Executive summary

In response to questions raised by many taxpayers, Cambodia’s General Department of Taxation (the GDT) has released an updated related party disclosure form (Annex 1) as an attachment to the 2017 annual Tax On Income (TOI) return and confirms that the requirements apply to 2017 calendar year taxpayers. The TOI return and Annex 1 are due on 31 March 2018.

Detailed discussion

Annex 1 to the fiscal year (FY) 2017 TOI return

Annex 1 “List of related party transactions” requires Cambodian taxpayers to list the following related party transactions:

- All revenue and sales generated between related parties
- All expenses and purchases between related parties
- Loans to and from related parties

Annex 1 also requires taxpayers to list the names and countries of residence of the related parties, descriptions of the related party transactions and a value of each related party transaction.
Failure to provide the required information may result in revocation of the taxpayer’s tax compliance certificate or revision to the taxpayer’s tax compliance status pursuant to Cambodia’s transfer pricing (TP) regulations in Article 19 of Prakas No. 986 (Prakas 986). Further, penalties may apply to a TP adjustment in accordance with Article 133 of the Law on Taxation.

Article 18 of Prakas 986: maintaining annual TP documentation

Article 18 of Prakas 986 provides that taxpayers include the following information in their documentation:

General information relating to the taxpayer and its related parties:
- Information relating to the taxpayer's group structure and intra-group relationships
- Details of the taxpayer and its related parties' business operations
- Documentation relating to business development strategies and investment plans

Information on the taxpayer's related party transactions:
- Intercompany agreements with accompanying product and service flow charts
- Product description information

Details of the taxpayer’s transfer pricing policy:
- Details of the taxpayer and its group’s intercompany pricing policy
- Profitability of the taxpayer’s related party transactions
- Substantiation of the selection of the most appropriate transfer pricing methodology

OECD-compliant TP documentation

Prakas 986 is based on the Organisation for Economic Co-operation and Development (the OECD) Transfer Pricing Guidelines. Accordingly the steps and results of the benchmarking process should be documented in an OECD-compliant TP document, preferably conforming to the guidance in the OECD Base Erosion and Profit Shifting Action 13 report on Country-by-Country reporting.

TP documentation language requirements

All documents submitted to the GDT should technically be in the Khmer language. Though the GDT has accepted TP documentation in English, the GDT may require all documents to be translated into Khmer.

Deadline for submitting TP documentation

Prakas 986 does not provide a deadline for submitting TP documentation. Deadlines for other documents requested by the GDT are within seven working days and the GDT may extend this deadline on request, subject to the discretion of the auditor.

Prakas 986 and Annex 1 do not address the following:

Whole of entity or separate transaction analysis
It is unclear whether the GDT will require taxpayers to document an arm’s-length price for each related party transaction or for the aggregate of all related party transactions for each entity.

Use of secret comparables
As the GDT has access to information that is not publicly available, the GDT may use private information as secret comparables. Accordingly, it is important to understand how the GDT selects comparables and, if applicable, challenge their use of secret comparables.

Endnotes

1. Taxpayers are classified into gold, silver or bronze status and those in the gold and silver categories are exempt from the minimum tax payment. Accordingly, if these taxpayers are down-rated to a bronze status, they become subject to the minimum tax provision.

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