KPMG

Technical Update

September 2020

Capital Gains Tax

(Prakas No. 346 MEF Prk, dated 1 April 2020)

Capital Gains Tax (CGT) is finally being implemented in the Kingdom of Cambodia, starting next year, following the issuance of the Ministry of Economy and Finance (MEF)'s Prakas No. 346 MEF Prk dated 1 April 2020, as recently published on the official website of the General Department of Taxation (GDT), http://www.tax.gov.kh.

CGT implementation in accordance with the Prakas is summarized below:

Capital Gains Tax	
Subject	The term "capital", subject to CGT per this Prakas, refers to immovable property, finance lease, investment asset, goodwill, intellectual property, and foreign currency. The CGT shall be applied to all taxpayers (either residents* or non-residents*) making capital gains. *resident taxpayers refer to physical persons meets one or more of the three residency criteria. *non-resident taxpayers refer to both legal entities and physical persons who are not considered resident persons.
Exemptions	Exemptions from CGT include mainly: - assets of government institutions. - assets of foreign embassies or consulates, international organizations or technical cooperation agencies of other governments. - the principal residence of the taxpayer owned for at least five (5) years. Where there are multiple principal residences, only one shall be exempted. - immovable property sales/transfers between and within a close relative circle, excluding transfers of immovable property between siblings and in-laws. - assets sold/transferred for the public interest in accordance with the Law on Expropriation.

Timing	Capital gains are realized at the time of: - the sale or transfer of ownership of asset(s); or - the registration of the transfer of ownership with the competent authority; or - the court's final verdict on the transfer of property.
Deductions	Deductible expenses must fulfil the following three conditions: 1. the facts leading to the charge or expense have verifiable evidence; 2. results of economic activities relate to the expense; and 3. invoices or documents as evidence to support the amount of expenses. Rule for deductions: For immovable properties, taxpayers can choose between: 1. limited expense deduction method: can deduct 80 percent of the sale proceeds; or 2. actual expense deduction method: can deduct actual expenses incurred. For other capital, taxpayers must only use the actual expense deduction method. Where the actual expenses deductions exceed the sale proceeds (i.e. there is a capital loss) the excess amount is not allowed for refund nor carry forward to deduct from the capital gains on other assets.
Calculation	CGT is set at 20% of capital gains. Taxpayers can choose to deduct expenditure with either one of the following two methods: Method 1: capital gain = sale price – 80% of sale price; or Method 2: capital gain = sale price – original cost. Sale price: The sale/transfer price as per the contract terms. In case the tax administration finds that the sale price in the contract is below market value, the tax administration can reassess the sale price, to follow the market value or as per the Stamp Duty regulations. Original cost: The cost to purchase the capital and expenditure incurred at the time of purchase/acquisition which includes mainly: a. expenses for consultancy services; b. stamp duty paid at the time of purchase; c. tax on immovable property or tax on unused land; d. public service fees to the cadastral office and land administration;

	e. expenses for commercial advertisements; f. expenses for commission fees; g. expenses on property valuations; h. expenses for administrative services related to borrowings to purchase/acquire the property; i. expenses for interest on the borrowings incurred during the ownership period; j. expenses for maintenance and improvement of the assets; k. expenses to establish or copyright ownership of the assets.
Declaration	Taxpayers must file and pay CGT, for each transaction, to the tax administration within three (3) months after making the capital gain (as per the timing above). The tax declaration format shall be determined by the tax administration. Documents requirement for declaration include: a. identification card, birth certificate or passport (for foreigners); b. family book, residency book or residence certificate; c. certificate of principal residence of the taxpayer; d. proper title, identification etc, issued by the cadastral administration or relevant ownership documents verified by the commune-Sangkat level authority and above, or recognition documents from the competent authority; e. purchase-sale contract or exchange contract or donation agreement; f. payment invoices and other expenses invoices; g. other relevant documents related to the sale or transfer of capital. Also, resident taxpayers that make capital gains on property located outside of Cambodia must also pay the additional amount on the tax rate variant that is less than Cambodia's CGT rate.

The CGT effective implementation date as stated in the above Prakas is 1 July 2020. However, according to the recent public comment from the Director General, H.E. Kong Vibol, the implementation shall be delayed to **1 January 2021** (pending official notification).

Comments

This is the first implementation of CGT in Cambodia, even though this tax technically exists in the tax regulations and provisions in effect before this. This is a highly impactful tax to taxpayers in Cambodia as the CGT shall also apply to the resident taxpayers (i.e. physical persons) and non-the resident taxpayers (i.e. both legal entities and physical persons) who sell their property and make a profit, such as land, houses, etc. Notably, there is no clear tax declaration format provided for taxpayers to follow per this Prakas including for individual persons who may not be aware of the proper tax declaration procedure.
The 80% of sale deduction, specifically should benefit individual sellers who may not have maintained proper supporting documents and invoices until now. In order words, the Prakas sets the maximum limit of the taxable gain at 20% for those taxpayers who have not kept proper supporting documents as at least they can claim a tax deduction/costs of the sale at 80% of the sale price.

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.
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