



# Investment in Cambodia Tax updates

16 August 2017



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# Agenda

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- ▶ Overview of setting up business in Cambodia
- ▶ Land and foreign ownership restrictions
- ▶ Cambodian tax regime
- ▶ Relevant tax compliance issues / matters for investment in Cambodia
- ▶ Investment incentives
- ▶ Foreign exchange controls
- ▶ Double tax treaties
- ▶ Accounting and auditing requirements
- ▶ Administration and tax appeal system
- ▶ Entry visa, quota and work permit
- ▶ Q&A

# Overview of setting up business in Cambodia



# Overview of setting up business in Cambodia (Cont.)

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- ▶ Setting up business in Cambodia is governed by the Law on Commercial Enterprise and Law on Investment
- ▶ Foreign direct investment can enter into Cambodia under the following types of business forms:
  - ▶ A subsidiary, which may be incorporated in the form of a LLC
  - ▶ Branch Office of Foreign Company (Branch)
  - ▶ Joint-Venture - Foreign ownership must not exceed 49%
  - ▶ A commercial RO
- ▶ All business form above is required to register with the relevant authorities in Cambodia as follows:



# Overview of setting up business in Cambodia (Cont.)

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- ▶ Foreign investors seeking an investment guarantee and incentive shall register with the Council for the Development of Cambodia (CDC) as a Qualified Investment Project (QIP)
- ▶ The CDC is a one-stop service organization providing all necessary licenses required from relevant ministries/entities listed in the Conditional Registration Certificate (CRC) for investment on behalf of the investor
- ▶ Once a project fulfills all the requirements under the CRC, a Final Registration Certificate (FRC) will be issued to the investor, which then a QIP will commence
- ▶ The below flow chart is a sample procedure of QIP registration:



# Land and foreign ownership restrictions



# Land and foreign ownership restrictions

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- ▶ There is no restriction on foreign ownership, except the ownership of land.
- ▶ An LLC can be 100% foreign owned, but the legal entities of Cambodian nationality (51% or more of share owned by Cambodians or Cambodian companies) have the right to ownership of land in Cambodia.
- ▶ There are limitations on investments in certain activities as listed in Annex 1 (Negative List) for both Cambodian and foreign entities. The activities which are prohibited include:
  - ▶ Production/processing of psychotropic and narcotic substances
  - ▶ Poisonous chemicals, agriculture pesticides/insecticide and other goods by using chemical substances
  - ▶ Processing and production of electricity from imported waste
  - ▶ Forestry exploitation business prohibited by the forestry Law, and other investment activities prohibited by the law.

# Foreign exchange controls





# Foreign exchange controls

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- ▶ Currently, there is no restriction on foreign exchange operations through book entry including:
  - ▶ purchases and sales of foreign exchange on the foreign exchange market, transfers
  - ▶ all kinds of international settlements and
  - ▶ capital flows in foreign or domestic currency, between Cambodia and the rest of the world or between residents and non-residents.
- ▶ However, such operations shall be undertaken solely through authorized intermediaries (bank permanently established in Cambodia).

# Cambodian tax regimes



# Cambodian tax regime

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- ▶ The Cambodian tax system is real regime (self-declaration). Taxpayers under this regime have been classified into 3 types:
  - ▶ **Small Taxpayer:** Sole Proprietorships or partnerships that have annual turnover from KHR 250 million to KHR 700 million (USD 62.5K to USD 175K)
  - ▶ **Medium Taxpayer:** Enterprises that have annual turnover from KHR 700 million to KHR 2,000 million (USD 175K to USD 500K)
  - ▶ **Large Taxpayers:** Enterprises that have annual turnover over KHR 2,000 million (USD 500K), or branch of a foreign company, or QIP
- ▶ Based on the above criteria, foreign direct investment in Cambodia should fall under either medium or large taxpayer.

# Relevant tax compliance/matters for investment in Cambodia



# Applicable taxes

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Medium and large taxpayers under Real Regime taxpayer system are liable to the following taxes:

- ▶ Annual tax compliance:
  - ▶ Patent tax
  - ▶ Tax on Income (TOI) / Minimum Tax (MT)
  
- ▶ Monthly tax compliance:
  - ▶ Value Added Tax (VAT)
  - ▶ Prepayment of Tax on Income (PTOI)
  - ▶ Tax on Salary (TOS) & Tax on Fringe Benefit (TOFB)
  - ▶ Withholding Tax (WHT)
  
- ▶ Other taxes (depend on industry or registered business activities)

# Patent tax - Overview

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- ▶ Patent tax is an annual fixed business tax.
- ▶ Patent tax is applied upon initial business registration and annually thereafter with the statutory deadline of 31 March of following year.
- ▶ Patent tax fees are as follows:
  - ▶ Medium Taxpayer: KHR 1,200,000 (approximately US\$300)
  - ▶ Large Taxpayer : KHR 3,000,000 or KHR 5,000,000\*  
(approximately US\$750 or US\$1,250)

\* If the annual turnover of the large taxpayer exceeds KHR 10,000 million (USD 2.5 million) then the patent tax will be KHR 5,000,000 (USD 1,250).

# TOI / MT / PTOPTOP - Overview

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- ▶ A registered taxpayer is subject to either **TOI** or **MT**, whichever is higher.
- ▶ TOI is the Cambodia's CIT, which is calculated on the taxpayer's taxable income inclusive of capital gains and other passive income, such as interest, royalties and rent
- ▶ TOI rate are as follows:
  - ▶ 0% For QIP during tax exemption period
  - ▶ 5% For insurance or reinsurance products covering property and other risk insurances including sale of protection products sold under the life insurance business (gross premium received)
  - ▶ 20% For life insurance or reinsurance policies in the form of savings products and any other products not related to the insurance or reinsurance of physical property or risk insurance
  - ▶ **20% Standard rate**
  - ▶ 30% For oil and gas and certain mineral exploration

# TOP / MT / PTOI- Overview (Cont.)

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- ▶ MT is a kind of yearly tax that is separated from the TOI. MT equals to 1% of annual turnover inclusive of all taxes, except VAT.  
*\*\* Based on 2017 Law on Financial management, a company can be exempted from MT if the company maintain its accounting records properly.*
- ▶ PTOI is an advance tax, which is paid monthly and used to offset against the TOI / MT.
- ▶ PTOI is imposed on a flat tax rate of 1% of monthly turnover inclusive of all tax except PTOI and VAT.
- ▶ Taxable Loss can be carried forward for a period of 5 consecutive years subject to certain conditions including there is no change in business activities or ownership.



# TOP / MT / PTOPTOP - Overview (Cont.)

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## General rule for deductible expenses:

- ▶ Any expenses incurred can be claimed as a deduction for the purpose of the TOP calculation if the following conditions are met:
  - ▶ The expense is actually incurred (i.e. regardless of paid or accrued)
  - ▶ Is the result of economic activities (i.e. for generating taxable income) and
  - ▶ The amount of taxpayer's liability is precisely determined (i.e. supported with verifiable evidence)

## Exception to general rule for deductible expenses:

- ▶ Charitable contribution (CC) - 5% of taxable profit excluding CC
- ▶ Interest deduction (50% of net non-interest profit plus the interest income) and capped interest expenses
- ▶ Depreciation expense under the tax law
- ▶ Provisions for bad debts (allowable for domestic banks only)

# VAT - Overview

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- ▶ VAT is applicable to the supply of goods and services other than land or money.
- ▶ VAT rates are determined as follows:
  - ▶ 10% Standard rate
  - ▶ 0% For goods exported and service rendered to a beneficiary based outside of Cambodia
  - ▶ Non-taxable supplies / VAT exemption\*
- ▶ VAT is paid under deduction method:

$$\text{VAT payable/(credit)} = \text{Output VAT} - \text{Input VAT}$$

*\* Non taxable supplies include mainly public postal service, hospital and medical supplies, public transportation system, insurance services, primary financial services, education, electricity and water supply, non-processing agricultural product and waste cleaning or collection.*

# WHT - Overview

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Nature of payments from resident taxpayers to residents:	Payment to VAT register	Payment to Non-VAT register
Interest payment to recipients other than domestic banks and saving institutions	15%	15%
Interest paid on non-fixed term saving accounts by domestic banks or saving institutions	4%	Not applicable
Interest paid on fixed-term saving accounts by domestic banks or saving institutions	6%	Not applicable
Royalties	15%	15%
Rent paid for movable and immovable property	10%	10%
Payments for services, including management, consulting and similar services	Exempted	15%

# WHT - Overview (Cont.)

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Nature of payments from resident taxpayers to non-residents:	WHT Rate
Dividends distributed by a resident enterprise	14%
Income from services performed in Cambodia	14%
Compensation for management and technical services paid by a resident person	14%
Income from movable or immovable property, if such property is situated in Cambodia	14%
Royalties from the use, or right to use intangible property paid by a resident/Permanent Establishment (PE) in Cambodia	14%
Gain from the sale of immovable property located in Cambodia or from the transfer of any interest in immovable property situated in Cambodia	14%
Premiums from insurance of risks in Cambodia	14%
Income from business activities carried on by a non-resident through a PE in Cambodia	14%
Gain from the sale of movable property which is part of the business property of a PE in Cambodia	14%

# TOS and TOFB - Overview

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- ▶ Personal Income Tax (PIT) is not implemented in Cambodia. Only TOS and TOFB which is collected through withholding by the employer at the time of salary payment and remitted to the tax authority.
- ▶ **TOS:** A resident employee is subject to TOS on Cambodian and foreign sourced salary income at progressive rates from 0% to 20% while a non-resident employee is subject to a flat rate of 20% on Cambodian source salary income only.
- ▶ **TOFB** is imposed on a flat tax rate of 20% of total value of the benefit, receives directly or indirectly any goods, services or other benefits in cash or in kind other than salary, for the employment activity which provide by the employer.

# Other Taxes - Overview

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- ▶ **Specific Tax on Certain Merchandise and Services (STCMS)** is charged on the certain manufactured products and services as follows:
  - ▶ Soft drink and non-alcoholic products - 20%
  - ▶ Cigarettes - 15%
  - ▶ Entertainment and domestic and international air ticket - 10%
  - ▶ Telephone service - 3%
- ▶ **Accommodation Tax (AT)** is calculated at the rate of 2% of accommodation fee inclusive of other services and all taxes, except AT itself and VAT.
- ▶ **Tax on Public Lighting (TPL)** is collected at the rate of 3% on the selling price of alcoholic drinks and cigarette, inclusive of all taxes except TPL itself and VAT.

# Other Taxes - Overview (Cont.)

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- ▶ **Additional Profit Tax on Dividend Distribution (APTDD)** is imposed on the distribution of profits that have not been taxed at the rate of 20% to shareholder. Generally, if the applicable TOP rate is 0% (i.e. QIPs), the amount of APTDD should be calculated based on 20% of dividends.
- ▶ **Tax on Immovable Property** is collected annually at a rate of 0.1% on the immovable property exceeding the value of KHR 100,000,000 (approximately USD 25,000).
- ▶ **Tax on Unused Land** is imposed on a non-constructed land and the abandon constructed land at the rate of 2% of market value of land.

# Other Taxes - Overview (Cont.)

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- ▶ **Registration Tax** is imposed on the following transactions:
  - ▶ 4% of the value of immovable property for the transfer of ownership or possession right of immovable property or capital injection in term of immovable property
  - ▶ 4% of the value of transportation mean or vehicle for The transfer of ownership or possession right of all transportation means or vehicle ownership.
  - ▶ 0.1% of the value of share for the transfer of parts or whole of shares or merger of a business
  - ▶ 0.1% of the value of contract for supply of goods or service contracts which use national budget.
  - ▶ KHR 1,000,000 for 3 types of legal documents, such as letter on business incorporation, letter on dissolution and letter on merger of business.



# Payment and Filing of tax procedure

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- ▶ As aforementioned, monthly tax compliance consists of VAT, PTOF, WHT, and TOS/TOFB return which are required to pay tax liability and file on a monthly basis, generally by the 20<sup>th</sup> of the following month.
- ▶ For annual tax compliance, the taxpayers are required to pay the tax liability and submit returns annually within 3 months after the end of each tax year.
- ▶ The payment of tax is made by bank, while the submission of returns is submitted in hard copies to the GDT/Tax Branch.

# Investment incentives



# Investment incentives - QIPs

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- ▶ A QIP registered and approved by CDC is entitled to the tax incentives described below:
  - ▶ MT exemptions
  - ▶ Use special depreciation allowance OR the tax exemption period in form of “trigger period + 3 years + priority period”
  - ▶ Import duty exemption with respect to the importation of production equipment, construction materials, raw materials, intermediate goods and accessories that serve production and
  - ▶ 100% export duty exemption

# Investment incentives - Zone investor

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- ▶ Investment located in a Special Economic Zone (SEZ) is granted the following incentives:
  - ▶ The same incentives on taxes and custom duty as other QIPs and
  - ▶ VAT at the rate of 0% for every imports; however the zone investor shall record the amount of tax exemption for its every import. The said record shall be disregarded if the Production Outputs are re-exported. In case, the Production Outputs are imported into the domestic market, the Zone Investor shall refund the amount of VAT as recorded in comparison with the quantity of export.

# Double tax treaties



# Double tax treaties

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- ▶ Cambodia only signed Double Tax Agreement (DTA) with the following countries:
  - ▶ Cambodia and Singapore signed a DTA on 20 May 2016
  - ▶ Cambodia signed its second DTA with China on 13 October 2016
  - ▶ Cambodia signed its third DTA with Brunei on 27 July 2017
- ▶ All three DTAs are yet to be ratified so do not have the force of law
- ▶ Broadly, the DTA's cover the tax treatment of salaries, business profits and passive income

# Accounting and auditing requirement



# Accounting

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- ▶ Real regime taxpayer is required to use accounting method in accordance to accounting standards enforced in the Cambodia.
- ▶ Supporting documents and accounting records are required to be maintained for a period of 10 years.
- ▶ Accounting records should be prepared in Khmer language with Khmer or Latin numerals and expressed in Cambodian Riel. Otherwise, the taxpayers shall request for approval to use another language and currency.



# Auditing Requirement

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- ▶ All enterprises establishing in Cambodia that meet two of the following criteria have obligation to submit financial statements audited by independent auditors registered with the Kampuchea Institute of Certified Public Accountants and Auditors (KICPAA):
  - ▶ Annual turnover of 3,000,000,000 Riels (approximately US\$750,000) and above
  - ▶ Total assets of 2,000,000,000 Riels (approximately US\$500,000) and above, based on the average value of assets held during the year subject to audit requirements
  - ▶ Number of employees of 100 (one hundred) and above, based on the average number of employees employed during the year subject to audit requirements
- ▶ For the bank and financial institution in Cambodia, its audited financial statement is required to be submitted to the National Bank of Cambodia no later than 31 March of each calendar year.

# Administration and tax appeal system



# Administration

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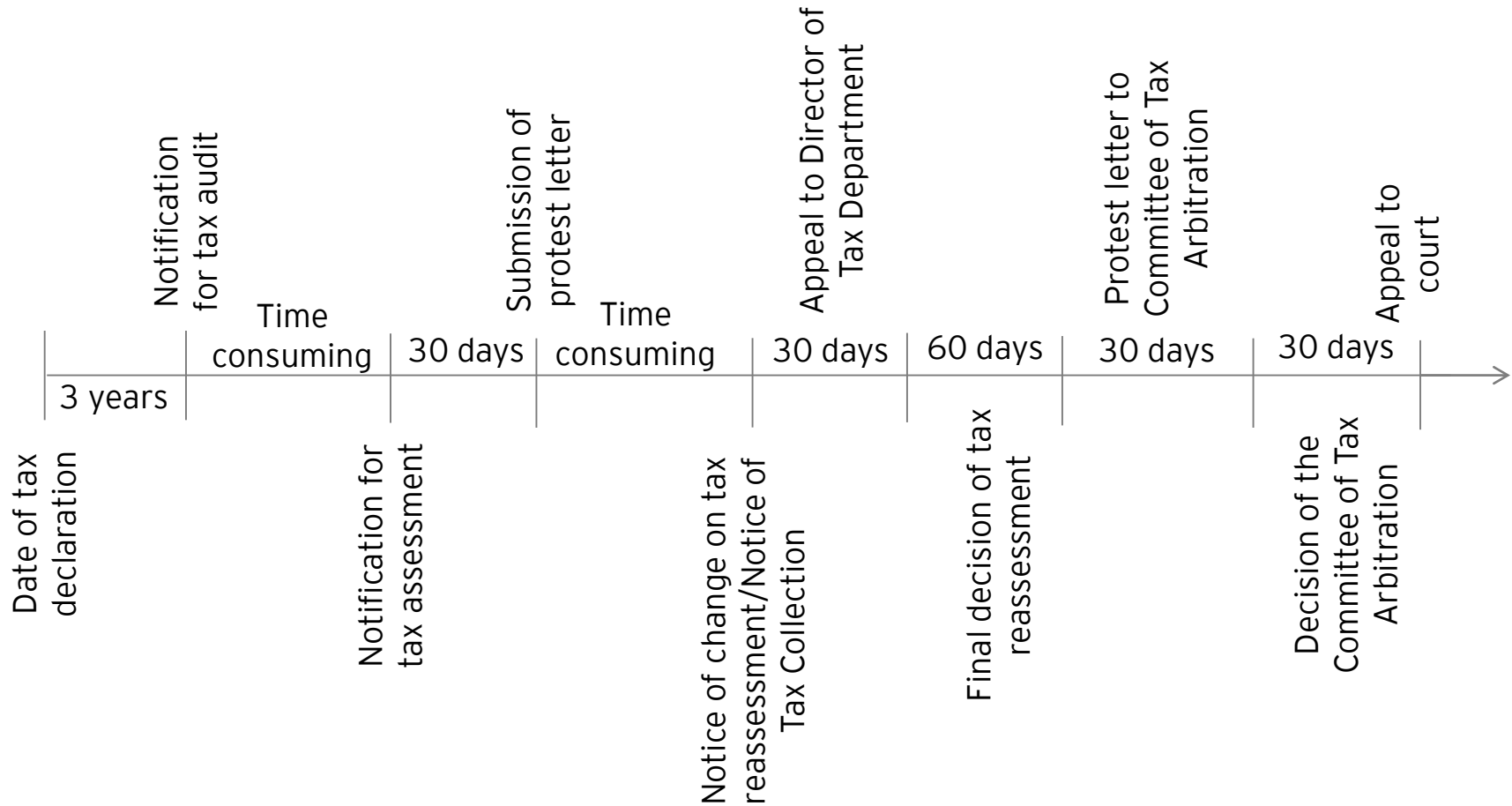
- ▶ A legal/individual person must register with the tax administration within 15 days after beginning economic activity.
- ▶ Registered taxpayers must inform the tax administration within 15 days of any change in the address, form, name, or objective of the business, ownership/director or any other changes of its business.
- ▶ Registered taxpayers shall file monthly and annual tax returns, and pay all applicable taxes to the tax authority. When a taxpayer fails to file a tax return within the period required by law, the tax authorities may carry out a unilateral tax assessment on that taxpayer.
- ▶ Penalties for non-compliance with the tax regulations are 10%, 25% or 40% of the unpaid tax, and interest is levied at the rate of 2% per month on the unpaid tax.
- ▶ KHR 2,000,000 (approximately US\$500) shall be imposed on the late submission of tax return and/or payment of tax.

# Tax appeal system

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- ▶ Cambodian tax system - self assessment / real regime system
- ▶ Taxpayers are responsible for correctly assessing their own taxable income, deductions and other tax offsets.
- ▶ Under Cambodian tax law, the tax administration is permitted to perform a tax audit and issue a notice of tax reassessment within 3 years from the submission of the tax return/declaration, or if there is evidence of obstruction of the implementation of the tax provisions, within 10 years from the submission of the tax return/declaration, or at any time with the written consent of the taxpayer.
- ▶ Taxpayers are subject to tax audit process by the Large Taxpayer Department (LTD), Tax Branch (TB) and/or Enterprise Audit Department (EAD) of the General Department of Taxation (GDT) after submission of the tax returns.

# Assessment and appeal procedures



# Hot audit issues

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- ▶ Financial information in soft copy format
- ▶ Audited financial statement and internal control (management) reports
- ▶ Free meals provided by employers to management/staff
- ▶ Related party transactions
- ▶ Correct use of serial numbers on invoices
- ▶ Providing property for use for free of charge

# Entry visa, quota and work permit



# Entry visa, quota and work permit

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## Entry visa

- ▶ To work in Cambodia, foreign nationals must obtain a business-entry visa (Visa E) and work permits from the Cambodian MLVT.

## Quota

- ▶ The MLVT does not allow the number of expatriate employees to exceed 10% of the employer's total Cambodian employees.

## Work permits:

- ▶ **Temporary work permit:** Staff and management specialist, technical staff, skilled worker, service providers or other laborers
- ▶ **Permanent work permit:** Foreign immigrants duly recognized by the Ministry of Interior and Foreign Investors, spouses, and dependents duly recognized by the Council for the Development of Cambodia



# Q & A

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- ▶ Rob is a qualified chartered accountant and a member of the Institute of Chartered Accountants in Australia. Rob also holds a legal practicing certificate in Western Australia. He has more than 20 years experience specialising in tax across a range of sectors including consumer products, mining, energy and infrastructure.
  - ▶ Rob's technical expertise and strong industry insight drives his highly pragmatic approach to client relationship management. As a full service advisor, he provides support ranging from general corporate tax advice and compliance, to more in-depth planning and structuring for major new investments, acquisitions, divestment and financing.
  - ▶ Rob joined Arthur Andersen's tax practice in Sydney after graduating with a BCom/LLB from the University of NSW in 1994.
  - ▶ Rob joined Ernst & Young's mining, energy and utilities group following the merger with Arthur Andersen in 2002.
  - ▶ Rob has worked in Sydney, London, Croatia, Slovenia, Perth and now Vietnam, Cambodia and Laos. Working in a number of different markets and in a number of different roles has given Rob a broad range of tax experience in both mature and maturing markets.
  - ▶ In July 2015, Rob moved to Vietnam to lead the tax team in the region and bring his international tax expertise and general experience to the local market.
- ▶ Bachelor of Commerce/Laws
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- ▶ Brendan Lalor is a Director in the Tax and Advisory Services Division of Ernst & Young (Cambodia) Ltd.
- ▶ Brendan has more than 14-year experience in transfer pricing international and corporate tax.
- ▶ Brendan has worked for revenue authorities and consulting firms during his tax career and across a number of jurisdictions so brings a wealth of experience to the role, which he leverages off to provide value adding services to his clients.
- ▶ Brendan currently leads the tax team at EY Cambodia and provides tax advisory services to a range multinational and domestic Cambodian clients covering a wide array of industries and sectors.
- ▶ In the broader Asia Pacific region Brendan has also provided transfer pricing advice to a range of clients in other jurisdictions including Vietnam and Australia.
- ▶ Brendan has also assisted numerous clients, which are or have faced transfer pricing or corporate tax scrutiny from the tax authorities in Cambodia and Vietnam and so brings significant experience in this regard.
- ▶ Master of International Tax (Australia)
- ▶ Bachelor of Economics (Australia)
- ▶ Australian Taxation Office graduate certificate in taxation
- ▶ Attended numerous workshops provided by the OECD and IBFD on transfer pricing and international taxation



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- ▶ Reangsey is a Senior Manager in the Tax and Advisory Services Division of Ernst & Young (Cambodia) Ltd.
- ▶ Reangsey is an experienced tax adviser more than 7 years experience on Cambodian tax through working with the largest auditing and tax advisory firm in Cambodia.
- ▶ More than 7 years of professional working experience, Reangsey has advised a wide range of both of local and international clients on tax structures, tax planning, tax due diligence, tax compliance, licensing and taxation aspects in different industries such as power supply, consumer products, airline, banking, and hotel.
- ▶ Master of Professional Accounting, the University of Auckland, New Zealand
- ▶ Bachelor of Economics Sciences, majoring in Finance and Banking, Royal University of Law and Economics, Cambodia
- ▶ Bachelor of Education, majoring in B.Ed. TEFL, Royal University of Phnom Penh, Cambodia.

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