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# THE DFDL TAX POCKET GUIDE TO INVESTING IN CAMBODIA

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2016 EDITION

# The DFDL Tax Pocket Guide to Investing in Cambodia

2016 EDITION



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# THE TAX POCKET GUIDE TO INVESTING IN CAMBODIA

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# 1. CAMBODIA REGULATORY OVERVIEW

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Cambodia's present legal framework combines laws and principles from the various legal systems implemented since Cambodia's independence from France in 1954.

Investment in Cambodia is, in most cases, a straightforward, direct and open process. It can be as easy as forming a company through registration of the corporate documents at the Ministry of Commerce, which normally takes around three to four weeks and is completed online from 1 January 2016. In most cases, however, additional operating licenses will be required. For investment projects to be eligible for investment incentives – which include profit tax exemptions or special depreciation and import duty exemptions – registration with the Council for the Development of Cambodia (“CDC”) is also required.

Unlike many countries in South East Asia, there are no industries closed to foreign investors. There are also only a few business sectors that cannot be fully foreign-owned. As a result, a greater proportion of investors choose to establish 100% foreign-owned limited companies in Cambodia than in many other developing countries.

Of course, there are certain industries that may not be engaged in by both local and foreign entities, such as the manufacturing of psychotropic drugs, weapons and ammunitions, chemicals and agents prohibited under international treaties.

Only a Cambodian national or company can own land. However, a foreign entity may either (a) enter into a long term lease (50 year term with a 50 year extension) in respect of land in Cambodia or (b) use a landholding company over which it has de facto control (notwithstanding a minority shareholding) to acquire the land itself.

## 2. SETTING UP BUSINESS IN CAMBODIA

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### i. Commonly Used Business Forms

This section provides an overview of the different forms of business entities available in Cambodia. The functions, organization, operation and registration of business entities are governed by the Law on Commercial Enterprise (“LCE”) and the Law on Commercial Rules and Commercial Register (“LCR”).

In accordance with the LCE, the following types of business entities are available in Cambodia:

**a) Limited Liability Company (“LLC”)**

LLCs may have from one to 30 shareholders and are managed by a board of directors. An LLC may have a single shareholder, in which case it would be known as a Single Member Private Limited Liability Company. LLCs having two or more shareholders are known as Private Limited Companies. Unlike a general partnership, the potential liability of shareholders in an LLC is limited to such shareholder’s investment via the subscribed capital and number of shares they hold in the LLC.

There is no restriction against establishing a 100% foreign-owned LLC in Cambodia. Foreign owned LLCs are afforded all the rights and benefits of a locally-owned LLC, with the exception that it cannot own land. In accordance with the concept of limited liability, the parent of a subsidiary is liable for its subsidiary’s debts and liabilities only to the limit of its subscribed capital in the subsidiary.

**b) Branch Office of Foreign Company (“Branch”)**

In all aspects, a Branch can undertake the same activities as an LLC. A Branch may enter into contracts to buy and sell goods and services and engage in manufacturing, processing and construction activities undertaken by its principal, employ staff, etc.

However, a significant disadvantage of this form of enterprise is that a Branch does not enjoy the limited liability afforded to LLCs. Liabilities with respect to losses and debts of a Branch are a joint liability for both the Branch and its parent. Accordingly, the parent of the Branch is held jointly responsible for the debts of the Branch in Cambodia. There is a risk of linking the parent directly to any local issues which might damage the parent entity.

A Branch of a parent company must be managed by one or more managers. There is no minimum capital requirement applicable to a Branch.

**c) Representative Office of Foreign Company (“RO”)**

An RO may be established in Cambodia to facilitate the sourcing of local goods and services and to collect information for its parent company. Essentially, this means that RO’s activities are limited to sales liaison work and marketing services. The RO is not considered a separate legal entity from its parent company, and is prohibited from entering into contractual arrangements for selling goods, performing services or engaging in manufacturing, processing or construction.

An RO is not allowed to earn income and must be funded exclusively by its parent office.

## **ii. General Business Registration Requirements**

### **a) Registration with the Ministry of Commerce (“MOC”)**

All enterprises conducting commercial activities in the Kingdom of Cambodia are required to be registered with the MOC which includes an RO, a Branch and an LLC.

Registration with the MOC needs to be made by the enterprise’s principal or, if applicable, its shareholders/directors during the month of formation and within 15 days prior to the commencement of its business operations. Registration is completed online through the MOC’s registration website.

### **b) Tax Registration with the General Department of Taxation (“GDT”)**

Following registration with the MOC, an enterprise will need to register with the GDT. As a matter of practice, the GDT generally requires registration within 15 days from the date of registration with the MOC. VAT registration is undertaken at the same time as the registration. From late 2014, the Ministry of Economy and Finance (“MEF”) imposed stringent requirements and conditions for the tax registration process.

The MEF issued a new Prakas on Tax Registration in April 2016 – it is hoped that the new Prakas will simplify the tax registration process and provide a more transparent and streamlined approach by the tax authorities. Further information on the tax registration process can be found in the recent developments section below at page 20.

### **c) Registration with the Ministry of Labor and Vocational Training (“MLVT”)**

An enterprise carrying on a business and employing staff in Cambodia is required to register with the MLVT and provide particulars regarding its employees within 30 days of the commencement of business operations. An enterprise is under an obligation to notify the MLVT on a timely basis of any changes in personnel.

## **3. QUALIFIED INVESTMENT PROJECT (“QIP”)**

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Some investment projects are entitled to be treated as QIPs and to receive investment incentives. Unless otherwise disqualified under the “Negative List,” an investment may generally apply for QIP status if it meets certain investment thresholds. The Negative List sets out various investment activities that will not qualify for QIP status.



## **i. Registration with the CDC**

If a project qualifies for QIP status, the investor can register the project as a QIP with the CDC. Once the application is approved, the CDC will issue a conditional registration certificate (“CRC”) and then a final registration certificate (“FRC”) which will set out a description of the QIP and any incentives for which the QIP may be eligible.

## **ii. Registration Procedures**

QIPs may elect to have either a profit tax exemption or special depreciation allowances. In addition, QIPs also enjoy customs duty exemptions on the import of production equipment, construction materials and production inputs. Note however that import duty exemption on inputs is limited to customs duties and not to VAT and Specific Tax that may also apply on imported materials and inputs. The exception being an investor that resides in a Special Economic Zone which is granted an exemption from VAT on inputs that are used in the production of products for export – see below.

### **a) Profit tax exemption**

QIPs electing to utilize a tax holiday will enjoy a profit tax exemption during the “Trigger Period,” the “Standard Three-year Period” following the trigger period, and the “Priority Period.” The Trigger Period is the period commencing on the date of registration of the QIP (i.e. the date of issuance of the FRC) and ending on the last day of the tax year immediately preceding the earlier of (i) the tax year that the profit is first derived; and (ii) the third tax year after the tax year in which the income is first derived.

The Standard Three-year Period commences from the tax year immediately following the Trigger Period.

The Priority Period, varying from zero to three years depending on the type and investment capital of the QIPs, commences from the tax year immediately succeeding the Standard Three-year Period.

A QIP is not required to pay Minimum Tax for the life of the QIP, and is not subject to Prepayment of Profit Tax during the profit tax exemption period.

### **b) Special Depreciation**

QIPs not electing to utilize the profit tax exemption are entitled to an accelerated depreciation rate of 40% of the value of new or used tangible property used in their production or processing. The accelerated depreciation rate can be deducted in the first

year of the purchase of the tangible property or the first year of use of the property in question.

#### **c) Customs Duty Exemptions**

Export-oriented and supporting industries QIPs enjoy customs duty exemptions for imports of production equipment, construction materials and production inputs. Domestically-oriented QIPs generally receive customs duty exemptions for the import of production equipment and construction materials only. Import duty exemptions on production inputs are granted to domestically-oriented QIPs only when they supply their products to export-oriented industries or when they export their products.

Export duty exemptions, on the other hand, are provided to all QIPs except for some exports which are specifically stated in Cambodian law as being subject to export duties regardless of the exporter's status as a QIP.

#### **d) Investment Guarantees**

In addition to the above incentives, both foreign and Cambodian QIPs enjoy the following investment guarantees:

- equal treatment of all investors regardless of their nationality (except for land ownership and some investment activities);
- no nationalization adversely affecting investors' properties;
- no price controls on investors' products or services; and
- guaranteed ability to remit foreign currencies abroad.

#### **e) Employment of foreigners**

A QIP is entitled to obtain Cambodian visas and work permits for the employment of foreign citizens as managers, technicians and skilled workers, and residency visas for the spouses and dependents of those foreign nationals as authorized by the CDC and in compliance with the Immigration and Labor Laws.

#### **f) Special Economic Zone**

Investors located in a Special Economic Zone ("SEZ"), are granted tax incentives similar to those enjoyed by QIPs, notably a temporary tax exemption for income taxes and a permanent exemption for Minimum Tax, and customs duties. In addition, these investors may enjoy VAT exemption on their imports if they are subsequently re-exported out of Cambodia.

## 4. ACCOUNTING AND FINANCIAL REPORTING

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### i. Financial Statement

Financial statements must be prepared in accordance with Cambodia-International Financial Reporting Standards (“CIFRS”) or Cambodia-International Financial Reporting Standards for SMEs (“CIFRS for SMEs”). The CIFRS and CIFRS for SMEs are based on the International Financial Reporting Standards and International Accounting Standards issued by the International Accounting Standards Board.

### ii. Audit Requirements

Financial statements must be audited by an independent auditor registered with the Kampuchea Institute of Certified Public Accountants and Auditors (“KICPAA”) if the taxpayer is a QIP or meets any two of the following thresholds:

- Annual turnover of KHR 3,000,000,000 (approximately USD 750,000) and above
- Total assets of KHR 2,000,000,000 (approximately USD 500,000) and above, based on the average value of assets held during the year subject to audit requirements.
- Number of employees of 100 and above, based on the average number of employees employed during the year subject to audit requirements.

### iii. Financial Year-end

The business year or the fiscal year of a corporation follows the calendar year, i.e. from 1 January to 31 December. However, a subsidiary of a foreign company is allowed to apply for a fiscal year that is different from the calendar year to be aligned with that of its parent company.

### iv. Record Keeping

All books of account, accounting records and their supporting documents must be kept for a period of 10 years. In addition, accounting records must be maintained in the Khmer language and monetary amounts must be denominated in Khmer Riel. It may be possible for taxpayers to request for permission from the MEF to use English and another currency in their accounting records if they are subsidiaries of foreign companies or transact regularly with foreign countries. Taxpayers that fail to maintain books and records in accordance with the Law on Taxation (“LOT”) may be subject to penalties and tax assessments.

## 5. TAXATION

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### i. Overview

Prior to 1 January 2016 Cambodia had three types of tax regimes: the real regime, the simplified regime, and the estimated regime. In practice only two of those three tax regimes were implemented in Cambodia – namely the estimated and the real regime of taxation. Under the estimated regime a taxpayer would pre-negotiate their annual taxes in advance with the tax authorities. Those taxpayers who fell under the real regime of taxation were required to submit monthly and annual tax returns on a self-assessment basis and comply with the tax regulations in place in Cambodia.

There was clear criteria as to which taxpayers fell under the estimated tax regime and which taxpayers fell under the real regime. In theory, the estimated tax regime was designed for small to medium taxpayers – comprising of sole proprietorships with a relatively low monthly revenue threshold.

In December 2015 the Law on Financial Management 2016 was promulgated and with it came the abolishment of the simplified and estimated regimes of taxation in Cambodia.

#### *Regime Change*

From 1 January 2016 only the real regime of taxation exists in Cambodia. The real regime was amended to create three categories of real regime taxpayer (RRT):

- Small Real Regime Taxpayer – taxpayers that are Sole Proprietorships or Partnerships that:
  - Have annual taxable turnover from Khmer Riel (“KHR”) 250 million (USD 62.5k to KHR 700 million (USD 175k);
  - Have taxable turnover, in any period of three consecutive calendar months (within this tax year), exceeding 60 million KHR (USD 15k);
  - Expected taxable turnover of 60 million KHR (USD 15k) or more in the next three consecutive months;
  - Participate in any bidding, quotation or survey for the supply of goods and services including duties.
- Medium Real Regime Taxpayers include:
  - Enterprises that have annual turnover from KHR 700 million (USD 175k) to KHR 2,000 million (USD 500k);
  - Enterprises that have been incorporated as legal entities;

- Sub-national government institutions, associations, and non-governmental organizations.
- Large Real Regime Taxpayers include:
  - Enterprises that have annual turnover over KHR 2,000 million (USD 500k);
  - Branch of a foreign company;
  - Enterprises registered as a Qualified Investment Project as approved by the Council for the Development of Cambodia;
  - Government Institutions, foreign diplomatic and consular missions, international organizations and agencies.

*Taxpayers under the real regime system are liable to the following taxes\*:*

#### *Annual Taxes*

- Tax on Profit (“TOP”)
- Minimum Tax (“MT”)

#### *Monthly Taxes*

- Prepayment of Profit Tax (“PPT”)
- Withholding Tax (“WHT”)
- Tax on Salary (“TOS”)
- Value Added Tax (“VAT”)

#### *Other Significant Taxes*

- Patent Tax (“PT”)
- Specific Tax on Certain Merchandise and Services (“ST”)
- Accommodation Tax (“AT”)
- Tax on Public Lighting (“TPL”)
- Tax on Unused Land
- Tax on Immovables
- Additional Tax on Dividend Distribution (“ATDD”)

*\*Please note small real regime taxpayers are able to follow a simplified accounting system as outlined in Prakas no. 1820 MEF.Prk dated 25 December 2015 on Method and Procedure on Implementation of Simple Accounting Record for Small Real Regime Taxpayers. The simplified accounting system provides specific rules on recording expenses, depreciable assets, WHT requirements and income recognition that may differ from the general rules that are outlined in this publication.*

## ii. Annual Taxes

At the end of each taxable year, RRT taxpayers pay either TOP or MT whichever is greater.

### a) Tax on Profit

TOP is a tax on income with a standard rate of 20%. Special tax rates apply to taxpayers in extraction or insurance industries. It is imposed on a resident taxpayer's worldwide income.

#### *Rates of Tax on Profit*

BUSINESS TYPES	TAX RATES
Legal Entities (General Businesses)	20%
Oil or natural gas production sharing contract, or realized in the exploitation of natural resources	30%
Insurance companies	5% on gross premium

#### *Deductibility of Expenses*

As a general rule, expenses are deductible if they are paid or incurred in a tax year to carry on the business of the taxpayer. The tax law provides that "expenses linked to abnormal management," expenses that "provide benefits to third parties," "expenses for personal needs" and "extravagant expenses" are not deductible for tax purposes.

Special rules apply which cap deductions on interest and on charitable contributions.

#### *Non-deductible Expenses*

Expenses which are specifically not allowed as deductions include:

- Any expense in relation to amusement, recreation or entertainment;
- Personal or living expenses;
- Penalties and fines;
- Donations, grants or subsidies;
- Prepayment of profit tax, minimum tax or profit tax;
- Withholding tax and salary tax borne by the enterprise;
- Losses on the sale or exchange of property directly or indirectly between related parties; and
- Non-related business expenses.

#### *Tax Depreciation*

Tax depreciation is based on the depreciation methods as follows:

	METHOD	RATE
<b>Intangible property</b>		
Having a specific useful life	Straight-line	Varies based on the estimated useful life
If there is no specific useful life	Straight-line	10%
<b>Tangible property</b>		
<b>Class 1:</b> Buildings and structures including their basic components	Straight-line	5%
<b>Class 2:</b> Computers, electronic information systems, software & data handling equipment	Declining balance	50%
<b>Class 3:</b> Automobiles, trucks, and office furniture and equipment	Declining balance	25%
<b>Class 4:</b> All other tangible property	Declining balance	20%

## b) Minimum Tax

MT is a yearly tax and is separate from the TOP. MT is calculated at 1% of annual turnover inclusive all taxes except VAT. Note however that the monthly settlement of the Prepayment of Profit Tax (see below) is usually sufficient to cover the MT. Hence, if the MT is payable instead of the TOP, it is usual that no additional MT payments need to be made.

## iii. Monthly Taxes

### a) Prepayment of Profit Tax

PPT is calculated at 1% of a taxpayer's monthly turnover inclusive of all taxes, except VAT. Any PPT payments made will be credited against the TOP liability.

### b) Withholding Tax

Withholding Tax ("WHT") regulations require a resident taxpayer carrying on a business in Cambodia to withhold certain amounts from payments made to resident and non-resident taxpayers. The amounts withheld are remitted to the GDT. The following payments are subject to WHT:

Payments by resident taxpayers to residents in respect of:

- The performance of services – 15% (except payments to a tax registered taxpayer that are supported by a valid VAT invoice)
- Interest – 15% (except domestic bank and saving institution)
- Royalties – 15%
- Rental – 10%
- Interest payments on fixed deposits made by local banks to residents – 6%
- Interest payments on saving accounts made by local banks to residents – 4%

Payments by resident taxpayers to non-residents in respect of:

- Interest – 14%
- Royalties, rental and other income connected to the use of property – 14%
- Management and technical fees – 14%
- Dividends – 14%

WHT does not apply to payments in respect of the sale of goods.

### **c) Tax on Salary**

A resident taxpayer is subject to TOS on Cambodian and foreign sourced salary income at progressive rates from 0% to 20% while a non-resident taxpayer is subject to a flat rate of 20% on Cambodian source salary income only.

Individuals are classified either as resident or non-resident taxpayers. An individual is deemed to be resident if he has his residence or principal place of abode in Cambodia, or is present in Cambodia for more than 182 days in any 12 month period ending in the relevant tax year. A non-resident is a person who does not meet the above test of residency.

Salary includes remuneration, wages, bonuses, overtime, compensation and loan or advances provided by the employer.

The tax base is reduced by KHR 75,000 per month for every dependent child and non-working spouse of the resident taxpayer.

#### *Exempt Salaries*

The following salary payments received by a resident taxpayer are not subject to TOS:

- Reimbursement of business expenses by the employer, provided the costs were incurred in the course of employment, the amount is not excessive, and can be substantiated;



- Indemnity for layoff within the limit of labor law;
- Additional remuneration received with social characteristics as stated in labor law;
- Supply of free or below-cost uniforms or special professional equipment used in the course of employment; and
- Flat allowances for mission and travel cost received in the course of employment, where the amount of allowance shall not be in excess of expenditure incurred.

### Salary Tax Rates

MONTHLY SALARY		
Khmer Riel (KHR)	Approx. USD equivalent	Rate
0 - 800,000	0 - 200	0
800,001 - 1,250,000	200 - 312.50	5%
1,250,001 - 8,500,000	312.50 - 2,125	10%
8,500,001 - 12,500,000	2,125 - 3,125	15%
12,500,001 - upwards	3,125 - upwards	20%

Exchange rate USD 1 = KHR 4,000

### Fringe Benefits Tax

Fringe benefits are subject to FBT at a rate of 20%. FBT is primarily imposed on the following benefits:

- Vehicles for private usage;
- Accommodation; food, utilities, household personnel;
- Educational assistance (except for employment-related training);
- Low interest loans;
- Discounted sales;
- Social contributions in excess of the level provided by the labor laws of Cambodia;
- Life and health insurance premiums (except where provided to all employee regardless of job classification);
- Pension contributions in excess of 10% of the employee's monthly salary; and
- Entertainment, amusement or recreation expenses which are not part of employment activity.

## d) Value Added Tax

VAT is applicable to the supply of goods and services. Goods are defined as tangible goods other than land and money. Services are defined as the supply of something of value other than goods, land or money.

An enterprise is required to charge VAT at the standard rate of 10% on taxable supplies in Cambodia including the importation of goods into Cambodia. A VAT rate of 0% (“zero-rate”) is applied to goods exported from Cambodia. Taxable supplies are defined as all supplies other than exempt supplies. Exempt supplies are not subject to VAT and include:

- Public postal services;
- Hospital, clinic, medical, and dental services and the sale of medical and dental goods incidental to the performance of such services;
- The service of transportation of passengers by a wholly state owned public transportation system;
- Insurance services;
- Primary financial services;
- The importation of articles for personal use that are exempt from customs duties; and
- Non-profit activities for public interest that have been recognized by the Ministry of Economy and Finance.

The Cambodian VAT system follows conventional VAT systems, whereby a VAT registered enterprise can offset input VAT incurred on purchases against its output VAT. In circumstances where the taxpayer’s input VAT for the month exceeds its output VAT (i.e. VAT credit), the taxpayer is allowed to carry forward the VAT credit to offset output VAT in the succeeding period.

VAT paid on the following expenditures cannot be used as VAT input:

- Entertainment expenses;
- Products or imports of certain petroleum products;
- Purchases or imports of passenger motor vehicles; and
- Mobile telephone calls.

## iv. Other Taxes

### a) Patent Tax

Businesses are required to pay Patent Tax (PT) upon initial business registration and annually thereafter.

In previous years the Government fee that was required to be paid to obtain a PT Certificate was approximately USD 285. The revised PT fees for 2016 are as follows:

REAL REGIME OF TAXATION	2016 PATENT TAX FEE KHMER RIEL (KHR)	2016 PATENT TAX FEE UNITED STATES DOLLARS (US)
SMALL TAXPAYER	KHR 400,000	USD 100
MEDIUM TAXPAYER	KHR 1,200,000	USD 300
LARGE TAXPAYER	KHR 3,000,000 OR KHR 5,000,000*	USD 750 OR USD 1,250

*\*If the annual turnover of the Large Taxpayer exceeds KHR 10,000 million (USD 2.5 million) then the PT payable will be USD 1,250. If the annual turnover of the Large Taxpayer is less than KHR 10,000 million (USD 2.5 million) the PT payable will be USD 750.*

The PT must be paid at the place where taxpayers have their specific/real business operation. A taxpayer which has a branch office, warehouse, factory and workshop with the same business objective in the same location (city-province) is required to pay only one PT fee.

#### **b) Specific Tax on Certain Merchandise and Services**

The ST is imposed on a number of local and imported products, and services. The rate ranges from 3% to 45%. Goods subject to this ST include soft drinks, alcoholic products, cigarettes, beer, and certain services such as entertainment services, domestic and international air tickets, and telephone services.

The Specific Tax rate on the following goods, which are imported or domestically produced and supplied in Cambodia, were increased in 2016 as follows:

- 30% on all types of beer products (previously 25%)
- 35% on all types of wine products (previously 20%)
- 20% on all types of cigarette products (previously 15%)

With respect to calculating Specific Tax on locally supplied goods the tax base is defined as the “ex-factory selling price”. In 2014 the “ex-factory selling price” for real regime taxpayers was increased from 65% to 90% of the selling price recorded on invoices to customers excluding VAT, any discount and the Specific Tax itself.

#### **c) Accommodation Tax**

AT is a tax levied on the provision of accommodation services by hotels. AT is calculated at the rate of 2% of the accommodation fee inclusive of other service charges and all taxes except AT itself and VAT.

#### **d) Tax on Public Lighting**

TPL is collected at the rate of 3% on the selling price of alcoholic drinks and cigarettes, both imported and domestically manufactured, at each stage in the supply-chain. The tax base of the TPL is calculated inclusive of all applicable taxes, but exclusive of TPL itself and VAT.

#### **e) Stamp Duties**

Stamp Duty is imposed on the transfer of ownership of immovable property, all kinds of vehicles, and shares. It is also imposed on contracts for the supply of goods and services to public institutions and certain legal documents relating to the establishment, merger or dissolution of business. The rates are as follows:

- Transfer of ownership or right of possession of immovable property and the contribution of immovable property as capital in a company – 4% of the value of the immovable
- Transfer of ownership or right of possession of vehicles – 4% of the value of the vehicle
- Transfer of any or all parts of the company's shares – 0.1% of the value of shares transferred
- Registration of contracts to supply goods or service to the government – 0.1% of the contract price
- Registration of legal documents such as certificates of incorporation, certificates of merger, and letter evidencing the winding up of the company – KHR 1,000,000 (approx. USD 250)

#### **f) Tax on Immovable Property**

Immovable property is defined as including land, houses, buildings and other constructions built on the land. Tax on immovable property is imposed at the rate of 0.1% of on the value of the immovable property exceeding the threshold of KHR 100,000,000 (approx. USD 25,000). The value of the immovable property is determined by the Immovable Property Assessment Committee. The property tax return must be filed, and the taxes must be paid by 30 September each year.

#### **g) Tax on Unused Land**

Tax on Unused Land is imposed on a land on which there are no constructions and land with abandoned constructions which. The tax is imposed only on areas identified by the Unused Land Appraisal Committee (ULAC). Tax on Unused Land is collected at the rate 2% of the market value of the land as determined by the ULAC. The tax return must

be filed, and the taxes must be paid by 30 September each year. If a land owner pays property tax on a particular piece of land then they are not required to pay unused land tax on the same piece of land.

#### **h) Additional Tax on Dividend Distribution**

ATDD applies to the distribution of profits that has not previously been taxed at the full rate of 20% (such as those distributed by QIPs). Profits realized when a company is exempt from TOP are not subject to the ATDD until the retained earnings are distributed, either during or after the tax holiday period.

#### **v. Import and Export Duties**

Import duties are collected on all goods (other than those specifically exempted from import duties as stated by law or relevant authorities) crossing the border, at rates of between 0% and 35%. Cambodia is a member of the World Trade Organization (“WTO”) and applies the most-favored nation rate to imports from other WTO members. The country is also part of the ASEAN Free Trade Area and applies the tariff rates agreed upon under the ASEAN Trade in Goods Agreement to imports from other ASEAN states.

Cambodia levies export duties on a few items such as timber, rubber, uncut precious stones and certain aquatic products.

#### **vi. Tax Administration**

##### **a) Patent and Annual Profit Tax Return**

RRT must submit TOP and Patent Tax returns not later than three months following each year. Newly registered enterprises are required to lodge a Patent Tax return within 15 days after it receives approval for business registration from the Ministry of Commerce.

##### **b) Monthly Tax Returns**

RRT are required to lodge Monthly Tax Returns to the tax authority on a monthly basis. Monthly Tax Returns consist of:

- Return of Prepayment of Profit Tax\* 15th day of the following month (lodgment)
- Return for Withholding Tax 15th day of the following month (lodgment)
- Return for Tax on Salary 15th day of the following month (lodgment)
- Return for Value Added Service 20th day of the following month (lodgment)

*\*Specific Tax, AT, PLT, ADDT and Other Taxes also included in this return.*

## **vii. Tax Loss**

RRT's (excluding small taxpayers) are allowed to carry forward tax losses for a maximum of five years. Tax losses cannot be set-off against previous years' profits.

Tax losses will be forfeited upon a change in ownership of the business, or if there is a change in business activity. Tax losses will also be forfeited in the event a taxpayer is subject to a unilateral tax reassessment by the GDT.

## **viii. Tax Audit**

The LOT provides the GDT with the power to carry out an audit of a taxpayer's activities and to reassess taxes. The GDT has a three-year period following the submission of any monthly or annual tax return in which to raise a tax reassessment. However, this period is extended to ten (10) years where there is evidence that the taxpayer has obstructed the implementation of the tax provisions. The definition of obstruction is very broad and includes a failure to lodge tax returns within 30 days of the due date. Consequently, a ten-year reassessment period may be applied in many circumstances.

### *Penalties*

Tax penalties are imposed for violations of the LOT and its regulations. The level of the penalty is dependent upon the nature of the violation, and is determined as follows:

- Where a taxpayer or withholding agent is considered negligent (amount of deficiency tax paid is 10% or less than amount of taxes due) the penalty will be 10% of the unpaid tax;
- Where a taxpayer or withholding agent is considered seriously negligent (amount of deficiency tax is more than 10% of taxes due) or the taxpayer has failed to settle tax liabilities by the due date stated in a tax notification on late payments issued by the GDT, the amount of penalty will be 25% of the unpaid tax; and
- Where a tax audit conducted by the GDT exposes an underpayment of taxes, the amount of the penalty will be 40% of the unpaid tax.

In addition, there are penalties imposed for late payment of taxes and late lodgment of returns, together with interest that is charged at 2% per month.

## **ix. Double Tax Agreement**

At the time of publishing this booklet, Cambodia had just signed its first Double Tax Agreement with Singapore. The DTA is still to be ratified in both Singapore and Cambodia.

#### **x. Group Relief**

There is no group relief provision in Cambodia.

#### **xi. Thin Capitalization**

There is no thin capitalization rule in Cambodia.

Please note however that Circular 151 (issued in 2014) set a limit to the interest deductions that a taxpayer may apply for each loan that it contracts. The interest rate deduction limit of borrowers will be based on this new benchmark:

- Taxpayers who borrowed money from non-related persons may deduct interest expenses up to 120% of the deemed market rate applicable at the time of the borrowing.
- Taxpayers who borrowed money from related persons may deduct interest expenses up to 100% of the deemed market rate applicable at the time of the borrowing.

On 5 February 2016, the General Department of Taxation released Notification 2118 and 2119, which provided the deemed market rates for determining the caps on interest rate deductions under Circular 151 for loans that had been entered into using Khmer Riel (“KHR”) and United States Dollars (“USD”) in the 2015 financial year. The deemed market rates for 2015 are as follows:

- For borrowing in USD – 10.28%
- For borrowing in KHR – 19.51%

These interest deduction limits are applied for each loan, and are in addition to the annual deduction limit under Article 12 of the LOT and Prakas on Tax on Profit, which caps the annual interest deduction to the sum of 50% of the taxpayer’s non-interest income and 100% of its interest income.

#### **xii. Transfer Pricing Rules**

Currently, Cambodia does not have actual transfer pricing statutes or regulations. Subject to certain conditions, the GDT may exercise the authority to adjust the allocation of income and expenses between related enterprises. Two or more enterprises will be deemed to be under common ownership if a person owns 20% or more of the value or the equity interests of each enterprise.

### xiii. Foreign Exchange Control

At this time, there is no restriction on foreign currency exchange.

## 6. RECENT DEVELOPMENTS OF NOTE

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### i. Abolishment of the Estimated Tax Regime

As noted in the introduction from 1 January 2016 there is only one tax regime that exists in Cambodia – the real regime. The real regime is made up of small, medium and large taxpayers.

### ii. Tax Invoices

Instruction No. 1127 issued by the GDT on 26 January 2016 provides important instructions on the issuance of invoices for taxpayers who are registered as RRT's. The key points to be taken from Instruction 1127 are as follows:

- All RRT's are required to issue an invoice for every sale or supply of goods or services in accordance with the four (4) invoice templates that have been provided by the GDT.
- A recipient of a VAT invoice that does not conform to the requirements of Instruction 1127 shall not be permitted to claim a VAT input credit or to claim an expense for the purchase for tax on profit purposes.

As per Notification 1127 a VAT invoice is now required to include the following:

- Name, address, and value-added tax identification number (VATTIN) of the seller or supplier;
- Clear invoice number in a chronological order and date of issuance of the invoice;
- Name and address of the purchaser and value-added tax identification number in case the purchaser is a taxpayer under the self-assessed regime;
- Description, quantity, and selling price of the goods or services;
- Total prices excluding tax and separate tax amount;
- The ink quality printed in the invoice and the invoice paper shall be able to be kept for a long period of time; and
- All invoices shall be written or printed in Khmer, or both Khmer and English, and the English text shall be under the Khmer text.



### iii. Tax Disputes committee

In January 2016 Sub Decree no. 03 was issued establishing a Committee of Tax Arbitration (CTA). The CTA's function is to review, resolve and make decisions on protests regarding tax and customs disputes. The CTA comprises of;

- The Minister of Economy and Finance as Chairperson
- Secretary of State of the Ministry of Economy and Finance as Vice-Chairperson
- Representative of the National Accounting Council, the General Director of the General Department of Policy for Economy and Public Finance, and the General Director of the General Department of Internal Audit as Members.

The establishment of the CTA provides an opportunity to a taxpayer to appeal the decision made by the GDT during the course of a tax dispute. If the taxpayer does not agree with the decision of the CTA it has the right to appeal to the Courts in Cambodia within 30 working days after receiving the decision of the CTA.

### iv. Tax Registration

In March 2016 the Ministry of Economy and Finance issued a new Prakas on Tax Registration No. 496 MEF.P. (Prakas 496). Prakas 496 abrogates Prakas 1139 (dated 9 October 2014) that had previously set out procedures for all existing taxpayers to on update their information and for new taxpayers to register for tax with the GDT.

The salient points of Prakas 496 are set out as below.

- Scope – Prakas 496 reflects the recent abolishment of the estimated tax regime and restructure of the real regime but also importantly extends the registration requirements to those individuals who don't meet the criteria to register as a small taxpayer.
- The new Prakas provides a dispensation to chairpersons/owners of foreign nationality who reside outside of Cambodia whereby they are not required to physically present themselves to the GDT to have their photo taken and finger prints scanned.
- Addition requirements regarding nominated office addresses have been added.
- The change of circumstances requiring notification to the GDT are clearly listed as are the fees.
- The procedural and documentary requirements are listed for all persons that carry out economic activity in Cambodia.
- Accounting for Small Taxpayers.

As noted above in December 2015 the MEF issued Prakas no. 1820 that dealt with the rules and procedures for the implementation of the simplified accounting system for small taxpayers in the real regime of taxation.

Some of the salient points to come out of Prakas 1820 included the requirement for small taxpayers to maintain three daily journals for Purchases, Sales and Inventory respectfully. The Prakas also provided specific rules on how small taxpayers account for withholding taxes, tax loss carry forward, input VAT and TOP rates. It also provides a definition of ‘turnover’ for the purposes of calculating MT and outlines scenario’s whereby MT would not apply.

#### **v. Double Tax Agreement**

At the time of publishing this booklet, Cambodia had just signed its first Double Tax Agreement with Singapore. The DTA is still to be ratified in both Singapore and Cambodia.

## **7. ABOUT DF DL**

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DFDL is a leading international law firm founded in 1994. We specialize in frontier markets with regional legal, tax and advisory investment expertise developed throughout the Mekong region (Cambodia, the Lao PDR, Myanmar, Thailand, and Vietnam), Bangladesh, Indonesia, and Singapore.

- Banking and Finance
- Corporate
- Mergers and Acquisitions
- Energy, Mining and Infrastructure
- Real Estate and Construction
- Taxation

DFDL established its office in Phnom Penh in January 1995, as the first officially authorized foreign investment advisory and tax firm in Cambodia. DFDL is licensed as an investment company by the Council for the Development of Cambodia and the Cambodian Investment Board. We are also registered as a private limited company with the Ministry of Commerce. Under these licenses and registrations, we are permitted to provide business consulting, investment and tax advisory services of an international nature.

On 1 March 2016, DFDL and Sarin & Associates joined forces and established a

commercial association and cooperation in order to form a new business transactions platform to serve clients with interests in Cambodia and across the expanding ASEAN marketplace.

DFDL and Sarin & Associates have worked together for over ten years in Cambodia. Sarin & Associates has long been recognized for its outstanding legal advice, providing advice to companies in Cambodia in several sectors, such as telecommunication, energy, retail, real estate, financial services, banking, etc.

Our clients are major international and Asian foreign investors in Cambodia, including large foreign and Asian financial institutions. We have been involved in major projects in Cambodia including electricity projects, aviation, telecommunications, infrastructure projects and large real estate projects.

## **i. Our Services**

### **a) Tax Advisory**

- International tax planning and legal structuring;
- Corporate tax optimization solutions;
- Regional tax structuring of shareholding, financing, licensing services and other arrangements;
- Transfer Pricing Advisory;
- M&A and restructuring; and
- Real Estate tax and legal structuring.

### **b) Compliance**

- Preparation of monthly and annual tax returns;
- Personal income taxes; and
- Expatriate tax services.

### **c) Customs & Free Trade Agreement**

- Consulting with customs authorities on valuation, tariffs and exemptions;
- Advice on customs duties classifications and valuations;
- Strategic Free Trade Agreement planning, advice on rules of origin (ROO);
- Advice and government liaison services on market access, barriers to trade and protection of investors.

## d) **Market Entry Advice**

Research on market opportunities, restrictions, corporate intelligence and background checks.

## e) **Due Diligence**

Our services include Tax Due Diligence on target companies in Cambodia covering all tax and customs issues and can be tailored to suit your needs. We highlight tax risks and opportunities in acquiring businesses or companies. Greater proportion of investors choose to establish 100% foreign-owned limited companies in Cambodia than in many other developing countries.

## ii. **Our People**

At DFDL, our most valuable assets are our people. We are dedicated to hiring, developing and retaining experienced and efficient advisers.

People who comprise our Cambodia Team are:



**Jack Sheehan**

Partner and Head of Regional Tax Practice

Jack is a Partner, and is the Head of the Regional Tax Practice. Jack specializes in providing advice on international tax planning, mergers and acquisition (“M&A”) and cross-border tax planning. He is regularly featured as a speaker and writer on international tax in the Asia Pacific region. Jack is member of the Editorial Board for Bloomberg BNA on tax treaties, and the country correspondent for the International Bureau of Fiscal Documentation (“IBFD”) in Cambodia, Myanmar and the Lao PDR and a member of the International Fiscal Association (“IFA”). Jack is listed as a leader for tax controversy and was nominated as Asia Tax Leader 2016 by International Tax Review. He is a Fellow of the Association of Chartered Certified Accountants and is a post graduate student at Oxford University Law School where he is studying taxation.

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### **Clint O'Connell**

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Clint has worked professionally in Cambodia for over seven years, and in that time has been involved in some of the largest commercial transactions in Cambodia. He advises a wide range of clients, from large globally-listed companies to small- and medium-sized businesses. Clint is widely recognized for his work. He is a regular contributor to the International Tax Review and Bloomberg BNA's Tax Planning International Asia-Pacific Focus journal and also lectures at CamEd with respect to their popular "Tax in Cambodia" course.

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Borapyn is Tax Country Associate Director for the Cambodian Tax Practice Group. He has nine years' experience as a tax adviser in Cambodia and Thailand, including working in tax advisory, tax compliance and transfer pricing "Big Four" accounting firms. Pyn specializes in corporate taxes, expatriate taxes and tax audits and disputes.

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# The Essential, Up-To-Date Pocket Guide for Investors in Cambodia

*Written by experts from DFDL with information on:*

Cambodia Regulatory System • Qualified Investment Project • Accounting and Financial Reporting • Taxation • and more.

## About Us

DFDL was established in 1994 and built on a unique vision: to create an integrated legal, tax and investment advisory firm, with in-depth knowledge of the jurisdictions we work in, providing technical excellence across our core areas of expertise.

Over twenty years later, DFDL continues to build on its reputation as the obvious first-choice firm for sophisticated transactions in frontier markets across Asia and beyond.

As these markets continue to expand and thrive, so has DFDL and we are now uniquely positioned to help clients access investment opportunities in the world's most dynamic region.

With a team of over 140 local and foreign advisers working within Asia, we provide personalized cost-effective consulting services and solutions with particular expertise in:

- Banking and Finance
- Corporate
- Mergers and Acquisitions
- Energy, Mining and Infrastructure
- Real Estate and Construction
- Taxation

Since its foundation, DFDL has acquired an outstanding reputation for providing integrated and solution-oriented services to establish, structure and protect our clients' business interests in dynamic and challenging markets. DFDL is also actively involved in developing the legal and regulatory environments of the frontier markets in which we operate.

BANGLADESH | CAMBODIA<sup>‡</sup> | INDONESIA\* | LAO PDR | MYANMAR | PHILIPPINES\* | SINGAPORE | THAILAND | VIETNAM

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