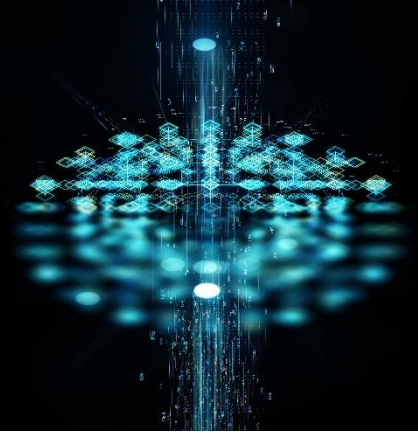


Technical Update

April 2021



Implementation of VAT on Electronic Commerce

(Sub Decree no. 65 SD.Prk, dated 8 April 2021)

The Royal Government of Cambodia issued Sub Decree no. 65 implementing certain provisions covering the supply of goods and services traded through the “Electronic Commerce” (E-commerce) in Cambodia. This Sub Decree is effective from 8 April 2021, and the detailed rules and procedures to implement this Sub Decree shall be determined by a Prakas to be issued by the Ministry of Economy and Finance (MoEF).

As defined under this Sub Decree, “digital goods” refers to intangible goods purchased, supplied, and sent entirely online, while “digital service” refers to services performed online. “E-commerce” refers to the purchase, sale, rental, exchange of goods or services, including commercial activity online.

The Sub Decree provides a detailed list of E-commerce transactions covered by this Sub Decree which includes, but is not limited to, the supply of software and other services related thereto, online shopping or auctions, advertising, website hosting, data retrieval, consumption of digital products and/or contents via download, real time streaming, subscription, or other means.

Non-resident taxpayers conducting E-commerce transactions in Cambodia with no permanent establishment (PE) in Cambodia shall be required to register with the General Department of Taxation (GDT) based on taxpayer classification under self-assessment regime as determined by the Prakas of the MoEF. This registration requirement is for VAT purposes only (Article 4 of Sub Decree no. 65).

For business to consumers (B2C) E-commerce transactions, the non-resident taxpayer shall declare and pay for the VAT on the transaction to the GDT (Articles 5 of Sub Decree no. 65).

For business to business (B2B) E-commerce transactions, the VAT on the transaction shall be accounted for via the “reverse charge” mechanism. Under the “reverse charge” mechanism, the resident taxpayer receiving the supply from the non-resident taxpayer shall account and pay for the output VAT on such supply on behalf of the non-resident taxpayer. Correspondingly, input VAT shall be allowed as tax credits based on the current tax regulations in effect (Articles 6 & 7 of Sub Decree no. 65).

Our comments

E-commerce transactions in Cambodia has been a hot topic for discussion ever since the enactment of the E-commerce law in Cambodia on November 2019.

One notable change is the introduction of the concept of the “reverse charge” mechanism into the Cambodian tax regulation. It should be noted that the “reverse charge” mechanism, i.e. under the VAT and/or GST regimes in other tax jurisdictions, generally applies to the supply of services by non-residents to resident business consumers (B2B), commonly known as “imported services”. This also includes the supply of digital goods and services and other E-commerce transactions. Integrating such concept into the Cambodian VAT regulations (somehow) aligns Cambodia’s VAT system with the VAT/GST system implemented in other tax jurisdictions.

It should be noted, however, that there are certain provisions under this Sub Decree which seem to be unclear on a number of aspects, particularly on the applicability of the “reverse charge” mechanism, and provisions that requires further clarifications to be consistent with the existing tax regulations and practices.

At the outset, the tax registration requirement under Article 4 of the Sub Decree requires the non-resident suppliers of goods and services through E-commerce, with no PE in Cambodia, to register for VAT purposes only. It should be noted, however, that the PE definition under the Tol Prakas no. 098, dated 29 January 2020, provides that “online business” shall be deemed to have a PE in Cambodia if the goods and/or services were supplied and/or consumed in Cambodia. Article 10 of the Sub Decree provides that any provisions contrary thereto shall be abrogated. Hence, it can be interpreted that the provisions under this Sub Decree no. 65 supersedes the earlier PE provisions on “online business” provided under Prakas no. 098. This matter should be clarified further by the GDT or through the subsequent Prakas to be issued by the MoEF to set rules and procedures for implementing the provisions of the Sub Decree. In addition, the issue on securing separate VAT registration should be addressed, as currently, the tax registration process covers all tax types, including direct and indirect taxes.

Secondly, this Sub Decree provides that the “reverse charge” mechanism shall apply to B2B transactions, wherein the resident taxpayer receiving the supply, shall declare and remit the VAT on behalf of the non-resident taxpayer. Note that the VAT registration requirement under Article 4 of the Sub Decree seems to defeat the purpose and design of an effective “reverse charge” mechanism as the non-resident supplier would still have to register for VAT, nonetheless. As it is, there would not be much difference if the transaction would be accounted for as a local supply of goods/services, instead of applying the “reverse charge” mechanism.

Thirdly, unlike B2B transactions, the “reverse charge” mechanism shall not apply to B2C transactions, and hence, the non-resident supplier shall declare the VAT on such supply to the GDT via the monthly VAT declaration. Again, the VAT registration requirement under Article 4 of the Sub Decree renders the need to identify between B2B and B2C transaction futile, as either way, the non-resident would still have to register for VAT.

Lastly, it is still unclear on whether the VAT invoicing requirements (e.g., the requirement to use Khmer language, and Khmer Riels, among others) under the current tax regulations would be strictly imposed on the supply of digital goods, digital services, or on all E-commerce transactions. This impacts the question on the input VAT claim on the part of the recipient of the E-commerce supply, as well as the need for the non-resident suppliers to customize its accounting and invoicing system to comply with the VAT invoicing requirements in Cambodia.

It is critical that the GDT clarifies the abovementioned issues as it impacts the effective implementation and the intention of this new Sub Decree. As mentioned above, the MoEF will issue subsequent Prakas to specify detail rule and procedure for implementation of this Sub Decree. The GDT needs to rapidly provide clarifications on this Sub Decree so as to provide taxpayers with certainty into operations of laws to which they are required to comply.

Notwithstanding the abovementioned interpretation and/or implementation issues, it seems quite clear that the intention of the government is to widen the tax base by including Cambodia's digital/e-commerce economy as part of its tax jurisdiction. It is therefore important for businesses, both the supplier and consumer of the digital goods/services/e-commerce, to be aware of these rules, and how it is likely to impact the business's current operations, processes, and compliance obligations in Cambodia.

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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