

Technical update

August 2025

Tax Obligation for Share Premium

(Instruction no. 18574 GDT, dated 17 June 2025)

Effective from the date of signing, Instruction no. 18574 was issued by the GDT to clarify the taxpayer's concerns regarding the tax implications of "share premium".

The Instruction clarifies the following points:

- **"Share premium"** refers to the amount an enterprise receives in excess of the par value of its shares when it increases capital through the issuance of new shares (i.e., share subscription).
- Share premium is considered an additional capital contribution by shareholders to the enterprise and is not regarded as taxable income.
- Share capital and share premium for new shares must be fully paid into the enterprise and clearly recorded in the accounting records with proper supporting documents. Failure to do so may result in the increase in shareholder equity being considered taxable income in accordance with the provisions on Tax on Income.

Our comments

This Instruction provides greater clarity on the non-taxable nature of share premium, recognizing it as part of the enterprise's capital in accordance with generally accepted accounting principles. Taxpayers involved in share premium transactions must maintain sufficient supporting documentation and ensure compliance with the criteria outlined in this Instruction to mitigate future tax risks.

Tax Obligations for Board of Directors (BOD) Members or Company Directors

(Instruction No. 19116 GDT, dated 20 June 2025)

Based on the provisions outlined in the Tax on Salary (ToS) and Fringe Benefits Tax (FBT) Prakas no. 575, the GDT has clarified the following tax implications for BOD members and Company Directors:

- BOD members or Directors who engage in employment activities in Cambodia that meet the "employer-employee" relationship criteria under Article 4 of Prakas No. 575 are subject to ToS in Cambodia, regardless of where the salary is paid. This includes individuals seconded from their overseas Parent Company or Head Office to work as BOD members or Directors of the Cambodian company, irrespective of whether they have a work permit or receive salaries from such employment.
- If a BOD member or Director does not meet the conditions of employment status but provides services to the Cambodian company, the transaction will be subject to withholding tax (WHT) on services as per Articles 25 and 26 of the Law on Taxation (LoT). This applies regardless of whether these individuals have a work permit, a resident or non-resident who performs independent work for a company in Cambodia.

- BOD members or Directors who meet the following conditions are not considered as employees and are not subject to ToS:
 - A. They are registered on the company's Memorandum of Articles of Association (M&A), or Patent Tax Certificate, but are not present and do not hold a regular management role at the company in Cambodia.
 - B. Only attend occasional BOD meetings, and shareholder meetings.
 - C. They do not receive any salary from a company in Cambodia.

Our comments

Before the issuance of this Instruction, company representatives and/or Directors listed in a Cambodian company's M&A, Patent Tax, and other government registrations were initially considered to be employees of the Cambodian company. This interpretation posed a risk of triggering ToS and FBT during tax audits. The issuance of this Instruction is a positive step towards clarifying the ambiguity in the interpretation of the tax regulations, ensuring alignment between the GDT and the taxpayer's position, and ultimately improving the overall tax compliance environment in Cambodia.

It is advisable for affected taxpayers to review their current BOD and Director arrangement in Cambodia. They should thoroughly document their assessment to determine whether the arrangement would fall within the purview of "employer-employee" relationship, subject to ToS, or if they are considered as providing management, consultancy, or technical services, which would be subject to WHT. A proper evaluation of reasonable amounts for salaries, management fees, directors' allowances/fees, etc., should be conducted in accordance with the guidance provided under the current tax rules and regulations, regardless of whether actual salary or service payments are made. In cases where the arrangement involves related parties, having a proper TP documentation and benchmarking exercise can help mitigate challenges regarding the reasonableness of the fee applied.

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

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