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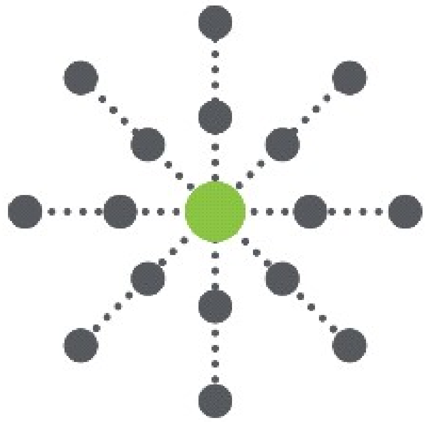

Cambodia tax alert

Rules and procedures issued on implementation of tax treaties

Following the entry into effect of Cambodia's first two tax treaties (with Singapore and Thailand) on 1 January 2018, the General Department of Taxation (GDT) issued an instruction on the rules and procedures for the implementation of tax treaties on 26 March 2018. The instruction sets forth the definition of a Cambodian tax resident and the procedures to obtain benefits under a tax treaty (including reduced withholding tax rates and beneficial treatment of income from international transport), as well as the procedures to obtain a foreign tax credit for income that was taxed in the other contracting state.

Status of Cambodia's tax treaties

Based on a Royal Kram (an official promulgation) dated 9 December 2017, four of Cambodia's tax treaties (with Brunei, China, Singapore and Thailand) have been adopted and signed by the king and the prime minister. However, only the tax treaties with Singapore and Thailand have been ratified and entered into effect from 1 January 2018. A notification from the Ministry of Economy and Finance dated 2 February 2018 announced that the treaty with China has entered into force and will apply as from 1 January 2019, while the treaty with Brunei will enter into force after the two countries exchange ratification instruments.

On 31 March 2018, Cambodia and Vietnam signed a tax treaty, the text of which is not yet publicly available. The treaty will enter into force after both countries exchange ratification instruments. On 8 June 2018, the government reportedly confirmed that Cambodia and Indonesia have signed a treaty, but no official documentation has been released to the public.

Below is a summary of Cambodia's tax treaties that have been promulgated:

Treaty	Date signed	Effective date
Singapore	20 May 2016	1 January 2018
Thailand	7 September 2017	1 January 2018
China	13 October 2016	1 January 2019
Brunei	27 July 2017	1 January of the year after exchange of ratification instruments

In Cambodia, the taxes that are covered under the above tax treaties include the tax on income; withholding tax on dividends, interest and royalties; the minimum tax; the additional tax on dividend distributions; capital gains tax; and the tax on salary.

Residence in Cambodia

Based on the March 2018 instruction issued by the GDT, a resident of Cambodia is defined as follows:

- An individual with a residence or principal place of abode in Cambodia, or who is present in Cambodia for more than 182 days in any 12-month period ending in the current tax year; or
- A legal person or partnership organized or managed in Cambodia, or that has its principal place of business in Cambodia.

Based on the instruction, a Cambodian resident can apply for a residence certificate from the GDT, which is valid for one year and can be renewed annually. A Cambodian resident taxpayer may be required to provide the certificate to the tax authorities of a treaty partner jurisdiction to claim benefits under the relevant tax treaty, such as reduced withholding tax rates on certain types of income or beneficial treatment for income from international transport.

Withholding tax under tax treaties

The instruction states that withholding tax on dividends, interest, royalties and technical service fees paid to residents of the other contracting state should be withheld in accordance with article 26 of Cambodia's Law on Taxation, but the rate may not exceed the rate stated in the applicable tax treaty.

Under Cambodia's domestic law, a 14% withholding tax rate applies to dividends, interest, royalties and technical service fees paid to a nonresident. Cambodia's tax treaties that have been signed thus far (and whose text is publicly available) generally provide for a 10% withholding tax rate on such income.

To apply a reduced withholding tax rate under a tax treaty, the taxpayer or beneficial owner of the income must submit an application and supporting documents (including a tax residence certificate from the competent authority of the other contracting state) to the GDT for approval before tax is withheld by the Cambodian payer.

Income from international transport

Under the tax treaties that have been signed thus far (and whose text is publicly available), income derived by an enterprise of a contracting state from the operation of aircraft in international traffic will be taxable only in the contracting state in which the enterprise is resident.
Income or profits derived by an enterprise of a contracting state from the operation of a ship or boat, or a rail or road vehicle in international traffic may be taxed in the other contracting state, but the tax imposed in that other state will be reduced by 50% (i.e. tax will be imposed at 50% of the domestic rate).

The instruction provides that, to obtain treaty benefits for income from international transport, an enterprise that is a resident of a contracting state must have a residence certificate issued by its competent authority. The same procedure applies as to obtain reduced withholding tax rates under a tax treaty, i.e. the entity must submit an application and supporting documents to the GDT for approval.

Procedure to avoid double taxation

A resident taxpayer that already has paid tax in one contracting state may apply for a tax credit certificate from that contracting state to avoid being subject to double taxation on the same income in the other contracting state. For example, a Cambodian resident taxpayer that derived income from Thailand and paid income tax on the income in Thailand may obtain a tax credit from Cambodia. To obtain the tax credit, the Cambodian resident must provide a proper certificate from the Thai competent authorities confirming the tax paid, and a copy of the supplier's residence certificate issued by the Thai authorities.

Comments

The process for a nonresident to obtain a residence certificate from the domestic authorities in its country of residence that would allow it to obtain treaty benefits under the procedures provided in the GDT instruction will depend on the applicable rules and procedures in that country.

We understand that Cambodia is looking to conclude tax treaties with its Association of Southeast Asian Nations (ASEAN) neighbors, Japan and Korea (ROK). In addition to the tax treaties discussed above, Cambodia reportedly also has signed a treaty with Indonesia. Going forward, we expect that Cambodia will look to expand its treaty network beyond the ASEAN.

If you have any questions, or would like additional information on the topics covered in this alert, please contact:

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