

Technical Update

February 2020, Part III

Prakas on Tax on Income

(Prakas No. 098 MEF.Prk, dated 29 January 2020)

The Ministry of Economy and Finance (MEF) issued Prakas No. 098 MEF.Prk dated 29 January 2020 (Prakas 098) on Tax on Income (Tol). This Prakas 098 compiles, amends and updates various provisions relating to Tol as well as determines rules and procedures for implementation.

The Prakas is effective from the signature date of 29 January 2020. Furthermore, as confirmed by the General Department of Taxation (GDT) during a recent meeting with the Private Sector Tax Working Group (PSTWG), this Prakas 098 is applicable from the **2020 Tol** return.

Of note, there are many amendments on tax treatments in relation to taxable income and deductible expenses which will impact the 2020 Tol preparation purposes for all taxpayers registered under the self-assessment regime. We are currently working on the changes and analyzing the impacts to the 2020 Tol return preparation as well as seeking any unclear issues arising from the changes of the tax rules for taxable income and expenses. We will provide a further detailed update on the changes in our next Technical Update once we have more clarity on the changes from the GDT.

Meanwhile, Prakas 098 also effects certain changes to monthly tax preparation, effective from 29 January 2020 onwards. These changes will generally impact self-assessment taxpayers who should pay attention **during the February 2020 monthly tax preparation**, notably as follows:

– 1% Prepayment of Tol (PTol):

- 1% PTol is applied to income from both principal business activities and subsidiary income. Subsidiary income refers to rental income from immovable property, immovable property given for free use to a third party (the income is at market price), immovable property given for free use to staff (the income is at market price) unless it is in accordance with the labor law, royalty, sale of scrap, rental of business equipment, income from packaging....

– Withholding Tax (WHT) exemption additionally includes the following transactions:

- Software payments to a VAT registered company for shrink-wrap software, site license, downloadable software, and software bundled with computer hardware, provided that a valid VAT invoice is obtained from the VAT registered company.
- Service payments worth less than KHR50,000 (~US\$12.5).
- Rental payments to a VAT registered company, provided that a valid VAT invoice is obtained from the VAT registered company.

– Non-resident WHT

- Among other listed items classified as Cambodian source income, Prakas 098 also includes “gain from financial or investment assets or capital gains from sale of direct shares in a Cambodian enterprise” as Cambodian source income.
- The terms “management service” and “technical service”, with regards to Cambodian source income, have also been further defined as follows:
 - The term “management service” refers to all services, which are management in nature, performed to function in the management of business such as recruiting staff, training or managing sale agents; and

- o The term “technical service” refers to all services, which are technical in nature, required to have technical skill or knowledge in the development or creation of inputs in the business such as services in science, physics, medicine, dentistry, pharmacology, legal, hydraulics, physiology, art, education, engineering, architecture, research study, accounting, economy, welfare, nuclear power including consultation services, etc. The term “consultation service” refers to consultations by skilled or professional persons relating to the technical services

Comments:

This is one of the first major updates to the main tax provisions on Tol (the old Prakas No. 1059 MEF.Prk dates from 12 December 2003). This Prakas 098 abrogates any contradicting regulations and should be referenced as the main regulation on Tol from 2020 Tol preparation onwards.

Of note, the inclusion of subsidiary income to be subject to the 1% PTol (and minimum tax also) would increase taxable income for taxpayers, especially items such as sale of scrap, small income from packaging... etc., (Before, taxpayers could argue that such small incomes are not part of their main business activity and thus not subject to the 1% PTol and minimum tax). However, in our opinion there should be no material impact, as the 1% PTol would be set off with the annual Tol or minimum tax (whichever is the higher) at the year’s end.

Also, the exemptions of rental income and certain software sales for registered taxpayers from WHT should be a welcome addition and another incentive for properly registered taxpayers. The limit to only KHR50,000 (~USD12.50) and above on services subject to 15% WHT should benefit taxpayers as well since normally companies would just bear the WHT on behalf of their vendor anyway, being unable to withhold tax from them.

While the old Prakas mentioned the term “management and technical service”, it did not give any detailed definition and as a result, tax auditors usually in practice consider payment to non-residents for most services other than goods as management and technical services and subject to 14% WHT. With the definition provided in the new Prakas, taxpayers should have some clear grounds to base on when deciding if a particular payment of services to non-residents should or should not be subject to 14% WHT.

Furthermore, the inclusion of the term “gain from financial or investment assets or capital gains from sale of direct shares in a Cambodia enterprise” as Cambodian source income may potentially now mean that non-resident investors may be required to pay the 14% WHT on the gains. However, Prakas 098 currently does not prescribe any clear mechanism or procedure on how the non-resident will remit the tax, if applicable. In this respect, the PSTWG is also seeking further clarification from the GDT and we will provide a further update, if any, in due course.

Due to the tax implications of the various changes from Prakas 098, we recommend you as taxpayers to seek professional tax advisors to study and review how these updates may impact your own business transactions.

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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