



2018 Year Review

Cambodia

After enjoying robust growth over the past two decades, Cambodia's economy strengthened further in 2018. The Cambodian legal system is in a state of ongoing development, with new laws being implemented on a regular basis to meet and facilitate the needs of foreign and local investors alike. We have summarized their key developments undertaken during 2018.



Change of Format of The Certificate of Ownership Over Immovable Property

According to the Notification from the Office of the Council of ministers (Sor.Chor.Nor No.528) dated 7 May 2018, the Royal Government of Cambodia approved the change of format of the certificate of ownership over immovable property. The old form of certificate as previously issued to owners remains valid without them having to change to the new form.

The main features of the new form are:

- QR Code on the bottom left of the certificate of ownership over immovable property for public verification;
- Deletion of the watermark of the “certificate of ownership of immovable property”;
- Insertion of a watermark within the picture of the Cambodian map and the phrase: “certificate of ownership of immovable property” within the map and insertion of the phrase: “ AIDOBMAC FO MODGNIG , KINGDOM OF CAMBODIA” along with the Mekong river in the picture of the Cambodian map; and
- The paper number code consisting of 8 figures.

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Law On Minimum Wage dated 6 July 2018

The Law on Minimum Wage was promulgated on 6 July 2018 and now guarantees a minimum wage for employees covered by the provisions of the Labour Law. A tripartite National Council on Minimum Wage (“**NCMW**”), comprised of the government, employer representatives, and employee representatives, will be established to study, research and provide recommendations on the determination of minimum wages and other benefits for persons covered by the Labour Law. Subject to the discretion of the NCMW, key factors in determining the minimum wage include social considerations (such as inflation rates and living expenses); and (2) economic considerations (such as productivity, competition, job market status and profitability of a particular industry).

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Provision of Seniority Payments

The MLVT issued Prakas 443 on Seniority Payments (“**Prakas 443**”) on 21 September 2018. This Prakas will take effect from 1 January 2019 and clarifies the scope and enforcement of the relevant provisions on seniority payments for employees under unfixed duration contracts (“**UDCs**”).

Previously, ‘severance’ (or indemnity for dismissal) was payable only upon termination of a UDC by an employer, except for serious misconduct committed by an employee. From 2019, seniority payments (which replaces the ‘severance’) must now be paid to employees on UDCs every 6 months. This change is likely to increase an employer’s liability with respect to severance/seniority payments.

For employees under fixed duration contracts, severance pay of at least 5% of the total wages due throughout the term of the contract must continue to be paid.

The most significant implications of Prakas 443, which are applicable to all enterprises under the scope of the Labour Law (including non-governmental organizations, associations and private sector entities) are:

- (1) Seniority payments from 2019 onwards.
- (2) Back pay of seniority payments prior to 2019.

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Wage Payments

From January 2019 onwards, all enterprises governed under the Labour Law must pay wages to employees twice per month as follows:

- (1) First Payment: 50% of base wages for that month in the second week of the month; and
- (2) Second Payment: the remaining base wages, fringe benefits and other allowances for that month in the fourth week of the month.

This requirement would be a major change to payroll processes of the hiring entities, which are typically made monthly.

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Amendment Law : Provisions Relating to Termination and Compensation

Law on Amendments of Article 87 (K), Articles 89, 90, 91, 94, 110, 120 and 122 of the Cambodian Labour Law dated 13 March 1997, dated 26 June 2018. The “**Amendment Law**” has introduced significant changes to the 1997 Labour Law, in particular to provisions relating to termination and compensation. These include:

- (1) **New Article 87:** Under this new provision, requirements on “damages” and “compensation in lieu of notice” are not applicable in the case of enterprise closure, which must be undertaken in accordance with the conditions to be determined by a forthcoming Prakas from the Ministry of Labour and Vocational Training (“**MLVT**”).
- (2) (**New Article 89:** Indemnity for dismissal is amended as “seniority payment”. The amount of seniority payment is 15 days per year to be paid every six months to employees. In the event that the employment contract is terminated by an employer in accordance with the Labour Law, the employee is entitled to the remaining seniority payment from one month up to six months of seniority payment, which will be equal to seven days of wages and fringe benefits. If an employee commits serious misconduct, he or she will not be entitled to seniority payment. [Read more](#)

Licensing and Management of Collective Investment Schemes

The Securities and Exchange Commission of Cambodia (“**SECC**”) issued a Prakas on Licensing and Management of Collective Investment Schemes dated 29 May 2018 (“**CIS Prakas**”). The CIS Prakas is intended to regulate any collection of funds from the public in Cambodia via a collective investment scheme. Fund management company, fund management representative, distribution company, fund selling representative, trustee, crowd funding representative must be licensed by the SECC pursuant to the CIS Prakas in order to undertake CIS related activities lawfully in Cambodia.

Under the CIS Prakas, a collective investment scheme is defined very broadly to include any collection of cash and valuable assets via issuance of fund unit or crowd funding in order to create a private fund, public fund or real estate investment trust. Fund can be a closed-end or open-ended fund. Further, a private fund is a fund collected from not more than 30 institutional investors and/or qualified investors whereas a public fund is a fund issued to more than 30 investors. Each fund must be subject to prior approval of the SECC before it can be implemented by a fund management company. Assets of the fund must be held by a trustee company licensed by the SECC.

CAMBODIA TAX REVIEW FOR 2018

Tax Treaties with Singapore and Thailand

The Cambodia General Department of Taxation (**GDT**) has formally announced that the Double Tax Agreements (**DTAs**) which Cambodia signed with Singapore in 2016, and with Thailand in 2017, officially came into effect on **1 January 2018** for Cambodia tax residents. These developments represent major milestones in Cambodia’s ongoing tax evolution, and in practical terms, they signify that most of the substantive provisions contained in these DTAs, including the reduction of withholding taxes on certain cross border transactions, are applicable from 1 January 2018 for Cambodian taxpayers. [Read more](#)

Changes to Import Duties, Salary Tax, and Taxpayer Classification

The first month of 2018 has brought with it a number of important tax and customs update including the changes to Import Duties, Salary Tax, and Taxpayer Classification include the following:

- Modification to the calculation formula regarding Specific Tax and Value Added Tax on the importation of goods into Cambodia under a Free Trade Agreement brought about by Notification 11825.
- Instructions regarding the implementation of the amended monthly Tax on Salary rates issued by the GDT under Instruction No.002 on 15 January 2018.
- Changes to the criteria determining taxpayer classification under the Self-Assessment Tax Regime as per Prakas 025 – On the Amendment of Classification of Taxpayers under the Self-Assessment Regime – issued on 24 January 2018.

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Transfer Pricing – Interest Rates for Related Parties

Instruction 11946 issued by the General Department of Taxation (“GDT”) on the 21st of August 2018 (“**Instruction 11946**”) provides an important clarification regarding the determination of interest rates between related parties. Instruction 11946 has now put the speculation to rest by clearly stating that when Cambodian taxpayers lend to, or borrow money from, related parties, the rate of interest to be applied to those loans must adhere to the “arm’s length principle” as set out in Prakas 986. In other words, the interest rate to be charged on related party loans should be determined based on the rate of interest that would have been charged between independent parties under similar circumstances.

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Principal and Agency – Important Update

Prakas 597 titled “**The Recognition and Tax Obligation regarding the supply of Goods and Services made by an Agent on behalf of a Principal**” was issued on 27 June, 2018 (“**Prakas 597**”) and provides some important clarifications and requirements for a number of taxpayers currently operating in Cambodia. This update is extremely important to those taxpayers in Cambodia who sell goods or services on behalf of a Cambodian Principal. Industries that may be directly affected by this update include – travel, telecommunication, FMCG, local manufacturers and in general any industry which involves the receipt of a commission that is related to selling goods or services on behalf of a Principal. One of the key requirements brought about by Prakas 597 is that those taxpayers in Cambodia looking to operate as an Agent must apply formally in writing to the General Department of Taxation (“GDT”) in Cambodia to obtain a recognition letter.

[Read more](#)

VAT Update – Essential Food Exempted

Prakas No. 361 MEF.PrK dated 3 April 2018 (**Prakas 361**) provides a Value Added Tax (VAT) exemption on basic food items that are sold by Cambodian taxpayers operating under the self-assessment regime. The purpose of Prakas 361 is to improve the living standards of Cambodian citizens by rendering basic food products more affordable.

[Read more](#)

Important Update on Tax Compliance Obligations for all Associations and NGOs

The General Department of Taxation has been quite vociferous in recent years with respect to the tax registration obligations of both Associations and Non-Government Organizations that operate in Cambodia. The introduction of Prakas 464 earlier this month reiterates the tax registration requirements of these bodies but also goes much further in clarifying the scope of the Tax on Income exemption provided in the Law on Taxation (LOT). This Prakas makes it very clear that income derived by “social enterprises” fall outside of the scope of the Tax on Income exemption provided by the LOT. In practice Associations and NGO’s that operate in Cambodia may receive membership fees, donations and grants but may also run social enterprises which are often related to their underlying objectives i.e. running a restaurant which employs disadvantaged youth, selling products that are produced by victims of domestic violence or charging tuition fees for a training school. In addition the NGO or Association carrying out such activities are required to obtain a separate tax registration and maintain separate financials for these activities.

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VAT Update – Refund Process Updated

Until now the VAT refund process was a very lengthy process – sometimes taking years – and often subject to uncertainty and delays. It appears that the General Department of Taxation (GDT) has taken note of these concerns and in response have acted upon them by issuing **Prakas 576 “The Refund of Value Added Tax” (Prakas 576)** in June 2018 with the stated purpose of “*developing a mechanism to effectively and efficiently refund VAT*”. The key takeaway from Prakas 576 is that for most taxpayers who follow the process correctly the timeframe to receive a VAT refund should be **approximately 40 working days** (this timeframe may be shortened for taxpayers who have a Gold Taxpayer Compliance Certificate). The VAT refund timeframe for Diplomatic Missions/Foreign Councils/INGO’s and Technical Co-operation Agencies of other Governments is **approximately 15 working days**.

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SME Tax Incentives Announced

Sub-Decree No. 124 R.N.Cr.BK (“**SD 124**”) that came into effect on the 2nd of October 2018 has introduced important tax incentives for qualifying Small and Medium Enterprises (“**SME’s**”) operating in defined priority sectors in Cambodia.

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Taxation of Individuals

Whilst a lot of discussion has been made in recent times regarding the impact of the proposed seniority payments a much more significant and far-reaching area of tax reform is expected to be ushered into effect with the anticipated promulgation into law this month of the 2019 Law on Financial Management (2019LFM).

Compared to its predecessors in 2016, 2017 and 2018 the 2019LFM does not contain a large number of tax updates however the few amendments it has made to Articles 5 and 7 of the Law on Taxation (LOT) lay the foundation to what we expect to be the next significant piece of tax reform in Cambodia – a comprehensive regime of taxation for individuals residing in Cambodia. [Read more](#)

2019 EXPECTED DEVELOPMENTS

▪ Cambodia's Latest Draft Competition Law

Cambodia issued an English version of its Competition Law entitled Version 5.7 stated to be “based on the Draft Khmer Version as of 13 FEB 2018” (“**Law**”). We have been informed that this is a final version and that it is expected to be enacted by mid-2019. We further understand the draft is under review by the Council of Ministers and Council of Jurists as part of the enactment process and may be revised prior to enactment. In this regard, we note that the implemented Khmer language legislation may differ in important ways from the Law described below. The Law will apply to any person whose Cambodian or extra-territorial business activities or related actions significantly prevent, restrict or distort competition in a Cambodian market. A person includes both natural and juristic persons regardless of whether the person is for profit or non-profit; registered or unregistered; privately owned or wholly or partly state owned. [Read more](#)

▪ NSFF Pension Scheme

The National Social Security Fund (“NSSF”) is planning to launch the pension scheme by 2019 after its implementation of the occupational risk scheme in 2008 and health care scheme in 2016. Based on recent report from the NSSF, the NSSF is considering to include the following matters in the upcoming NSSF pension scheme: (1) the retirement age being 60 years of age to be consistent with the retirement age of civil servants; (2) employment seniority being 30 years to be entitled to the pension benefits and (3) employees with special conditions (such as physical disability or health issues) may also be entitled to the pension scheme. The rate of contribution to the NSSF for the pension scheme is under on-going discussion between the relevant stakeholders.

▪ E-Commerce Law

The Draft Law on E-Commerce is currently being prepared by the relevant competent authorities. The Draft Law has been put through public consultation among legal practitioners, relevant companies and businesses and competent authorities. This Draft Law will cover all electronic transactions in Cambodia and with international. It also aims to create legal certainty of all civil and commercial transactions involving electronic communication.

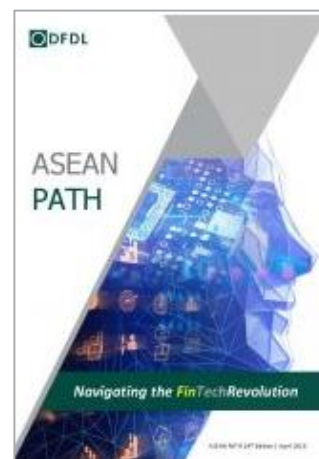
2018 PUBLICATIONS



Cambodia Investment Guide



ASEAN Path #15 GDPR



ASEAN Path #14 FINTECH
REVOLUTION

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