

- Enterprises that have annual turnover from KHR700m (USD175k) to KHR2 000m (USD500k)

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[CAM ¶3-002] Due dates

A summary of income tax returns, payment deadlines and tax rates are as follows:

• Real regime tax system

Persons	Types of forms	Filing and payment deadline
RRTS taxpayers (all enterprises and sole proprietors that exceed the turnover threshold or are in the business as importer or exporter)	<div><div>• Form TOP 01 — Returns on Annual Tax on Profit</div><div>• Form VAT 200 — Monthly Return for Value Added Tax</div><div>• Form TOS 01 — Monthly Return for Tax on Salary</div><div>• Form WT 03 — Monthly Return for Withholding Tax</div><div>• Form T 01 — Monthly Return on Prepayment of Tax on Profit, Specific Tax on Certain Merchandise and Services, Tax on</div></div>	<div><div>• Within 3 months from end of fiscal year</div><div>• 20<sup>th</sup> day following end of reporting month</div><div>• 20<sup>th</sup> day following end of reporting month</div><div>• 20<sup>th</sup> day following end of reporting month</div><div>• 20<sup>th</sup> day following end of reporting month</div></div>





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## [CAM ¶3-045] COVID-19 Tax Relief

Cambodia has announced a new package of measures to support businesses and low-income persons amid COVID-19.

The measures are intended to support the garment and footwear industry, tourism and aviation businesses and low-income persons, the Ministry of Finance said.

According to the state news agency, the measures include a wage subsidy for furloughed staff in certain manufacturing or tourism-focused industries and a tax exemption for hotels, guesthouses, restaurants, and tour agencies based in the capital, Phnom Penh and in Siem Reap, Preah Sihanouk, Kep, Kampot, Bavet and Poipet. Tax relief will also be provided to domestic-registered airlines.

On 31 March 2020, the Royal Government of Cambodia issued a press release outlining their additional measures to support the private sector and employees who are impacted by the COVID-19 epidemic. These measures are in addition to those issued in recent weeks by the Government to provide tax relief to affected sectors.

### Airline sector

- A minimum tax exemption is provided to all airline entities operating in Cambodia for a period of three (3) months from March to May 2020.
- There will be a delayed due date with respect to the payment of aviation fees by airline entities operating in Cambodia for a period of six (6) months to the Secretary of State of Civil Aviation.

### Tourism sector

Tax relief has already been provided to registered taxpayers in the Siem Reap Province who carry out business activities relating to hotels and guesthouses. Under Notification No 002 MEF dated 25 February 2020 these taxpayers will be exempted from the payment of all monthly taxes for the period of four (4) months from February to May 2020.





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## [CAM ¶3-050] COVID-19 Relief: e-filing implementation and monthly tax declarations

Guidance No 14812 GDT was issued by the General Department of Taxation (GDT) on 16 June 2020 to allow taxpayers more time to comply with the implementation requirements for e-filing of monthly tax declarations.

An additional three-month grace period from June to August 2020 for e-filing implementation is allowed.

The following options to input transaction data for the monthly tax declarations have also been provided for taxpayers to choose from:

- follow existing guidelines as per above and input the data directly in the e-filing system or
- a request can be submitted to the GDT for microfinance and banking institutions, the Phnom Penh Water Supply Authority, Electricity of Cambodia and certain other private sectors that prefer to connect their own tax declaration system with the GDT's system directly, or
- an application can be downloaded from the GDT to directly upload excel spreadsheets. An annual subscription fee of US\$100 is charged per enterprise for this application.

Existing value-added tax online declarations pursuant to guidance from January 2019 are to be used by taxpayers during the grace period.

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## [CAM ¶11-200] VAT registration for non-residents

Cambodian value-added tax (VAT) is applicable to the taxable supply of goods and services. An enterprise is required to charge VAT at the rate of 10% on the sale of taxable supplies in Cambodia, and at the rate of 0% on the sale of taxable supplies exported from Cambodia. Under Cambodian tax law, only an enterprise registered under the VAT system can offset input VAT charged on purchases against the output VAT. In theory, refunds are available subject to certain general conditions, but in fact, refunds are subject to prohibitive delays for most taxpayers.

Cambodian VAT only applies when the services are performed in Cambodia. Cambodian tax law provides in this regard that:

“A supply of services is considered to be provided in the Kingdom of Cambodia if such services are rendered in the Kingdom of Cambodia, except for:

1. supply of services relating to immovable properties is considered to be provided where such immovable properties are located;
2. supply of services relating to transport is considered to be provided at the place of such transportation;
3. supply of services for use outside the Kingdom of Cambodia is considered to be provided outside the Kingdom of Cambodia”.

It is important to note that no specific guideline is offered with respect to the leasing of equipment.

As for services performed in Cambodia, the supplier will be considered a taxable person for VAT purposes when the thresholds stated in the Sub-Decree on VAT are exceeded, ie when:

- the taxable turnover in any period of three consecutive months exceeds KHR125m (approximately USD30,000) for taxable goods or KHR60m (approximately USD15,000) for services
- there is an expectation to exceed the taxable turnover, in the coming period of three consecutive months, of KHR125m for goods or KHR60m for



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## [CAM ¶11-600] Accounting obligation and statutory reporting

### Accounting

Investors in Cambodia are required to prepare annual income statements and balance sheets, primarily to assess profit tax liability. The GDT has a mandatory form for the submission of financial statements. The fiscal year in Cambodia is generally the calendar year. Accounts must be received by the GDT by 31 March of the year following the end of the relevant fiscal period. All accounting books and records must be in Khmer and be denominated in KHR, and all declarations must be submitted in KHR and kept for a period of 10 years. Nevertheless, foreign companies' branches and enterprises dealing with foreigners are allowed to use the English language and other currencies.

All taxpayers are required to use a Cambodian-approved accounting system, ie the Cambodian Accounting Standard (implemented on 1 January 2004). Please note that the Cambodian Accounting Standard is in line with the IFRS.

Cambodian tax regulations provide that the taxpayer must have "appropriate supporting documents" (s 2.2.3.c of the Prakas on TOP), but there is no specific obligation or restriction with respect to the forms or documents that may be used.

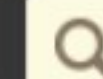
### Statutory audit

An enterprise that meets the following criteria set by a *prakas* of the Ministry of Economy and Finance will be required to submit its accounts for an audit undertaken by an independent auditor:

- Has an annual turnover of KHR3 billion (approximately USD750,000) or above
- Has total assets of KHR2 billion (approximately USD500,000) or above, or
- Employs 100 or more employees.

The independent auditor must be a natural person or legal entity enrolled on the list of Cambodian professional accountants and auditors (as certified by





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## [CAM ¶18-300] Foreign tax credit

A foreign tax credit is available to a resident in respect of foreign taxes paid, subject to certain conditions.

### *Foreign tax credit for corporate tax*

A resident taxpayer who has received income from foreign sources and has paid taxes according to foreign tax law will receive a tax credit for deduction for TOP to be paid in Cambodia under the condition that there is sufficient documentation confirming this tax payment abroad.

In order to calculate the tax to be paid in Cambodia before deduction of this tax credit, the total amount of income received from Cambodian sources and foreign sources will be taken into account.

The tax credit is determined separately for the tax paid by a Cambodian resident in each foreign country. However, the tax credit to be allowed for deduction in the tax year for the tax paid in any one foreign country is the smaller of:

- the tax amount actually paid in that foreign country, or
- the amount obtained by multiplying the total tax on profit from all sources for the same period calculated according to the tax rate with the ratio of income received in that foreign country to the total income from all sources.

Availing of the foreign tax credit is possible only if the resident taxpayer has complied with the formalities and supplied various documents as specified by the tax administration, especially certification from the foreign tax payer and from the foreign tax administration.

In the case where the tax credit exceeds the tax liability, the amount of the excess may be carried forward to be used in succeeding years up to the fifth year counting from the year following the year in which the credit arose. In the case of tax credits arising from more than one taxable year, the credits must be taken in the order in which they arose.





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## [CAM ¶21-500] Exemption from VAT on "transfer of business"

Article 82 of the LOT states that "[t]he transfer of a business from one person to another, in accordance with the conditions provided by sub-decree, shall not be subject to the tax on value added ...".

Pursuant to the above, in order for the transfer of business to be exempt from VAT:

- the business transferred must be a going concern and must continue to trade under new ownership
- the purchaser or new owner must be a VAT registrant
- the VAT-registered taxable person transferring the business must notify the Real Regime Tax Office of the transfer of the business within 10 days of the date of the transfer
- the VAT-registered taxable person transferring the business must seek cancellation of his/her VAT registration (if he/she has no other business activities) in accordance with the provisions of cancellation of a VAT registration
- the new owner of the business must obtain all the business records related to the transfer of business and retain them for 10 years
- the new owner must account for VAT on all stock and assets acquired on the transfer of business when a taxable supply is made, and
- there must be no extended break in the business activities of the business transferred.

Assets that are sold separately are not exempted from VAT.

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## [CAM ¶21-300] Transfer of business

In a merger or acquisition, the respective dissolving companies' or vendor companies' businesses continue to conduct business under new ownership. From a tax perspective, it is viewed as a "transfer of business" to another separate legal entity (ie the new owner).

The "transfer of business" by the dissolving companies or vendor companies would be subject to the following tax implications:

- TOP on the gain or loss on the transfer of business, or MT of 1% on the proceeds from the transfer of business, whichever the higher.
- VAT of 10%, unless certain criteria or conditions for the transfer of business are met.

Details of the above are discussed further in the subsequent sections.

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## [CAM ¶21-600] Unutilised tax losses from "transfer of business"

The accumulated tax loss of an RRTS taxpayer can be used to offset against future year profits for a maximum of five years, subject to the following conditions:

- The GDT has not issued a unilateral tax assessment for any of the above tax years in question.
- There is no change in the business activities of the enterprise.
- There is no change in the ownership of the enterprise, and
- The loss has been recorded in the tax return which has been submitted to the tax administration within the period of time as specified in the tax provisions.

In addition, the conditions for the utilisation of a tax loss are:

- the loss can only be carried forward by the enterprise that has incurred the tax loss
- the loss cannot be brought forward if:
  - there is a change of owner (due to the sale of the share or death of the owner)
  - there is a change of business activities.
- if a tax loss has not been brought forward for deduction against taxable profit as allowed by law, this loss cannot be utilised in the subsequent year.

In accordance with the above conditions, the unutilised tax losses of the dissolving company generally cannot be transferred to the surviving company. In



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## [CAM ¶24-400] Taxation of an employee

It should be noted that Cambodia does not have a general personal income tax law; it only has a specific TOS.

The TOS does not provide for any specific rules addressing the issuance of shares, options or other similar equity incentive instruments to an employee in the context of an employee stock option plan or another type of similar arrangement. Reference must thus be made to the general principles of the TOS. The term "salary" is defined as "remunerations, wages, bonuses, and 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" (s 42(8) of the LOT). It is not required that the salary be paid in cash. A salary paid in kind also constitutes a taxable salary. It is however noteworthy that the salary must in fact be "paid" to the employee. The principle of effective payment is well entrenched in Cambodian TOS. No definition is given of "bonus" or "direct or indirect advantage".

Fringe benefits, which are subject to tax under a similar tax regime associated with the TOS, are defined as "any good, services, or other benefits in cash or in kind, provided directly or indirectly by an employer to a physical person for employment activities that the physical person has fulfilled for the benefits of the employer" (s 3.2 of the Prakas on TOS). The arguably limitative list set out in the regulation does not make any mention of stocks, options or similar instruments.

Although there is no official guidance on this issue, it may be fair to say that there is no or little basis to treat a share or option right as a taxable salary at the moment of granting or vesting, unless the employee can cash in the right at that time. Several principles of Cambodian tax law can be called upon against such a position, including the lack of effective payment in the TOS and the fact that the income must be calculable before it can be subjected to TOS.

The question remains whether the sale of the shares or rights should be treated as a deferred part of the salary or as a gain on the shares or rights themselves. It is clear that, in Cambodia, in the absence of a general personal income tax, the income can only be taxed if it is assimilated with the salary (or given the more unlikely characterisation of "fringe benefits"). Again, with the reservation that no official guidance is available, it may be safe to say that a later gain from the sale of the shares is not assimilated with the taxable salary under Cambodian tax law.

Withholding tax on residents





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## [CAM ¶24-300] Stock dividends and bonus shares

Cambodian company law allows the issuance of shares in payment of a dividend but “an adjustment to the stated capital account must be made”. It seems clear that issuing bonus shares does not trigger WHT, and although there is no official confirmation of this issue, it seems unlikely that this transaction would be subject to additional dividend distribution tax (ADDT).

### Company law context

In accordance with Art 159 of the LCE, a Cambodian company may issue shares in payment of dividends. However, as in the case of redemption of shares, an adjustment to the stated capital account must be made. This is provided in Art 160 of the LCE, which provides as follows:

“Article 160: Adjustment of stated capital account

If shares of a company are issued in payment of a dividend, the declared amount of the dividend stated as an amount of money shall be added to the capital account or maintained or to be maintained for the shares of the class or series issued in payment of the dividend.”

### Tax treatment

For the purposes of the LOT, “dividend” is defined in para 3 of Art 3 of the LOT as follows:

“The term “dividend” means any distribution of money or property that a legal person distributes to a shareholder with respect to the shareholder’s equity interest in such legal person, with the exception of stock dividends and distributions in complete liquidation of the company. Whether or not a distribution is a dividend shall be determined under the preceding condition without regard to whether or not the legal person has current or accumulated income or profits or earnings.”

This provision states that a stock dividend or a bonus share is not regarded as a dividend in the first place. Since the same term is employed in Art 26 of the LOT (concerning non-resident WHT), it is clear that a stock dividend or a bonus share would not trigger WHT.



