Technical Update

August 2023

Sub Decree No. 139 ANK.BrK dated 26 June 2023 on the Implementation of the Law on Investment

On 26 June 2023, the Royal Government of Cambodia has promulgated the Implementation of the Law on Investment (LoI 2021) under Sub-Decree No. 139 ANK.BrK.

Sub Decree No. 139 includes detailed, updated procedures on the registration of investment projects and a range of new investment incentives available to investors which are significantly different to those included under the old Law on Investment and related Sub-Decree 111 (old). The key changes arising from the new Sub-Decree can be summarized as follows:

- Investment project registration process changed to follow a single registration process, compared to the previous 2-step approach, with shortened official timeline.
- New negative list has been introduced to replace the old negative list, which includes a comprehensive list of business activities, split into four different investment sectors (agriculture, services, industry, and infrastructure).
- Investment incentives available to investment projects have been updated significantly. Whilst the basic tax incentives available still provide for two (2) options (Tax on Income "ToI" Exemption & Accelerated Depreciation), the period of ToI Exemption is now defined based on the investment activity category in which the QIP falls, which can be broadly defined as high, medium or low technology. The Sub-Decree includes clear guidance on which activities fall into which investment activity category. Additionally, greater clarity is provided with respect to custom duty incentives and additional incentives, compared to the previous law.
- There are clear provisions which outline when a QIP expansion project can receive additional incentives.
- Investors may request aftercare services from the CDC which cover a range of defined topics, and the CDC is mandated to provide such aftercare services on request.

We note that according to 2021 LoI, existing QIPs that enjoyed ToI exemption prior to adoption of 2021 LoI shall continue to receive such tax exemptions for the remaining period; however, neither the 2021 LoI, nor Sub-Decree 139, provide clarity on whether existing QIPs are eligible for investment incentives and guarantees introduced by the 2021 LoI.

If you have any questions related to the above Sub Decree, we would welcome the opportunity to discuss the applicability of these regulations to your business at your request.

The key amendments made to the Sub-Decree 139 are listed as follows:

Topic	Sub-Decree 111 (old)	Sub-Decree 139 (new)
Procedure for Registration of Investment Projects	Two-step registration process under the previous law, including Conditional Registration Certificate (CRC) and Final Registration Certificate (FRC). Proceeding through hard copy is the only option for an applicant to submit their investment application. The timeline for issuance of the CRC and FRC is 31 working days.	A single registration process via issuance of a registration certificate ("Registration Certificate"). A Registration Certificate includes a QR code that contains initial information on a registered investment project that can be used for other relevant registrations and implementation of the investment project. An applicant now has two options to register an investment project, either via submission of a hard copy application or an online application. Further, the timeline for issuance of the Registration Certificate is 20 working days.
Negative list and Prohibited investment activities	Negative List covers a long list of specific business activities with various criteria, classified into three (3) sections as follows: 1. prohibited investment activities; 2. investment activities not eligible for investment incentives; and 3. investment activities with specific characteristic eligible for customs duties exemption, but not profit tax exemption.	The Negative List covers a long list of specific business activities with various criteria, classified based on four (4) different investment sectors totaling 213 Investment Activities including: • Agricultural sector: 22 • Service sector: 46 • Industrial sector: 120 • Infrastructure sector: 25 Sub-Decree 139 did not mention about Prohibited Investment Activities, and therefore, Sub-Decree 111 is still enforceable.
Investment Activity Categories	There are no separate investment activity categories.	There are three (3) investment activity categories in accordance with Annex 2 of Sub-Decree 139 as follows: • Category 1 consists of 37 main investment activities with high technology • Category 2 consists of 65 main investment activities with medium technology • Category 3 consists of 32 main investment activities with low technology Note that for other investment activity categories that are not considered in category 1, 2 or 3 above will be subject to the government's review and approval.

Topic	Sub-Decree 111 (old)	Sub-Decree 139 (new)
Investment Incentives	The investment incentives are as follows:. • QIPs may elect to receive a profit tax exemption or use special depreciation • Profit tax exemption (Selective): A tax holiday period is composed of "Trigger period + 3 years + Priority Period" (Maximum total 9 years) – Trigger Period (Maximum 3 years): Commencing on the issuance of the Final Registration Certificate and ending on the last day of the taxation year immediately preceding the earlier of: • if the QIP derives a profit, the taxation year that the profit is first derived; and • if the QIP derives income from the Investment Activity in respect of the sale of goods or services, the third taxation year after the taxation year in which the income is first derived. – Priority Period (Maximum 3 years): To be determined according to the type of project and investment capital in the Financial Management Law.	It provides very detailed incentives for the investors with basic incentives and additional incentives and special incentives. ***<u>Basic incentives:</u>*** <u>Option 1</u> • Income tax exemption according to investment activity categories: – 9 years for category 1 – 6 years for category 2 – 3 years for category 3 • Eligible to income tax at a progressive rate proportional to the total applicable tax amounts after tax exemption period has ended: – 25 percent for the first 2 years – 50 percent for the subsequent two years – 75 percent for the last 2 years • Prepayment of ToI exemption for a specific period of time according to category of investment activities (Category 1, 2 & 3) • Minimum tax exemption if an independent audit report is provided • Export customs duty exemption, except otherwise prohibited in other laws and regulations <u>Option 2</u> • Eligible to deduction of capital expenditure through special depreciation as stated in the applicable tax provisions • Prepayment of ToI exemption for a specific period of time according to category of investment activities (Category 1, 2 & 3) • Minimum tax exemption if an independent audit report is provided • Export customs duty exemption except otherwise prohibited in other laws and regulations ***<u>Additional Incentives</u>*** In addition to the basic incentives, investment activities registered as a QIP receive additional incentives as follow: • VAT exemption for the purchase of locally made production inputs for implementation of the QIP. VAT at 0% rate.

Topic	Sub-Decree 111 (old)	Sub-Decree 139 (new)
		• Deduction of 150% from the tax base for certain activities, including R&D and Innovation, HR development, construction of accommodation, food courts, canteens, upgrade of machinery to serve the production line, and other activities mentioned in Article 15 of Sub-Decree 139. • Entitlement to income tax exemption for the Expansion of QIP projects for activities in annex II as follow: – 9 years for category one – 6 years for category two – 3 years for category three ***Special Incentives*** Any specific sectors and investment activities having high potential to contribute to Cambodia's national economic development may receive specific special incentives. However, the extent and nature of these incentives are subject to the provisions of the Law on Financial Management, which is amended annually.
The exemptions for custom duty, special tax and VAT	Under the old provision, there is a lack of clarity on the components of the import duty incentives. The previous LoI only specifies on a customs duty exemption and investors have previously had to clarify or seek additional approvals for the exemption of other imports taxes (i.e., special tax and value-added tax "VAT").	The 2021 LoI and Sub-Decree 139 provide clear components of the import duty incentives. In addition to the abovementioned two (2) options of the investment incentives, customs duty, special tax and VAT exemptions are available for **QIPs such as Exporting, Supporting Exporting Industry QIP**, and **Domestically Oriented QIP** for import of construction materials, construction equipment, production equipment, and production inputs used in its production chain If the production inputs are not used to serve the Exporting QIP's production chain or the QIP that is a supporting industry to Exporting QIP, the customs duty, special tax, and VAT must be paid in accordance with the applicable laws and regulations. Regarding the following investment incentives listed in Annex 3 of Sub-Decree 139: • Construction and/or expansion of antenna or mobile phone coverage/station • Bonded warehouses • Distribution centers • Dry port projects

Topic	Sub-Decree 111 (old)	Sub-Decree 139 (new)
		• Research on all sorts of petroleum and mines • Establishment of mineral or petroleum laboratories • Other related petroleum and mineral activities Exporting or Supporting Exporting Industry QIP and Domestically-oriented are entitled to customs duty, special tax, and VAT exemptions for the import of construction materials, construction equipment, and production equipment used in its production chain, but not tax incentives.
QIP registrant compliance	On an annual basis, all QIPs are required to apply for a Certificate of Compliance ("CoC") within 90 working days after each tax year-end.	All QIPs are required to submit semester and annual reports to the CDC/PMIS within 20 days of the closing date for submitting tax returns in order to avoid losing its investment and tax incentives. Following the receipt of the semester and annual reports from the investors, the CDC/PMIS will issue a COC to the investors. Furthermore, under Article 11(3) of Sub-Decree 139, any existing QIPs that have failed to apply for a CoC from the CDC in the past years may now comply with the semester and annual reporting requirements and apply for a CoC.

Contact us

Phnom Penh

PO Box 2352
35th Floor, GIA Tower,
Sopheak Mongkul Street, Diamond Island,
Sangkat Tonle Bassac, Khan Chomkarmon,
Phnom Penh, Kingdom of Cambodia

T +855 (17) 666 537 | +855 (81) 533 999

Scan to visit our website: kpmg.com.kh
Email: kpmg@kpmg.com.kh

Michael Gordon
Senior Advisor,
Partner

T +855 17 666 537
E mgordon@kpmg.com.kh

Neou Seyla
Manager

T +855 17 666 537
E nseyla@kpmg.com.kh

So Dary
Partner

T +855 17 666 537
E daryso@kpmg.com.kh

Richard Nuttall
Director

T +855 17 666 537
E richardjosephnuttall@kpmg.com.kh