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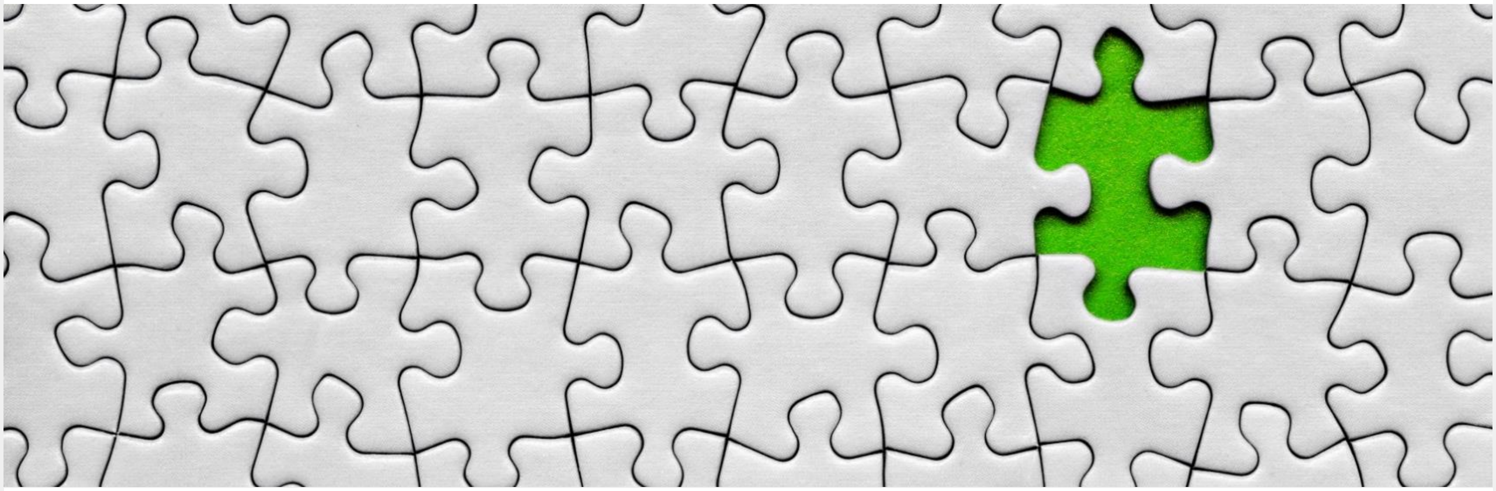

# International Tax Alert
## Keeping you informed

Greetings from your tax team at Deloitte Singapore and Deloitte Cambodia. We are pleased to update you on the following tax development:

### Signing of Singapore-Cambodia tax treaty

Singapore and Cambodia signed an Agreement for the Avoidance of Double Taxation (DTA) on 20 May 2016. This DTA is expected to boost cross-border trade and investment between the two countries. Once ratified, the DTA provides for, amongst others, reduced withholding tax on dividends, interest, royalties and service fees. There are also provisions to resolve treaty disputes through mutual agreement and to exchange information on tax matters.

## Highlights of the treaty from the perspective of a potential Singapore tax resident investor into Cambodia include:

**Permanent Establishment (Article 5)**

The treaty provides for the following time tests (within which it can be argued that a permanent establishment (PE) in Cambodia does not exist) for the following activities:

(i) Six months or less for a building site, a construction, assembly or installation project, or supervisory activities in connection with the aforementioned activities;

(ii) 183 days or less within any twelve-month period for the provision of services, including consultancy services, in Cambodia by an enterprise of Singapore through employees or other personnel engaged by such enterprise; and

(iii) 90 days or less in any twelve-month period for the carrying on of activities (including the operation of substantial equipment) for the exploration or for exploitation of natural resources in Cambodia

Broadly, income from the carrying on of business through a PE in Cambodia is subject to Cambodian income tax at the prevailing tax rate of 20%. Due to the operation of Article 13 (Fees for Technical Services), income arising from the activities mentioned in items (ii) and (iii) above may be taxable in Cambodia via the withholding tax mechanism.

**Dividends, Interest and Royalties (Articles 10, 11 and 12)**

Cambodia levies withholding tax at the rate of 14% for payments of dividends, interest and royalties (including rental of equipment) to non-residents and these are broadly reduced to 10% under the DTA if the conditions are met. In addition:

- *Dividends*

  The reduced withholding tax rate of 10% is also applicable to Additional Tax on Dividend Distribution (APTDD)[1]. Briefly, APTDD is applicable on the distribution of profits that were subject to tax in Cambodia at rates lower than the prevailing corporate tax rate of 20%.

[1] Article 2(3)(a)(i)

An underlying tax credit is available to a Singapore resident investor company that owns, directly or indirectly, not less than 10%[2] of the share capital of the Cambodian dividend paying company.

- *Royalties*

  Payments made for the rental of industrial, commercial or scientific equipment is included under the definition[3] of royalties.

We also note that:

- The payment of dividends, interest and royalties to a trust may qualify for reduced withholding under the DTA, provided the trustee of the trust is liable to tax in Singapore in respect of the income[4].
- The reduced rates under the treaty are not available to the portion of the payments that are regarded as excessive owing to a ‘special relationship’ between the payer and payee[5]. The treaty does not provide additional clarity on what constitutes a ‘special relationship’ and whether this clause can be invoked in instances of transactions between unrelated parties.

**Fees for Technical Services (Article 13)**

“Fees for technical services” are defined as payment of any kind in consideration for the rendering of any managerial, technical or consultancy services, including the provision by the enterprise of the services of technical or other personnel, but does not include independent personal services to which Article 15 applies.

The DTA reduces the withholding tax rate in Cambodia from 14% to 10%, unless such services are rendered through a PE in Cambodia (in which case such income, net of allowable expenses, should be taxed at 20%). Likewise, the reduced rates do not apply to the portion of the payments that are regarded as excessive owing to a ‘special relationship’ between the payer and payee.

[2] Article 23(b)
[3] Article 12(3)
[4] Article 3(2)
[5] Articles 11(7), 12(6) and 13(6)

**Capital gains (Article 14)**

Cambodia does not have a separate capital gains tax. Gains arising from the disposal of, amongst others, shares are treated as ordinary income for the purposes of Cambodian income tax and is subject to tax at the prevailing tax rate.

Potential investors would be interested to note that gains arising from the disposal of shares in a Cambodian company (if regarded as sourced in Cambodia) should prima facie be sheltered from Cambodian income tax under the DTA, provided the company is not 'land-rich[6]'.

## Deloitte's view

This DTA is significant as it is Cambodia's inaugural bilateral tax treaty and should be of great interest to taxpayers considering potential investments into Cambodia and transactions with Cambodia parties.

We understand that Cambodia is also pursuing further tax treaties with her ASEAN[7] neighbours. Going forward, we foresee that Cambodia would look to expand her treaty network beyond ASEAN, especially with significant trading partners such as China[8] and the United States[9].

The administrative procedure for the DTA's implementation in Cambodia (upon ratification) is likely to take some time to develop. On a practical note, the interpretation of certain Articles in the treaty (such as Article 8 International Transport) by Cambodia may require additional clarification especially where there is no comparable equivalent provision under Cambodia's domestic tax legislation.

[6] Defined in Article 14(4) as shares that derive more than 50% of their value directly or indirectly from immovable property situated in Cambodia.
[7] Association of Southeast Asian Nations comprising Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam.
[8] Top import origin country outside ASEAN (Thailand is top)
[9] Top export destination

## Contacts

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