

Technical Update

April 2020

Tax Exemption for Seniority Indemnity from Year 2020

(Circular No. 002 MEF, dated 24 March 2020)

The Ministry of Economy and Finance (MEF) has issued this Circular No. 002 dated 24 March 2020 (Circular 002) to provide an update to the Tax on Salary (ToS) exemption rule for seniority indemnity, further to the previous Circular No. 003 dated 11 April 2019 (Circular 003). Following Circular 002, the ToS exemption on seniority indemnity shall apply as follows:

- Seniority indemnity back pay for before the year 2019 and payments made during the year 2019, for Cambodian employees/workers in the garment and footwear manufacturing sectors and other sectors, are still exempted from ToS in accordance with the old Circular 003.
- Seniority indemnity provided to employees/workers, for the year 2020 onwards in accordance with the labor law, shall be exempted for an amount up to KHR4,000,000 (~US\$1,000) per year and any excess amount shall be included for ToS calculation.

This updated exemption shall be effective from the Circular's signature date of 24 March 2020, thus it should apply starting from the payment of seniority indemnity in June 2020.

Our comments:

The continued exemption of ToS on seniority indemnity is good news for workers/employees of all enterprises as the updated exemption provision aims to give the ToS exemption to them.

The MEF has changed the exemption to be provided only to employees who will receive around US\$1,000 seniority indemnity per year, and it does not specifically mention that this exemption is limited to just Cambodian nationals. This is essentially a more progressive way to give exemption to employees/workers while collecting ToS on those who receive higher salaries.

Fringe Benefit Tax (FBT) on Loans to Employees

(Instruction No. 7015, dated 13 March 2020)

When a company provides a loan to an employee and applies a lower interest rate than the market interest rate, the difference between the lower interest rate and the market interest rate shall be subject to FBT (per Prakas 1173, dated 31 December 2003). This recent GDT's Instruction No. 7015 dated 13 March 2020 aims to provide options to determine the market interest rate used to find this difference.

Per the Instruction, the market interest rate shall be:

- a. the minimum interest rate given to customers or other debtors (who are non-related parties); or
- b. the market interest rate issued by the General Department of Taxation (GDT) from the previous tax year, i.e. year N-1 with N being the current tax year.

Our comments

This clarification aims to provide clarity to companies for their FBT calculations. However, the wording in the Instruction seems to be unclear, so how should enterprises choose between option (a) or (b)?

According to verbal commentary from tax officials on this matter; certain officials think the lower rate of the two options should be chosen while others suggested the higher option. Some tax officials even advised to pick the GDT rate from the previous year. As such, it is still not clear how this will be applied in practice.

However, it should be considered that the higher the market interest rate, the bigger the difference, thus resulting in a higher basis for the FBT calculation. As such, it is more prudent for taxpayers to pick the higher rate of the two options as the market interest rate to use, in the absence of any clear confirmation from the GDT.

As a committed tax 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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Please contact us if you have any questions:

Phnom Penh PO Box 2352 4 th Floor, Delano Center No.144, Street 169, Sangkat Veal Vong, Khan 7 Makara, Phnom Penh, Kingdom of Cambodia T: +855 23 216 899 F: +855 23 216 405 E: kpmg@kpmg.com.kh	Michael Gordon Senior Advisor T: +855 23 216 899 (ext. 7222) E: mgordon@kpmg.com.kh Nguon Socheata Director T: +855 23 216 899 (ext. 7217) E: nsocheata@kpmg.com.kh	Tan Mona Partner T: +855 23 216 899 (ext. 7221) E: tmona@kpmg.com.kh Song Kunthol Director T: +855 23 216 899 (ext. 7202) E: skunthol@kpmg.com.kh	So Dary Partner T: +855 23 216 899 (ext. 7277) E: daryso@kpmg.com.kh Im Udomvityea Associate Director T: +855 23 216 899 (ext. 7262) E: uim@kpmg.com.kh
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