



## Rules and Procedures for VAT on E-commerce

(MEF Prakas no. 542 MEF.Prk, dated 8 September 2021)

Subsequent to the release of VAT Sub-Decree no. 65, dated 8 April 2021, the Ministry of Economy and Finance (MEF) issued Prakas no. 542 MEF.Prk which is effective from 8 September 2021 covering the rules and procedures to implement the said VAT Sub-Decree on E-commerce transactions.

### I. Overview

- **Scope:** Supply of digital goods or services or E-commerce activities by non-resident suppliers in Cambodia is subject to 10% VAT, unless the E-commerce supplies are non-taxable supplies. For this purpose, the non-resident E-commerce supplier(s) shall register for VAT purposes (i.e., under a simplified VAT registration) within thirty (30) days if any of the following criteria are met:
  - i. Annual turnover from KHR250 million (approx. US\$62,500); or
  - ii. Expected turnover from KHR60 million (approx. US\$15,000) in any three (3) consecutive months during a taxable calendar

The non-resident E-commerce supplier shall be exempted from the payment of the annual Patent Tax (i.e., annual business registration tax).

Supply	VAT compliance obligation	Time of Supply	Taxable Value
B2C	<ul style="list-style-type: none"> <li>▪ The non-resident supplier shall account for the VAT (i.e., based on the KHR- converted value of the supply, excluding of VAT) through the monthly VAT declaration system.</li> </ul>	Earliest of the following dates: <ol style="list-style-type: none"> <li>1. Issuance of invoice by the supplier</li> <li>2. Delivery/fulfillment of the goods/services</li> <li>3. Receipt of payment</li> </ol>	I. Price of the goods/services charged by the supplier(s)  II. If the payment includes consideration other than money, the non-cash consideration shall be included based on its fair market value (FMV)
B2B	<ul style="list-style-type: none"> <li>▪ The VAT-registered purchaser shall apply the “reverse charge” mechanism and account for the VAT (i.e., based on the KHR- converted value of the supply, excluding VAT) through the monthly VAT declaration system. The “reverse charge” mechanism shall apply regardless if the E-commerce suppliers have not registered for VAT in Cambodia.</li> <li>▪ Small taxpayers shall be exempted from the obligation to apply the “reverse charge mechanism” for a period of five (5) years from the effective date of this Prakas.</li> <li>▪ Input VAT credit shall be allowed based on prevailing VAT rules and regulations.</li> <li>▪ The non-resident supplier shall still submit a “nil” VAT declaration through the monthly VAT declaration system.</li> </ul>	Earliest of the following dates: <ol style="list-style-type: none"> <li>1. Delivery/fulfillment of the goods/services</li> <li>2. Payment date</li> </ol>	III. The General Department of Taxation (GDT) has the right to reassess the true value of the supply, where the consideration does not represent its true value.

- **Non-taxable E-commerce supplies:** Supply of certain E-commerce goods/services within the purview of non-taxable supplies under Article 57 of the Law on Taxation shall be considered non-taxable transactions. This includes, among others, financial services provided by financial institutions, insurance services, and medical services.

## II. VAT Invoicing requirements

The non-resident E-commerce supplier shall issue a VAT invoice containing the following information:

- a. Name, address, and VAT Tax Identification Number ("VAT-TIN") of the non-resident taxpayer;
- b. Name, address, and/or VAT-TIN of consumers;
- c. Invoice number and date of issuance of the invoice;
- d. Description of the digital goods or services; and
- e. Taxable value and VAT amount or total prices including VAT

The invoice can be issued in any language but must provide the corresponding translation in Khmer or English.

## III. Penalties

Non-compliance of the provisions under this Prakas (e.g., failure to register, failure to file VAT declaration, failure to apply the "reverse charge" mechanism, etc.) shall be subject to penalties according to the prevailing tax laws and regulations.

## Our comments

In view of the foregoing, the following matters for consideration might need further clarification from the GDT:

- The VAT Sub-Decree no. 65 provides a list of certain activities that could potentially be covered by this E-commerce regulation. However, some of the activities listed therein are broad and may be susceptible to abuse. Hence, we believe there is a need for the GDT to clarify the extent of activities that would be covered by this new regulation. Furthermore, the GDT has to work closely with other government agencies/ministries (e.g., Ministry of Commerce, Ministry of Post and Telecommunications) to implement a wholistic and streamlined policies and procedures relating to E-commerce businesses in Cambodia.
- For B2B transaction, although it is not specifically addressed in the Prakas, it appears that the "reverse charge" mechanism would have significant impact E-commerce purchases by non-taxable suppliers (e.g., banks, insurance, etc.). In view that their E-commerce purchases would be inputs for their non-taxable supplies, the input VAT may not be allowed as input VAT credit. Alternatively, local suppliers may be considered, where feasible, to mitigate the impact of non-creditable input VAT on imported E-commerce goods/services.
- If the E-commerce supplier has not registered for VAT in Cambodia, there is a question as to whether input VAT credits shall be allowed as credits in applying the "reverse charge" mechanism on the part of the VAT-registered purchaser as the non-registered supplier would not be able to provide a proper VAT invoice in accordance with the VAT invoicing requirement mentioned above.
- Local registered purchasers should be aware of this new regulation and on how these impact its ongoing monthly VAT compliance obligations. They may also revisit their current supply chain management in view that the implementation of the "reverse charge" mechanism on E-commerce transactions may mitigate the expected price difference arising from the potential 10% VAT, if the E-commerce goods/services are sourced overseas vs. if these are sourced locally.
- For the non-resident supplier, the GDT has the right to register any E-commerce supplier who fails to register as per GDT's invitation. The GDT could gather information on registrable businesses/activities from different sources (e.g., from the "reverse charge" mechanism reporting by local purchasers, the monthly withholding tax schedules submitted via E-Filing, etc.). Impacted businesses should be aware of their compliance obligations in Cambodia to mitigate further risk arising from non-compliance. Practically, their networks (e.g., customers, affiliates, etc.) in Cambodia should highlight these new regulation and its impact to their business in Cambodia. At the outset, there may be a need for these impacted E-commerce suppliers to outsource the monthly VAT compliance obligations in view that they have no local presence in Cambodia.

- Note that the Prakas is effective from 8 September 2021, however, it appears that the GDT's IT infrastructures and guidelines to implement these new rules (e.g., simplified VAT registration, reverse charge, etc.) are not yet readily available. This presents some challenges for the E-commerce suppliers in complying with their VAT registration and tax filing requirements on a timely manner, as well as challenges in applying of the "reverse charge" mechanism on the part of VAT-registered purchasers. Thus, we do hope that the above matters will be promptly resolved to implement the VAT on E-commerce regulations efficiently and effectively.

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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