

Technical Update

March 2020, Part I

Measures to Support the Tourism and Garment Sectors and to Improve the Economy

(Letter No. 1313 MEF, dated 25 February 2020 | Instruction No. 002 MEF, dated 25 February 2020)

Following the Royal Government's intention to improve the economy and to support the tourism and garment sectors (i.e. textile, footwear and bags), within the context of the Covid-19 virus outbreak and the partial suspension of the Everything But Arms (EBA) program, the Ministry of Economy and Finance (MEF) has issued Instruction No. 002 MEF and Letter No. 1313, for the General Department of Taxation (GDT) to implement certain measures as follows:

Garment Sector:

For those factories seriously impacted from the lack of production raw materials and/or the suspension of the EBA, depending on how affected each factory is, the Royal Government will allow a tax holiday for a period of from six months to one year. The MEF will determine the actual calculation and policy for this exemption.

Tourism Sector:

Taxpayers conducting businesses in the hotel and guest house sector in Siem Reap province shall receive the following tax relief:

- a. Exemption from payment of all kinds of monthly taxes of the hotel and guest house for the period from February to May 2020.
- b. Exemption from comprehensive tax audits for the 2020 tax year.

Taxpayers must still comply with their monthly tax return declaration obligations and use the online VAT management system as well as declare and pay the annual 2019 Tax on Income (ToI).

Exemption from stamp duty on certain transfers of immovable property:

The transfer of ownership or possession rights to immovable property (for all kinds of residences) valued at US\$70,000 or less, shall be exempted from the 4% stamp duty if the residence meets all the following conditions:

1. The transfer of the ownership or possession rights to such immovable property is for US\$70,000 or less, according to the real market value and as stated clearly in a sale-purchase agreement which is dated between 25 February 2020 and 31 January 2021 and for which the stamp duty must be declared during this period;
2. The transfer of the ownership or possession rights (for all kinds of residences) is from a residential development company which is registered with the MEF or with the provincial department; and
3. The residential development companies must have proper sale-purchase agreements based on real market values. The GDT will conduct inspections to prevent opportunistic companies from exploiting the situation by reducing sale prices below the market value and thereby affecting tax revenue.

The tax exemptions for the tourism sector and on stamp duty above shall be considered as state-charges and shall be effective from the date of the Instruction of 25 February 2020.

Our comments:

These measures by the Royal Government and the subsequent implementation by the MEF above are to combat the recent events affecting the country's economy. The suspension of the preferential EBA program by the European Union has already impacted the garment sector. Meanwhile, the outbreak of the Covid-19 virus is causing wide-spread fear of travelling and has affected the tourism industry in the country, including a marked decrease in tourists visiting Siem Reap province in recent months. Due to the situation in China, there is also a lack of production raw materials for the garments, textiles, footwear and bag sectors.

With the exemption from payment of all monthly taxes for taxpayers operating hotels and guest houses in Siem Reap, it is clear that the 1% Prepayment of ToI, 2% Accommodation Tax on the revenue of the taxpayers (as well as Specific Tax and Public Lighting Tax, if there are any applicable goods/services) should all be state-charged and thus not payable by the relevant taxpayers.

However, it is unclear if the monthly Salary and Fringe Benefit Tax (SFBT) on employee remuneration and benefits and the Withholding Taxes (WHTs) on various payments (i.e. services, non-residents, etc.) to suppliers and vendors as well as the 10% Value Added Tax (VAT) are also exempted since technically these are not taxes on the businesses themselves and the taxpayers are just obligated to withhold and/or charge the taxes from the employees or payees and then remit them to the GDT.

In respect of above, we noted from a workshop held in Siem Reap by the GDT on 2 March 2020 that the GDT clarified that the hotel and guest houses are still required to charge the applicable 10% VAT since VAT is finally imposed to the end-users. This means that if their VAT output is higher than their VAT input the difference will not be paid to the GDT during the tax exemption period.

On the WHT obligations, the GDT also clarified that the hotel and guest houses should not be obliged to withhold during the exemption periods. We would think that most likely the GDT may refer to all kinds of WHT obligations that requires the hotel and guest houses to act as WHT obligation by tax law such as general WHT and SFBT. Nonetheless, as this matter is not very clear, the affected taxpayers should seek further clarification from the GDT to ensure that they would be able to properly fulfil the compliance requirement with their suppliers/employees in respect of the WHT and SFBT respectively, although they are exempted from the conduct of comprehensive tax audits for the 2020 tax year.

VAT state-charge for Basic Daily Food

(Prakas No. 168 MEF.Prk, dated 21 February 2020)

On 21 February 2020, the MEF issued Prakas No. 168 MEF. Prk (Prakas 168) to determine that VAT on certain basic food for the daily living of the people shall be allowed as a state-charge. The basic food covered under Prakas 168 are defined as follows:

- Meat from domesticated animals including cattle, buffalos, goats, sheep, swine, chickens and ducks, including whether the meat is fresh, cured or smoked;
- Eggs from domesticated animals of all kinds, including whether the eggs are fresh, cured or smoked;
- Fresh and salt water fish of all kinds including lobsters, prawns, shrimps, crabs and shellfish of all kinds, whether fresh, cured or smoked;
- Sugar of all kinds which are not characterized as candy;
- Salt of all kinds; and
- Fish sauce and soy sauce of all kinds.

The VAT on the domestic supply of the above basic food shall be treated as a state-charge for a period of two years from 1 January 2020 to 31 December 2021. Food supplied by restaurants shall be excluded from the above.

Our comments:

The Prakas 168 should provide a relief to the daily expenses of the people as VAT will be borne by the state (VAT state charge).

Our comments (Con't):

This is not the first VAT relief that the Royal Government has given in respect of the supply of basic daily food. The Royal Government previously provided VAT relief under Prakas No. 361 MEF.Prk (Prakas 361), dated 3 April 2018, which expired at end of 2019. This Prakas 168 is, in essence, another two years extension of the same tax relief for basic daily food as provided for in Prakas 361.

Since this Prakas is supposed to provide VAT state-charges for supplies of the food from 1 January 2020 onwards, but has just been issued on 21 February 2020, there may be taxpayers who have already charged 10% VAT on their supplies and subsequently have declared and paid this in their January 2020 tax return (for which the submission and payment deadline was on 20 February 2020). In this regard, we have asked various GDT officials for comments and they verbally advised that the taxpayers should be able to get tax credits for the taxes paid in January 2020. Nonetheless, we think that in practice, for taxpayers who have already charged/collected the VAT from their customers and have already paid this to the GDT prior to Prakas 168 being issued on 21 February 2020, it may be hard for them to request for a VAT credit/refund for the VAT already paid. Hence, those taxpayers should review their cases and consider if it is actually necessary to try to pursue requests for VAT credits 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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