all kinds of share capital, gain on sale of share, legal reserve capital, gain on revaluation of assets and retained earnings.

Deductible interest calculation basis = Taxpayer’s capital x 3  
= 100,000,000 x 3  
= 300,000,000 dollars

Interest allowable for deduction = deductible interest calculation basis x interest rate  
= 300,000,000 x 5%  
= 15,000,000 dollars

*Please refer to the Prakas no 536 for a detailed example.*

The Prakas does not provide any new key details on decommissioning cost reserve, depreciation rules and commencement, and transfer of interest, and loss carried forward, which were already stated in the new provision in Chapter 6 issued in 2018 LoFM, in this Prakas.

The taxpayer also has the obligation to declare and pay monthly 1% Prepayment of ToI (PTol) and it will be deductible from annual ToI. If there is any remaining PTol credit at the end of petroleum operation, the taxpayer can request the PTol tax credit as a refund.

Taxpayer must submit monthly and annual tax returns, and provide relevant reports and other documents of the business operations as required by the tax administration.

Taxpayer can request the tax administration to use English language and United States dollar as currency for accounting records, reports, and other documents related to petroleum operations.

## Our comments

This Prakas should be an important and useful step as it provides detailed guidance and instruction on calculation of ToEI by tranches based on EIR and interest allowable for deduction based on debt to equity ratio, which were not mentioned specifically before. Clearly, this would be welcomed as it would assist the petroleum operators to be able to comply with the recent petroleum tax regulation.

Notwithstanding, as also indicated in our February 2018 Technical Update, there are still a number of unclear matters such as how to calculate the net book value when there is a transfer of interest for the transferee, and also how the interest allowance for deduction will be calculated as the loan interest rate can be varied according to different loans from multiple lenders including loan from related parties – based on the Prakas, to calculate the deductible interest is to multiply the taxpayer’s capital by 3 regardless of how much the loan is. Hence, taxpayers will have to look forward to further clarifications from the GDT to clarify these matters or consult with its tax advisor if it is in doubt.

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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