

KINGDOM OF CAMBODIA

Nation Religion King

Law on Taxation

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Chapter 1: Provisions For The Tax On Profit

Section 1: General Provisions

Article 1: Change to Tax

The provisions for the tax on profit as stated in the Finance Act of 1994 promulgated by the Royal Kram No. 02NS dated 28 December 1993, the Amendment to the Finance Act of 1994 promulgated by the Royal Kram No. 08NS dated 30 November 1994, the Finance Act of 1995 promulgated by Royal Kram No. 11NS94 dated 31 December 1994, and the Amendment to the Finance Act of 1995 promulgated by Royal Kram No. CS/RKM/0995/01 dated 01 September 1995 shall be amended as follows for the benefit of the State budget.

Article 2: Object of the Tax

The tax of profits is the debt of a resident person on income from Cambodian sources and income from foreign sources and of a non-resident person on income from Cambodian sources.

Article 3: Definitions

For the purposes of the tax provisions:

1. The term “resident taxpayer” means:
 - a. any physical person who is domiciled in or has a principal place of abode in, the Kingdom of Cambodia, or who is present in the Kingdom of Cambodia on more than 182 days during the calendar year;
 - b. any legal person or pass-through organized or managed in the Kingdom of Cambodia, or having its principal place of business in the Kingdom of Cambodia. A permanent establishment shall be considered a resident legal person with respect to its Cambodian source income only.
2. The term “non-resident” means not a resident of Cambodia.

3. The term “legal person” means any enterprise or organization carrying on a business whether or not officially recognized by the competent institutions of the Royal Government. The term “legal person” includes any government institution, religious organization, charitable organization, or non-profit organization. For a non-resident person, the term “legal person” means any permanent establishment in the Kingdom of Cambodia. The term “legal person” does not include a pass-through or a sole proprietorship.

4. The term “permanent establishment” means a fixed place of business in the Kingdom of Cambodia, the branch of a foreign company or an agent resident in the Kingdom of Cambodia, through which the non-resident person carries on their business. The term “permanent establishment” also includes any other association or connection through which a non-resident person engages in economic activity in the Kingdom of Cambodia.

5. The term “pass-through” means a general partnership with up to 10 resident individual partners in which the proportional sharing by the partners of items of capital, profit, and loss meet the criteria which shall be determined by sub-decree. In this definition, a “pass-through” cannot be a member of another partnership and does not include a corporation, a permanent establishment, or a sole proprietorship.

6. The term “sole proprietorship” means a business enterprise owned 100 percent by one physical person. In this definition, a husband and wife and their dependent children shall be treated as one physical person.

7. The term “business” means a person’s economic activity the aim of which is to derive income from the production and sale of goods, the supply of services, the lease, rental or sale of property, or any other activity.

8. The term “dividend” means any distribution of money or property that a legal person distributes to a shareholder with respect to the shareholder’s equity interest in such legal person, with the exception of stock dividends and distributions in complete liquidation of the company. Whether or not a distribution is a dividend shall be determined under the preceding condition without regard to whether or not the legal person has current or accumulated income or profits or earnings.

9. The term “shareholder” means any person owning an equity interest in a legal person. For the purposes of this tax a legal person which is not a corporation shall be treated as if it were a corporation

and any person who holds an equity interest in, or may otherwise gain income or profit as a participant in such a legal person shall be treated as a shareholder of such legal person.

10. The term “investment enterprise” means an enterprise that the Council for the Development of Cambodia has recognized as an investment enterprise and that has registered with the tax administration.

11. The term “related person” means:

- a. a member of the taxpayer’s family;
- b. an enterprise which controls or is controlled by, or is under common control with, the taxpayer.

The term “Control” means the ownership of 51 percent or more in the value or voting power of the equity interests in the enterprise. For determining the degree of control of a taxpayer who is a physical person, shall be taken into consideration all equity interest owned by the taxpayer and those owned directly or indirectly by the taxpayer’s spouse.

Article 4: Tax Regimes

The tax regimes are as follows:

1. The assessment of the tax on profit shall be made according to the real regime, simplified regime, or estimated regime system of taxation.
2. The rules and procedures for the assignment of taxpayers to one of the three regimes as above will be determined by sub-decree and shall be based on the form of the business, the type of business activity, and the level of turnover.

Section 2: Taxable Profit and Tax Rates

Article 5: Tax Year

The tax year shall be determined as follows:

1. The tax on profit for the real regime system of taxation is calculated from the balance sheet results realized in the previous tax year.
2. If there is no closing balance sheet during any one year the tax to be paid for the following year is assessed on the profit made in the previous period from the end of the last taxable period. For new enterprises the calculation is made from the start of business operations up to the 31st of December of the year for which the tax is calculated.

3. If many successive balance sheets are drawn up during the same year the results of these balance sheets are added up to have the base for the tax to be paid.
4. The tax on profit for the simplified and estimate regime systems of taxation shall be calculated on a cash method of accounting on the past calendar year.
5. Directives on the reporting and the filing of a final declaration for enterprises that cease activities, are reorganized, or are sold or transferred during the calendar year shall be determined by prakas of the Ministry of Economy and Finance.

Article 6: Accounting Rules

Accounting rules shall be determined as follows:

1. For a taxpayer under the simplified regime system of taxation using cash method of accounting, income is reported in the year that cash or other property is actually received even if as payment pertaining to other years, and expenses or deductions are taken in the year in which the expenses or other items are actually paid except for prepaid expenses and depreciation allowances.
2. For a taxpayer under the real regime system of taxation using the General Chart of Accounts method of accounting, income is reported in the year it is earned whether that income is already paid or not. The deduction for an expense may be taken when all facts determining the taxpayer's liability have occurred, the results of economic activities with respect to the item has occurred, and the amount of the taxpayer's liability can be actually determined.
3. For real regime taxpayers, expenses incurred to a related person under the simplified regime system of taxation is not allowed as a deduction before actual payment.
4. Domestic banks and savings institutions shall be allowed to establish provisions for bad debts for the determination of the taxable profit. The rules and procedures on deductions shall be provided by sub-decree.

Article 7: Taxable Profit

The taxable profit is the net profit obtained from all the results of all types of operations realized by the enterprise including capital gains from the sale of various parts of the asset during the operation or at the close of the business, as well as income from financial or investment operations and interest, rental, and royalty income.

Article 8: Determination of Taxable Profit

The taxable profit is made up of the excess gross product realized on the expenditure that is made with the view of acquiring and preserving profit.

Article 9: Income Exempt from Tax

Income exempt from tax shall be as follows:

1. Except for contrary provisions and for income that is taxable under article 22 of this law the tax on profits shall not apply to:
 - a. the income of the Royal Government and institutions of the Royal Government;
 - b. the income of any organization that are:
 - organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes;
 - no part of the assets or earnings of which is used for any private interest;
 - c. the income of any labor organization, or any chamber of commerce, industry, or agriculture, in the case where the income of these organizations is not used for the private benefit of any shareholder or physical person.
 - d. The profit from the sale of agricultural produce that a person who is not a real regime system of taxation taxpayer has produced by himself whether the produce is sold in its raw state or after transformations that are an extension of habitual agricultural work. Operations by industrial means including transformation, preservation, and commercial packaging are not considered part of habitual agricultural work.
2. The Ministry of Economy and Finance shall define by prakas the procedures for the application for tax exemptions, the loss of tax exemptions, for tax declarations, and for registration.

Article 10: Determination of Income of a Pass-Through

The income of a pass-through shall be determined as follows:

1. With regard to a pass-through, each member in determining one's income for a taxable year shall take into account separately one's distributive share of the items of income, gain, loss, deduction, credit, and charitable contributions for such year. For this purpose each item shall retain its character and shall be treated as distributed during the taxable year whether or not actually distributed. The loss to be carried forward will be determined after the items have been distributed.

2. The rules for determining the amount distributed, the treatment of contributions, and the adjustment to each member's base distributive share in the pass-through in any taxable year shall be determined by sub-decree.

Section 3: Deductions

Article 11: Allowable Deductions

Allowable deductions shall be as follows:

1. Except as provided in articles 12 through 18 of this law, expenses that are allowed as a deduction include expenses that the taxpayer has paid or incurred during the tax year to carry on a business.
2. Any rent, interest, compensation, payments, or fees paid to an officer or director of an enterprise, a partner, a member of a pass-through, a member of the taxpayer's family or other related person where there is proof that the payment is for services actually performed and to the extent that such payment is reasonable.
3. Amounts paid on new buildings and other tangible assets, permanent improvements or betterments including any construction or acquisition period interest and taxes. These amounts are to be recorded in the relevant asset account and shall be deductible as depreciation as provided in article 13 of this law.

Article 12: Interest Expense

There shall be allowed as a deduction interest expenses paid or incurred by the taxpayer during the tax year to carry on a business but not in excess of an amount equal to the sum of the taxpayer's interest income and 50 percent of the taxpayer's net noninterest income in the tax year.

The "net noninterest income" is the gross income other than interest income, reduced by the allowable expenses except for interest expense.

Any interest expense remaining from the above mentioned deduction shall be treated as an interest expense for the next tax year and the deduction shall be made according to the content of this same article.

Article 13: Depreciation of Tangible Property

Conditions for the depreciation of tangible property are as follows:

1. The allowance for depreciation shall be calculated using the straight-line method or the declining balance method. Depreciable tangible property is tangible property used in a business which is likely to lose value because of use or obsolescence. Land is not depreciable property.
2. All tangible property shall be divided into four categories.
 - a. Category 1 shall include buildings and their basic components. Each asset in this category shall be depreciated according to the straight-line method at a rate of 5 percent per year.
 - b. Category 2 shall include property having a useful life of up to 4 years and have a straight line depreciation rate of 25 percent on each property.
 - c. Category 3 shall include property having a useful life of greater than four years through eight years and have a straight line depreciation rate of 12.5 percent on each property.
 - d. Category 4 shall include all other tangible property and have a straight line depreciation rate of 10 percent on each property.
3. Those taxpayers electing the declining balance method of depreciation shall use a rate of depreciation equal to 200 percent of the straight line method rate and shall apply it to the aggregate remaining undepreciated value of all assets in each category. The declining balance method shall be allowed only for category 2, 3, and 4 property.
4. Enterprises under the Law on Investment shall use the straight line method for all categories.
5. Procedures for establishing property categories, adding a new asset to a category, disposing of an asset from a category, and the treatment of repairs and various expenses shall be determined by sub-decree.
6. A taxpayer subject to the tax on profit prior to 1 January 1997 must make an irrevocable election to depreciate either by the straight line method or the declining balance method the remaining undepreciated value of property by 31 December 1997. For a new taxpayer the election must be made by the 31st of December of the year of registration.

Article 14: Depreciation of Intangible Property

For intangible property including patents, copyrights, drawings, models, and franchises, having a limited life the depreciation rate on each property shall be calculated on the life of that property according to

the straight line method of depreciation. If the life of the intangible cannot be determined the annual depreciation deduction shall be at the rate of 10 percent of the value of the intangible property.

Article 15: Depletion of Natural Resources

Depletion of natural resources shall be determined as follows:

1. The allowance for the depletion of any natural resource, including any oil and gas, shall be determined as follows.
 - a. All exploration and development costs, including interest attributable to these costs, shall be added to the asset account of the resource.
 - b. The amount of the depletion for each natural resource deductible for the tax year shall be determined by multiplying the balance of the account for the natural resource with the ratio of the quantity produced from the natural resource during the year to the estimated total production from the natural resource.
2. Procedures for the determination of the estimated total production shall be provided by sub-decree.

Article 16: Charitable Contributions

A deduction shall be allowed for charitable contributions to an organization as provided in article 9 of this law. But it shall not exceed 5 percent of taxable profit determined before taking the charitable contribution deduction.

The criteria for charitable contributions shall be determined by sub-decree.

Article 17: Carry Forward of Losses

In case of a loss in any one tax year, this loss is considered as a charge to the following tax year and shall be deducted from the profit realized in that following year. If this profit is not sufficient to definitively settle it, the remaining part of the loss is carried over successively to following tax years until the fifth tax year.

When losses occur in more than one year, this article shall be applied to the losses in the order in which they arose.

Article 18: Allocation of Income and Deductions Among Taxpayers

In the case of two or more enterprises, whether incorporated or organized in or outside of the Kingdom of Cambodia, which are under common ownership, the tax administration may as may be necessary

distribute, gross income, deductions, or other benefits among such enterprises and their owners in order to prevent the avoidance or evasion of taxes or to clearly reflect the income of such enterprises, or their owners.

For purposes of this article, two or more enterprises are under common ownership if a person owns 20 percent or more in the value or the equity interests of each enterprise.

Article 19: Not Allowed as Deductions

For the provisions for the Tax on Profit, expenses that shall not be allowed as a deduction are:

1. Any expense on activities generally considered to be amusement, recreation, or entertainment or the use of any means in connection with such an activity.
2. Personal living or family expenses except for fringe benefits in cash or in kind subject to withholding tax according to the provisions for the Tax on Salary,
3. Any tax imposed by the provisions for the Tax on Profit or withholding tax imposed by the provisions for the Tax on Salary.
4. For the loss on any sale or exchange of property, directly or indirectly, between related persons.
5. For any expense except for expenses already incurred and for which the taxpayer can establish the amount of the expense, and the business purpose of the expense in a manner as determined by sub-decree.

Section 4: Tax Rates and Tax Due

Article 20: Determination of Tax Due

The tax rates on the annual profit are as follows:

1. 20 percent for the profit realized by a legal person.
2. 30 percent for profit realized under an oil or natural gas production sharing contract and the exploitation of natural resources including timber, ore, gold, and precious stones.
3. 9 percent for an investment enterprise after the period of tax exemption.
4. 0 percent for an investment enterprise during the period of tax exemption.
5. According to the progressive tax rate by tranche for the table below for the profit realized by the physical person and the distributive share to each member of a pass-through that is not classified as a legal person.

<u>Parts of the annual taxable profit</u>	<u>Tax rate</u>
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From 0 to 6,000,000 Riels	0%
From 6,000,001 to 15,000,000 Riels	5%
From 15,000,001 to 102,000,000 Riels	10%
From 102,000,001 to 150,000,000 Riels	15%
From greater than 150,000,000	20%

Article 21: Tax on Insurance Companies

The tax on an insurance company shall be determined as follows:

1. For an enterprise having principal activity in the insurance or reinsurance of life, property, or other risks, the tax on profit shall be determined as follows:
 - a. 5 percent of the gross premiums received in the tax year for the insurance or reinsurance of risk in the Kingdom of Cambodia,
 - b. according to the rates in article 20 of this law for other of activities that are not insurance of reinsurance.
2. The rules and procedures for the payment of the tax on profit for an insurance company shall be determined by prakas of the Ministry of Economy and Finance.

Article 22: Tax on Unrelated Business Profit

For an unrelated business the tax on profit shall be determined as follows:

1. The tax on profit shall be fixed at 20 percent of taxable income from unrelated business income of organizations as stated in article 9 of this law.
2. For purposes of the tax on profit, the term “unrelated business taxable income” is the gross income realized from an unrelated business regularly carried on by any organization, reduced by the deductions which are directly related to the carrying on of such business and which are allowed by the provisions of tax on profit.
3. The term “unrelated business” means any commercial or industrial business, or any other business of the organization aiming to obtain profit or funds and which are not substantially related to the purpose or function constituting the basis for tax exemption as stated in article 9 of this law.

Article 23: Advanced Tax on Dividend Distributions

The advanced tax on dividend distributions shall be determined as follows:

1. If an enterprise distributes dividends to its domestic and foreign shareholders during the tax year, it shall withhold and pay as tax an amount equal to the product of the amount of the dividend grossed up by the tax on profit rate and multiplied by the appropriate annual tax rate as stated in article 20 of this law.
2. The above mentioned withheld tax shall become a tax credit against the tax on profit of the dividend distributing enterprise for the tax year in which the withholding takes place. If the tax credit exceeds tax on profit such excess shall be carried forward and shall become a tax credit for the following year. The tax withheld on dividend distributions made by an insurance enterprise taxable under article 21 of this law cannot be used for tax credit.
3. An enterprise (hereinafter called the “first enterprise”) owning 20 percent or more in value of the equity in a second enterprise shall establish a dividend account. Whenever the first enterprise receives a dividend on which the tax has been paid from the second enterprise it shall record the amount of that dividend into its dividend account. When the first enterprise subsequently distributes dividends to its shareholders the amount distributed which are taken out of the dividend account shall not be subject to withholding tax under paragraph 1 of this article.
4. A physical person or enterprise receiving a dividend from an enterprise required to withhold tax under paragraph 1 of this article or a dividend from a dividend account described in paragraph 3 of this article shall not include such dividend in income.

Section 5: Other Taxes

Article 24: Minimum Tax

A minimum tax is imposed on taxpayers subject to the real regime system of taxation. The minimum tax is a separate and distinct tax from the tax on profit. This tax is payable by a taxpayer subject to the real regime system of taxation even if the taxpayer has been granted the status of an investment enterprise. The minimum tax is imposed at the rate of 1 percent of the annual turnover inclusive of all taxes and is payable at the time of the annual liquidation of the tax on profit.

The minimum tax may be reduced by the annual tax on profit that is actually paid according to the rules found in articles 37, 38, and 39 of this law.

Section 6: Withholding Taxes and Prepayment of Tax on Profit

Article 25: General Withholding Tax

The general withholding tax shall be determined as follows:

1. Any resident payor making any payment in cash or in kind to a resident person shall withhold, and pay as tax, an amount according to the below mentioned rates which are applied to the amount paid before withholding the tax:
 - a. The rate of 15 percent on:
 - income received by a physical person from the performance of services including management, consulting, and similar services;
 - royalties for intangibles and interests in minerals, oil or natural gas, and interest paid to a physical person or an enterprise except interest paid to a domestic bank or savings institution.
 - b. The rate of 10 percent on the income from the rental of movable and immovable property.
 - c. The rate of 5 percent on interest paid by a domestic bank or savings institution to a resident physical person having a non-fixed term savings account.
2. The withholding in this article shall not apply to the payment of tax exempt income as stated in article 9 of this law.
3. For purposes of this article and article 26 of this law, the term “resident payor” means:
 - a. any resident enterprise or pass-through;
 - b. any physical person, but only with respect to payments made by such physical person in carrying on a business in the Kingdom of Cambodia.

Article 26: Withholding on Payments to Foreign Persons

A resident payor making any payment of Cambodian source income to a non-resident person shall withhold, and pay as tax, an amount equal to 15 percent of the payment before withholding.

This article shall not apply to dividends as stated in article 23 of this law.

Article 27: Withholding Tax as Final Tax

The tax withheld on distributions under article 23 of this law, on payments to a resident physical person under article 25 of this law, and on payments to a non-resident person under article 26 of this law shall be considered the final tax on the recipients of the payments or distributions described in those articles.

Article 28: Prepayment of the Tax on Profit

An enterprise liable to the tax on profit according to the real regime system of taxation including an investment enterprise liable to the tax on profit at the rate of 9 percent, has the obligation to make a

monthly prepayment of the tax on profit at the rate of 1 percent of turnover inclusive of all types of taxes realized in the previous month. This prepayment will be deducted from the tax on profit at the annual liquidation of the tax.

Section 7: Obligations of Taxpayers

Article 29: General Obligations of Real or Simplified Regime System Taxpayers

Real or simplified regimes system taxpayers have the obligations:

1. All taxpayers liable to the tax on profits who must pay taxes according to the real regime or simplified regime system of taxation shall send every year to the tax administration a declaration of the profit they have realized in the previous tax year. This declaration must absolutely be registered in the period of 3 months after the end of the tax year.
2. Real regime system taxpayers must submit to the tax administration a tax declaration to which is attached:
 - a. Balance sheet
 - b. Results Account
 - c. Tables of complementary information.
3. Simplified regime system taxpayers must submit to the tax administration a tax declaration with attached documents in the form provided by the tax administration.
4. An enterprise with a loss must submit a tax declaration in the same manner and period of time.

Article 30: Obligation of Estimated Regime System Taxpayers

Estimated regime system taxpayers have the obligations:

1. The taxpayer subject to estimated regime system of taxation must submit the tax declaration to the tax administration every year by October 31, in the form provided by the tax administration.
2. The amount of estimated profit is determined by the tax administration after verification and consultation with the businessman or his representative. This estimated profit is calculated according to the profit rate with consideration to the type and activities of the business which shall be determined by Prakas of the Ministry of Economy and Finance.
3. This tax level on estimated profit shall be kept constant for a period of 3 months, 6 months or 1 year.

4. The taxpayer subject to the tax on profit under estimated regime system of taxation shall pay this tax every month at the time fixed by the tax administration.

Article 31: Obligations of Withholding Agents

The person or designated payor who withholds tax under articles 25, and 26 of this law, or withhold tax on dividends under article 23 of this law shall submit a tax declaration and pay the tax withheld to the tax administration in the form as specified by the tax administration by the 15th day of the month following the month in which the withholding is made.

Article 32: Obligations of Persons Required to Make Prepayments of the Tax on Profit

Persons required to make prepayments for the tax on profit shall submit a tax declaration and pay the prepayment of the tax on profit to the tax administration in the form as specified by the tax administration by the 15th day of the month following the month in which the liability arose.

Section 8: Sources of Income

Article 33: Income from Cambodian Sources

Except for contrary provisions in this law, the income as below shall be treated as from sources within the Kingdom of Cambodia:

1. interest paid by a resident enterprise or resident pass-through, or a governmental institution of the Kingdom of Cambodia;
2. dividends distributed by a resident enterprise of the Kingdom of Cambodia;
3. income from services performed in the Kingdom of Cambodia;
4. income from the rental of movable or immovable property for use in the Kingdom of Cambodia;
5. royalties from the use, or right to use intangible property in the Kingdom of Cambodia;
6. gain from the sale of immovable property located in the Kingdom of Cambodia or from the transfer of any interest in immovable property situated in the Kingdom of Cambodia;
7. gain from the sale of movable property, other than inventory, where the seller is a resident of the Kingdom of Cambodia;
8. premiums from the insurance or reinsurance of risks in the Kingdom of Cambodia.

Article 34: Income from Foreign Sources

The definition of foreign source income is obtained by taking the income definition as stated in article 33 of this law and substituting the term “a country other than the Kingdom of Cambodia” for the term “the Kingdom of Cambodia”

Article 35: Determination of Source

Where there is insufficient information to determine the source of income, or where the rules set forth so far cannot clearly reflect the income is from any one source the tax administration is the one to decide on the source of that income.

Section 9: Calculation of Annual Tax Due

Article 36: Foreign Tax Credit

A resident taxpayer who has received income from foreign sources and who has paid taxes according to foreign tax law shall receive a tax credit for deduction from the tax on profit to be paid in the Kingdom of Cambodia under the condition that there is presentation of documents confirming this tax payment abroad.

In order to calculate the tax to be paid in the Kingdom of Cambodia before deduction of this tax credit, the total amount of income received from Cambodian sources and foreign sources shall be taken into account.

The tax credit is determined separately for the tax paid by a Cambodian resident in each foreign country. But, the tax credit to be allowed for deduction in the tax year is the smaller of:

- a. the tax amount actually paid in a foreign country,
- b. the amount obtained by multiplying the total tax on profit from all sources for the same period calculated according to the tax rate in article 20 of this law with the ratio of income received in that foreign country to the total income from all sources.

The foreign tax credit is possible only if the resident taxpayer has complied with the formalities and supplied various documents as specified by the tax administration especially certification from the foreign tax payor and from the foreign tax administration.

In the case where the tax credit exceeds the tax liability, the amount of the excess may be carried forward to be used in succeeding years up to the fifth counting from the year following year in which

the credit arose. In the case of tax credits in more than one year the credits must be taken in the order in which they arose.

Article 37: Determination of the Liability to the Tax on Profit

The calculation of the liability to the tax on profit shall be as follows:

1. calculate the total tax liability according to article 20 of this law,
2. minus any article 36 foreign tax credit but not in excess of the tax liability in paragraph 1 of this article,
3. minus any tax paid by the taxpayer on dividend distributions under article 23 of this law but not in excess of any tax liability after the reduction for the foreign tax credit as in paragraph 2 of this article.

Article 38: Determination of Tax Due or Tax Credit for the Tax Year

The determination of tax due or tax credit for the tax year shall be as follows:

1. If the result from the calculation in article 37 of this law is greater than the sum of any withholding tax made on the behalf of the taxpayer under article 25 of this law, and the prepayments for the tax on profit made by the taxpayer for the tax year under article 28 of this law, the taxpayer shall pay the difference to the tax administration.
2. If the result from the calculation in article 37 of this law is less than the sum of any withholding tax made on the behalf of the taxpayer under article 25 of this law, and the prepayments for the tax on profit made by the taxpayer for the tax year under article 28 of this law, the taxpayer may, after properly accounting for any minimum tax liability, apply for a refund of the difference, or carry the difference forward to be used as a prepayment in the following year.
3. Before making any tax payment under paragraph 1, or claiming any refund under paragraph 2, the taxpayer must first determine any liability for the minimum tax according to the procedures as stated in article 39 of this law.

Article 39: Determination of the Minimum Tax, and the Tax Due or the Tax Credit for the Tax Year

The determination of the minimum tax, the tax due or the tax credit for the tax year shall be as follows:

1. The taxpayer must pay the minimum tax at the time of the liquidation of the tax on profit. The minimum tax due may be reduced by any liability for the tax on profit under article 20 of this law for the same tax year.

2. If the liability for the tax on profit exceeds the liability for the minimum tax:
 - a. the taxpayer shall pay any tax due under article 37 of this law at the time of submission of the tax declaration;
 - b. if the withholding in articles 25 and 28 of this law exceeds the minimum tax liability the taxpayer may claim a tax credit;
 - c. in the case as stated in paragraph 2 of this article, the taxpayer is not liable for minimum tax.
3. If the liability for the tax on profit is less than the liability for the minimum tax:
 - a. the taxpayer's tax credit under paragraph 2 of article 38 of this law will be reduced by the difference;
 - b. the amount by which the tax credit is reduced in complying with the sub-paragraph a of this paragraph, shall be considered as payment of the minimum tax for the tax year.

Chapter 2: Provisions for The Tax on Salary

Section 1: General Provisions

Article 40: Charge to Tax

The provisions for the tax on salary as stated in the Finance Act of 1995 promulgated by the Royal Kram No. 11NS94 dated 31 December 1994 shall be amended as follows for the benefit of the State Budget.

Article 41: Object of Tax

The tax on salary is a monthly tax imposed on salary that has been received within the framework of fulfilling employment activities

A physical person resident in the Kingdom of Cambodia is liable to the tax on salary for Cambodian source salary and foreign source salary.

A non-resident physical person is liable to the tax on salary for Cambodian source salary.

Article 42: Definitions

For the purposes of the provisions for the tax on salary:

1. The term "resident" when used for an employee, taxpayer, or physical person means domiciled in, or having a principal place of abode in, the Kingdom of Cambodia, or present in the Kingdom of Cambodia on more than 182 days in the calendar year.
2. The term "non-resident" means not resident.

3. Except for contrary provisions, any reference to the terms employee, taxpayer, and physical person are references to both residents and non-residents as defined in this article.
4. The term “employer” includes any government institution, any resident legal person, any resident pass-through, any permanent establishment in the Kingdom of Cambodia, any non-profit organization, or any resident physical person carrying on a business.
5. The term “employee” means any physical person receiving salary from their employment activity including any governmental officer, any elected official and the officer or director of an enterprise.
6. The term “Cambodian source salary” means salary received within the framework of fulfilling employment activities in the Kingdom of Cambodia. As for the salary received by a non-resident for furnishing technical assistance it shall be treated as from sources in the country where the payor of such income resides.
7. The term “foreign” means:
 - a. when used with respect to an physical person means non- resident;
 - b. for the determination of the source of income, means outside of the Kingdom of Cambodia.
8. The term “salary” means remunerations, wages, bonuses, and overtime, compensations and fringe benefits which are paid to an employee, or which are paid for the direct or indirect advantage of the employee for the fulfillment of employment activities.

Section 2: Tax Exempt Salary

Article 43: Salary of Diplomatic and Other Foreign Officials

The tax exemption for the salary of diplomatic and foreign officials shall be as follows:

1. Shall be exempted from the Tax on Salary:
 - a. Salaries that officers and employees of a diplomatic or consular mission of a foreign government holding a diplomatic or official passport of that government have received within the framework of fulfilling their official function in the Kingdom of Cambodia.
 - b. Salaries that foreign representatives, officials and employees of international organizations and of agencies of technical cooperation of other governments have received within the framework of fulfilling their official function in the Kingdom of Cambodia.
2. Any tax exemption in this article shall be based on the principle of reciprocity between the governments concerned.

Article 44: Tax Exempt Income of Employees

Shall be tax exempted:

1. Real refunds on professional expenses made by the employee under the assignment and for the benefit of the employer and which satisfy the 3 following conditions:
 - a. made for the direct and exclusive interest of the enterprise;
 - b. not exaggerated nor extravagant;
 - c. supported by detailed invoices already paid and made in the name of the recipient of the real expense refund.
2. Indemnity for the layoff within the limit as provided in Labor Law.
3. Additional remuneration with social characteristics where there is provision in Labor Law.
4. Supply gratis or below acquisition cost of special uniforms or professional equipment.
5. Flat allowance for mission and travel expenses. This allowance should not overlap the real expense refund provided in this article.

Section 3: Monthly Tax Base, Monthly Taxable Salary and the Determination of the Monthly Tax

Article 45: Monthly Tax Base

Except for fringe benefits taxable under article 48 of this law the monthly tax base for a resident is the taxable salary from which is deducted:

1. withholding obligations as the result of the compliance with the Labor Law in order to create pensions and for the maintenance of social welfare;
2. payments which are allowed to be tax exempt in Article 44 of this law.

Article 46: Monthly Taxable Salary

The monthly taxable salary shall be determined as follows:

1. Monthly taxable salary for a resident employee includes:
 - a. salary received from Cambodian sources;
 - b. salary received from foreign sources;
 - c. advance money, loan or installment made by the employer to the employee which shall be added to the taxable salary of the month in which they are paid out and shall be deducted from salary in the month of any repayment made by the employee.

2. Based on the evidence of family situation, any resident employee with:
 - a. minor dependent children at the time of tax payment is allowed a reduction in the tax base of seventy-five thousand Riels per each child per month,
 - b. spouse having only an occupation as housewife is allowed a reduction in the tax base of seventy-five thousand Riels for one person only per month.
3. For a non-resident taxpayer taxable salary includes salary from Cambodian sources taxable according to the provisions of this chapter.

Article 47: Determination of the Monthly Tax of an Employee

For a resident employee the tax to be paid must be determined on the monthly taxable salary and must be withheld by the employer according to the progressive rates by tranche as follows:

<u>Taxable Parts of the Monthly Salary</u>	<u>Tax Rate</u>
From 0 to 500,000 Riels	0%
From 500,001 to 1,250,000 Riels	5%
From 1,250,001 to 8,500,000 Riels	10%
From 8,500,001 to 12,500,000 Riels	15%
Over 12,500,000	20%

Article 48: The Determination of the Tax on Fringe Benefits

For fringe benefits, every month, the employer shall withhold and pay tax by the time specified at the rate of 20 percent of the total value of fringe benefits given to all employees. The value of fringe benefits is the fair market value inclusive of all taxes.

Article 49: Determination of the Tax on Salary for a Non-Resident

Taxpayer

Except for fringe benefits to be taxed under article 48 of this law, for a non-resident taxpayer the tax shall be withheld by the payor at the rate of 15 percent on every payment of taxable salary as provided in paragraph 3 of article 46 of this law. This withholding tax is the final tax on salary for the non-resident receiving the salary.

Article 50: Foreign Tax Credit

A resident taxpayer who has received foreign source salary and who has paid taxes according to foreign tax law shall receive a tax credit which for deduction from the tax on salary to be paid in the Kingdom of

Cambodia under the conditions that there is presentation of documents confirming this payment abroad.

a. In order to calculate the tax to be paid in the Kingdom of Cambodia before deduction of this tax credit, the total amount of salaries received from Cambodian sources and foreign sources shall be taken into account.

b. The tax credit is determined separately for the tax paid by a Cambodian resident in each foreign country. But, the tax credit to be allowed for the tax on salary paid abroad is the smaller of:

- the tax amount actually paid in a foreign country, or
- the amount obtained by multiplying the tax on total salaries from all sources for the same period calculated according to the table of progressive tax rates by tranche in article 47 of this law with the ratio of salary received in that foreign country to the total salaries from all sources.

The refund of the foreign tax credit is possible only if the resident taxpayer has complied with the formalities and supplied various documents as specified by the tax administration especially the certification from the employer and from the tax administration of the place of employment abroad.

Section 4: Obligations of Employers and Employees

Article 51: Cause of Tax Liability

The salary payment is the cause of the tax liability.

Article 52: Tax Debt and the Obligation to Withhold

The tax debt and the obligation to withhold shall be as follows:

1. This tax is the debt of the physical person receiving the salary, including foreign physical persons, except for contrary provisions as stated in international agreement.
2. The tax on salary shall be collected through monthly withholding procedure by the employer at the time of each salary payment.
3. If the employer resides abroad, the fiscal representative appointed in the Kingdom of Cambodia by the employer is the one in charge of withholding the tax on salary prior to the salary payment to employees and of transferring their taxes to the State.
4. The employer or the resident representative in the Kingdom of Cambodia of a foreign employer and the employee shall be jointly responsible for the payment of the tax on salary in the Kingdom of Cambodia regardless of whether the salary is paid in the Kingdom of Cambodia or abroad. In the case

where no withholding is made on the tax on salary, the employer is held responsible under this law even if the tax is already paid by the employee.

Article 53: Payment of Tax Withheld

The withholding tax related to the salary payment made in any one month shall be paid by the 15th of the following month to the tax administration in the area of the domicile or principal establishment of the person in charge of withholding the tax.

Article 54: Tax Withholding, Record Keeping and Reporting

Requirements

All employers who make taxable salary payments shall be in charge of:

1. withholding tax prior to the salary payment;
2. reporting to the tax administration and the employee of the status of the tax withheld;
3. keeping and maintaining books and records which shall be determined by prakas of the Ministry of Economy and Finance.

Chapter 3: Provisions for the Tax on Value Added

Section 1: General Provisions

Article 55: Charge to Tax

From 1 January 1998 onward, shall be established a Tax on Value Added on taxable supplies for the benefit of the State budget.

Article 56: Definitions

For the purpose of the provisions of the tax on value added:

1. The term “good” means tangible property other than land or money.
2. The term “service” means the provisions of something of value other than goods, land, or money.
3. The term “supply of a good” means the transfer of the right to use or dispose of a good as the owner whether or not for consideration. The supply of a service incidental to the supply of a good shall be considered a supply of a good.
4. The term “supply of a service” means a supply that is not a supply of a good or land or money which is made for consideration. The supply of a good incidental to the supply of a service shall be considered a supply of a service.

5. The term “person” means any person or group of persons engaged in business and any other person who is related to the person.
6. The term “related” in relation to a person means:
 - a. a person who owns 20 percent or more in value or voting power in equity interests in the person under consideration;
 - b. having common management or directors with the person;
 - c. a member of the family or spouse or a member of the family of the spouse of the person;
 - d. purchasing 30 percent or more of the person’s total output in any three consecutive month period.
7. The term “tax” in this chapter means the tax on value added.

Article 57: Non Taxable Supplies

Non taxable supplies are as follows:

1. Public postal service.
2. Hospital, clinic, medical, and dental services and the sale of medical and dental goods incidental to the performance of such services.
3. The service of transportation of passengers by a wholly state owned public transportation system.
4. Insurance services.
5. Primary financial services which shall be determined by prakas of the Ministry of Economy and Finance.
6. The importation of articles for personal use that are exempt from customs duties and that are within the value level which shall be determined by prakas of the Ministry of Economy and Finance.
7. Non profit activities in the public interest that have been recognized by the Minister of Economy and Finance.

Article 58: Non Taxable Supplies for Diplomatic Missions and

International Organizations

Non taxable supplies for diplomatic missions and international organizations shall be as follows:

1. The imports of goods for or by foreign diplomatic and consular missions, international organizations and agencies of technical cooperation of other governments for use in the exercise of

their official function shall be treated as non taxable supplies. Non taxable supplies shall only be allowed on the certification by the chief of mission to the Tax Department that the goods are being imported for purpose of the use as above.

2. The import of goods for the personal use of the official personnel of missions and organizations as stated in paragraph 1 of this article shall be treated as non taxable supplies only for those items that are on an enumerated list which shall be determined by prakas of the Ministry of Economy and Finance.

3. The non taxable supplies in this article shall be based on the principle of reciprocity between governments concerned.

Section 2: General Principles for the Tax on Value Added

Article 59: Taxable Person

The taxable person refers to any person subject to the real regime system of taxation who makes a taxable supply as stated in article 60 of this law.

A person subject to the simplified regime system of taxation may apply to be classified as a taxable person. The conditions and procedures for this application shall be determined by prakas of the Ministry of Economy and Finance.

For the purpose of this chapter, an employee shall not be treated as a taxable person with respect to activities engaged in as an employee.

Article 60: Taxable Supply

Except for contrary provisions in this chapter, the term “taxable supply” means:

1. the supply of goods or services by a taxable person in the Kingdom of Cambodia;
2. the appropriation of goods for his own use by the taxable person;
3. the making of a gift or supply at below cost of goods or services by the taxable person;
4. the import of goods into the customs territory of the Kingdom of Cambodia.

The rules and procedures for the application of this article shall be provided in sub-decree.

Article 61: Taxable Value

The taxable value shall be determined as follows:

1. The taxable value for any supply shall be the price of the goods or services the seller charged the purchaser. The taxable value includes any charges for transportation and other items payable to the seller with respect to the supply, including any specific tax on certain merchandise and services but

excluding the tax on value added. Procedures for the adjustment of the taxable value at the time of supply and after the time of supply shall be determined by sub-decree.

2. When the payment for a taxable supply involves any consideration other than money for the direct or indirect benefit of the seller, this consideration shall be included in the taxable value at its fair market value.

3. The taxable value for any imported good shall be the customs value including insurance and freight plus any customs duties and any specific tax on certain merchandise and services. If there is no such adjusted customs value, the fair market value shall be used.

4. If the taxable value of the goods or services supplied does not represent the true value, the tax administration may determine a value for such goods or services and such value shall be presumed to be the correct value until proven otherwise to the satisfaction of the tax administration.

5. The taxable value of used goods that the taxable person regularly purchases from consumers for resale or sells on behalf of other persons shall be the differential between the selling price and the purchase price, or the commission from the sale of those goods.

Article 62: Time of Supply

The time of supply shall be determined as follows:

1. The tax on value added becomes due and payable at the time of supply.

2. The time of supply of goods and services shall be the time by which the seller must issue the invoice or the time the seller issues the invoice if that invoice is issued before the time it must be issued by the seller.

3. A value added tax invoice must be issued within seven days after the goods are shipped or services rendered or after payment if payment occurs before the goods are shipped or services rendered. If a shipment is not accompanied by an invoice, there shall be attached a shipping document which has been properly recorded in the shipping journal.

4. For the supply of goods or services which are made continuously or which involve multiple payments, the time of supply shall be determined by prakas of the Ministry of Economy and Finance.

5. In the case of the import of goods, the time of supply shall be the time the importer files a declaration to the customs administration according to the regulations in force.

Article 63: Location of Supply

The location of supply shall be determined as follows:

1. The supply of a good takes place in the Kingdom of Cambodia if the good is delivered in the Kingdom of Cambodia, whether that delivery takes on the characteristic of a transfer of the right to use or to dispose. In the case where the supply must include transportation, the supply takes place in the Kingdom of Cambodia if the good is in the Kingdom of Cambodia when the transportation starts.
2. The supply of a service takes place in the Kingdom of Cambodia if the service is performed in the Kingdom of Cambodia, except that:
 - a. the supply of a service in connection with immovable property is deemed to take place where the property is located;
 - b. the supply of a service in connection with transport is deemed to take place where the transport occurs.
3. Goods are imported into the Kingdom of Cambodia if they are brought within the customs territory of the Kingdom of Cambodia.

Section 3: Tax Rate and the Calculation of Tax

Article 64: Tax Rate

The tax rate shall be as follows:

1. The tax on value added shall be imposed at the tax rate of 10 percent on the taxable value of each taxable supply in the Kingdom of Cambodia.
2. The tax on value added shall be imposed at the tax rate of 0 percent on the taxable value of each taxable supply of goods exported from the Kingdom of Cambodia and of the taxable supply of a service rendered outside of the Kingdom of Cambodia as stated in article 63 of this law.
3. The tax administration may use a number of documents to certify that export has in fact occurred including export certification from the Customs Department, import documents from the country of import, executed letters of credit, and payments received by a domestic bank.

Article 65: Input Tax Credit and Non Taxable Supplies

The input tax credit and the non taxable supplies shall be determined as follows:

1. The tax paid by a taxable person on goods and services for use in the business which are supplied by another taxable person or the tax paid by the taxable person as an importer on imported goods or

services for use in his own business shall become an input tax credit deductible against the output tax. Input means any goods or services purchased and output means any goods or services sold.

2. In the case where goods and services purchased are used partly for taxable supplies and partly for non taxable supplies, the tax credit shall be allowed only for that portion used for taxable supplies.

Article 66: Determination of Tax

The tax amount shall be determined as follows:

1. The tax charged under article 64 of this law shall become a debt to the State at the time of supply.
2. The tax to be paid to the State is equal to the total output tax according to the rates in article 64 of this law minus the total input tax credit allowed for the same month.

Article 67: Capital Assets that Cease to be Used in the Business

If a capital asset for which a tax credit has been received under article 65 of this law ceases to be used in the business of the taxable person, such asset shall be treated as sold and taxable for its then fair market value at the time of cessation of use.

Article 68: Necessary Documentation to Claim an Input Tax Credit

The request for an input tax credit shall be attached with:

1. a value added tax invoice, drawn up in accordance with article 78 of this law,
2. a customs Bill of Entry for Import, certified by customs authorities, which must state the name of the taxable person as consignee or importer and the amount of tax paid at the time of import.

Article 69: Input Tax Not Allowed as a Tax Credit

The input tax that shall not be allowed as a tax credit includes the tax paid by a taxable person on entertainment, amusement, or recreation expenses; the purchase of automobiles; or the purchase of certain petroleum products.

Section 4: Payment of Tax

Article 70: The Monthly Filing of the Value Added Tax Declaration

The value added tax declaration for any month shall be submitted to the tax administration on or before the 20th day of the following month and the tax shall be paid according to the amount declared at the time the declaration is filed.

Article 71: Treatment of Excess Credits

If the input tax paid by the taxable person under article 64 of this law exceeds the output tax collected by that person for any month:

- a. the excess shall be used as a tax credit against any outstanding liability of such person for the tax on value added for prior months,
- b. the remainder of the excess shall be treated as an input tax credit under article 65 of this law for the succeeding month.

Article 72: Refunds for Exporters

The tax administration may refund the monthly excess input tax credits according to the request of the taxable person who has as a primary activity export if that person has shown proper certification of exports and has complied correctly with his obligations in book and other record keeping.

Article 73: Refunds Where Excess Credits Continue for Three Months or More

If the taxable person has excess input tax credits for three months or more that person may apply for a refund of the tax at the end of the third month or in any month thereafter. To be effective for any month, the request must be filed in a period of 20 days after the close of such month.

Article 74: Refunds to Diplomatic Missions and International Organizations

Foreign diplomatic and consular missions, international organizations and agencies of technical cooperation of other governments may apply for a refund of the tax on those goods purchased locally that are listed on an enumerated list which shall be determined by prakas of the Ministry of Economy and Finance. The refund shall be granted only on the certification by the chief of mission to the tax administration that the goods are being bought for use in the exercise of the official function of the relevant unit.

Article 75: Liability for the Collection and Payment of Tax

The liability for the collection and payment of tax is as follows:

1. A taxable person or importer has the obligation to pay the tax imposed by article 64 of this law with respect to every taxable supply in which the taxable person or importer engages.
2. Special conditions for the liability of the purchaser for the tax where the supplier is not engaged in business in the Kingdom of Cambodia or where there are other obstacles to the collection of the tax from the supplier shall be provided by sub-decree.
3. Any person making a supply of goods and services on behalf of the owner, other than as an employee, and having control of the supply shall be treated as a taxable person with respect to that supply.

Section 5: Administrative Provisions

Article 76: Registration

The principles of registration shall be as follows:

1. A taxable person as stated in article 59 of this law must complete registration for the tax on value added within a period of 30 days of the day on which the person becomes a taxable person. The rules and procedures for registration shall be determined by sub-decree.
2. Where a person required to register fails to register the tax administration may register that person from the time that the person should have been registered. The person so registered shall be liable for all tax in article 64 of this law from the date person should have been registered.
3. Where a taxable person registered under this article expects not to be classified as a taxable person for the current and succeeding year, such person may apply for de-registration.
4. For a group of two or more related persons where one or more of those persons is not a taxable person the tax administration may treat a taxable person as registered in respect to all or part of the related economic activities. Where none of the related persons is a taxable person the tax administration may register one or more of those persons of the group in respect to all or part of the related economic activities.
5. For registration purposes and with the approval of the tax administration, for a group of taxable persons who are related as defined in article 56 of this law, the activities of various members of the group may be treated as the activities of one designated member. In any such case, each member of the group must undertake to be jointly and severally liable for compliance with the provisions of this chapter.

Article 77: Value Added Tax Invoice

The principles for the value added tax invoice shall be as follows:

1. Any taxable person who makes a supply shall provide the purchaser a serially numbered Value Added Tax Invoice.
2. The invoice required by paragraph 1 of this article with respect to any supply shall have the title of "Value Added Tax Invoice" and shall contain the following:
 - a. the name and registration number of the seller,
 - b. the date of issue of the invoice,
 - c. the name of the purchaser or purchaser's employee or agent,
 - d. the quantity, description and selling price of the goods or services,
 - e. the total value excluding the specific tax on certain merchandise and services and the tax on value added,
 - f. the total taxable value if different from the amount in subparagraph e of this paragraph,
 - g. the amount of the tax payable,
 - h. the date of supply of the goods or services if different from the date of issue of the invoice.
3. A person cannot issue any invoice or other document indicating an amount which claims to be tax on the supply of any goods or services unless such person is a taxable person registered according to article 77 of this law, and the goods or services supplied are taxable goods or services.
4. Without prejudice to any other penalties, where any invoice falsely claims to be a Value Added Tax Invoice and shows that an amount of tax is payable, the person issuing such invoice shall pay to the tax administration within seven days of the date of issue of the invoice any amount shown on the invoice whether or not such tax amount would otherwise be properly payable.
5. In the case of sales at retail where most sales are not to a taxable person the invoice as required in paragraph 1 of this article shall be considered satisfied if the seller has provided a detailed cash register receipt or other documentation which shall be determined by sub-decree.
6. In the case of an import, the customs Bill of Entry properly filled and containing certification of the payment of the tax shall be used as the control document for establishing eligibility for a tax credit.

Article 78: Failure to Issue Value Added Tax Invoice

The failure to issue value added tax invoices shall be subject to penalties as follows:

1. Without prejudice to any other penalties, if the tax administration can find for a second time that an establishment of the a taxable person has failed to issue the required invoice, the tax administration may lock and seal the establishment for a specified period not to exceed 7 days.
2. If any establishment which has been closed under paragraph 1 of this article, has committed again such an offense, such establishment may again be closed for a specified period not to exceed 7 days.