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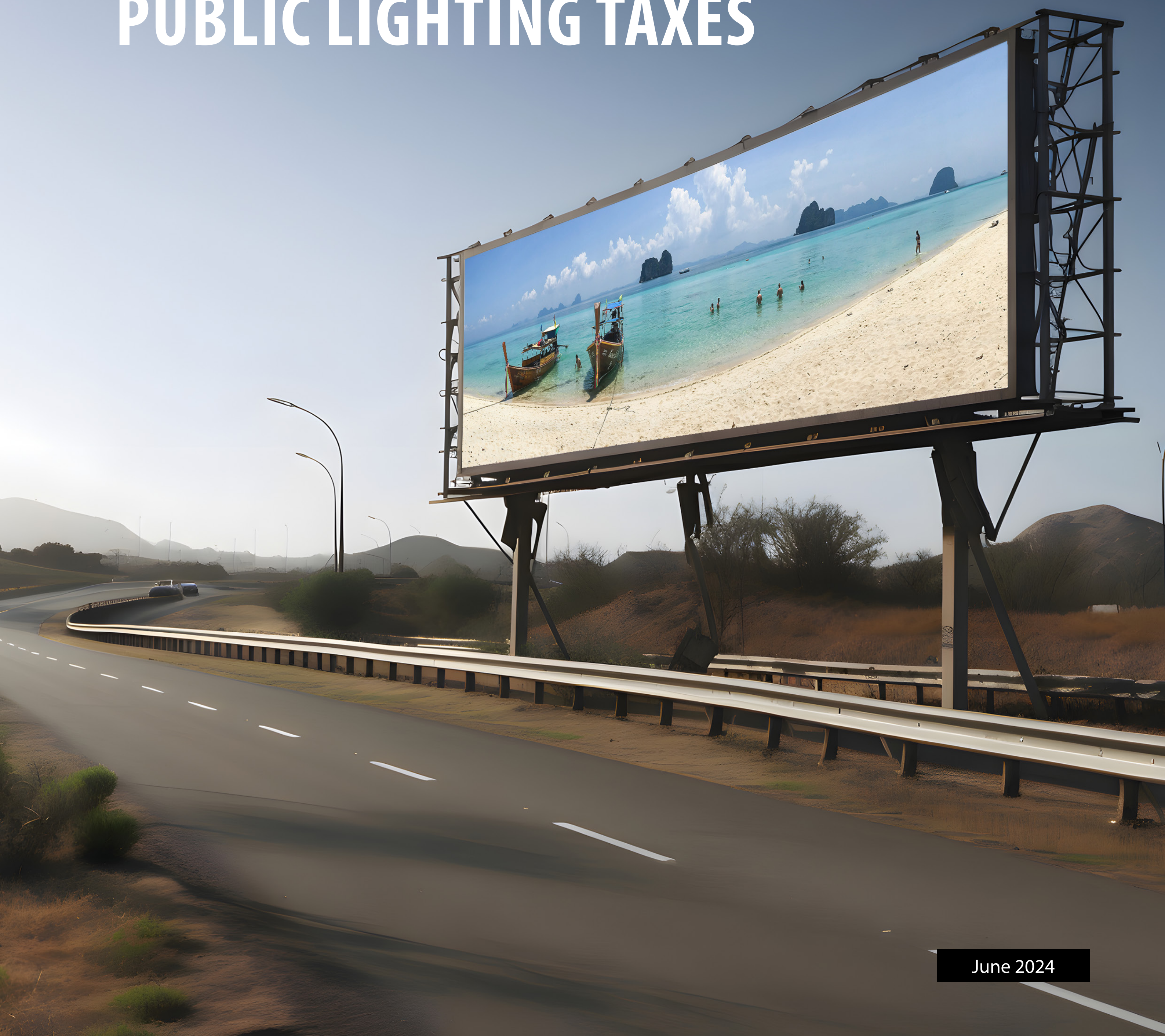
CAMBODIA TAX UPDATE: KEY CHANGES TO SIGNBOARD, RENTAL, ACCOMMODATION, AND PUBLIC LIGHTING TAXES



June 2024

On 20 March 2024, the General Department of Taxation ("**GDT**") published nine Prakas, making significant updates to various taxes in Cambodia, including the signboard tax, immovable property rental tax, accommodation tax, and public lighting tax. Below we provide a brief overview of these updates.

SIGNBOARD TAX

Legal Reference: Law on Taxation dated 16 May 2023 ("**LOT**"), Prakas No. 982 MEF.PrK dated 18 August 2015 ("**Prakas 982**"), Instruction 015 MEF dated 9 December 2022 ("**Instruction 015**"), and Prakas No. 176 MEF.PrK.GDT dated 20 March 2024 ("**Prakas 176**")

The recently issued Prakas 176 supersedes previous Prakas 982 and Instruction 015.

Scope: The signboard tax applies to all forms of advertising signs, both movable and immovable, within Cambodia. *This is consistent with the LOT and prior Prakas 982.*

Definition of advertising signs: The term includes any signage (បណ្ណ), signboards (ស្លាក), or panels displaying letters (ផ្ទាំង), drawings, or images (whether animated or static) used for commercial advertising to inform customers or the public about products and services placed on public display outside the business. The term also includes leaflets (both in the previous Prakas 982 and in Prakas 176); however, to date, we have not seen the GDT enforce the signboard tax on leaflets.

Applicable taxpayers: <u>This has been expanded under Prakas 176</u>. The tax applies to all individuals and legal entities involved in advertising activities, both **advertisers** and any **agents** they hire for the purpose. This means both parties are responsible for filing tax returns and making payments. (*Our insight:* This could mean that if the payments are not made by the advertiser, the agent will be held accountable for filing returns and making the payments.)

Tax bases and rates: <u>The tax rates remain unchanged from Prakas 982</u>. They vary based on several factors, including the category, size, and volume of the advertisement, its placement relative to the road (perpendicular or parallel), whether it is illuminated, and whether it includes foreign characters (although neither Prakas mentions an additional cost for foreign characters, the tax return form levies an additional amount on foreign characters calculated by multiplying the number of foreign characters by their height). <u>A few changes introduced by Prakas 176 are</u>:

- **A broader definition of the "advertising signage" category** to include materials other than plastic, such as cloth or rubber, among others.
- **More clarity on how to categorize advertising signage that doesn't meet the specified limitations** of (1) not exceeding 100 square decimeters and (2) remaining displayed for no more than 90 days. Signage exceeding these limits is now considered "Boards with Text or Graphics" subject to **higher** tax rates.
- **Clarification on branch signboard:** Branches registered with the GDT can have one business signboard taxed at the **lowest applicable rate**, provided the displayed name matches the main entity. This clarifies a previously unmentioned allowance in Prakas 982 and a previously mentioned disallowance in Instruction 015.
- **Inclusion of tricycles (and more) in the mobile signage category:** Prakas 982 defined "Mobile Boards/Panels with Text or Graphics" as signage attached to vehicles like cars, trains, ships, trailers, and motorcycles. Prakas 176 expands this category to explicitly include tricycles and potentially other modes of transportation.
- **Addition of LED screens** to the "Immobile Boards/Panels with Text or Graphics" category, which now includes LED screens, devices, and other advertising screens along with televisions.

Here is an example of how the tax rate is calculated:

- Paper leaflets (40 square decimeters or less) are subject to a tax rate based on the number of pages and content. Leaflets with only Khmer characters are taxed at a rate of **KHR500** per page. **If the brochure includes any foreign characters**, except for those used in logos, addresses, or contact details, the tax rate **increases to KHR1,500** per page.
- *Our insight:* The use of foreign characters exclusively in logos, addresses, or contact details on advertising materials does not lead to a higher tax rate.

Exemptions: These remain unchanged from Prakas 982 and the LOT. State institutions, foreign embassies and consulates, non-governmental organizations ("**NGOs**"), international organizations, technical cooperation agencies, and advertisements for public interest purposes such as health education or environmental awareness are all exempt from signboard tax.

Tax declaration and payment: In a change from Prakas 982, Prakas 176 now requires that taxpayers declare and pay the tax **before** any advertisement is displayed. Under Prakas 982, taxpayers had a 15-day grace period to make the payment after advertising began. In another change, payment is now to be made at the tax office **where the taxpayer is registered**, rather than where the advertisement is displayed.

IMMOVABLE PROPERTY RENTAL TAX

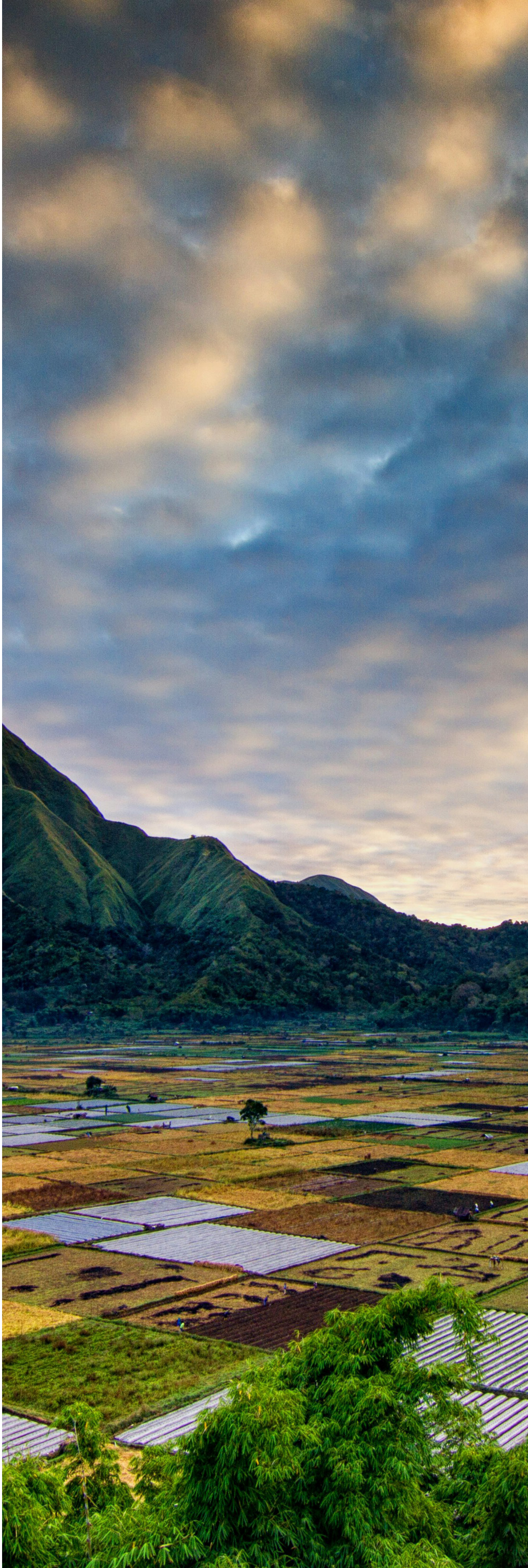
Legal Reference: LOT, Prakas No. 021 Prk.MEF dated 24 February 1994 ("**Prakas 021**"), and Prakas No. 169 MEF.PrK GDT dated 20 March 2024 ("**Prakas 169**")

The recently issued Prakas 169 supersedes previous Prakas 021.

Scope: Unchanged under Prakas 169, this tax applies to rental income earned by the owner or beneficiary of immovable property located in Cambodia, provided they are not registered under the self-assessment regime.

Tax rate: The rate remains unchanged at 10% of the total monthly rental income.

Tax base: Prakas 169 has broadened the tax base from that of Prakas 021. The tax is calculated on total monthly rental income, which is now defined as the total monthly rent agreed upon or received by the taxpayer as per the lease agreement **or the market price**. (*Our insight*: The inclusion of "market price" gives the GDT the authority to reassess the tax based on its determination of the market price. This has become a common practice of the GDT with other taxes during a tax audit, where the GDT will determine the market price, and then apply the tax to whichever is higher.)



Exemptions: These remain unchanged from Prakas 021 and the LOT:

- Rental income from immovable property owned by government institutions, diplomatic missions, foreign embassies and consulates, international organizations, and technical cooperation agencies.
- Rental income from the immovable property of NGOs organized solely for charitable, scientific, educational, or religious purposes, where no part of the rental fee is used for private interests. (*Our insight*: If the GDT believes the NGO's rental income is used for private interests, rental tax will have to be paid.)
- Rental income where the lessee is a self-assessment taxpayer and has already withheld the tax from payments to the landlord.
- Rental income from property owned by a self-assessment taxpayer where the rental income is already included in the taxpayer's tax on income declaration and tax payment.
- Total monthly rental income that is less than KHR500,000.

Lessees' obligation: Lessees are required to provide the GDT with receipts from the property owner or beneficiary and submit relevant contract details upon request.

Tax declaration and payment: The timing of when the tax must be paid depends on the payment schedule stipulated in the contract, as follows:

- Monthly payments must be made by the 20th of the following month.
- For contracts requiring lump-sum payments covering several months, payment is due by the 20th of the month following the month the lump-sum payment was made.
- Lessees who are registered under the self-assessment regime must withhold and pay the immovable property rental tax on behalf of the lessor (landlord) by the 25th of the following month. This withholding tax mechanism is mandated by Article 25, Paragraph 1b of the LOT.

ACCOMMODATION TAX

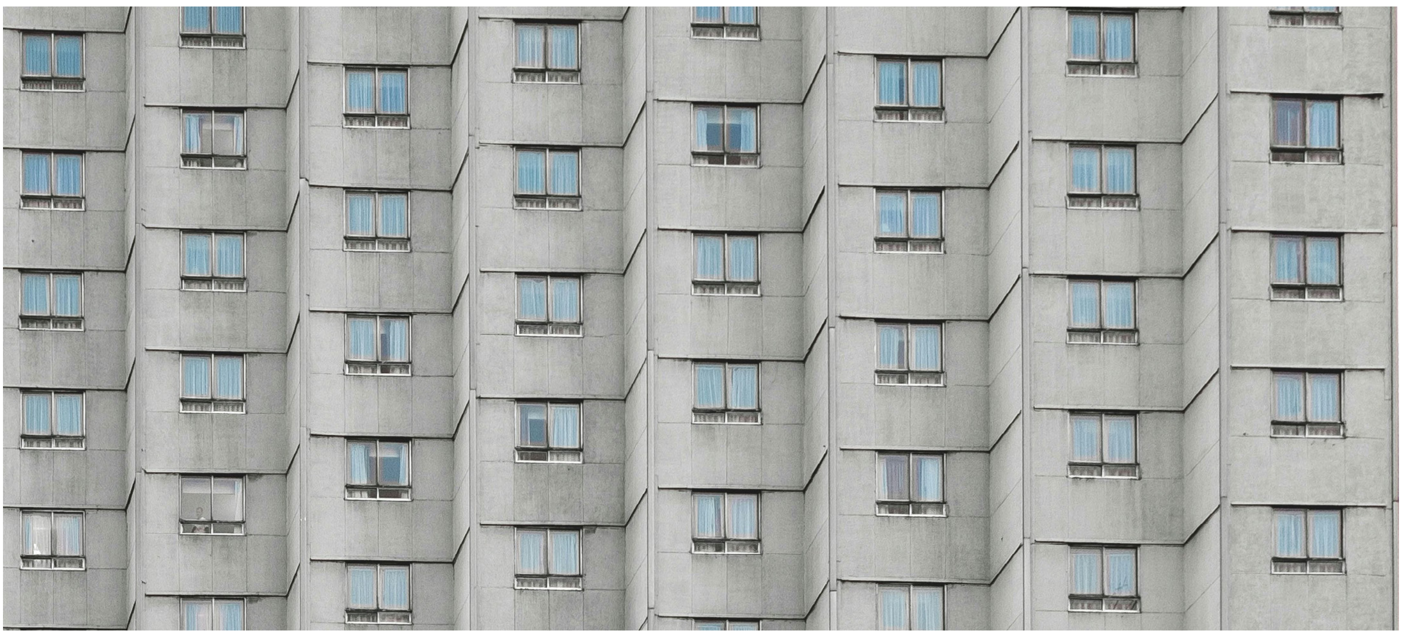
Legal Reference: LOT, Prakas No. 380 MEF dated 14 July 2005 ("**Prakas 380**"), Prakas No. 173 MEF.Prk.GDT dated 20 March 2024 ("**Prakas 173**")

The recently issued Prakas 173 replaces Prakas 380.

Scope: Accommodation tax continues to apply to services provided in hotels in Cambodia. The term "hotel" covers establishments offering accommodation in the form of rooms and beds, as well as fitness and other services. This includes hotels, apartments, suites, resorts, bungalows, guesthouses, tourist campsites, and similar facilities, irrespective of their name. However, "hotel" does not include rooms, flats, or apartments that do not provide fitness and other services through short-term or long-term leases (these are taxed under the immovable property rental tax).

Prakas 173 expands the definition of what falls within the scope of the tax. Although the definition of "hotel" remains the same as in the LOT, there is a newly added definition of "fitness and other services". These are defined as the provision of a wide range of ancillary services such as food, cleaning, laundry, gym, swimming, massage, steam, and sauna services. (*Our insight:* This addition raises questions about the tax treatment of these ancillary services when provided separately from room and bed services. For example, it remains unclear if a walk-in customer dining at a hotel's restaurant or a local resident purchasing a gym membership would be subject to the accommodation tax if these services are offered independently.)

Tax base and tax rate: The tax rate of 2% remains unchanged. However, under Prakas 173, the taxable value now explicitly includes the total amount **received** from customers, clarifying that the tax base includes all charges related to accommodation services and any applicable taxes except value added tax ("**VAT**") and the accommodation tax



itself. This means that the entire cost of a hotel stay, including additional services like meals or gym access, is subject to the tax. (*Our insight:* While the tax is based on the total accommodation price, it's unclear how mandatory service charges (tips) distributed to hotel staff are treated. According to Article 134 of the Labor Law, hotels are required to collect and distribute these charges to their employees. This raises the question of whether service charge income received by hotel staff should be subject to accommodation tax since service charges arguably relate to both the hotel's facilities and its employees' services (e.g. room service). Based on our experience, the GDT sometimes include service charges in the tax base during tax audits.

Taxable supply: This includes the supply of accommodation services by a taxpayer, and under Prakas 173, this has been expanded to cover the personal use of accommodation services by a taxpayer, and the provision of accommodation services as gifts or below market value. This results in a wider range of transactions being subject to accommodation tax.

Time of supply: As under Prakas 380, the accommodation tax becomes due and payable at the time of supply, determined by the issuance of an invoice or the due date for invoice issuance, whichever is earlier. Prakas 173 also clarifies that the time of supply for services provided as gifts is upon the complete provision of the service.

Tax declaration and payment: Taxpayers are required to file accommodation tax returns and make payments monthly, due by the 20th of the following month after the supply is made.

PUBLIC LIGHTING TAX

Legal Reference: LOT, Sub-Decree 286 ANKr. BK dated 20 September 2023 on the Public Lighting Tax, Prakas 976 MEF.PrK dated 9 October 2017 ("**Prakas 976**"), Prakas 168 MEF.PrK.GDT dated 20 March 2024 ("**Prakas 168**")

Recently issued Prakas 168 replaces Prakas 976 on public lighting tax ("**PLT**") and introducing some fairly significant changes, particularly with regard to agents' obligations (see below).

PLT applies to the supply of all alcoholic beverages and tobacco products within Cambodia.

Tax rate: Prakas 168 has increased the PLT rate from 3% (as stipulated in Prakas 976) to 5% of the tax base.

Tax base: The tax base is defined as the taxable supply amount recorded on the invoice, including all taxes except for VAT and the PLT itself.

Taxable products: Alcohol, liquor, and tobacco products, with a new exemption under Prakas 168 for alcohol used in the medical sector. However, the Prakas does not specify the criteria for what qualifies as "alcohol used in the medical sector."

Applicable taxpayers: This definition has been narrowed under Prakas 168. Previously, under Prakas 976, manufacturers, importers, and distributors were all considered taxpayers within the scope of PLT. Prakas 168

now focuses the tax liability on those directly involved in production and importation by removing reference to distributors, leaving only manufacturers and importers responsible for the tax, with updated definitions as below:

- **Manufacturer**: The definition has been updated to specifically refer to the owner (principal) who produces the taxable product themselves or hires others (agents) to produce the products for them.
- **Importer**: The term "importer" now applies exclusively to the product owner who imports the taxable product themselves or authorizes another person (and agent) to import the product on their behalf.

Time of supply: Prakas 168 clarifies that PLT is applied at the point of the first supply of taxable products after their manufacture or import into Cambodia. This is consistent with the time of supply rules for VAT as stated in Article 61 of the LOT.

Tax declaration and payment: The requirements remain unchanged under the new Prakas. Taxpayers are required to declare and make payments as part of the prepayment of tax on income return, due by the 25th of the following month after the supply is made.

Agents' obligations: A major change introduced under Prakas 168 are new obligations for agents (producers and importers authorized by a principal (the taxpayer)). Entities who are hired to produce or import taxable products for a taxpayer must:

- Notify the GDT, attaching an authorization letter and relevant agreements with the taxpayer.
- Suspend the production or importation of the taxable products for the taxpayer if the GDT notifies them to do so.

If they fail to comply with these requirements, they will be considered taxpayers and liable for the PLT. (*Our insight:* Entities who produce or import taxable goods **on behalf of** a taxable person are not automatically recognized as taxpayers solely because of these activities. They must undergo a separate registration process to become a taxpayer and will only be liable for PLT if they fail to comply with the specific reporting requirements outlined in Prakas 168.)

CONCLUSION

Cambodia's latest tax updates bring significant changes across various areas:

- **Signboard tax:** Prepayment of tax is now mandatory before displaying the advertisement. Additionally, both advertisers and their agents are considered taxpayers, although it remains unclear as to how enforcement on the agent would work in practice.
- **Immovable property rental tax:** The tax base is now determined by considering the higher amount between the agreed-upon rent and the market value determined by the GDT.
- **Accommodation tax:** The tax applies to all establishments offering rooms, beds, and ancillary facilities like food, gym access, and spa treatments, regardless of their name. However, the treatment of mandatory service charges remains unclear.
- **Public lighting tax:** The tax rate has increased from 3% to 5%, with new exemptions for alcohol used in the medical sector. PLT is now applied exclusively at the first point of supply, focusing on manufacturers and importers, and no longer extends to distributors. Agents authorized to produce or import PLT-taxable products must notify the GDT and demonstrate their agent status to avoid liability for the tax.

At VDB Loi, we provide expert guidance to help you navigate these changes and optimize your tax strategy. Contact us today to learn more.

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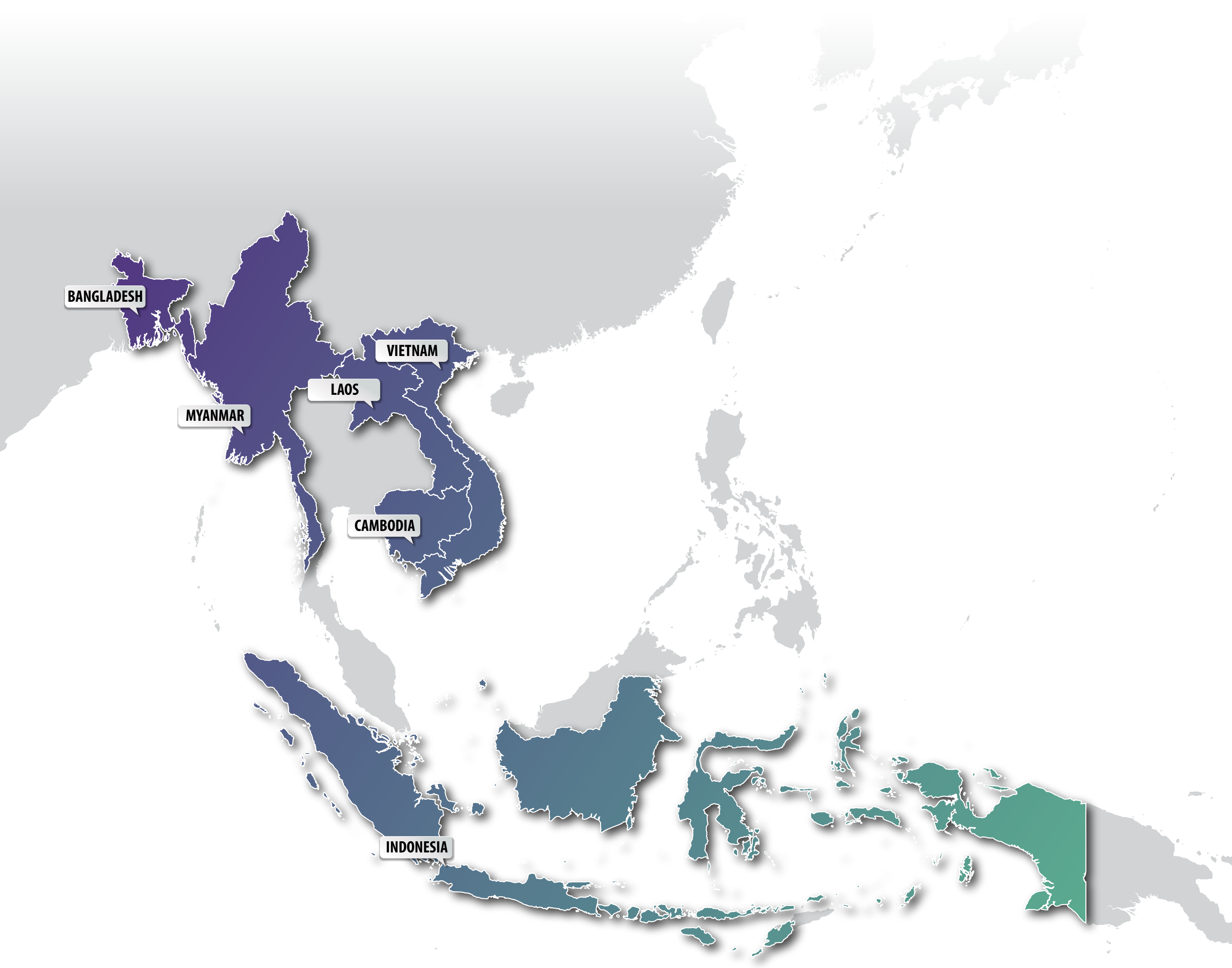

BANGLADESH

UTC Building, 19th Floor
Unit 1922, 8 Pantho Path
Karwanbazar, Dhaka 1215
T: +880 0 961 188 6739
WhatsApp: +95 0 997 532 7699

CAMBODIA

No. 33, Street 294 (corner of Street 29)
Sangkat Tonle Bassac
Khan Chamkarmorn
Phnom Penh 120101
T: +855 23 964 430~434
F: +855 23 964 154

INDONESIA

Plaza Bisnis Kemang, Suite 211
Jl. Kemang Raya, No. 2
Jakarta 12730
T: +62 21 718 3415

The Cityloft Sudirman
Suite 1119, Jalan K. H. Mas Mansyur Kav. 121, Jakarta, 10220
T: +62 21 2555 6611

LAOS

Level 4, Kolao Tower II
23 Singha Road, Nongbone Village, Saysettha District
Vientiane
T: +856 21 454 679

VIETNAM

Level 5 Unit 505
The Landmark Building
5B Ton Duc Thang
Ben Nghe Ward
District 1
Ho Chi Minh City 700000
T: +84 708 283 668

MYANMAR

1st Floor, No. 112-114
Bogalay Zay Street
Botahtaung Township
Yangon 11161
T: +951 837 1635
F: +951 837 1902

ParkRoyal Hotel
No. DA – 2197
Artharwaddy Street 3
Dekkhina Thiri Township
15011
T: +95 978 559 2433