

Technical Update

Tax and Corporate Services

February 2016

Instructions on the use of invoices for taxpayers under the Real Regime

(No. 1127 GDT, dated 26 January 2016)

The General Department of Taxation (GDT), on 26 January 2016, issued **Notification no. 1127 GDT** regarding the use and issuance of invoices for registered Real Regime taxpayers.

Invoicing requirements for taxpayers under the Real Regime were already regulated under the Law on Taxation (LoT), Sub-Decree on Value Added Tax (VAT) as well as further instruction in the GDT's notification no. 024 MEF-TD dated 16 August 2006 and no. 815 GDT dated 28 March 2014. The above notification provides further clarification on these existing requirements and also sets out certain conditions and the consequences of non-compliance.

The requirements for issuance of the tax and commercial invoice(s) are not much different to the existing regulations, however, there are important points to note as follows:

- The invoice has to be issued or printed in Khmer or bilingual (Khmer and English) with English written below Khmer language; and
- The invoice has to be signed by both suppliers and customers.

No implementation date was provided, but tax officials seemed to be indicating immediate implementation.

Potential consequence for non-compliance:

- Disallow VAT input claim as well as deduction as expense for the Tax on Profit (ToP) purposes; and
- "Obstruction" to the implementation of the tax provisions as stated in Article 128 of the LoT and it is liable to penalties, as stated in Article 133 and Article 136 of the LoT, including temporary closing of a business for a period of time as determined by the law, subject to a tax reassessment, or prosecution for criminal violations of the tax provisions that can be subject to a fine of up to **KHR10,000,000** or imprisonment for up to 1 year or both

In addition, taxpayers are required to attach proper invoices or provide in scanned copy during monthly tax declaration for claiming for VAT input, as well as maintaining the proper invoices for the deductibility purpose of the expenses.

Our comment:

Certain enterprise/companies may have already designed their invoice format into their system or even the format may be used or integrated globally particularly for an enterprise/company that operates in multiple countries, and most likely the invoice is only in an English version. Previously, this has been acceptable by the GDT as long as it meets the disclosure criteria under the existing regulations.

Thus, the above requirements to use Khmer language or even in bilingual, (with English below Khmer) as well as to require the customer's signature on the invoice would create difficulties for such enterprises/companies to immediately implement such changes.

The indication from tax officials of immediate effect of the notification is totally unrealistic. Tax officials also added that if the taxpayers are unable to meet any requirement of the notification, a specific request shall be made to the GDT.

Furthermore, the imposition of harsh penalties for non-compliance shows a lack of understanding of the issues involved. The GDT must give some transitional period for taxpayers to implement revisions to their system or give some exemption process for specific enterprises/companies who cannot easily revise their global system.

There are also a number of other uncertainties. For example, would the sequential number of invoices be required from year to year or just per year, starting new sequential in year two? Would the taxpayers be required to follow the exact sample format as attached with this notification or can this be flexible so long as it will meet the required disclosure items?

Given the issues involved and uncertainty of this notification, KPMG and Business Groups are currently seeking clarification from the GDT and hopefully the GDT will provide clear guidelines.

Notifications on interest market rate for loans in US Dollar and Khmer Riel in year 2015

(No. 2118 GDT and no. 2119 GDT dated 5 February 2016)

As per the GDT's Notifications nos. 2118 and 2119 dated 5 February 2016, the market interest rate for loans in year 2015 has been set out as follow:-

- **10.28%** for loan in US Dollar, which results from the average calculation of the lending interest rates of 9 major local commercial banks
- **19.51%** for loan in Khmer Real, which results from the average calculation of the lending interest rates of 2 major local commercial banks

The above rates shall be used for the annual ToP calculation for year ended 2015.

Our comments:

The GDT has issued the interest market rate on loans every year following the Circular no. 151 GDT dated 22 January 2014 for interest expense determination for the annual ToP calculation purpose. It should also be noted that as per 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 limitation of the interest expense deduction during the tax year 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.



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