KPMG
cutting through complexity

TECHNICAL UPDATE
February 2015

Circular on implementation on obligation to withhold Tax on Salary (ToS) and Fringe Benefits Tax (FBT)

(Circular no. 002 MoEF dated 20 January 2015)

On 20 January 2015, the Ministry of Economy and Finance (MoEF) issued Circular no. 002 with reference to Chapter 2 of the Law on Taxation (LoT) and Prakas on ToS no.1173.MoEF. As per this Circular, the following benefits, provided to employees and workers of factories for performing their employment activities shall not be included in ToS nor FBT calculation:

1. Commuting expense for factory employees and workers between their residence and their workplace or factory as well as accommodations or housing provided inside the factory complex in accordance with the provisions of the labor law.
2. Meal allowance provided to all employees and workers regardless their position or function including meal allowance for overtime.
3. Social security fund or social welfare fund within the limits prescribed by the provisions of the law.
4. Health insurance or life/health premiums provided to all employees and workers regardless of their positions or functions.
5. Baby support or baby nursery allowance as provided under the provisions of the Labor Law.
6. Indemnity for lay off or termination of contract as stipulated by the provisions of the Labor Law.

The Circular shall be effective from **20 January 2015** onward.

Our comments

This Circular seems to be a part of the MoEF's new policy specifically for factory industries, in relation to the benefits provided to their employees and workers. We would think that the Circular has provided some clarifications and, hopefully, will minimize the inconsistent practices adopted by tax officials towards the above matters. However, it seems that there remains some unclear points on applicability of the Circular. For example:

- Point (1) above refers to the employees and workers of the factories and benefits shall be provided in accordance with the Labor Law. Hence, this Circular specifically refers to the benefit of factory's employees and workers only, and other companies may not be entitled for this exemption even though they offer the allowance to their employees. Also, it seems that the Labor Law sets conditions for certain specific kind of factories only, rather than all kinds of factories.

  We have verbally raised the above concerns to various tax officials and were advised that this provision in point (1) applies to all factories. However, in practice, there remains a risk as the tax officials may apply the exemption inconsistently.

- Point (2&4) – It does not mention about the value of the allowance for meal, health insurance or life/health premiums and if different values provided to management and workers are taxable or not. However, the Circular did specifically refer to the term "regardless of position and function". We would think that this could mean that an exemption is provided where it is provided equally. Further clarification should be obtained from the GDT on its applicability.

- Point (6) – The indemnity for lay-off was stated under the existing Law on Taxation and applies to all taxpayers. Hence, this provision is not new. However, the Circular has now also provided an exemption on "the payment for termination of contract" as stipulated by the provisions of the Labor Law (i.e. for factory worker and employees only as per this Circular). The Circular does not specifically state the details of the payments. Therefore, the company should understand the Labor Law clearly on the payment requirement when terminating the contract and claim the ToS and FBT exemption properly.

Furthermore, the Circular is effective from 20 January 2015. Thus, questions still remain in respect of what action the GDT now propose where the taxpayers have paid tax on the above expense or the GDT reassessed the tax on the above expenses on the taxpayers.

It seem to us that this Circular should be used as a guidance and clarification on the matter which is unclear under the existing LoT and which has been subject to different implementation adopted by the tax officials. Therefore, as it is simply a clarification of existing law, it should apply retrospectively. In other words, those taxpayers who have not paid tax on those expenses prior to the effective date of this Circular should not be liable. The problem is that if tax has been paid on the expense, in practice it may not be recovered.

As there are still some unclear issues on the Circular, we would suggest that further clarifications should be obtained from the GDT based on each taxpayer's case by case.

KPMG
cutting through complexity

TECHNICAL UPDATE
February 2015

Notification on Interest Market Rate for Loans in 2014
(No. 881 GDT dated 5 February 2015)

As per the GDT's Notification no. 881 dated 5 February 2015, the market interest rate is set at **10.15%** for loans in 2014. It is stated that this rate results from the average calculation of the lending interest rates of **8** major local commercial banks. This rate shall be used for the annual tax on profit calculation for year ended 2014.

Our comments

The GDT has issued the interest market rate on loans as set out in Circular no. 151 GDT dated 22 January 2014 for interest expense determination for the annual tax on profit calculation purpose. It should also be noted that as per the Circular no. 151, allowable interest expense deductions should be:

a. In case an enterprise loans from a non-related person, the allowable interest shall not exceed 120% of the market interest rate at the borrowing time.

b. In case an enterprise loans from a related person, the interest expense amount shall not exceed the market interest rate at the borrowing time.

Also, interest expense as stated in points (a) and (b) is allowed to be deducted after implementing the limitation of the interest expense deduction in accordance with the Article 12 of LoT and Section 5.9 of the Prakas on ToP.

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

KPMG Cambodia Ltd

Michael Gordon
Senior Partner
T : +855 23 216 899 (ext 7222)
E : mgordon@kpmg.com.kh

Tan Mona
Director
T: +855 23 216 899 (ext 7221)
E: tmona@kpmg.com.kh

Song Kunthol
Manager
T: +855 23 216 899 (ext 7210)
E: skunthol@kpmg.com.kh

4th 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

kpmg.com.kh