Transfer Pricing Country Summary

Cambodia

May 2022

1. Introduction

The government issued a new Prakas on transfer pricing rules on October 11, 2017, which went into effect on October 10, 2017. The Prakas specifies new transfer pricing methods to be used by Cambodian taxpayers to determine fair market prices for related party transactions, as well as the documentation required to support these prices. Furthermore, it requires taxpayers to report all related party transactions to the tax authorities via the annual profit tax return.

2. Laws & Regulations

a) References to OECD/EU/Local Rules

Cambodia's Ministry of Economy and Finance (MEF) has issued the country's first transfer pricing regulations (Prakas No. 986) on 10 October 2017. The new regulations generally conform with the BEPS Action 13 of the OECD, and accordingly, the arm's length principle as stated by its transfer pricing guidelines. The legislation includes the transfer pricing methods, documentation standards, penalties, and specific rules for intangible property and intragroup services.

b) Definition of Related Party

Related parties are defined for TP purposes by Law on Taxation under Article 56 and Prakas No. 986 under Section 7.3. The enterprises are deemed to be related if:

- they are members of the same family of enterprises, or
- if an enterprise controls another enterprise, or
- if an enterprise is controlled by another enterprise, or
- if two enterprises are under the common control of a third party.

Control is established when an enterprise holds 20% or more of dividend rights or an equivalent amount of voting rights in the Board of Directors. The same applies to both domestic and international transactions.

c) Nature of Transfer Pricing Documentation

Cambodia has not been a member of OECD. However, it follows the OECD guidelines via the latest legislation and following practices. The requirements brought for transfer pricing documentation in Prakas No.986 overlap, in general, with the 2017 Guidelines and BEPS requirements.

The enterprises should prepare their transfer pricing documentation annually. Local branches also need to comply with the requirements if they carry out transactions in related-party nature. Specific requirements for the master file, local file, or CbC reporting have not been announced or enacted yet. However, further regulations are awaited from the Government.

d) Tax Havens & Blacklists[1]

Cambodia is a non-BEPs associate country, but it can attend meetings and is not required to implement any of the recommendations. The new global tax system, which is intended to prevent tax evasion in developing countries, could go into effect as early as 2023. Cambodia is already focusing on increasing revenue from the digital realm and regulating it. Currently, the country levies a 10% value-added tax (VAT) on the sale of digital goods or services. If Cambodia implements the reforms, it has the potential to significantly increase its tax revenues.

Because of tax evasion by large tech firms, Cambodia loses about 7.89 percent of its potential annual revenue budget.

e) Advance Pricing Agreement (APA)

The existing legislation regarding transfer pricing does not cover APA's.

f) Audit Practice

The Prakas No. 986 was a significant first step in the increasing transfer pricing scrutiny in Cambodia. Further development of the new TP regulations also seems likely since many details (for example, the deadline for submitting the documentation) are missing from the Prakas. Currently, the application of the new rules is still being tested well enough. The tax authority also establishes a particular audit team for carrying out transfer pricing scrutiny, and it is expected that the TP scrutiny will increase. However, its current capacity and resources are not sufficient to handle a large number of TP audits simultaneously.

3. Transfer Pricing Documentation

a) Level of Documentation

Taxpayers are obligated to prepare transfer pricing documentation regarding related party transactions details and the methodologies used to justify the arm's length nature of the transaction. The following information is required:

- General information on the enterprise and the related parties;
- Information about the related party transactions (documents related to payment, transportation, products, etc. and transaction documents);
- Information regarding the transfer pricing method (documents that justify the chosen method).

b) Industry Analysis

By identifying value drivers for the relevant industry, a first indication of the level of profitability common in the industry is being given.

[1] https://www.khmertimeskh.com/50913195/kingdom-will-have-a-say-in-the-global-tax-reform-process/

c) Company Analysis

A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.

A detailed description of the business and business strategy pursued by the local entity, including an indication of whether the local entity has been involved in or affected by business restructurings or intangibles transfers in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.

d) Functional Analysis

In conducting a functional analysis, an assessment is made of the significant activities and responsibilities that are performed by the related parties relevant to the Intercompany Transactions under review, the tangible and intangible assets that are employed and the risks that are borne in undertaking the business activities. Such an assessment is consistent with the recommendations that have been made in the OECD Guidelines in paragraph 1.51.

e) Choice of Transfer Pricing Method

The new regulations recognise 5 transfer pricing methods that comply with the OECD guidelines; (i) Comparable uncontrolled price, (ii) Resale price method, (iii) Cost-plus method, (iv) Profit-split method, (v) Transaction net margin method.

The appropriateness of the method depends on the situation, and the taxpayer shall provide enough evidence and supporting documentation to justify their chosen method. In cases where the taxpayer is unable to make that justification, the tax authorities can determine the appropriate method for the taxpayer.

f) Economic Analysis – Benchmark Study

Foreign comparables should be acceptable as supporting documentation if (as is likely) no or limited domestic comparables are available.

g) Inter-company (IC) Legal Agreement

Although an Inter-company legal agreement formalises the business and financial relationship between group entities, the legal agreements have a lower ranking since the OECD 2017 Guidelines made the ‘’conduct of parties’’ the prevailing concept.

h) Financial Statements[2]

Companies in Cambodia are required by law to submit annual financial statements. The statements are reported either electronically or on paper. The Accounting and Audit Act governs financial statement reporting in Cambodia. The IFRS are used by all types of commercial companies.

Annual financial statements must be filed within three months of the fiscal year's end. They must be written in Khmer and paid for with national currency.

The stock exchange is where companies that sell their shares publish their financial statements.

Annual financial statements include the following:

- The balance sheet
- Profit and loss statement
- Statement of cash flows
- Notes

i) Production Process for TP Relevant Returns, Documents, Forms and Financials

In the chart below, the existence of the filing requirements with the details of which format is used, the latest filing date, notification requirement and its deadline, thresholds to be applied in case it exists, and the required languages are demonstrated. These information can be seen respectively for CIT, master file, local file, CbCR, local forms, annual accounts and segmented P&L documentations.

	Prepare or File?	Format	Deadline	Notification Deadline*	Threshold* (Yes/No)	Local Language (Yes/No)*(If "No", it can be filed in English)
Corporate Income Tax	File	e-Filing	31 March of the following FY	N/A	Not applicalbe	Yes (Khmer)
Master File	Prepare	N/A	31 March of the following FY	N/A	N/A	No

2 https://schmidt-export.com/extracts-foreign-commercial-registers-and-accounting-statements/financial-statements-cambodia

Local File	Prepare	N/A	31 March of the following FY	N/A	N/A	No
CbCR	Prepare	N/A	31 March of the following FY	N/A	N/A	No
Annual Accounts	File	Local IFRS	The year end	N/A	N/A	Yes (Khmer)
Segmented P&L	N/A	N/A	N/A	N/A	N/A	N/A
* Cambodia has NOT signed the MCAA agreement for the filing of CBCR.						
* There are no special provisions governing SMEs.						

Even though there is no clear-cut requirement to prepare transfer pricing documentation, related-party transactions must be disclosed in the annual tax return. It is highly recommended due to the onus of proof resting with the taxpayer.

There is no deadline to submit the required documentation. However, taxpayers should keep in mind that they are required to retain the required documentation and then submit it to the tax authorities upon request. The documentation must be filed no later than seven working days in principle. Therefore, it is advised that taxpayers prepare their TP documents before the deadline for submitting CIT returns in order to prevent incurring penalties.

Art. 117 of Cambodian Tax Law prescribes that the tax administration can do re-assessment within (i) 3 years in an ordinary way after the date the tax declaration was submitted, (ii) within 10 years if there is evidence of the obstruction of the implementation of tax provisions, (iii) anytime with the written consent of the taxpayer.

j) Mandatory Language

Documentation for submission to the tax authority must be in Khmer or English.

k) Notification Requirement

There is no notification requirement regarding the CbC reporting in Cambodia since it has not completely implemented the BEPS Action 13 yet.

l) Record Keeping

Cambodian tax laws require records to be kept for ten years starting from the end of the tax year in which a recording of information concerning the transaction was made. Transfer pricing documentation should be kept for the same period.

m) Penalties and Interest Charges

The non-compliance of taxpayers with the guidelines and deadlines requirements can result in several penalty possibilities such as:

- Revoke of the taxpayer's certificate of tax compliance,
- Adjustments on the Transfer Pricing, which would finally impose an additional tax,
- Tax penalties. The penalties under Art. 133 of the Law on Taxation can be applied due to breach. These penalties in the form of an additional tax range from 10% to 40%. Also, late payments can result in an interest charge of 1.5%,
- The local tax authority can bring criminal charges against the enterprise, for example, in cases of tax evasion or obstruction of the implementation of the tax, via the rules stipulated under Art. 134 to 138 of Law on Taxation.