



Tax Master Class – Tax Disputes

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Cambodia* (1995)

Partners: 5

Advisers: 42

Lao PDR (1994)

Partners: 2

Senior counsel: 1

Advisers: 10

Indonesia[‡] (2011)

Mataram Partners

Partner: 1

Advisers: 10

Myanmar (1995)

Partners: 2

Senior Counsel: 1

Advisers: 20



Philippines[‡] (2015)

Ocampo & Suralvo Law Office

Partners: 3

Singapore (2010)

Partners: 2

Advisers: 3

Thailand (2005)

Partners: 4

Advisers: 28

Vietnam (2006)

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Advisers: 17

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Tax Disputes – Final Points

What is a non-taxable supply?

- No Output
- Cannot claim input credit
- Different to zero-rated VAT
- List of activities in the LOT and VAT S/D include:
 - Insurance
 - PFS
 - Public Postal Service.....

In place since 1999 – industry practice.....

Prakas – 559 (May 2017) – defines PFS

“financial services which derive profit on a margin/difference basis including:

- *Money deposit operations, the provision of credit or loans, excluding service fees related to the provision of credit or loan;*
- *Initial Public Offering (IPO), securities trading or other financial instruments, and clearance and settlement services;*
- *Money exchange services;*
- *Surety and pawn brokerage services; and*
- *Trade on gold which has not been processed as jewelry.*

- New definition appears to impose VAT on documentation/admin fees.
- Private sector reaction.
- GDT reaction.
- Next steps.

Introduced in the 2017 Law on Financial Management

- Educational Services
- The supply of electricity
for domestic consumption or business consumption – does not include cable installation or other related measurement tools.
- and clean water;
for purpose of domestic consumption or business consumption – excludes sale of drinking water

- Unprocessed agricultural products; and refers to bulbs, flowers, leaves, roots, and misc. plant elements from local cultivated land, whether sliced or grounded or not, which has not been processed to create a final product.
- Services relating to the removal and/or removal of waste material either solid or liquid.
solid and liquid material or substances which can no longer be used, or that have been abandoned.

Prakas 518

LOT Definition:

- *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 capital or corporation/equity distributions in the period of liquidation of the company.*

Prakas 518

A conversion in part or whole of retained earnings into capital or equity will not be considered as a dividend distribution and will not be subject to WHT.

- The conversion needs to be properly documented and approved by the regulatory bodies in Cambodia
- Should a company transfer shares or distribute equity or capital back to its *non-resident shareholders* (either via a capital reduction or liquidation) where such capital originates from a conversion of retained earnings to capital, then the 14% WHT will apply at that time.

- Used to be excluded as a dividend under the old definition in the LOT
- Removed under the 2017 Law on Financial Management
- Law on Commercial Enterprises (“LCE”) which states: *“A company may pay a dividend by issuing shares of the company.....”*
- Stock dividends are normally issued from capital account of a company – in practice normally from retained earnings.
- In theory a conversion of retained earnings to capital and the issuance of a stock dividend quite similar.
- Substance and form

- The tax rate and determination of registration tax shall be as follows:

4% of the immovable property price for the transfer of ownership or title deed of immovable properties, which are construction and/or land or placement of shares in the form of immovable property within a company

The 4% registration tax now applies to the transfer of soft title land as well as hard title land.

- 4% Registration tax applies on the transfer of soft title land
Notification 367 – 2nd May 2017
- If soft title land is transferred after 1 January 2017
- for all transfers of soft title prior to 1 January 2017 where registration tax was not paid – registration tax is only payable 1 time
- for all transfers of soft title after 1 January 2017 registration tax applies on each transaction

Example 1:

Mr. X owns land in Kandal province with soft title. Mr. X sells the soft title to Ms. Z in July 2017.

Previously the land had been sold three times before 1 January 2017 and once in February 2017 – no registration tax had been paid on those sales.

Registration tax will need to be paid three times on the transfer:

- One time on the transfers of land before 1 January 2017
- One time for the transfer of land in February 2017
- One time for the transfer of land in July 2017

- How is this being implemented at the commune level.
- Who pays the historical registration tax – buyer or seller?
- What value is used on the historical transactions
- Notification vs Prakas

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Tax Disputes – Key Points

Principle of self-assessment

Taxpayers are responsible for identifying, calculating and remitting their tax obligations to the tax administration, and the tax administration has the authority to re-assess non-compliance.

- Within three years after the date the tax declaration was submitted
- Within 10 years after the date the tax declaration was required to be submitted if there is evidence of the obstruction of the implementation of tax provisions
- At any time with the written consent of the taxpayer

- Failure to
 - maintain proper records; or
 - allow the tax administration access; or
 - register with the tax administration; or
 - notify the tax administration of any change as required by law;
or
- Conceals or deliberately destroys accounting papers, records, documents, reports or other information; or
- Attempts to obstruct the assessment or the collection of taxes; or
Fails to submit a nil tax declaration within 30 days of the date required by law

In Cambodia, there are three main kinds of tax audits:

1. **Desk**
2. **Limited**
3. **Comprehensive**

Points of note:

- **Combined Audit**
 - VAT audit
 - Requesting a tax audit

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Tax Disputes – Key Points

LOT, Article 100

Generally, the tax administration issues a letter of notification prior to commencing an investigation of a taxpayer. This is one of the obligations of the tax administration.

For each inquiry for which a letter of notification is issued, the tax administration has the right to enter the business establishment, the place that is considered to be the business establishment, a place that is open to the public, or other places for the purpose of assessing the tax of any person that must be paid or for the purpose of collecting taxes.

- Although not required by law it is common practice for the tax officer to issue a draft tax re-assessment prior to issuing the final notice of tax re-assessment
- Provides an opportunity for the taxpayer to try and remove issues that have been raised by providing additional documentation or other evidence.
- *The tax auditors now have little time or patience for delays and may proceed to the final notice of tax re-assessment if the taxpayer fails to provide additional supporting evidence in a timely fashion.*

If the tax auditor determines that the taxpayer has underpaid taxes, the level of violation is determined by the percentage of underpayment.

A taxpayer is deemed negligent if:

- The amount of underpayment of tax is less than 10%
- The taxpayer files the tax declaration after the due date
- The taxpayer pays the tax after the due date

A taxpayer is deemed to be seriously negligent if the amount of underpayment of tax is more than 10%.

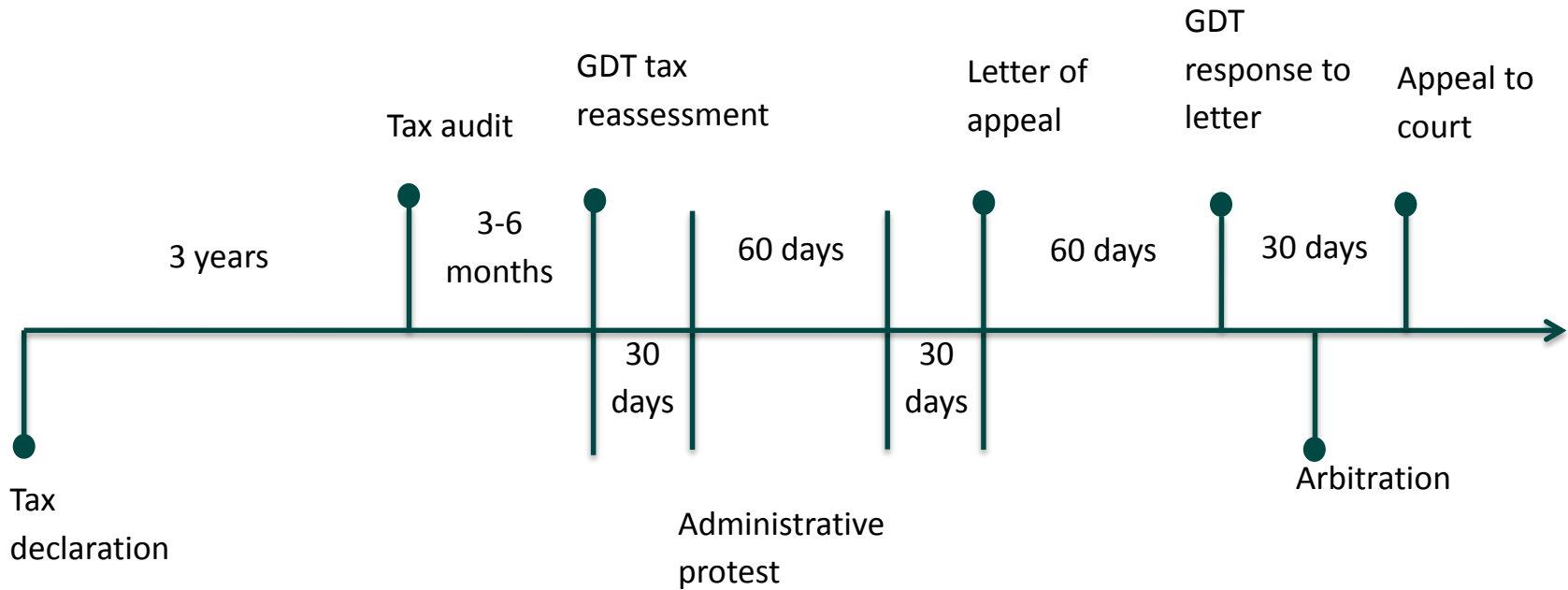
The penalty on the underpayment of tax varies with the level of violation:

- 10% for negligence
- 25% for serious negligence
- 40% if it is a unilateral tax assessment

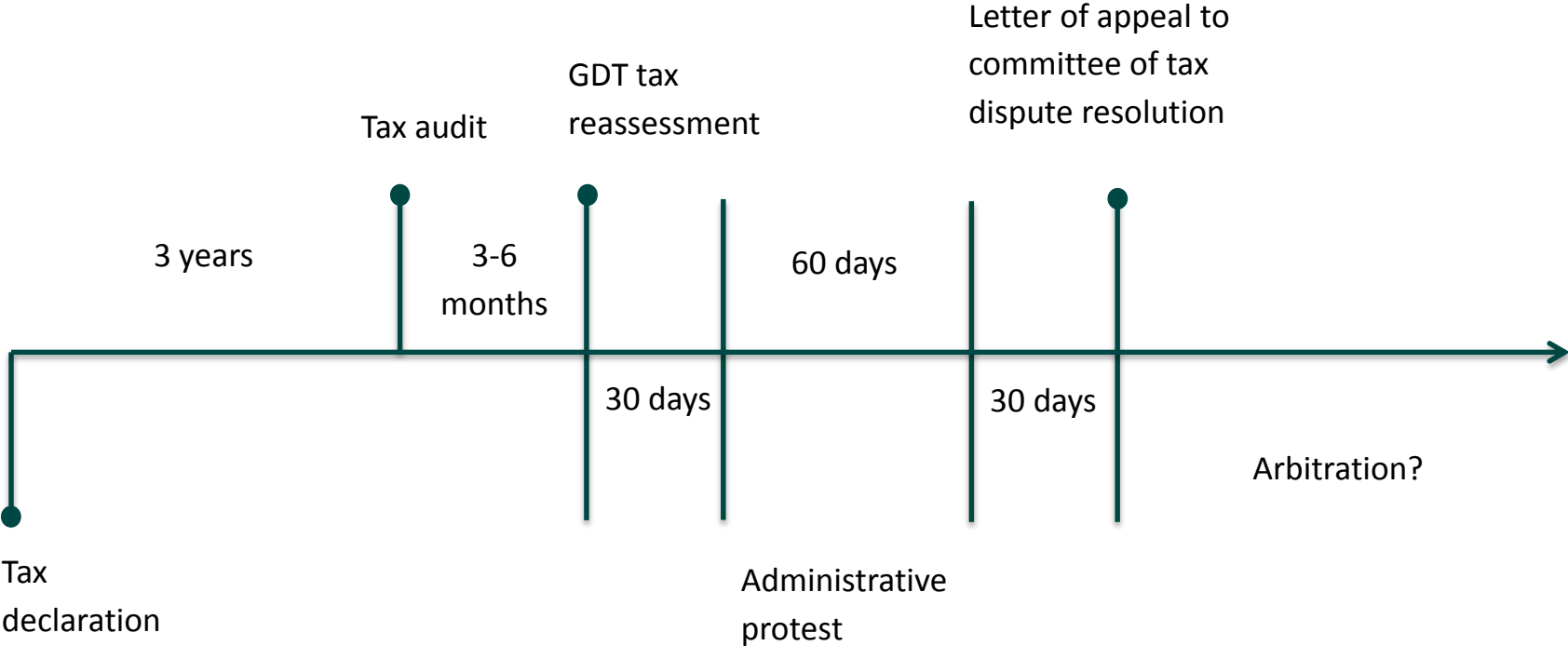
In addition to the penalty on the underpayment of tax, interest is charged at 2% per month of the underpaid amount.

- *Restates the key points of the tax audit process*
- *More adherence to the procedural requirements in particular:*
 - *timeframes*
 - *form and accuracy of submissions*
 - *supporting documentation*
 - *collection of tax debt*
 - *tax disputes committee*

The Tax Audit Process - Old



The Process - New



When the reassessment is initiated by the tax administration, it will be conducted according to the following procedure:

- Following the completion of a site visit and review of documentation the relevant tax unit will issue the taxpayer with a Notice of Formal Tax Re-Assessment (NoTR).
- The taxpayer has 30 working days from the date of receipt of the NoTR to submit a formal protest letter if they wish to contest any of the issues raised in the NoTR.
- If the taxpayer **fails to respond within 30 working days, the taxpayer will be considered to have accepted the tax reassessment.**

In case appellants lodge protest exceeding the defined period as specified in Paragraph 1 of this article, the Director-General of the General Department of Taxation can issue decision rejecting such protest by providing clear reasons.

Attached to the Protest letter should be:

- Notification on tax assessment, tax reassessment, tax debt collection or other decision concerning tax measures which is the subject of the protest;
- Documents confirming tax payment including **bank credit advice** and receipt or certificate of tax payment in case tax has already been paid
- *Other evidence relating to facts or grounds of the protest lodged by appellant including but not limited to **journal, invoice, contract, supporting documents or documents.***

- The protest shall be signed directly by appellants or his/her authorized representative (copy of POA or *tax agent license*);

Protest letter shall be lodged in writing with the following information:

- Date of lodging protest
- Identification of taxpayers including VAT TIN and/or PIN if any
- Address, phone number and/or electronic mail of the appellant or his/her authorized representative
- With reference to notification on tax assessment, tax reassessment, tax collection or other decision relating to tax measures which is the subject of protest

- Facts or actions taken by the General Department of Taxation or Tax Assessment Unit which is the subject of protest
- Grounds and legal basis of protest that the appellant uses as cause to lodge protest against other tax-related measures approved by the General Department of Taxation or Tax Assessment Unit
- Necessary information relating to the protest.

In the case where the terms and conditions for lodging a protest provided for are not fully met by the person lodging the protest (the appellant), the Director General of the General Department of Taxation may issue a decision to reject the complaint by providing a clear reason

Protest Letter - Template



Company's Name:

Identity: (VAT IN/PIN/.....)

Office Address:

Telephone number:

Electronic Mail:

Date:.....

To

His Excellency (title), Director General of the General Department of Taxation

Subject:

References:

- (Decision or measure and date, which are subject matters of the complaint)
- (relevant legal instruments, if any)
- (documents or evidence).

As per the above subject and references, I would like to inform your Excellency (title), Director General of the General Department of Taxation that: based on (the decision or measure, with the date confirmation to which the appellant opposes), I would hereby present my understanding as follows:

- Facts/Basis and reasons/ Conclusion
- Therefore, may it please His Excellency the Director General to kindly and favorably examine and resolve my complaint.

Please, Excellency (title), the Director General of the General Department of Taxation, be assured of my regards.

Authorized Representative of the Company

[Signature]

(Company's seal)

The initial protest letter should be issued to the tax unit who conducted the audit.

The procedure for settling the protest letter shall be in stages as follows:

- Register and handle/manage the complaint;
- Examine the explanatory report prepared by the tax assessment unit and the tax collection unit

This explanatory report shall be submitted to the Department of Legislation, Dispute and Statistics within seven (7) working days the latest after obtaining the letter of notification on the request for the explanatory report from the Department of Legislation, Dispute and Statistics.

- Examine the grounds for the complaint

Officials at the Office of Dispute of the Department of Legislation, Dispute and Statistics, who is responsible for investigating the grounds for the complaint, shall proceed with the investigation into the root cause as follows:

- Search for information relating to the grounds for the complaint,
- Invite auditor(s) or the officer in charge of collecting tax or the officer in charge of tax assessment and/or the appellant to come over for the clarification or require (them) to provide further proof of evidence;
- If deemed necessary, field monitoring shall be conducted or the right to demand information from/for a third party

- Decision on the Protest

The Director General of the General Department of Taxation shall make its decision to resolve the protest letter within sixty (60) working days starting from the date on which the protest letter is received.

The decision to resolve the complaint shall clearly stress the fact, law and reasons on which the decision is based.

- Notification on the decision to resolve the complaint

The letter of notification on the decision to resolve the complaint shall be submitted to the appellant, and shall be copied to the tax assessment unit and/or tax collection unit involved so that it could be incorporated into the enterprise's dossier and be recorded in the surveillance certificate/bulletin.

The person lodging the complaint, who is not satisfied with the decision to resolve the complaint or to reject the complaint of the Director General of the General Department of Taxation, can lodge its appeal to the committee of tax dispute resolution within thirty (30) working days starting from the date on which the letter of notification on the decision to resolve the complaint or to reject the complaint of the Director General of the General Department of Taxation is received, with a copy being sent to the General Department of Taxation.

The GDT wants taxpayers to pay greater attention to the following:

- Address of the complainant shall be complete and genuine;
- Telephone number of the complainant (complaint holder) shall be reachable;
- Subject of the complaint shall be concise: the complainant shall clearly state that he or she is not satisfied with the measure or decision, in part or wholly, that is the subject of the complaint;
- Supporting evidence: the complainant shall clearly describe the events, facts, laws or regulations that he or she deems appropriate and as a basis for a request for an adjustment to the measure or decision that is the subject of the complaint;

- Any evidence that the complainant thinks can support and be useful for the complaint shall be attached with the complaint;
- Evidence that proves that the measure or decision is not correct shall be the responsibility of the complainant to gather and provide as evidence to support the complaint;
- Conclusion: is the statement of what the complainant wants to ask for based on the above facts and laws;
- Letter of proxy in case the director of the enterprise is absent (attached with identification documents of the representative).

- Attend the complaint hearing sessions as invited by the tax administration. In case the complainant is unable to attend, appropriate reasons shall be given **in a written notice three (3) days prior to the hearing date**. Any request for a postponement of the complaint hearing session **shall not be for more than 7 (seven) days**.
- The complainant may assign his or her representative to attend the complaint hearing session. The representative shall have a Letter of Proxy (attached with the identity documents of the representative) and shall be with the full capacity to take part in the complaint resolution process. ***The General Department of Taxation shall have the right to reject the representative if they do not have full capacity or does not know about the business activities related to the subject of the complaint.***

- Provide any evidence that supports the complaint as requested by the complaint resolution panel. **All documents shall be in Khmer.** Evidence shall be submitted by the deadline set by the complaint resolution panel. Any request for extension of the deadline for evidence submission shall come with an appropriate reason and **shall not exceed 7 (seven) working days.**
- Take responsibility before the court of law with regard to any evidence given to the complaint resolution panel;
- Comply with the decision regarding the complaint as decided by the General Department of Taxation.

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Tax Disputes – Key Points

Notification 3435 states that in the event that the directors of enterprises with outstanding tax liabilities fail to settle them by 30 June 2015, the GDT will publish the names of the enterprises and their owners in the press, and may also take additional steps to recover the tax debt, in accordance with the LOT, such as:

- stopping the import-export operations of the enterprise (if applicable),
- freezing bank accounts; and,
- nullifying permits and licenses.

Article 107 of the LOT provides that:

- “A tax debt is due and payable within 30 days after a letter of notification for tax collection is delivered.”
- In practice what this means is that the Tax Arrears Office of the GDT will issue a formal letter to a taxpayer requesting payment of a tax debt, payable within 30 days of the receipt of the letter.
- In some circumstances a taxpayer may receive a letter of notification of tax collection from the GDT with respect to a reassessed tax amount that the taxpayer may be in the process of protesting.

- As per Article 118(4) of the LOT, the tax department within the GDT that is responsible for the tax reassessment must forward the results of the tax reassessment to the tax collection office within a period of 30 days after the issuance of the letter of notification for tax reassessment.
- Under Article 120(3) of the LOT, the act of submitting a protest letter with respect to a tax reassessment “...*does not relieve the taxpayer of any obligation to pay various taxes, additional taxes and interest as specified in the letter of notification for tax collection.*”

Effective Case Management is critical;

- Meeting key deadlines,
- Addressing the issues raised with valid arguments as per the taxation regulations,
- Providing sufficient supporting documentation,
- Managing debt collection

- **New Regulations on Real Estate Developer License**
 - Real Estate Licensing Requirements Under Prakas No. 965 on Housing Development Business Management
 - Set up a mechanism/rule for HD management
 - Control of Housing Development (HD) Business.
 - To enhance effectiveness of the management and inspection of HD.
 - Prevention of financial risk and curbing money laundering activity.
 - Classification of Housing Development License “HDL”(Art.6)
 - HDL 1:
 - Entirely financed by own capital/loan
 - Sale after completion of construction
 - HDL 2:
 - Financed by own capital/loan/ deposit from buyers
 - Sale during construction
 - Application Requirement for Housing Development License (Art.10)
 - Business Security Deposit (Art.22)
 - Sale and Purchase Transaction Restrictions (Art.19 & 20)
- **Soft titles – foreigners prohibition**
 - Notification letter of the Director of the Phnom Penh Department of Land Management, Urban Planning and Construction (25 May 2016).
 - Enforcement of prohibition of soft titles to foreigners.

- **Foreign Employee Quota and Work Permit – Online System**
 - From 01 September 2016, applications for foreign employee quota and work permits must be filed through online system of the MLVT.
 - The MLVT is adhering more strictly to the 10% quota limit.
 - Timeline: by 30 November 2017 for 2018 quota and by 31 March 2018 for 2018 work permit renewal.
 - Recent measures by the authorities to enforce work permit requirements for foreign workers and enterprises employing foreigners are subject to joint MLVT and Ministry of Interior inspections. Sanctions include fine of up to USD900, imprisonment up to three months (for repeat offences) and deportation of the foreign employee.

- **National Social Security Fund – Health Care Scheme**
 - Implementation of the NSSF schemes: (1) occupational risk scheme – since 2008; (2) health care scheme – since 2016, but not yet fully implemented yet; (3) pension scheme – not yet implemented.
 - Benefits of the health care scheme include preventive health services, treatment and medical care service, and daily allowances during work suspension resulting from disease treatment or accidents other than occupational risk and maternity leave.
 - Contribution for the health care scheme to the NSSF is 1.3% of average wage of each employee (ranges from USD 0.65 to USD 3.25 per month) paid by each employee and each employer.

Thank you



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Thank you



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