

Technical Update

January 2020



Law on Financial Management for year 2020

(Royal Kram NS/RKM/1219/025, signed 20 December 2019)

The Law on Financial Management (LoFM) for year 2020, promulgated by Royal Kram NS/RKM/1219/025 and signed on 20 December 2019 includes several updates to the current Law on Taxation (LoT) provisions. We have summarized certain key changes as follows:

1. Paragraph 4 of Article 20 New (one) shall be amended as below:
“The progressive tax rates by tranche for Tax on Income (Tol) of physical person and distributive share to each member of a pass-through that is not classified as a legal person, per Article 20 of the LoT, shall now be determined by a Sub-Decree by the Ministry of Economy and Finance (MEF)”
2. Article 23 New (one) shall be amended as Article 23 New (two). Advanced Tax on Dividend Distribution (ATDD) shall be determined as below:
 - “Except for Qualified Investment Projects (QIP), if an enterprise distributes dividends to its domestic and foreign shareholders during the tax year, it shall withhold and pay as tax an amount equal to the amounts of dividends grossed up by the Tol rate and multiply by the appropriate Tol rate as stated in Article 20 New (one) of this law”.
 - The above-mentioned withheld tax shall become a tax credit against the annual Tol for the tax year in which the withholding takes place. If the tax credit exceeds Tol, such excess shall be carried forward and shall become a tax credit for the following tax year.
 - Dividend on which ATDD is paid per this Article shall not be subject to ATDD again when it is subsequently distributed by the enterprise to its shareholders.
 - ATDD shall not be imposed on income from insurance or reinsurance premiums on property or other risks in Cambodia.

3. Article 22 New (Tol on foreign company branches), sub-paragraph a, b and c shall be revised. When the foreign company branch transfers Cambodian source income overseas, the income shall not subject to ATDD per Article 23 New (two) of this law, if it is transferred from income after paying Tol per paragraph 1 or 2 of Article 20 New (one).

Dividend distribution to non-resident shareholders shall still be subject to Withholding Tax based on Article 26 New (one) of this law.

4. The term “Additional tax on income” as per Article 31 New shall be replaced with the term “Advanced tax”.
5. Article 47 New (three). Resident employees shall be subject to monthly tax on salary and shall be withheld by employers based on the progressive rate by tranche on taxable salary which shall be determined by a Sub-Decree by the MEF.

Our comments

Based on previous Article 23 New (one), when QIP under tax holiday period (i.e. subject to 0% Tol) distributes dividends to its shareholders out of the retained earnings (R/E) that is subject to the 0% Tol, the QIPs are required to pay 20% Additional Income Tax on Dividend Distribution (AITDD). In other words, QIP under tax holiday period is subject to 0% Tol when making profit. However, once the profit is distributed back to shareholders, QIP is still required to pay additional tax (i.e. the AITDD) of 20% - which means that in the case of a QIP the tax incentive was in reality a tax deferral.

With the introduction of the 2020 LoFM, Article 23 New (two), it appears that the AITDD has been replaced with the Advanced Tax on Dividend Distribution (ATDD). A change from additional income tax back to advanced tax (as originally named since 1997 LoT) should change the above position. Whereas, “Additional tax” may consider more taxes for taxpayers, while “Advance tax” implies it is just another pre-collection of Tol which can be used as a tax credit during the year end annual tax calculation, as the same approach as the monthly Prepayment of Tol.

As above, based on the Article 23 New (two), we would think that the exemption on QIPs as well as on income from insurance and reinsurance premiums on property from the subject/imposition of the ATDD is a welcome measure which provides a real tax incentive for QIPs. Nonetheless, it is still in question on the applicability of this ATDD on undistributed R/Es of QIPs prior to the promulgation date of the 2020 LoFM, i.e. whether they are still required to pay 20% ATDD once they distribute R/E from prior years that was subject to 0% Tol before the promulgation date of the 2020 LoFM. We would think that this can be still subject to interpretations and hence, this matter should be consulted and clarified further with the GDT.

Another update to LoT provisions for Tol on physical person and pass-through shall be determined by the MEF's Sub-Decree. As a result, the threshold of income and progressive rate of those physical persons and pass-through shall be updated and generally, it might be taken a consideration of time to get Sub-Decree above to be issued by the MEF.

The similar update to the LoT provisions for salary tax progressive rate to be set by the MEF also show that the responsibility and decision are delegated to the MEF to determine the threshold for taxable salary. The expected changes would likely be further raising the threshold for taxable salary, to exclude even more workers/employee salary from being taxed in accordance with the government policy to provide further tax relief for working people.

We will cover further update regulations or additional implementation regarding above matter, if any, in subsequent publications

Use of Exchange Rates

(Instruction 27617, dated 12 December 2019)

The General Department of Taxation (GDT) has issued Instruction no. 27617, dated 12 December 2019, to instruct the use of exchange rates for taxpayers in the self-assessment regime.

From **January 2020** onward, exchange rates to be used for issuance of invoice and for calculation of monthly and annual taxes shall be determined as follows:

1. Daily exchange rate, taxpayers shall use daily exchange rate of the National Bank of Cambodia (NBC), for disclosure on invoice in Khmer Riel. During a non-working day or before working hours of NBC, taxpayers shall use the exchange rate a day before.
2. Salary exchange rate, taxpayers shall use the exchange rate of the NBC issued every 15th of each month, to calculate salary taxes. If the 15th falls on a non-working day, taxpayer shall use the exchange rate a day before.
3. Monthly exchange rate taxpayers shall use the exchange rate of the NBC issued on the last day of each month to calculate monthly taxes.
4. Annual exchange rate taxpayers shall use the exchange rate of the NBC issued on the last day of December of each year to calculate annual taxes.



Our comments

Per this Instruction, it seems the GDT will no longer issue the exchange rates for monthly and annual taxes declaration as currently practiced with effect from January 2020.

In respect of this Instruction, it has been raised a few issues/concerns such as:

- Creating an administrative burden on those taxpayers who have high volume of invoices issuance on a daily basis when it is required to disclose Khmer Riel based on daily exchange rate as most companies' business transactions as well as the accounting records and system has already been set up US\$ as a functional currency,
- Unclear exchange rates to be used for monthly tax return preparation. For instance, should the 1% Tax on Income be either calculated on Khmer Riel disclosure per the invoices or conversion of the monthly exchange rate on the total sales based on US\$ figure. Also should the 10% WHT on rental be calculated based on daily rate of the rental invoice or the monthly exchange rate at the end of the month.
- Unclear annual exchange rates for certain taxpayers with different tax year.

Given the above, a further clarification and/or specific request might be sought from the GDT if any taxpayer cannot implement the Instruction above (i.e. point 1 above) in particular from the practical issue perspective.

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.

PO Box 2352
4th Floor, Delano Center
No.144, Street 169, Sangkat Veal Vong,
Khan 7 Makara, Phnom Penh, Kingdom of Cambodia

Michael Gordon

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

So Dary

Partner
T: +855 23 216 899 (ext 7277)
E: daryso@kpmg.com.kh

Song Kunthol

Director
T: +855 23 216 899 (ext 7202)
E: skunthol@kpmg.com.kh

Tan Mona

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

Nguon Socheata

Director
T: +855 23 216 899 (ext 7217)
E: nsocheata@kpmg.com.kh

Im Udomvityea

Associate Director
T: +855 23 216 899 (ext 7262)
E: uim@kpmg.com.kh

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