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Over the last few decades, real estate sectors has been growing and booming at a faster rate in Cambodia. The Government has been taking various incentive to attract foreign investors in this sectors by introducing various legislations, which has resulted in many foreign investing companies seeking to invest in land or real estates for their business purpose, as well as numerous construction plans which are being developed in urban areas. All of these illustrate the reasons behind the increase of real estate transactions in Cambodia. In term of real estate transaction, property value is one of the main factors for both seller and purchaser. However, one factor that is usually not considered is regarding an “ad valorem” rate of the value of the transaction involved in tax related to the transfer of immovable property.

1. Basis of Registration Tax Prior to the Reform in 2014

The Taxation on transfer of immovable property is treated as “Registration Tax”. This taxation is imposed on the transfer of ownership or procession rights over immovable properties. On December 26, 2012, the Law on Financial Management 2013 was promulgated to amend the tax provisions and the registration tax rates have been amended as 4% of the immovable property value in the transfer of ownership or possession right, and contribution of immovable property as company share.

The total value of the immovable property is the market value which can be determined by the Immovable Property Assessment Committee (IPAC). A issues often arises is the calculation of the registration tax i.e. 4% of the value of the immovable property, for which we need to calculate the selling price multiplying by 4%. Until 2014, since there is no specific regulation on the market value of the immovable property for the registration tax, the tax official calculated the

registered tax based on the reference used for the property tax or the transactions value whichever is higher.

2. Prakas No. 962 dated 28 August 2014: Property Appraisal Guideline

Given the above mentioned fact, the Prakas No 962 on Determination the Basis of Registration Taxable Amount on Transferring Ownership or Possession Rights over Immovable Property, dated 28 August 2014 has created criteria to assess the value of immovable property in Cambodia. The Prakas contains several annexes that elaborate in details all factors to determine a minimum value of an immovable property. Each property is categorized in several types depending on its locations and characteristic of buildings.

For first criteria “location”, a property in Phnom Penh is categorized base on the zone on which it is located. The basis of the calculation is in value of the property (in USD) per square meter. For example, Category 1¹ properties in Phnom Penh is valued over 1, 500 USD per sqm while Category 12² properties is only 25 USD per sqm. In provinces, the basis of the calculation is depended on the communes and districts where properties are located. The value of the properties varies from agricultural zone, industrial zone, housing zone to commercial zone. In addition to the zone, the property is appraised upon the type of street on which it is located. In spite, being in the same district, a property located near a main street will cost over 1,000 USD per sqm, while such property would cost less than 500 USD if it is located near a district street instead.

The characteristic of the property has also an importance role in appraisal. A building which is aged over 10 years is valued less than the one that has been built under 10 years old. Whether the building is in wood or in concrete is also a part of the appraisal. Moreover, the value of a building is varied on its number of floors.



¹ The land around the market and located along the certain main street, page 1, Annex I of Prakas No 962.

² The land located near small road in certain villages in Phnom Penh, page 8, Annex I of Prakas No 962.

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In normal building, the price decrease as the floors go up until fifth floor, for example ground floor cost 250USD per sqm, but second to fifth floor cost 150USD per sqm only. However starting from sixth floor, the value exponentially increases – for example 700 USD per sqm. However, for condominium building, value increases steadily as the floors go up.

In brief, when we know the location of the land and the characteristic of a building, we can both estimate the minimum price of the property as well as our obligation to pay the registration tax. According to Article 5 of the Prakas, the basis of registration taxable amount is the value calculating according to the Prakas, or the value stipulated in a sale and purchase agreement, if it is equal to or higher than such mentioned in the Prakas. For example, a property is worth 100,000 USD based on the calculation of the Prakas. If the Seller is able to sell the property at total 150,000 USD, the registration tax liability of 4% rate will be 6,000 USD. However, if the property is sold lower than 100,000 USD, the registration tax liability remains 4,000 USD.

There is an allowance of 100,000,000 KHR (approximately 25,000 USD) when the transfer is made as donation between family member or of 200,000,000 KHR (approximately 50,000 USD) by succession between family member. This kind of allowance needs to be deducted from the value of the property before calculating the registration tax.

3. Enforcement of Tax on Transferring Properties

All transfer of ownership or possession rights over immovable property is subjected to registration tax and no exception is mentioned but the taxable amount could be reduced depending upon the transaction. However, as Cambodian land registration system is still developing, majority of immovable properties in Cambodia still do not have title deed and some property owners have only certain type of private documents, usually referred to as “Soft Title”.

The Prakas does not distinguish between the lands with or without title deed, which means that it covers all the transfer of possession right of immovable property. The normal procedure to transfer the property is to file application form with the Department of Land Management, Urbanization, and Construction (DLMUC). After filling with DLMUC, the payment of the registration tax needs to be completed with the tax department. Then the documents will be transferred back to DLMUC to register the name of the buyer (new owner) to the title deeds. As such, it means that government uses this requirement to ensure the collection of registration tax is done effectively. This is where the differences between

Land Title and Soft Title become clear as land with Soft Title in practice cannot proceed to the DLMUC who collaborates with tax department with regard to tax enforcement. In this way, the transfer of soft title is, in practice, not subject to the control by tax department which also means not subject to the tax on transferring immovable properties. In short, the tax department cannot thwart the process of transferring immovable properties that do not have title deed.

It is also important to note that in addition to the function of the registration tax on property transfer, an annual tax on immovable property need to be paid based on self-declaration regime, which means owner of the property should properly self-declare the value of property and the type of property, such as agricultural land and unused land etc. However, during the procedure of transferring the title deed, tax official can notice the wrongdoing of immovable property annual tax filling done by owner of the immovable properties. For example, if the owner pays annually his/her property tax at a normal used land rate (0.1%) despite the fact that his/her property is an unused land (subjected to 2% rate), tax official will reclaim all the non-payment of annual tax properly plus certain tax penalties.

³ The exemption from Property Tax for certain immovable properties (example: agricultural land, land owned by the community or a person for the religious and charitable activities ...) does not apply for Registration Tax

LEGAL UPDATE

Notification No. 3434 (GDT) dated 02 June 2015 on Reminding on Excise tax Stamp for Cigarette

MEF and GDT have informed to stick the stamp of Excise Tax for Cigarette Imported Company, Local Cigarette Producer, Cigarette Wholesaler and retailer. Currently, some companies followed and some companies did not follow this prakas.

GDT would like to remind Cigarette Imported Company, Local Cigarette Producer, Cigarette Wholesaler and Retailer has to follow the Prakas No.539 dated April 30, 2014. There are 87 brands of Cigarette did not stick this stamp.

If you don't stick the excise tax stamp, stick the fake stamp, used stamp or improperly stick the stamp, GDT will cooperate with authority to seize this cigarette. You will be subjected to tax evasion as stated in article 16 of Prakas No.539 and article 127, 128, 133, 135 and 136 of Law on Taxation which will be fined from 10 Million Riel to 20 Million Riel or will be imprisonment from 1 to 5 years or both.