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### QIP's: could your business be eligible for a tax holiday?

In order to encourage rehabilitation and growth in the Cambodian economy, in 1994, the Cambodian government came up with an incentive scheme to attract investment in the Kingdom. The scheme provides that candidates can apply to the Cambodian Development Council (CDC) for recognition as a Qualified Investment Project (QIP). This grants them a holiday on income tax and/or customs duties for up to nine years.

If the CDC approves the application, the business will be granted a tax holiday based on the formula below. Note that it is the project itself, rather than the company or entity that qualifies for the exemption, meaning that non-QIP income will still be liable for tax.

Trigger Period + 3 years + Priority Period

1. Trigger period. This applies from when the QIP receives its Final Registration Certificate (issued by the CDC) and expires upon either:
  - a. The first year of profit; or
  - b. The third year of revenue
2. Upon expiration of the trigger period, the QIP is automatically granted a three year income tax break
3. Priority Period. This varies according to with the industry and the initial investment capital.

#### So what does "tax holiday" actually mean? Can I abandon paying my taxes altogether?

QIP's will still have to pay withholding tax, tax on salary, VAT and any other taxes specified in Cambodian laws. The tax break only applies to income tax and customs duties, and excludes any

part of that income that is distributed as dividends. Any profit distributed before the tax holiday is over will be liable to tax at the 20% rate, so reinvestment in the business is crucial!

Tax breaks are not automatically granted to all customs duties either. Items used as input for production such as raw materials must be fully applied to the QIP's production process within 2 years of import. Specifically excluded items are office equipment and furniture, crude oil production inputs and vehicles (including spare parts). Production equipment and construction materials are specifically included.

#### And then?

Once your tax holiday expires, normal tax responsibilities resume. Dividends paid will incur tax at a rate of 0%, seeing as they would have already been subject to the 20% tax on profit. QIPs can be suspended or have their implementation date upon application to the CDC.

Extensions: if the project is unable to be implemented within 6 months of receiving a Final Registration Certificate, application can be made to the CDC for an extension. The extension can be granted for up to 6 months, and a further 6 months can be requested if necessary. When considering whether or not to grant the extension, the CDC will pay regard to whether or not there is a good reason for a delay.

Suspensions: much like extensions, 6 month suspensions can be applied for and granted after the project has commenced, provided good reasons exist. Up to two suspensions can be granted.

Cessations: ceasing a QIP is dealt with either by the Law on Insolvency or on request. If a company wishes to exit the QIP regime by request, they must submit a proposal to the CDC and clear outstanding obligations. To prove there are outstanding obligations, they must obtain certification from the General Department of Customs and Excise and the General Department of Taxation.



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## ABOUT US

BNG Legal is a leading Cambodian law firm providing comprehensive legal services to foreign and local clients.

Registered with the Bar Association of the Kingdom of Cambodia, our legal professionals combine international standards with local expertise.

We differentiate ourselves by coupling a deep understanding of the local business environment with international professionalism and integrity.

We facilitate business, investment and trade between Cambodia and the rest of the world through innovative and cost-effective legal services.

Superior knowledge of local protocol, local procedure, and local people is necessary for any business to succeed in Cambodia.

Conducting daily business in Cambodia, BNG Legal is up to date with the newest procedures and requirements, helping clients efficiently and successfully complete any project.

## Taxpayer Regimes explained

Taxpayers in Cambodia are not always subject to the same regime of tax payment. As well as the most common Real Regime, smaller businesses may be able to report under the simplified regime or the estimated regime depending on the form of business, the type of business activity, and the level of turnover.

### REAL REGIME

The Real Regime applies to all large taxpayers and companies. Companies must register with the General Department of Taxation where they will receive a Taxpayer ID number. A Large taxpayer is any QIP, branch of a foreign company, or a company with a turnover greater than USD\$250,000 according to the balance/income sheet of the previous year.

Real Regime Tax Payers are expected to use the accrual method of accounting. However they cannot deduct expenses made to a person subject to the simplified or estimated regime, unless these have already been paid under the cash method.

When filing their annual tax declaration, a Real Regime Taxpayer is expected to attach a balance sheet, a results account (or income statement) and tables of complementary information.

### SIMPLIFIED REGIME

The Simplified Regime applies to tax payers who do not fall into the Real Regime, and they make a taxable supply. They are expected to use the calendar year as the basis for taxation, and the cash method of accounting. They must submit a tax declaration with attached documents as per the form provided by the tax administration. This will include things like accounting documents, stock-lists, receipts and disbursement vouchers, so taxpayers should keep a record of these.

They are expected to keep proper accounting records (in Riel expect for some foreign operators, who may be permitted to use USD).

### ESTIMATED REGIME

The Estimated Regime applies to taxpayers who elect to have their profit (and applicable tax rate) determined by the tax administration, after submitting a tax declaration to the tax administration every year by October 31. They have to submit an annual return by 31 October under Article 30.

This estimated rate is to be applied for 3 months, 6 months or 1 year, and tax should be prepaid at this rate every month.

It is agreed by contract between the taxpayer and the tax administration.

There is no obligation to keep accounting records in accordance with International Accounting S.

## Additions to our team

### MS AKANE TSUCHIYA-SALTMANN

Akane Tsuchiya-Saltzman joined BNG Legal as a legal counsel in August 2011. She received her Juris Doctor from Columbia Law School in New York. During law school, she served as a Production Editor for the Journal of Gender and Law. She is a member of the New York Bar in the United States.

Prior to joining BNG, Akane worked at a fashion retailer in the United States, assisting in various corporate, contract and trademark matters. She also has previous experience in both an American media publishing company where she conducted legal research and helped draft and edit contracts, and in the Tokyo office of an international law firm where she researched trademark law and reviewed documents for various intellectual property and corporate matters.

Prior to entering the legal profession, Akane taught English as an Assistant Language Teacher for three years in Saitama, Japan. She earned her Bachelor of Arts in History at Columbia College of Columbia University in New York.

Akane works in intellectual property and commercial law.

She is fluent in English and proficient in Japanese.

### MR DARAVUTH SENG

Mr. Daravuth Seng joined BNG Legal as a legal consultant in November 2011. Daravuth holds a Juris Doctor from the University of San Francisco (USF) School of Law in the United States where he specialized in corporate, real estate and tax law. In addition, he received training in alternative dispute resolution and was certified by the LA County Bar Dispute Resolution Services.

Daravuth is admitted to the State Bar of California, a California-trained mediator and a member of the American Bar Association. As mediator and attorney, Daravuth found himself involved in a broad array of legal matters including debtor-creditor reparations, corporate formation, contracts negotiations, mechanics liens and estate planning. Most recently, he served as Legal Advisor to the Ministry of Environment for the Royal Government of Cambodia.

Prior to his career in law, Daravuth was a pre-medical student at the University of California, Irvine. He then transferred to California State University, Long Beach (USA) and obtained a BA in Art History.

His current areas of practice includes agribusiness investments, chemical management, corporate, energy & infrastructure, finance, intellectual property, NGO, real estate and tax law.

Daravuth speaks English and Khmer.

[cambodianlaw.wordpress.com](http://cambodianlaw.wordpress.com)

BNG Legal believes expanding access to legal information is crucial to rule of law. To that end, several of our legal professionals will be writing a blog discussing recent developments in the legal landscape. Several of our recent posts cover:

- Annual Leave and Rollover
- Capital Gains Tax
- New Moves on Pirated Movies
- Buying Land as a Foreigner in Cambodia
- Can Expats Adopt Cambodian Children?

## LEGAL UPDATES

**Royal Kram No. NS/RKM/1211/019 dated December 15, 2011 Promulgation of the Law on Financial Management for the Year 2012. (R/L/Agr/Khm/2011) (Royal Gazette, Year 11, No. 95, dated December 27, 2011).**

This law sets out the Government's budget for 2012 and sets out a loan limit for the government.

**Instructive Circular No. 12 (RGC) dated November 25, 2011 on the Strengthening of Internal Audit Duties at Ministries, Institutions and Public Establishments. (R/L/Agr/Khm/2011) (Royal Gazette, Year 11, No. 95, dated December 27, 2011).**

This circular updates a previous instructive circular (No. 01 dated January 20, 2009) on strengthening internal audit duties at Ministries, Institutions and Public Establishments and a Prakas (No. 1109 dated November 03, 2006) on the promulgation of political documents on internal management at Ministries, Institutions and Public Establishments in order to reform Public Financial Management.

This circular entitles the Ministry of Economy and Finance to liaise with all state institutions in order to manage any risk factors and adjust or update relevant legal tools in this sector.

**Prakas No. 1004 dated November 30, 2011 on Corrections and Adjustments made to Formal Documents for Tax Registration.**

This Prakas requires investors and companies to register with the tax administration within fifteen days of the start of economic activities in the Kingdom. Investors or companies that wish to change their address, form, name, scope of business, management composition, company officer responsible for paying taxes, business objective transfer or to cease business altogether must inform the tax administration within fifteen days of such changes.

**Prakas No. 233 (MLV) dated November 07, 2011 on Adjustment to Clause 8 and Clause 10 of Prakas No. 109, dated June 16, 2008 on Allowance (Compensation) of job-related Risk (Accident). (R/L/Pri&SP/Khm/2011) (Royal Gazette, No. 84, dated November 15, 2011).**

This Prakas provides for benefits to employees who suffer injuries as the result of a workplace accident which causes the permanent loss of working ability. The employee is entitled to compensation as per the calculation method outlined in the Prakas.

The prakas also provides for a cremation/funeral allowance of 4 million Riel (around \$1000 USD) to be provided by the employer to the person who is responsible for managing of the cremation/funeral when a work-related accident results in the death of an employee.

