

# Cambodia NEWS Brief

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A periodic summary of new rulings and documents relating to legal, tax and investment developments in Cambodia

## Subjects:

1. Capital gains tax
2. Special employment of foreign employees

## The following report may be of interest to:

General taxpayers and companies

### Capital gains tax

*(Prakas No.346 MEF-BrK dated 1 April 2020)*

The Ministry of Economy and Finance issued Prakas No. 346 to implement tax on capital gains realised by taxpayers pursuant to the Law on Taxation.

Under this Prakas, resident and non-resident taxpayers are subject to 20% capital gains tax. The term 'capital' refers to immovable property, leases, investment assets, goodwill, intellectual property and foreign currencies.

## Definition of each item:

1. Immovable property refers to land, houses, buildings, and other constructions built on the land in accordance with the tax regulations on immovable property.
2. Lease refers to transactions where a lessor enters into an agreement with a lessee in which the lessee is entitled to own and use the immovable assets for a period by paying periodic lease fees or an equivalent value. Lease includes sublease, except for a financial lease of movable property and a special lease as stated in the Law on Special Lease.
3. Investment asset refers to shares, bonds, and securities issued by a private enterprise.
4. Goodwill refers to licenses, customer lists and brand names.
5. Intellectual property includes patents, literary and artistic works, logos, pictures and drawings that are used for commercial purposes.
6. Foreign currency refers to any currency other than Khmer Riel.

## Calculation of the capital gains tax;

To calculate the capital gains tax, taxpayers take income from the sale or transfer, deduct expenses and multiply by 20%. Deductible expenses are: (i) for immovable property, a choice between the designated deductible expenses equal to 80% of the sale or transfer income, with no need to provide expense-supported documents, or the actual expenses supported by evidence; and (ii) for others, actual expenses only.



Taxpayers must submit tax returns and pay capital gains tax to the General Department of Taxation (GDT) within three months after realising the capital gain. The GDT has the right to adjust the capital gain and tax calculation if the taxpayer can't provide sufficient supporting evidence. Ownership transfer isn't legalised until there's evidence that the capital gains tax is paid.

Under this Prakas, the capital gains tax would be in effect from 1 July 2020. However, since the GDT wishes to make a public announcement, they will implement it on 1 January 2021.

### **Special employment of foreign employees**

*(Prakas No.277/20 MLVT dated 14 August 2020)*

The Ministry of Labour and Vocational Training issued Prakas No. 277 to allow owners or directors of enterprises to employ foreign employees in excess of 10% of the total number of their Cambodian employees.

Under this Prakas, if owners or directors of enterprises (under the scope of Article 1 of the Law on Labour) need to employ someone, but can't find a suitably qualified Cambodian worker for that workplace, work type, or work shift, they can request for the special use of foreign employees exceeding 10% of the total number of Cambodian employees.

To employ foreign employees under these special conditions, owners or directors of enterprises shall: (i) submit a request letter on the use of foreign employees to the Minister of Labour and Vocational Training by attaching each foreigner's written employment contract, (ii) fulfil applications for foreign employee work permits via the online Foreign Workers Centralised Management System (FWCMS) through the website: <https://fwcms.mltv.gov.kh>, (iii) pay official fees for each foreign employee's work permit; and (iv) submit valid visa or residence permits.

Owners or directors of enterprises or any person who violates the provisions of this Prakas shall be penalised under Chapter 16 of the Labour Law.



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