KPMG 30+ YEARS IN VIETNAM & CAMBODIA

Technical Update

June 2024

Tax on Income (ToI) Incentives for Expanded Qualified Investment Projects (EQIPs)

(Prakas No. 313 MEF.Prk.GDT, dated 10 May 2024)

Pursuant to Article 16 of Sub-Decree 139, dated 26 June 2023, implementing the 2021 Law on Investment (LoI), this Prakas is issued by the Ministry of Economy and Finance (MEF) to provide guidance on the ToI incentives provided to EQIPs, effective from 10 May 2024.

Below are the key details highlighted under this Prakas:

Items	Details
Scope (Art. 2)	This Prakas is applicable to a QIP that expands its investment activities in any form, including increasing existing production, diversifying product lines, adopting new technologies for better productivity or environmental protection, and other government-approved expansion projects.
Commencement of ToI exemption period (Art. 4)	Prakas 313 clarifies that EQIP ToI incentives shall **commence at the time when the EQIP generates its first EQIP income.**
Coverage of ToI exemption period (Art. 4)	The additional income tax holiday (ITH) period for the EQIP shall follow the ITH period granted to the original QIP (i.e., if the original QIP is granted a three-year ITH, the EQIP may also enjoy three years additional ITH). For reference, Sub-Decree 139 provides the following ITH period to QIPs based on specific criteria[i]: • nine years for Group 1 • six years for Group 2 • three years for Group 3
EQIP Exemption Rate (Art. 5)	• EQIP exemption rate shall be the **ratio of the EQIP Invested Capital divided by the Total Investment Capital** (i.e., Original QIP Capital + the EQIP Capital). The EQIP exemption rate shall be the basis for calculating the income exempted from the ToI. • The invested capital amounts to be used in the EQIP ratio shall be based on the actual capital that was invested for either the QIP or EQIP activities.

[i] This categorization, detailed in Annex 2 of Sub-Decree 139, consists of 37 high-technology investment activities in Group 1, 65 medium-technology investment activities in Group 2, and 32 low-technology investment activities in Group 3.

Items	Details
	• Only the capital injected into the EQIP activities during the year shall be used as the basis for the EQIP exemption rate. In the subsequent periods, the EQIP shall re-calculate the EQIP ratio based on the year-to-date capital injected for the EQIP[ii].
Prepayment of ToI exemption for EQIPs (Art. 6)	The monthly turnover shall also be exempted from the 1% PToI by applying the EQIP exemption rate during the EQIP period.
Minimum Tax (MT) exemption (Art. 6)	EQIPs shall qualify for MT exemption, provided an independent audit report is obtained.
Withdrawal of tax incentives (Art. 7)	EQIP incentives may be revoked for any of the following offences: • Failure to utilize EQIP capital to invest in the new construction and production equipment as specified in the EQIP's application. • Failure to inject all approved EQIP capital before the end of the exemption period. • Failure to fulfil tax obligations as per prevailing tax laws and regulations.

Any regulations contrary to this Sub decree shall be abrogated.

Our comments

One of the notable changes introduced under this Prakas is the commencement date of the EQIP incentives, i.e., previously, the additional tax exemption period granted for EQIP commences from the date of CDC approval for the EQIP. This was a challenge for EQIPs that need a significant amount of lead time in procuring, installing, and commissioning key equipment and facilities for the EQIP activities before generating any income. Under this new rule, EQIPs are now able to maximize the available incentives, as the EQIP period shall now commence once the EQIP starts to generate its own income.

The new Prakas also imposes stricter criteria when computing the EQIP exemption rate. Particularly, it requires QIPs/EQIPs to keep track of the actual capital injected into the QIP/EQIP activities, as opposed to using the ballpark figure of projected capital submitted to the CDC during QIP/EQIP application. This is to mitigate any concerns whereby investments/activities are enjoying certain incentives from the government whilst not fulfilling their intention in terms of the actual capital invested into Cambodia. As provided under the Prakas, this could be grounds for withdrawal of tax incentives, which may result in significant financial burdens on the part of the business. Proper documentation and record-keeping become vital in this case, particularly in identifying whether the funding was utilized for the original QIP or for the expansion activities.

However, there are provisions under this Prakas that require further clarifications from the GDT. For instance, it is unclear how this new Prakas will apply to existing QIPs that are enjoying incentives under the old LoI, particularly in the calculation of the tax exemption rate and the years covered by the EQIP incentives. Furthermore, there is also a question on which amount should be used in the calculation of the EQIP exemption rate, for instance whereby the actual invested capital exceeds the projected capital submitted to the CDC upon QIP/EQIP application.

Lastly, impacted taxpayers must also ensure compliance with their existing tax obligations (e.g., keeping audited accounts, timely submission of tax declarations, etc.) to remain eligible for the said incentives. Impacted taxpayers must also obtain the GDT's confirmation on their EQIP incentives as provided under this Prakas.

[ii] Refer to the examples provided under Art. 5 of Prakas 313 on how to calculate the EQIP exemption rate based on different scenarios.

Minimum Tax Exemption for Qualified Investment Projects

(Instruction No. 13804 GDT, dated 08 April 2024)

Pursuant to the provisions of the 2023 Law on Taxation (LoT), 2021 Law on Investment (LoI), and the decision of the government during the 19th Government-Private Sector Forum, the General Department of Taxation (GDT) issued this Instruction to provide guidance on the Minimum Tax (MT) exemption granted to enterprises registered as Qualified Investment Projects (QIP).

To ensure effective implementation, the GDT instructed as follows:

- QIPs shall receive MT exemption by having an independent audit report and maintaining proper accounting records.
- Newly registered QIPs are also exempted from MT, and they are required to submit the independent audit report to the GDT no later than June of each following year, except for the first year in which submission of the audit report is not required.

Our comments

This GDT Instruction aims to provide clearer guidance on the MT exemption which shall be applicable to all QIP-registered enterprises. However, to qualify for this exemption, there is a question of whether QIPs should still obtain an official confirmation from the GDT on keeping proper accounting records, despite having an independent audit report. Affected taxpayers should take necessary actions to be eligible for the tax incentive.

As committed tax advisors to our clients, we welcome any opportunities to discuss the relevance of the above matters to your business.

Contact us

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