

**KINGDOM OF CAMBODIA**

**Nation Religion King**

**Ministry of Economy and Finance**

**No. 346 MEF.P.**

**PRAKAS**

**ON**

**CAPITAL GAINS TAX**

**The Deputy Prime Minister**

**Minister of Economy and Finance**

*Pursuant to*

- The Constitution of the Kingdom of Cambodia;
- Royal Decree No. NS/RD/0918/925, dated September 6, 2018, on the Appointment of the Royal Government of Cambodia;
- Royal Kram No. NS/RK/0618/012, dated June 28, 2018, promulgating the Law on the Organization and Functioning of the Council of Ministers;
- Royal Kram No. NS/RK/0196/18, dated January 24, 1996, promulgating the Law on the Establishment of the Ministry of Economy and Finance;
- Royal Kram No. NS/RK/0297/03, dated February 24, 1997, promulgating the Law on Taxation and its subsequent amendments;
- Royal Kram NS/RK/1218/017, dated December 12, 2018, promulgating the Law on Financial Management 2019;
- Subdecree No. 488 S.E., dated October 16, 2013, on the Organization and Functioning of Ministry of Economy and Finance;
- Subdecree No. 75 S.E, dated May 25, 2017, on the Modification of Subdecree No. 488 S.E, dated October 16, 2013 the Organization and Functioning of the Ministry of Economy and Finance;
- Necessity of the Ministry of Economy and Finance;

## **Hereby decides**

### **Article 1.- Purpose**

The purpose of this Prakas is to enforce the tax on capital gains achieved by taxpayers in accordance with the new Article 7 (one) of the Law on Taxation.

### **Article 2.- Goal**

The goal of this Prakas is to set out a rule and procedure for managing the collection of tax on capital gains achieved by taxpayers in the Kingdom of Cambodia.

### **Article 3.- Scope**

This Prakas shall apply to the taxpayers who achieve capital gains.

### **Article 4.- Definition**

For the purpose of this Prakas:

- 1- "Taxpayer" refers to a resident or non-resident taxpayer who has sold or transferred capital to any other persons.
- 2- "Resident taxpayers" refers to a natural person with one or more of the three criteria as follows:
  - A- Have a residence in the Kingdom of Cambodia which he/she owns, or rents or leases, is a rented house, building, room, and dormitory etc. and is place where that person regularly resides or occupies.
  - B- Have a principal place of abode in the Kingdom of Cambodia according to the actual status of the stay based on several factors, including the economic center of the natural person, duration of stay, characteristics of stay, the place where the family of that natural person stays, the bank account of that natural person, or primary place where the natural person takes part in social activities.
  - C- Be physically present in the Kingdom of Cambodia for more than 182 days on one or more occasions within a period of 12 months ending in the current tax year. In determining the number of days of stay in the Kingdom of Cambodia, a part of a day during which he/she stays is counted as one full day.

In the event of any obscurity in judging the criteria stated in Clause A and Clause B of this paragraph, the physical presence of the natural person stated in Clause C is the last condition for determining whether or not a natural person is a resident.

- 3- "Non-resident taxpayer" refers to a natural person or legal entity who is not a resident taxpayer.
- 4- "Capital" refers to a property, lease, investment assets, business reputation, intellectual property, and foreign currency. For the purpose of this paragraph, the following terms are defined as follows:
  - A- Property refers to land, house, building and constructions built on that land in accordance with the regulations on property tax.
  - B- Lease refers to the transaction, in which a lessor signs an agreement with a lessee, through which a lessee is authorized to occupy and use the property for a period of time by paying rent based on the duration or equivalent rate. The lease also includes a sublease except the financial lease of a movable property and special lease as stated in the in Law on Special Lease.
  - C- Investment asset refers to a share, bond, and security issued by a private enterprise.
  - D- Business reputation refers to a license, customer list and brand;
  - E- Intellectual property refers to a patent, literary and artistic works, logo, picture and drawing used for commercial purpose;
  - F- Foreign currency refers to any currency other than Riel.
- 5- "Capital gains" refers to a taxable income derived from the generation of income from the sale or transfer of capital minus the allowable expenses.

#### **Article 5.- Tax exemption**

Tax on capital gains shall be exempted for the sale or transfer of:

- 1- Property which is owned by a public institution.
- 2- Property which is owned by a diplomatic mission or foreign consul, international organization or technical cooperation agency of other governments.
- 3- Residence which is the principal place of taxpayer's occupation for at least five (5) years before the sale or transfer. In the event a taxpayer has more than one residence or a taxpayer and his/her spouse have different residences, only one residence shall be permitted as a principle residence.
- 4- Immovable properties among relatives as stated in the regulation on registration tax, except the transfer of ownership or right to occupy immovable properties between biological brothers/sisters, between parents-in-law and children-in-law and grandparents-in-law and grandchildren-in-law.

- 5- Properties sold or transferred for the public interest in accordance with the Law on Expropriation.

### **Article 6.- Time of achieving capital gains**

For the purpose of this Prakas, taxpayers achieve capital gains when:

- 1- Selling or transferring or creating the right to occupy property or;
- 2- Registering the transfer of ownership or right to occupy property at the competent authorities or;
- 3- A decision is made to transfer ownership or right to occupy property through a court verdict or judgment.

### **Article 7.- Deductible expenses**

Deductible expenses shall meet the three requirements as follows:

- 1- An event that proves the increase in expenses or costs with verifiable evidence;
- 2- Outcome of economic activities related to the expenses;
- 3- Invoices or supporting documents proving the amount of expenses.

### **Article 8.- Rules for expense deduction**

The rules for expense deduction are as follows:

- 1- For capital as immovable property, taxpayers shall be permitted to choose one of the following two methods:
  - A- Determination-based expense deduction: It is permissible to deduct 80 percent of the income derived from the sale or transfer of property.
  - B- Actual expense-based deduction: It is permissible to deduct expenses actually incurred.
- 2- For other capitals, taxpayers shall be only permitted to deduct expenses according to the actual expense-based deduction method.
- 3- In the event that taxpayers choose the actual expense-based deduction method, and the expenses actually incurred exceed the income from the sale or transfer of property, the exceeding amount shall not be permitted to be returned or deducted from a capital gains of other properties.

### **Article 9.- Price and cost of property**

To calculate the tax on capital gains, the price and cost of the property shall be defined as follows:

- 1- Price of property shall be based on the price of selling or transferring property, attached with the sale/purchase agreement and other supporting documents. In the event that the tax administration finds that the sale price determined in the sale/purchase agreement is lower than the market price, the tax administration shall be entitled to reassess the sale price of the property based on the market price or the value determined in the annex of the Prakas on Determination of the Calculation Base for the Registration Tax on the Transfer of Ownership or Occupancy Right over Immovable Property or the price determined by the commission for evaluation of property of capital gains tax.
- 2- The cost of property includes the cost of property when it is bought and the expenses incurred during its purchase or, occupation, sale or transfer, including but not limited to:
  - A- Consulting fees;
  - B- Registration tax paid when the property was purchased or received;
  - C- Tax on property or tax on unused land that has been paid;
  - D- Expenses on cadastral administration or land management fees;
  - E- Expenses on commercial advertisement;
  - F- Commission fees;
  - G- Property evaluation fees;
  - H- Expenses on administrative fees to obtain a loan to purchase or obtain property;
  - I- Expenses on interest on a loan borrowed to purchase property paid during the occupancy of property;
  - J- Property maintenance and renovation;
  - K- Expenses on the creation or protection of property occupancy right.

#### **Article 10.- Tax rate**

The capital gains tax rate is fixed at 20%.

#### **Article 11.- Capital gains calculation**

In accordance with Article 8 of this Prakas, taxpayers are permitted to choose one of the two capital gains calculation methods:

- 1- Determination-based expense deduction

### Example 11.1

Mr. **A** sold a house to Mr. **B** at a price of 800,000,000 riels. Mr. **A** has failed to maintain expense documents related to the house. Therefore, Mr. **A** may choose the determination-based expense deduction as follows:

Income from the property sale or transfer	= 800,000,000 riels
Determination-based expense deduction	= 80% x property sale or transfer
	= 80% x 800,000,000 riels
	= 640,000,000 riels
Capital gains	= income from property sale or transfer – determination
	= 800,000,000 – 640,000,000
	= <u>160,000,000 riels</u>

#### 2- Actual expense-based deduction

### Example 11.2

Mr. **A** sold a house to Mr. **B** at a price of 600,000,000 riels purchased at a price of 400,000,000 riels, by paying registration tax on the transfer of ownership or right to occupy property of 16,000,000 riels, a commission fee of 24,000,000 riels for the sale of house, and a renovation fee of 20,000,000 riels.

Mr. **A** has retained documents related to the occupancy and renovation of that house. Therefore, Mr. **A** may chose actual expense-based deduction, calculated as follows:

Income from property sale or transfer	= 600,000,000
Total actual expense	= cost + tax paid + commission fee + renovation fee
	= 400,000,000 + 16,000,000 + 24,000,000 + 20,000,000
	= 460,000,000 riels
Capital gains	= Income from property sale or transfer – total actual expense
	= 600,000,000 – 460,000,000
	= <u>140,000,000 riels</u>

## **Article 12.- Capital gains tax calculation**

Capital gains tax shall be calculated by multiplying the capital gains by the tax rate stated in Article 10 of this Prakas.

### **Example 12.1.**

Mr. **A** is a resident taxpayer receiving capital gains of 340,000,000 riels.

$$\begin{aligned}\text{Capital gains tax} &= \text{Capital gains} \times \text{fixed rate } 20\% \\ &= 340,000,000 \times 20\% \\ &= \underline{68,000,000 \text{ riels}}\end{aligned}$$

### **Example 12.2**

Mr. **B** is a non-resident taxpayer receiving capital gains from the sale of shares in a company in the Kingdom of Cambodia, amounting to 400,000,000 riels.

$$\begin{aligned}\text{Capital gains tax} &= \text{Capital gains} \times \text{fixed rate } 20\% \\ &= 400,000,000 \times 20\% \\ &= \underline{80,000,000 \text{ riels}}\end{aligned}$$

## **Article 13.- Capital gains tax for properties outside the Kingdom of Cambodia**

In the event that a resident taxpayer receives capital gains from any property outside the Kingdom of Cambodia and has paid capital gains tax in accordance with the foreign tax law and if the tax amount in the foreign country is less than the tax amount stated in Article 12 of this Prakas, the taxpayer shall only pay the additional amount of the difference.

## **Article 14.- Tax return filing and tax payment**

Taxpayers shall file tax returns in a form determined by the tax administration and pay capital gains tax according to each transaction to the tax administration within no more than three months after achieving the capital gains as stated in Article 6 of this Prakas. For the properties located in Phnom Penh, taxpayers shall file tax returns and pay tax to the General Department of Taxation. For the properties located in provinces, taxpayers shall file tax returns and pay tax to the provincial tax branches where the properties are located.

### **Article 15.- Required documents**

Taxpayers shall provide the following relevant documents for payment of capital gains tax:

- A- Khmer ID card or certification of birth or passport for foreigners;
- B- Family record book or residence record book or residence certificate;
- C- Taxpayer's certification of his/her principal residence;
- D- Land ownership certificate or certificate of right to occupy real estate or real estate ownership certificate or unit ownership certificate issued by the cadastral administration or documents related to property occupancy certified by the Commune/Sangkat authorities or higher or documents of recognition by the competent authorities;
- E- Property sale/purchase contract, exchange or donation contract;
- F- Payment invoices and expense invoices as stated in Article 9 of this Prakas;
- G- Other documents related to the sale or transfer of capital.

### **Article 16.- Inspection authority**

The tax administration has inspection authority to reassess the tax calculation base and tax amount payable in the event that taxpayer fails to provide appropriate documents.

### **Article 17.- Transfer of capital ownership or occupancy**

The transfer of capital ownership or occupancy shall not be adequately legal if that capital is not certified with the payment of capital tax.

### **Article 18.- Management of capital gains tax collection**

Capital gains tax shall apply to the capital gains generated from July 1, 2020.

### **Article 19.- Punishment**

Taxpayers shall be subject to punishment according to the Law on Taxation in force if they fail to file the tax returns and pay the capital gains tax by the due date.

### **Article 20.- Promulgation**

Director of Cabinet, General Secretariat, Delegate of the Royal Government in charge as Director General of the General Department of Taxation, Delegate of the Royal Government in charge as Directors General and Directors General of all General Departments, Directors General of the General Inspectorate Department and the



heads of all relevant entities subordinate to the Ministry of Economy and Finance shall be in charge of respectively implementing this Prakas from the date of signature onwards.

Wednesday, the 9<sup>th</sup> day of the waxing moon, Month  
of Chaitra, Year of the Pig, Aeksaka, B.E 2563  
Phnom Penh, April 1, 2020

**Deputy Prime Minister**

**Minister of Economy and Finance**

*(Signed and stamped)*

**cc:**

- Office of the Council of Ministers
- Cabinet of Samdech Akka Moha Sena Padei  
Techo HUN SEN
- Cabinet of Samdech, Excellencies, Deputy  
Prime Minister
- Municipal – Provincial Halls
- As stipulated in Article 20 “for  
implementation”
- Royal Gazette
- Records – Archives

**H.E. Akka Pundit Sapheacha  
AUN PORNMONIROTH**