



## Tax on Salary

*(MEF Prakas no. 543 MEF.Prk, dated 8 September 2021)*

The Ministry of Economy and Finance (MEF) issued Prakas no. 543 MEF.Prk which provides for the updated rules and regulations regarding the imposition of Tax on Salary (ToS) and Fringe Benefits Tax (FBT) in Cambodia. This Prakas is effective from 8 September 2021 and abrogates the currently prevailing ToS and FBT regulation (i.e., Prakas no. 1173, dated 31 December 2003).

Below are the salient changes under the new Prakas no. 543:

<p><b>“Salary”, defined</b></p>	<p>The term “salary” refers to salaries, remunerations, severance pay, bonuses, overtime, compensations, and fringe benefits which are paid to an employee or which are paid for the direct or indirect advantage of the employee for the fulfillment of employment activities.</p> <p>Prakas no. 543 also defined and provided examples on the abovementioned salary items.</p>
<p><b>Tax residency criteria</b></p>	<p>The previous ToS/FBT Prakas no. 1173 provides that a natural person who meets at least one of the following three criteria, shall be considered as tax resident:</p> <ul style="list-style-type: none"> <li>A. Has a place of residence in Cambodia (e.g., building room, dormitory, apartment, etc., whether owned or rented)</li> <li>B. Has principal abode in Cambodia characterized by the nature and form of stay (e.g., economic center of activity, duration of stay, presence of bank accounts, engagement in social activities, etc.)</li> <li>C. Physical presence in Cambodia for more than 182 days per time or many times within 12-months period ended in the current tax year.</li> </ul> <p>Prakas no. 543 clarified that in case of uncertainty, the physical presence as per criteria C above shall be the final condition in determining the residency status for ToS/FBT purposes, regardless of the person’s immigration status.</p>

**Taxable vs. Non-taxable salaries for ToS purposes**

Prakas no. 543 clarified what are considered as taxable and non-taxable salaries, as below:

Taxable Salaries	Non-Taxable Salaries
<p>For tax resident:</p> <ul style="list-style-type: none"> <li>- Cambodian and foreign-sourced salary</li> <li>- Advance money, loan, or installment made by the employer</li> <li>- Fringe benefits shall be excluded</li> </ul> <p>For non-resident:</p> <ul style="list-style-type: none"> <li>- Cambodian-sourced salary</li> </ul>	<ul style="list-style-type: none"> <li>- Employee reimbursements, which must fulfill all the following 3 criteria:               <ul style="list-style-type: none"> <li>a. Disbursed in the direct interest of the company</li> <li>b. Not excessive or extravagant</li> <li>c. Evidenced by the detailed and pre-paid invoices made under the name of the company</li> </ul> </li> <li>- Indemnity for the layoff under the limitation and condition of the Labor Law</li> <li>- Additional incentive with social characteristics under the limitation and condition of Labor Law</li> <li>- Uniforms, and professional equipment, subject to certain conditions</li> <li>- Fixed allowances for mission and travel expenses, subject to certain conditions (cannot exceed the state granted amount for the same work).</li> </ul>

**Taxable Fringe Benefits**

Prakas no. 543 added the provision of any part of company’s shares or stock options into the list of taxable fringe benefits which is not previously enumerated under Prakas no. 1173.

Prakas no. 543 also emphasized the employer’s responsibility to withhold and pay the FBT to the GDT at the rate of 20% of the total fringe benefit value provided to the employee. The fringe benefits should be taxable in the month when they are given to the employees without taking into account the date when they become the employer’s burden.

**Claiming of foreign tax credits**

Resident natural persons who have received salary from foreign sourced and has paid taxes according to the tax rules of the foreign jurisdiction shall be allowed tax credits, subject to certain limitations/conditions. Among others, the resident natural person must present the employer statement or employment contract detailing the work performed, a copy of documents submitted by the employer to the foreign tax administration detailing the amount of tax payments and the certification issued by the foreign taxpayer of tax on salary in order to claim the foreign tax credits.

Prakas no. 543 provided further guideline on the conditions and supporting documents to enable the resident employees to apply for the tax credit.

## Our comments

The above Prakas no. 543 provided the necessary update to the current regulations laid out under the old Prakas no. 1173. Whilst there are not much significant changes to current regulations, the new Prakas introduced new taxable items, and would impact the current ToS/FBT compliance of taxpayers.

Prakas no. 543 mentioned that the provision of company's shares shall be considered as taxable fringe benefits. This new provision would likely impact big conglomerates and multinational corporations which offers share options, or restricted stock units as part of its benefits to key management and executives to entice performance. There is a need, however, for the GDT to provide further guidance on this, regarding the valuation of such benefit, as well as the timing for reporting (e.g., for vesting vs. non-vesting shares, etc.).

Furthermore, Prakas no. 543 also reinforced the rules on residency and source as earlier established under Article 42 of the Law on Taxation. Accordingly, for non-resident persons providing technical and other services in Cambodia shall not be subject to ToS, if the salary payor is not present in Cambodia. This could apply to staff on short-term business assignments (i.e., less than 6 months) in Cambodia, whereby the salary is shouldered by his/her home country. Meanwhile, the new ToS Prakas also emphasized the mechanism of claiming foreign tax credits to mitigate issues on double taxation, which is very relevant especially with the current trend of having business assignments and secondment arrangements by multinational corporations.

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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### Please contact us if you have any questions:

#### Phnom Penh

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

T: +855 23 216 899  
F: +855 23 216 405  
E: [kpmg@kpmg.com.kh](mailto:kpmg@kpmg.com.kh)

#### Michael Gordon

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

#### Nguon Socheata

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

#### Tan Mona

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

#### Song Kunthol

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

#### So Dary

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

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