Annual 2017 and 2018 Tax and Corporate Compliance

February 2018

As the annual tax and corporate compliance deadline at the end of March 2018 is coming, we would like to take this opportunity to highlight the compliance obligations and how KPMG can assist as below:

2017 Annual Tax on Income (ToI) Compliance:

All self-assessment regime taxpayers are required to lodge an annual ToI return with the Tax Office within three months, following the year-end. Accordingly, the ToI for year-ended 31 December 2017 must be lodged with the Tax Office by 30 March 2018 (as 31 March 2018 falls on a weekend). In this regard, it should be noted that as verbally confirmed by the tax officials, the Tax Office is not likely extended the deadline till 2 April 2018 even though the deadline falls on weekend, as they indicated that ToI must be paid within three months after the year end. Therefore, a further follow-up action with the Tax Office maybe required, if any further update of tax lodgement deadline above.

It should also be noted that a ToI return is required to be prepared and lodged with the Tax Office, irrespective of whether the taxpayer has made a profit or a loss for the year. The return must also include the taxpayer's profit & loss statement, balance sheet, and other supporting schedules.

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. "Qualified Investment Project (QIP)" and non-QIP activities);
- Claiming incorrect tax losses carried forward;
- Incorrect assessment of tax holiday due to the result of the prior year tax audits conducted by the Tax Office 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 General Department of Taxation level.

In the above tax compliance matters, taxpayer(s) should also be aware that the Tax Laws operate under the self-assessment system, and provide the Tax Office 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 Tax Office has a 3-year period following the submission of the annual ToI return in which to raise a tax reassessment. However, this period is extended to 10 years where there is evidence that the taxpayer has obstructed the implementation of the tax provisions. The definition of "obstruction" is interpreted very broadly by the Tax Office. Consequently, a 10-year reassessment period may be applied in many circumstances.

Tax reassessments raised by the Tax Office will be based on the monthly and annual tax returns submitted by the taxpayer. In addition, the Tax Office can rely upon other declarations and information submitted by the taxpayer and other information received by the Tax Office from other sources. The burden of proof rests with the taxpayer if a dispute arises in relation to any reassessments raised by the Tax Office.

Failure to comply with the tax compliance requirements may result in an additional tax penalty being levied by the Tax Office, ranging from 10% up to 40% on any unpaid/un-der-declared tax which is dependent on the nature of the violation, together with interest that is charged at 2% per month (no cap on interest penalty).

All above circumstances, it is pertinent to say that penalties could be substantial for taxpayers if the Tax Office finds fault on non-tax compliance in an event of future tax audits.

Therefore, it is strongly recommended that management should take the most appropriate possible actions to ensure that the tax returns are 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 2018 Patent Tax Compliance

Self-assessment regime taxpayers are also required to lodge and pay an annual patent tax with the Tax Office within three months following the year-end. The 2018 patent tax is payable by 30 March 2018.

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

Type of taxpayer(s) [1]	Turnover Threshold	Patent Tax Fee
Small	KHR250m – KHR700m (approx. US$62.5K – US$175K)	KHR400K (approx. US$100)
Medium[2]	KHR 700m – KHR2,000m (approx. US$175K – US$500K)	KHR1,200K (approx. US$300)
Large (Type 1)[3]	KHR2,000m – KHR10,000m (approx. US$500K – US$2,500K)	KHR3,000K (approx. US$750)
Large (Type 2)	>KHR10,000m (approx. >US$2,500K)	KHR 5,000K (approx. US$1,250)

Late lodgement of the patent tax return(s) or late payment of the patent tax could result in fines imposed by the Tax Office as indicated in the Section ToI above.

We, KPMG Cambodia, would be able to assist you to plan and fulfil the annual tax and corporate compliance obligations with the above relevant Tax Office, if required. Please do not hesitate to contact us at your earliest convenience.

[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, and also associations or NGOs if carrying on business activities.*

[3] *Includes all 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. This enables QIPs to continue to receive the investment incentives granted under their investment licence. It means that a QIP is not entitled to any investment incentives unless a QIP is issued with a 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 2018

All foreigners working in Cambodia must have a work permit. Employers cannot employ a foreigner without a work permit. However, 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. Generally, this quota of foreigners cannot be more than ten percent (10%) of the total number of Cambodian employees. If the employer wants to employ more foreigners than the quota, an application must be made to increase the quota. However, the approval is subject to the decision of the LO.

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 foreigners need to produce their passport, their valid visa, their employment contract with the local entity which must be in the Khmer language and which must be lodged with the LO, and undergo a medical examination. 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.

As a committed tax and corporate consultant to our clients, we welcome any opportunity to discuss the relevance of the above matters to your business at a mutually convenient time.

Contact us

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