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New Property Tax

In January 2011, the Ministry of Economy and Finance implemented a new property tax which applies to all immovable property worth more than 100 million riel (USD\$25,000). This is in addition to existing taxes such as Tax on Unused Land, Registration Tax and Tax on Land and House Rent. The law follows the establishment of a Property Valuation Committee (PVC) which is responsible for property valuation in relation to the new law.

Any property subject to the tax will be issued with a Tax Identification number and the taxpayer will be required to file and pay the tax before 30 September each year. Each property requires a separate return. The amount owing will be assessed as 0.1% of the value in excess of the amount specified. No declaration is necessary for properties valued below this. If a taxpayer makes alterations to the property which may reduce its value for the purpose of the tax, the responsibility of notifying the PVC lies with the taxpayer.

“Immovable property” is defined very broadly as applicable to land (both used and unused), housing and building and constructions (including those without walls or roofs). This means that anything fixed to land will have its value considered for the purpose of the tax.

Foreign investors may be caught by the definition of taxpayer, which includes occupiers and final beneficiaries as well as owners. Careful consideration needs to be paid to tax liability when negotiating leases and other rental arrangements to make ensure ultimate liability does not end up resting with a lessee or tenant. Purchasers also need to be cautious that taxes to date have been paid, or they may end up with the responsibility for unpaid taxes on the property - under the

regulation, liability rests with the owner at the time tax is due.

The tax was implemented following the International Monetary Fund’s recommendation that Cambodia increase revenues from tax collection to open up resources for development needs in the wake of the global economic crisis.

EXEMPTIONS

The regulations do provide for some exemptions on the tax.

- Agricultural Land: Land (or portion thereof) which is used for agricultural cultivation is exempt from the tax. This includes rice fields, farms, agro-industrial crops, livestock farms, aquaculture farms and salt marches;

- Religion and Charity: to qualify for an exemption on religious or charitable grounds, the property must be owned used exclusively for religious or charitable purposes. Lease interests and other temporary arrangements will not qualify. No part of the property or any income from it may be applied to a private interest.

- Government and Special Economic zones: this covers roads, bridges, infrastructures for producing clean water or electricity, ports, railway stations and any building or office serving these infrastructures.

COMPANY DECLARATIONS

As the end of the tax year approaches, it can be easy to forget that in addition to tax requirements, commercial companies are required to file an Annual Declaration of the Company’s situation with the Ministry of Commerce. Failure to do so can result in severe penalties, deregistration or even criminal punishment for Directors.

[The Annual Declaration Office of the Business Registration Department has templates which can be copied and filled in by the company. These are free of charge and available on request.]



A No 64, St 111
PO Box 172
Phnom Penh
Cambodia

T +855 23 217 510
+855 23 212 740

F +855 23 212 840

E info@bnglegal.com

W www.bnglegal.com

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.

Recent Additions to Our Team **Legal Updates**

Ms. Bridie Sweetman

LEGAL & TAX COUNSEL

Ms. Bridie C. Sweetman is tax and legal counsel at BNG Legal. Bridie received her Bachelor of Commerce in Accounting from the University of Auckland, and her Bachelor of Laws from the University of Canterbury. Bridie has previous experience in two law firms in Christchurch, New Zealand, drafting documents and researching employment, family, banking and finance law. She has also worked with a "Big Four" firm as an accountant in Auckland, New Zealand. She decided to move to Cambodia to further her career in tax and commercial law after initially coming to Cambodia to complete an internship with the United Nations Assistance to the Khmer Rouge Tribunal.

Bridie primarily focuses on laws and policies related to taxation, accounting, corporate and finance.

Bridie speaks English and French

Mr. Manou Y

LEGAL CONSULTANT

Manou Y is a legal consultant with BNG Legal. Manou received a Bachelor's Degree of Private Law from Lumière Lyon 2 University (France) and a Bachelor's Degree of Comparative Law from Royal University of Law and Economy (Cambodia). He also received a Master's degree in Property Law from Jean Moulin Lyon 3 University (France).

Prior to joining BNG Legal, Manou worked at an NGO specializing in land law issues. He has also worked in the Department of Legal Affairs of the Securities and Exchange Commission of Cambodia, and in a law firm in Cambodia. Manou's previous practice includes providing legal advice, drafting contracts, editing contracts, drafting internal rules of co-owned buildings and other legal documents. At BNG, his practice areas cover corporate law, family law and property law.

Manou speaks Khmer, English and French.

Prakas No. B9-010-151 (NBC), dated August 25, 2010 on Third-Party Processor. (L&R/CIE/2010/Khm&Eng) (Royal Gazette, Year 10, No. 66, September 08, 2010)

The purpose of this Prakas is to enable banks and financial institutions to outsource one or more parts of their payment transaction services to one or more third-party processor. This requires the approval from the National Bank of Cambodia. Banks must apply for a license on behalf of such Third-Party Processor. The license is valid for 3 years and can be renewed for consecutive 3-year terms.

Prakas No.571 (MEF), dated August 19, 2010 on the Procedure for Tax Payment and Excise on Imported & Exported Goods. (L&R/CIE/2010/Khm) (Royal Gazette, Year 10, No. 65, September 04, 2010)

This Prakas requires the payment in full of all duties, fines, fees, interest, and other charges prior to the release of imported and exported goods from customs storage. The exporter or owner is liable for export duties and taxes. In cases where the exporter or owner cannot be located, the customs broker is liable for the export duties and taxes. The payment shall be declared in Riel currency by cash, check or other means recognized and authorized by the National Bank of Cambodia and the Customs Administration shall accept receipt from the Bank.

Prakas No.572 (MEF), dated August 19, 2010 on the Declaration of Goods Entering Cambodia's Customs Boundary. (L&R/CIE/2010/Khm) (Royal Gazette, Year 10, No. 66, September 08, 2010)

This Prakas aims to regulate the customs clearance of goods, materials, and all transportation means in the Kingdom of Cambodia. Goods must be kept in their original state and packaging, including any seal and stamp. Goods must be declared either orally or in writing to the customs administration as determined by the General Department of Customs and Excise of Cambodia.

The transporter is required to hold a transportation permit. In case the goods are transported by sea or other water ways, they must be recorded in the ship's manifest or general packing list. These documents need to be signed by the captain and must describe the type of goods on board, including the quantity, trademarks, total weight (including packages), and the place where the goods were loaded.

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:

- Overtime Rules under the Labor Law
- Pitfalls to Avoid in Setting Up a Business
- Foreign Corrupt Practices Act
- Special Economic Zones
- Changes to Internet Structure

The same conditions apply for land and air transportation.

Before entering into Cambodia, certain documents need to be provided to the nearest customs administration.

Sub Decree No.108 (RGC), dated August 30, 2010 on Determining the Rate and Formality for Recruitment of Handicapped Persons. (L&R/Lsa/2010/Khm) (Royal Gazette, Year 10, No. 65, September 04, 2010)

This sub-decree aims to determine the rate and formality for recruitment of handicapped persons following the Law on the Protection and Promotion of Handicap Rights. It responds to Cambodia's obligation as a signatory state of the Convention Relating to Human Rights and Handicap Rights.

This sub-decree requires state institutions and legal entities to recruit qualified handicapped persons to fulfill the duties and responsibilities to the position required.

In principle, as stated in this sub-decree, state institutions with more than 50 civil servants must have 2% of qualified persons with disabilities. Legal entities which have more than 100 employees must have 1% of qualified persons with disabilities of the total amount of employees to perform the duty.

If they fail to meet these requirements, they shall make a charitable contribution to a handicapped-persons organization. If not, they are subject to fines and punishment according to law.

Prakas No. B12.010.206 (BNC) dated December 21, 2010 on the Anti-Money Laundering and Combating the Financing of Terrorism relating to all Reporting Entities not under the Supervision of the National Bank of Cambodia. (L&R/Bnk/2010/Khm and Eng) (Royal Gazette, year 10, No. 96, December 30, 2010)

This Prakas aims to apply the term "Reporting Entities" to the following institutions and professions, which are not regulated by the National Bank of Cambodia and are referred as "Reporting Entities" in the Law on Anti-Money Laundering and Combating the Financing of Terrorism: (a) non-bank financial institutions, including securities brokerage firms and insurance companies; (b) investment and personal funds, investment companies and companies for managing investment funds; (c) real estate agents, buildings and land; (d) post offices operating payment transactions; (e) lawyers, notaries, accountants, auditors, investment advisors and asset managers when they prepare or carry out transactions for their clients concerning the activities listed in Article 2 of this Prakas; (f) casinos and other

gambling institutions; (g) non-governmental organizations and foundations engaging in businesses activities and fund raising; (h) trust companies and other services provider companies; and (i) any other institution or profession that is designated by the Cambodia Financial Intelligence Unit (CAFIU) to fall within the scope of the Law on Anti-Money Laundering and Combating the Financing of Terrorism and is not supervised by NBC.

This Prakas provides criteria to be followed by the reporting companies in order to meet their obligations. The main feature of this Prakas is to establish an obligation for the reporting entities to focus on a client when a singular financial transaction of an amount of US\$10,000 is made in any situation, including failure to provide required documents, when there is a suspicion of money laundering.

Furthermore, this Prakas prohibits the reporting institutions from entering into contracts with an institution or company which is not operating or does not have business in Cambodia. All financial transactions must be done through such reporting institutions.

