

Technical Update

April 2022

Tax Incentives for Voluntary Tax Return Adjustment

(Prakas no. 217 MEF.Prk, dated 14 March 2022)

The Ministry of Economy and Finance (MEF) issued Prakas no. 217 MEF.Prk, effective from 14 March 2022, which provides certain benefits to taxpayers or withholding tax agents under the self-assessment regime who voluntarily files amended tax returns.

I. Adjustments prior to tax audits

For periods not yet subjected to tax audits, voluntarily adjustments of the accounting records, tax returns, and payment of the underpaid tax shall be subjected to a 10% additional tax and shall receive a reduction on the late interest as below:

- A 50% reduction on the late interest rate if the adjustment is made no later than six (6) months from the filing date of the tax declaration.
- A 20% reduction on the late interest rate if the adjustment is made more than six (6) months from the filing date of the tax declaration.

II. Adjustments during tax audits

Adjustments/amendments during the tax audit period (i.e., from the time of receipt of the notice of audit) shall be subject to a 10% additional tax and late interest of 1.5% per month in accordance with the Article 131 of the Law of the Taxation (LoT). Taxpayers or withholding agents will also be subject to additional taxes and late interest in accordance with the procedures and results of the tax audit under the Article 130, 131, 132, and 133 of the LoT.

In this case, the additional tax and late interest paid during voluntary amendments cannot be deducted from the additional tax and the late interest as a result of the tax audit unless the taxpayer or the withholding agents is being subjected to a tax audit for the first time.

Our comments:

As a general procedure, taxpayers who underpaid tax shall be subjected to the additional tax and late interest of 1.5% per month. For any unintentional errors in the tax filings, taxpayers are normally considering whether to submit voluntary amendments which could expose them to penalties and interest upon submission of the amended return or wait for the GDT to uncover such errors during tax audits. The intention of this Prakas is to encourage taxpayers to practice proper tax compliance procedures and to submit voluntary amendments as they deemed necessary for any errors/mistakes on the previously filed impacted returns. This approach would minimize the interest penalty on any underpaid tax through the incentive provided under this Prakas, and the lesser timeframe for the counting of the interest period, as opposed to interest imposed during tax audits which is normally at a higher rate of 25%, and for a longer timeframe.

Given this new Prakas, it is a high time for taxpayers to conduct a self-review of its tax compliance process (e.g., tax health check, tax process review) to identify areas which need further improvement. As necessary, amendments of the impacted tax returns should be considered to avail of the tax incentives offered under this Prakas.

Tax Incentives on the Securities Sector

(Sub Decree 42 SD.BK dated 24 February 2022)

Sub-Decree 42 was issued, effective from 24 February 2022, to further clarify the tax incentives provided to enterprises and public investors (both resident and non-residents) who make initial public offering (IPO) or invest in any equity and/or debt securities approved by the Securities and Exchange Commission of Cambodia (SECC), trading on Cambodia Stock Exchange (CSX). We summarize these incentives as follows:

Equity Securities

Tax Incentive	Period	Criteria
Reduction of the annual Tax on Income (Tol) payable by a factor of 2.5% to 50%	3 years , commencing at the beginning of the tax year that the approval was given if the securities were issued within the first 6 (six) months of the taxable year. If the securities were issued within the last 6 (six) months of the taxable year, the Tol incentive would take effect from the following year or any period as approved by the Ministry of Economy and Finance (MoEF)	<ul style="list-style-type: none"> — Applicable for enterprises that issue their first public equity securities — 50% reduction of the Tol payable, if the issuance size in proportion to the voting rights is at least 20.001% — 49.998% to 2.5% reduction of the Tol payable, following a declining proportion if the issuance size in proportion to the voting rights is within 20% to 1%. However, the Tol incentive shall not exceed KHR20B (approx. USD5M)
50% reduction in Withholding Tax (WHT) on dividends	3 years , commencing from 24 February 2022 (the date of the implementation of this Sub Decree)	<ul style="list-style-type: none"> — Applies to public investors who are holding and/or buying-selling stock securities listed on the CSX.
Exemption from Capital Gains Tax (CGT)	3 years , commencing from 24 February 2022 (the date of the implementation of this Sub Decree)	<ul style="list-style-type: none"> — Applies to public investors who are buying-selling stock securities listed on the CSX.
Tax Debt Waiver covering Tol, WHT, VAT, Specific Tax, Accommodation Tax, Public Lighting Tax	Up to 10 years (i.e., N-10)	<ul style="list-style-type: none"> — N-3 to N-10 shall apply for enterprises that fulfil the criteria for listing in the primary market. — N-2 to N-10 for small and medium enterprises that fulfil the criteria for listing in the secondary market.

Debt Securities

Tax Incentive	Period	Criteria
Reduction of the annual Tax on Income (ToI) payable by a factor of 2.5% to 50%	3 years , commencing at the beginning of the tax year that the approval was given if the securities were issued within the first 6 (six) months of the taxable year. If the securities were issued within the last 6 (six) months of the taxable year, the ToI incentive would take effect from the following year or any period as approved by the Ministry of Economy and Finance (MoEF)	<ul style="list-style-type: none"> — Applicable for enterprises that issue debt securities with maturity of at least 7 years — 50% reduction of the ToI payable, if the issuance size in proportion to the total assets is at least 20.001% — 49.998% to 2.5% reduction of the ToI payable, following a declining proportion if the issuance size in proportion to the total assets is within to 20% to 1%. However, the ToI incentive shall not exceed KHR8B (approx. USD2M)
50% reduction in Withholding Tax (WHT) on interest	3 years , commencing from 24 February 2022 (the date of the implementation of this Sub Decree)	<ul style="list-style-type: none"> — Applies to public investors who are holding and/or buying/selling of government bond, debt securities listed on the CSX
Exemption from Capital Gains Tax (CGT)	3 years , commencing from 24 February 2022 (the date of the implementation of this Sub Decree)	<ul style="list-style-type: none"> — Applies to public investors who are buying-selling debt securities listed on the CSX.
Tax Debt Waiver	Up to 10 years (i.e., N-10)	<ul style="list-style-type: none"> — Same criteria as with equity securities above

Qualified Investment Projects (QIPs) shall not be eligible for the ToI incentive above during their tax holiday period.

The incentives/provisions under Sub-Decree no. 01, dated 4 January 2019 shall continue to be implemented based on the provisions of this new Sub-Decree no. 42, dated 24 February 2022. However, any provisions or regulations which are inconsistent with this new Sub-Decree no. 42 shall be abrogated.

Our comments

The abovementioned incentives are extensions and/or clarification of the tax incentives for the securities sector which were previously provided under Sub-Decree no. 01, dated 4 January 2019.

Since the launching of the CSX back in 2011, there has been a steady, albeit slow, growth of companies listing their equity and debt securities to be traded through the CSX. Hence, the government has provided and/or extended these tax incentives to companies and investors, to further encourage market participation and to promote the CSX platform to local and foreign investors.

Enterprises which wish to raise funds and/or invest excess funds should consider exploring options offered through the CSX to benefit from potential tax savings from these incentives offered by the government.

As a committed tax advisor to our clients, we welcome any opportunity to discuss the relevance of the above matters to your business.

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