



ក្រសួងសេដ្ឋកិច្ច និង ហិរញ្ញវត្ថុ

នាយកដ្ឋានពន្ធដារ

**Ministry of Economy and Finance
Tax Department**

ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

**Kingdom of Cambodia
Nation Religion King**

ប្រកាស

ស្តីពី

ពន្ធលើប្រាក់ចំណេញ

Prakas

on

The Profit Tax

មករា ២០០៤

January 2004

INDEX

Chapter 1 *General Provisions*

| | | |
|--------------|--|--------|
| Section 1.1: | Tax Base..... | Page 2 |
| Section 1.2: | Residence and Non resident | Page 2 |
| Section 1.3: | Cambodian Source Income | Page 3 |
| Section 1.4: | Foreign Source Income | Page 4 |
| Section 1.5: | Power of the Tax Administration to Determine Income Source | Page 4 |
| Section 1.6: | Income not Taxable under TOP | Page 4 |

Chapter 2 *General Rules on Taxable Profit*

| | | |
|--------------|--|---------|
| Section 2.1: | Period for Tax Assessment..... | Page 6 |
| Section 2.2: | Definition of Taxable Profit | Page 7 |
| Section 2.3: | Definition of Business Assets | Page 9 |
| Section 2.4: | Accounting Rules | Page 10 |
| Section 2.5: | Adjustments Outside Accounting Books | Page 11 |
| Section 2.6: | General Rules on Burden of Proof (Article 119 of LOT) | Page 11 |
| Section 2.7: | General Rules on Provisions | Page 12 |

Chapter 3 *General Rules on Stocks and Works in Progress*

| | | |
|--------------|-------------------------------------|---------|
| Section 3.1: | Definition | Page 12 |
| Section 3.2: | Stock Valuation | Page 14 |
| Section 3.3: | Valuation of Work in Progress | Page 15 |

Chapter 4 *General Rules on Business Income*

| | | |
|---------------|--|---------|
| Section 4.1: | General | Page 16 |
| Section 4.2: | Pay ability of a Claim..... | Page 16 |
| Section 4.3: | Subsidiary Income..... | Page 17 |
| Section 4.4: | Income from Immovable Property Recorded in the Balance Sheet | Page 17 |
| Section 4.5: | Dividend Income | Page 18 |
| Section 4.6: | Income from Loans, Deposits, Guarantees and Current Accounts | Page 18 |
| Section 4.7: | Royalties..... | Page 18 |
| Section 4.8: | Donation and Grant | Page 18 |
| Section 4.9: | Other Subsidiary Incomes | Page 19 |
| Section 4.10: | Other Incomes | Page 19 |

Chapter 5
General Rules on Expenses

| | | |
|---------------|---|---------|
| Section 5.1: | Business Expense | Page 20 |
| Section 5.2: | Deductible Expense..... | Page 21 |
| Section 5.3: | Non-deductible Expense | Page 22 |
| Section 5.4: | Preliminary and Formation Expenses | Page 22 |
| Section 5.5: | Purchase | Page 23 |
| Section 5.6: | External Charges Services..... | Page 24 |
| Section 5.7: | Taxes | Page 26 |
| Section 5.8: | Salary and Similar Expenses | Page 27 |
| Section 5.9: | Interest..... | Page 28 |
| Section 5.10: | Exceptional and Extraordinary Expenses..... | Page 29 |

Chapter 6
General Rules on Depreciation

| | | |
|--------------|--|---------|
| Section 6.1: | Definition | Page 30 |
| Section 6.2: | Depreciation must be made only on a fixed asset recorded in the balance sheet of the enterprise | Page 31 |
| Section 6.3: | Depreciation must be made only on an element subject to depreciation ... | Page 32 |
| Section 6.4: | Depreciation must be made on the basis and within the scope of the cost price..... | Page 33 |
| Section 6.5: | Depreciation of Assets | Page 34 |
| Section 6.6: | Depreciation of Tangible Properties by the Straight Line Method | Page 35 |
| Section 6.7: | Depreciation of Tangible Properties by the Declining Balance Method .. | Page 36 |
| Section 6.8: | Depreciation must be made actually by the enterprise..... | Page 37 |
| Section 6.9: | Special Depreciation | Page 41 |

Chapter 7
General Rules on Capital Gain and Capital Loss on an Asset

| | | |
|--------------|---|---------|
| Section 7.1: | General | Page 39 |
| Section 7.2: | Calculation of the Capital Gain or Loss | Page 40 |
| Section 7.3: | Special Cases..... | Page 41 |

Chapter 8
General Withholding Tax

| | | |
|--------------|--|---------|
| Section 8.1: | General | Page 42 |
| Section 8.2: | Withholding Tax on payments made to a Resident..... | Page 42 |
| Section 8.3: | Withholding Tax on payments made to a Non-Resident | Page 43 |
| Section 8.4: | Exemption from the Withholding Tax | Page 43 |
| Section 8.5: | Calculation of the Withholding Tax..... | Page 44 |
| Section 8.6: | Withholding Agents and their Obligations..... | Page 44 |
| Section 8.7: | Penalties | Page 45 |

Chapter 9
Calculation of the Tax on Profit

| | | |
|--------------|---|---------|
| Section 9.1: | Determination of the Taxable Results | Page 45 |
| Section 9.2: | Determination of the Liability to the Tax on Profit | Page 47 |
| Section 9.3: | Determination of the Tax Due or Tax Credit for the Tax Year..... | Page 47 |
| Section 9.4: | Determination of the Minimum Tax, and the Tax Due or the Tax Credit for the Tax Year | Page 48 |
| Section 9.5: | Rules on the Carry Forward of Losses | Page 48 |
| Section 9.6: | Rates of the Tax on Profit (Article 20(new) of the Law on the Amendment of the LOT)..... | Page 49 |
| Section 9.7: | Foreign Tax Credit (Article 36 of LOT) | Page 50 |

Chapter 10
Taxation of Legal Persons

| | | |
|---------------|--|---------|
| Section 10.1: | General | Page 51 |
| Section 10.2: | The additional profit tax on dividend distributions..... | Page 51 |

Chapter 11
Taxation of Particular Types of Enterprises

| | | |
|---------------|--|---------|
| Section 11.1: | Taxation of Insurance Enterprises..... | Page 52 |
|---------------|--|---------|

Chapter 12
Regime Systems of Taxation

| | | |
|---------------|-------------------------------------|---------|
| Section 12.1: | Types of Systems of Taxation | Page 53 |
| Section 12.2: | Scope of the Real Regime | Page 53 |
| Section 12.3: | Scope of the Estimated Regime | Page 54 |

Chapter 13
Provisions for Real Regime System of Taxation

| | | |
|---------------|--|---------|
| Section 13.1: | Obligation of Declaration for the Enterprise | Page 54 |
| Section 13.2: | Accounting Obligation | Page 56 |
| Section 13.3: | Audit and Amendment of the Tax return | Page 57 |
| Section 13.4: | Right of the Tax Administration to Pursue Tax Collection | Page 60 |
| Section 13.5: | Taxable Person and Place to Assess Tax | Page 61 |

Chapter 14
Provisions for Estimated Regime System of Taxation

| | | |
|---------------|---|---------|
| Section 14.1: | Obligation of the Estimated Regime Taxpayer | Page 62 |
| Section 14.2: | Tax Assessment in the Estimated Regime | Page 62 |

Chapter 15
Closing Provisions

Section 15.1: Abrogation Page 62
Section 15.2: Effective Date..... Page 63



Kingdom of Cambodia
Nation Religion King

Ministry of Economy and Finance
Fax/Phone (855) 23 427 798
No. 1059 PK/MEF/DT

Phnom Penh City, 12 December 2003

PRAKAS
on the
Tax on Profit

Senior Minister
Minister of Economy and Finance

- Having seen the Constitution of the Kingdom of Cambodia.
- Having seen Reach Kret No. NS/RKT/1198/72 dated 30 November 1998 on the Formation of the Royal Government of Cambodia.
- Having seen Reach Kram No. 02/NS/94 dated 20 July 1994 promulgating the Law on the Organisation and Functioning of the Council of Ministers.
- Having seen Reach Kram No. NS/RKM/0196/18 dated 24 January 1996 promulgating the Law on the Creation of the Ministry of Economy and Finance.
- Having seen Reach Kram No. 02/NS dated 28 December 1993 promulgating the Finance Act of 1994 and the Reach Kram No. 08/NS/94 dated 30 November 1994 promulgating the Amendment to the Finance Act of 1994.
- Having seen Reach Kram No. 11/NS/94 dated 31 December 1994 promulgating the Finance Act of 1995 and the Reach Kram No. CS/RKM/0995/01 dated 01 September 1995 promulgating the Amendment to the Finance Act of 1995.
- Having seen Reach Kram No. NS/RKM/0297/03 dated 24 February 1997 promulgating the Law on Taxation.
- Having seen Reach Kram No. NS/RKM/1200/02 dated 30 December 2000 promulgating the Finance Act of 2001.
- Having seen Reach Kram No. NS/RKM/0303/009 dated 24 March 2003 promulgating the Law on the Amendment of the Law on Investment.
- Having seen Reach Kram No. NS/RKM/0303/010 dated 31 March 2003 promulgating the Law on the Amendment of the Law on Taxation.
- Having seen Prakas No. 055 PK/MEF/TD dated 30 March 1995 on basic principle for tax collection implementation on Profit.
- Having seen Prakas No. 539 KP/MEF/TD dated 03 March 2000 on the tax on Profit.
- Pursuant to the needs of the Tax Department in the administration and collection of taxes.

Decides

Chapter 1

General Provisions

Section 1.1: Tax Base

1. As stated in article 2 of the Law on Taxation (LOT), the Tax on Profit (TOP) is the debt of a resident person on income from Cambodian sources and income from foreign sources, and the debt of a non-resident person on income from Cambodian sources.

Section 1.2: Residence and Non resident

1- For a physical person, the term resident taxpayer refers to any physical person who has a residence, a principal place of abode, or who is present in the Kingdom of Cambodia for more than 182 days in any period of 12 months ending in current tax year. The criteria for a residence in Cambodia are as below and any person who satisfies any one of the 3 criteria as below shall be considered a resident in the Kingdom of Cambodia

- a- The first criteria is determined by a physical person's residence. A physical person has his residence located or situated in the Kingdom of Cambodia if he owns, rents, leases, or has available for use a house, apartment, dormitory, etc. in which he usually stays or occupies;
- b- The second criteria is determined by a physical person's principal place of abode in the Kingdom of Cambodia, which is a factual determination based on factors such as the physical person's centre of economic interest, the amount of time spent, the nature of time spent, where that person's family resides, the physical person's bank accounts are hold, his main social activities take place.
- c- The third criteria is the presence of the physical person in the Kingdom of Cambodia for more than 182 days during one or more separate periods in any period of 12 months ending in the current tax year. In determining the number of days in the Kingdom of Cambodia, presence for any part of a day is counted as a whole day.

2- A physical person is referred to as a non-resident taxpayer, if he is not a resident taxpayer but receives income from a Cambodian source.

3- For a legal person, the term resident taxpayer refers to an entity (a legal person), which is organised or managed in, or has a principal place of business in the Kingdom of Cambodia;

4- An entity, which is not a resident entity, that maintains a permanent establishment in the Kingdom of Cambodia, is referred to as a non-resident taxpayer.

5- A permanent establishment as mentioned in paragraph 4 refers to a fixed place of business or a resident agent in the Kingdom of Cambodia through which a non- resident person carries out business, wholly or partially, in the Kingdom of Cambodia. A permanent establishment includes also any other association or connection or mean through which a non-resident person engages in economic activities in the Kingdom of Cambodia. A permanent establishment shall be considered a resident legal person with respect to its Cambodian source income only.

a- A permanent establishment includes mainly:

- a place of management;
- a branch of a foreign enterprise, an agency;
- an office of a foreign enterprise;
- a warehouse;
- a factory;
- a workshop;
- a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- a farm or plantation.

b- A permanent establishment includes also:

- a building site, a construction project or an assembly project, or supervisory activities connected to such site or project, where such site or project or activities continue for a period of more than six months;
- the furnishing of services including consultancy services by the employees or other personnel of a foreign enterprise where such activities continue within the Kingdom of Cambodia for periods aggregating more than six months in any 12 month period.

c- In addition to the provisions of sub-paragraphs a and b of this paragraph, a person shall be considered a permanent establishment in the Kingdom of Cambodia if such person satisfies one or more of the three conditions as follows:

- has and regularly exercises the authority to conclude contracts in the Kingdom of Cambodia on behalf of a foreign enterprise;
- regularly maintains in the Kingdom of Cambodia a stock of goods or merchandise from which he regularly delivers or supplies such goods or merchandise on behalf of a foreign enterprise;
- collects insurance premiums or insures risks, except the reinsurance of risks, situated in the Kingdom of Cambodia, on behalf of a foreign enterprise.

d- In actual implementation, the tax administration shall decide for each particular case whether there is permanent establishment or not, on the basis of factual circumstances in that case except in the case of the implementation of the clauses of an international agreement.

Section 1.3: Cambodian Source Income

1- In accordance with articles 33(new) and 34 of the Law on the Amendment of the LOT, the income as below shall be considered as from Cambodian sources:

- a- Interest paid by a resident enterprise or resident pass-through, or governmental institution of the Kingdom of Cambodia;
- b- Dividends distributed by a resident enterprise;
- c- Income from services performed in the Kingdom of Cambodia;
- d- Compensation or income for management and technical services paid by a resident person;
- e- Income from movable or immovable property, if such property is situated in the Kingdom of Cambodia;

- f- Royalties from the use, or right to use intangible property paid by a resident, or paid by a non-resident through a permanent establishment that he maintains in the Kingdom of Cambodia;
- g- Gain from the sale of immovable property located in the Kingdom of Cambodia or from the transfer of any interest in immovable property situated in the Kingdom of Cambodia;
- h- Premiums from the insurance or reinsurance of risks in the Kingdom of Cambodia;
- i- Gain from the sale of movable property which is part of the business property of a permanent establishment maintained by a non-resident taxpayer in the kingdom of Cambodia.
- j- Income from business activities carried on by a non-resident through a permanent establishment in the Kingdom of Cambodia.

In addition to Cambodian source incomes as stated in article 33(new) and article 34(new) of the Law on the Amendment of the LOT, a resident taxpayer in Cambodia or a non-resident taxpayer may have a Cambodian source income from the carrying on of a business in the Kingdom of Cambodia. As stated in paragraph 7 of article 3 of LOT, the term “business” refers to a person’s economic activity the aim of which is to derive income from the production and sale of goods (supply of goods), the supply of services, the lease, rental or sale of property, or any other activity. And paragraph 7 of article 88 of LOT, has defined “economic activity” as the regular or continuous or from time to time activity of a person, whether or not for profit, in the supply of, or intent to supply, goods or service to other persons for the purpose of obtaining any benefit.

Section 1.4: Foreign Source Income

- 1- In accordance with articles 34(new) of the Law on the Amendment of the LOT, any income that is not treated as from Cambodian sources in section 1.3 of this Prakas and article 33(new) of the Law on the Amendment of the LOT and 35 of LOT is deemed to be from foreign sources.

Section 1.5: Power of the Tax Administration to Determine Income Source

- 1- As stated in article 35 of LOT, where there is insufficient information to determine what the source of income is, or where the rules set forth so far cannot clearly reflect the income is from any one source, the tax administration is the one to decide on the source of that income.

Section 1.6: Income not Taxable under TOP

- 1- Shall not be taxable under TOP, an income liable to the tax on salary or the tax on fringe benefits as stated in the Prakas No 396-PK-MEF-TD dated 27 June 1997 of the Ministry of Economy and Finance.
- 2- For an income which is the rental of a house or land, the following dispositions shall apply:
 - a- The income from the rental of a house or land belonging to a person who is not subject to the real regime system of taxation, shall not be taxable under TOP.
 - b- As for the income from the rental of a house or land recorded in the balance sheet assets of a person taxable under the real regime, this income must be added up with other incomes of that person to form the results for the determination of TOP.
- 3- Shall not be taxable under TOP, any income or profit from the sale of agricultural produce that a person who is not a real regime taxpayer has produced himself whether the produce is sold in its raw state or after some transformations which are an extension of habitual agricultural work.

Operations by industrial means including transformation, preservation, and commercial packaging, are not considered part of habitual agricultural work. In any case, if the person is a real regime taxpayer, or if the agricultural activity of the person generates a turnover exceeding the threshold level of income for real regime registration which impose on that person the obligation to apply for registration as a real regime taxpayer, the income from the agricultural activity of such person is liable to TOP in accordance with the general rules.

4- Shall not be taxable under TOP, the income of the Royal Government or the income of an institution of the Royal Government except for an institution which carries on a business for profit like a public enterprise.

5- Shall not be taxable under TOP, the income of an organisation as stated in sub-paragraphs b and c of article 9(new) of the Law on the Amendment of the LOT.

6- For an organisation as stated in paragraph 5 of this section, to be eligible for tax exemption status the concerned organisation must apply to the Minister of Economy and Finance, and provide documentation on:

- a- Goals and objectives of the organisation.
- b- Name and address of resident persons (if any) who sit on the board of director of the organisation.
- c- Name and address of the director or directors responsible for the operation of the organisation in the Kingdom of Cambodia if that organisation has connections to an organisation outside of the Kingdom of Cambodia.
- d- Source and use of all funds attributed to the operation of the organisation in the Kingdom of Cambodia.
- e- Assets held in the Kingdom of Cambodia by the organisation or the parent organisation.
- f- Chart of accounts of the organisation. This chart must be separate from the chart of accounts of any related organisation located outside the Kingdom of Cambodia.

7- The exemption of paragraph 5 of this section does not apply to property income or business income that is not substantially related to the purpose or function constituting the basis for tax exemption for the non-profit organisation.

8- Where the conditions specified in the application for tax exempt status change, the concerned organisation must notify the Minister of Economy and Finance within 15 days of such change.

9- The tax exempt status granted by approval of the Minister of Economy and Finance will remain in force as long as the non-profit organisation meets and continues to meet the conditions specified in the letter of application and for which conditions the approval was granted.

10- The unrelated business income of an organisation as stated in paragraph 7 of this section shall be subject to the tax on profit and the minimum tax. The rules for the determination of the profit of an unrelated business are stated in a separate Prakas.

Chapter 2

General Rules on Taxable Profit

Section 2.1: Period for Tax Assessment

1. As stated in article 5 of LOT:

- a- The tax on profit (TOP) for the real regime system of taxation is calculated from the balance sheet results realised in the previous tax year.
- b- If there is no closing balance sheet during any one year, the tax to be paid is assessed on the profit made in the previous period from the end of the last taxable period. For a new

enterprise, the calculation is made from the start of business operations up to the 31st of December of the year for which the tax is calculated.

c- If many successive balance sheets are drawn up during the same year, the results of these balance sheets are added up to have the base for the tax to be paid.

d- Separate rules for the tax on profit for the estimated regime system of taxation shall be defined in chapter 14 of this Prakas.

2- For an enterprise which ceases its activities, the tax shall be assessed immediately on profit realised from the 1st of January, or from closing date of the last period upon which the tax is assessed, up to the date the activities cease definitively. In this:

a- For a sole proprietorship, shall also be included in the taxable profit any capital gain which may exist and any provision which has been created in exemption of tax (if any). At the date of cessation of activities, an unsold asset (fixed asset, stock in trade, raw material, work in progress, ...) shall be considered as being taken back by the owner (transfer from business property to private property). For the calculation of the capital gain to be included in the taxable profit, such property shall be valued at its fair market value.

b -For a legal person enterprise, the relevant rules are defined in chapter 10 of this Prakas.

Section 2.2: Definition of Taxable Profit

1- As stated in article 7 of LOT, the taxable profit is the net profit obtained from all the results of all types of operations realised by the enterprise including capital gains from the sale of various elements of the assets during the operation or at the close of the business, as well as income from financial or investment operations, interest, rental, and royalty income. From this definition, the carrying on of a business which is not a legal one does not have any effect on the taxable nature of the profit.

2- As stated in article 8 of LOT, the taxable profit is made up of the excess gross product or gross income realised on the expenditure which is made with the view of acquiring and preserving profit. As such, the taxable profit comes from the deduction between all gross incomes and all expenses originated from all types of operations of the enterprise during the operation or at the close of the business. In accounting term, this profit is the balance of the profit and loss account. The operation realised by the enterprise may be directly related to the objective of the enterprise or may not be directly related to the activities of the enterprise. This operation may be realised as a primary activity or as a secondary one and includes mainly:

a- A sale, a supply of service, other work and operation (brokerage, work for commission, industrial franchise concession ...).

b- The disposal of an item of the assets. In this aspect, a disposal refers to any operation or event leading to the disposal of an item from the assets of the enterprise (sale, expropriation, investment, exchange, distribution, donation, withdrawal of capital...)

3- The taxable profit is the difference between the value of the shareholder's equity (or owner's equity) at the close of the taxable period and the value of the shareholder's equity at the beginning of that period:

a- The taxable profit is the difference between the values of the shareholder's equity at the close and at the beginning of the period producing the result which is being used as basis for tax assessment and which must be deducted with all additional capital contributions and must be added up with all appropriations for personal use that the owner of a sole proprietorship has made in that period. This definition shows that in the taxable profit there may be also profits originated in circumstances where the enterprise has made no operation

like capital gains realised in an expropriation, in a seizure or in an event leading to the reception by the enterprise of an insurance compensation.

- b- The shareholder's equity is the total value of the assets minus the sum of all claims of third persons, depreciations and provisions legally made.
 - b1- The main items in the assets are:
 - fixed assets;
 - other fixed assets (medium term and long term loans, fixed investments, shares,...);
 - stocks (goods, raw materials and other supplies, packaging, products, works In progress ...);
 - various bonds and securities, cash in bank accounts, cash in hand ... ;
 - research and development costs and other capitalized costs: these costs are not real values in the assets.
 - b2- Claim of a third person: this is a debt which is definite in its principle and in its amount, which is borrowed to serve the needs of the business and which is linked to a normal management of the enterprise.
 - b3- Depreciation and provisions: these items must be legally made.
- c- Capital contribution: a capital contribution, whether in cash or in kind, is not a taxable income. Additional capital contribution made by the owner of a sole proprietorship with appropriate supporting documents, must be deducted from the difference between the closing and the starting values of the owner's equity for the taxable period.
- d- Appropriation in cash or in kind for personal use by the owner of a sole proprietorship includes mainly:
 - the appropriation of a raw material, finished product, good, service..., to serve personal needs of the owner of a sole proprietorship and his family (foodstuff, clothing, household equipment, food for a worker in a restaurant, various materials and works for the owner of a construction enterprise...);
 - the use to serve personal needs of the owner of a sole proprietorship of an asset belonging to the enterprise (house, car...);
 - the charging to the enterprise accounts of expenses to serve personal needs of the owner of a sole proprietorship and his family (house rental, transport cost, servant's wage ...).
 - An appropriation for personal use in cash includes:
 - a remuneration paid to the owner of a sole proprietorship or his spouse;
 - a cash taken from the enterprise for personal use (cash taken from the cashbox, or from a bank account, or from a payment made by a customer...).
- e. The sale to a partner of a good or service below the price normally charged to a third person: this is an abnormal liberality, which shall be taxable.
- f. The definition of the taxable profit allows a tax assessment on:
 - the cancellation of a debt;
 - the reduction of a debt that a creditor has granted to the enterprise;
 - various liability accounts which do not exist in reality (a debt with no supporting document will cause an increase in the shareholder's equity and as such must be written back for inclusion in the taxable profit)
 - the recording in the assets of missed out items (because the value of the shareholder's equity will increase).
- g- The definition of the taxable profit on the basis of the variation of the shareholder's equity makes possible the correction of all mistakes in the balance sheet at the close of the period. If such correction leads to an increase in the value of an asset account (fixed assets, stocks,

cash, accounts receivable, or other debtors' accounts...), or a decrease in the value of a liability account, or a decrease in the balance of a depreciation or provision account, the increase in the shareholder's equity caused by this correction will result in a reassessment of the taxable profit of that period. The taxpayer has the right to do corrections to the opening balance sheet of a period which is within the legal time limit, except for the opening balance sheet of the first period in the legal time limit (which is outside the legal time limit) which cannot be changed.

Section 2.3: Definition of Business Assets

1- As the values of the shareholder's equity at the close and at the opening of the period are used as basis for tax assessment, it is necessary to determine the nature of the assets that form the business assets of the enterprise. The definition of the business assets differs as to whether the enterprise is a sole proprietorship or a legal person.

2- The business assets of a sole proprietorship must be in accordance with the following rules:

- a- For tax purposes, the owner must separate within his assets all items forming the business assets of the sole proprietorship enterprise from the ones forming his private property. The recording in the balance sheet is a criterion that differentiates a business asset from a private property.
- b- The Cambodian tax system is a "schedular tax system" in which each type of income is taxed separately and must be subject to a specific procedure for the determination of the tax base and the calculation of tax.
- c- The requirement for compliance with the rules on the determination of the tax base and the calculation of tax of the various schedular taxes leads to the setting up of the rule which states that the owner of a sole proprietorship does not have the right to record or not to record at will, an item of the assets or liabilities.
- d- For tax purposes, the owner of a sole proprietorship must record in the balance sheet of his enterprise all items of the assets or liabilities which are involved in the business operation. As such, the owner is under strict obligation to record in the balance sheet of his enterprise:
 - all fixed assets used in the carrying out of business activities (building, purchased goodwill, transport equipment ...). Any fixed asset for mixed use (for business and for private needs) must also be recorded in the assets of the balance sheet;
 - all current assets involved in business activities (stock in trade, products, raw materials, accounts receivable, cash in hand,...);
 - all liabilities related to the business activities (loans taken to finance the purchase of a fixed asset, short, medium and long term loans,...).
- e- The owner of a sole proprietorship is not allowed to record in the balance sheet of his enterprise any asset or liability which is not related to the business activities. As such, the owner cannot record in the balance sheet of his enterprise any immovable property or part of an immovable property which does not serve in the business activities (for example a dwelling house). Similarly, a claim or a debt not related to the business activity cannot be recorded in the accounting books of the enterprise. The balance sheet of a sole proprietorship must show all the assets and liabilities which, by nature or by assignment or by purpose, serve the business, and only these items.

- f- The tax consequences of the separation between the business assets and the private property are very important because:
 - the charges that come into the calculation of the taxable profit are the ones related to an item of the business assets. As such, all charges related to an asset not recorded in the balance sheet are not deductible. All charges in relation to ownership (acquisition costs, depreciation, insurance, major repairs, ...) of assets not recorded in the balance sheet are not deductible even if those assets are used in the business;
 - the transfer of an asset from the business assets to the private property (withdrawal from business assets) is a sale from which may arise a taxable capital gain or a deductible capital loss;
 - the inverse operation which is the transfer of an asset from the private property to the business assets is a capital contribution. This contribution must be recorded at real value at the date of the transfer.
- 3- The business assets of a legal person enterprise must be in accordance with the following rules:
- a- Business assets are the property of the enterprise. Legally, the business assets of the legal person enterprise must be separate from the assets of a shareholder or a partner.
 - b- For a de facto company, any asset that a shareholder has agreed to put under common ownership must be recorded in the assets of the balance sheet.

Section 2.4: Accounting Rules

- 1- For a real regime taxpayer using an accounting method in accordance with the accounting system in force in the Kingdom of Cambodia, income must be reported in the year in which it is earned whether that income is already paid or not. The deduction for an expense may be taken when all facts determining the taxpayer's liabilities have occurred, the results of economic activities with respect to the expense have occurred, and the amount of the taxpayer's liability can be actually determined.
- 2- For a transaction made in a foreign currency, the following rules shall apply:
- a- The enterprise must comply with the general rule which specify that for a transaction made in a foreign currency, the enterprise must record it in the accountings books in Cambodian Riels by using the exchange rate at the date of the transaction (date of issue of the invoice, date of payment of the advanced money or installment).
 - b- Where a form of exchange rate protection is being used, a claim or debt must be changed into Riels on the basis of the future exchange rate as stated in the contract.
 - c- Where a claim or debt arises and get settled in the same period, the difference between its value as recorded in the books when such claim or debt arises and its value at the date of settlement becomes a gain or loss on foreign exchange to be recorded in the financial income or expense of the period.
 - d- At the end of the period, a claim or debt in foreign currency must be valued on the basis of the exchange rate at the closing date. The difference resulting from this valuation must be recorded immediately as gain or loss on foreign exchange.

- e- In the following period, at the date of settlement of the claim or debt, the gain or loss on foreign exchange to be recorded is the difference between the value of that claim or debt at the settlement date and its value at the close of the preceding period.
- f- For any cash that the enterprise may have at the end of the period, the enterprise must proceed the same way as in the rule provided for a claim or debt as stated in sub-paragraph d of this paragraph.

Section 2.5: Adjustments Outside Accounting Books

1- According to the accounting rules, the net profit is the balance of the "profit and loss account" of the period. However as there are separate tax provisions, this accounting net profit must be subject to various adjustments outside the accounting books (write-backs and deductions) as stated in paragraph 1 of section 9.1 of this Prakas.

Section 2.6: General Rules on Burden of Proof (Article 119 of LOT)

1- When the taxpayer fails to maintain sufficient documents or fails to provide sufficient information, the tax administration has the right to assess or re-assess tax on the taxpayer on the basis of any precise information available to the tax administration. The burden of proof that the tax as determined by the tax administration is incorrect is on the taxpayer.

2- When there is clear difference between the taxable income or the income reported by the taxpayer and the purchase of assets or other things which make the taxpayer's expenditure conspicuous or extravagant, the tax administration has the right to assess or re-assess tax on the basis of the estimated income appropriate for the amount of expenditures to buy those assets or other things that are conspicuous. The burden of proof that the tax as determined by the tax administration is incorrect is on the taxpayer.

Section 2.7: General Rules on Provisions

1- In accordance with article 6 of LOT, the deduction for an expense may be taken when all facts determining the taxpayer's liabilities have occurred, the results of the economic activities with respect to the item have occurred, and the amount of the taxpayer's liability can be actually determined. So except for a domestic bank or savings institution, any other enterprise is not allowed to establish provision to absorb an expense or loss, which is not yet incurred actually, and this is so even if such expense or loss is very probable.

2- For a domestic bank or savings institution, these enterprises shall be allowed to establish provisions for bad debts for the determination of the taxable profit.

Chapter 3

General Rules on Stocks and Works in Progress

Section 3.1: Definition

1. A stock is made out of the enterprise's assets, which come into the business cycle:
 - a- to be sold in their original state, or after undergoing some processing, or at the end of a production process; or
 - b- to be completely used up at first use.
- 2- Stocks include mainly:

- goods, various supplies (raw materials, consumables, packaging ...), products (intermediate products, finished products, by-products ...);
 - works in progress: these are products or services in the process of realisation, in the production process.
- 3- Can be considered as a stock any product belonging to the enterprise whether such product is situated in or outside the compound of the enterprise.
- 4- At stock taking, any product or good which the enterprise has not yet received but which can be definitely considered as a property of the enterprise must be shown in stock and recorded in the balance sheet of the period.
- 5- A good, supply or product which is stored in a far away warehouse in Cambodia or abroad, or consigned to a third person's care, or put as a deposit, or loaned out, must be recorded in the assets of the enterprise which owns it.
- 6- In general, shall be considered as a stock any product, which meets the two conditions as below:
- a- The product is owned by the enterprise at the date of stock taking (whether stored in the warehouse of the enterprise or in the warehouse of another person).
 - b- The product is for use in production process or for sale in its original state or after some processing (a movable property in the enterprise assets which is not a fixed asset).
- 7- A work in progress is a work in the process of realisation at the close of the period. A work in progress normally exists in a construction enterprise, a civil engineering enterprise or any other enterprise using heavy equipment in the work and having long production cycle.
- 8- The enterprise must not record in stock:
- a- an item already sold but not yet delivered;
 - b- an item already delivered but for which the enterprise has not yet issued the invoice.
- 9- Accounts for the recording of a stock or a work in progress may be divided into:
- a- Raw materials and supplies: this account is for the recording of goods or materials with any level of processing which are to be included in the composition of the product to be processed or produced.
 - b- Other supplies: this account is for goods or materials which are consumed completely at first use or consumed quickly, which are involved in the processing or production work without entering into the composition of the product being processed or produced, or which are used in the business as packaging. These supplies includes:
 - b1- Consumable things.
 - b2- Consumable supplies:
 - fuels;
 - supplies for cleaning and maintenance;
 - supplies for workshop and factory;
 - supplies for store and warehouse;
 - office supplies.
 - b3- Packaging:
 - packaging to be written off;
 - packaging to recuperate which cannot be separately identified.
 - c- Work in progress for goods: this account is for products in the process of production and works in the process of realisation.

- d- Work in progress for services: this account is for the recording of a study or research or supply of service not yet finished and which is made under a contract which does not provide for a progressive transfer of ownership, or for the recording of a completed study or research or supply of service which is made under a contract stipulating that the work would become a claim on the client only after he has accepted the price.
- e- Stocks of products: these include:
 - e1- Intermediate products: these are products reaching a given level of completion but which are to be put into another stage of the production cycle.
 - e2- Finished products: these are products which have reached the final level of completion in the production cycle.
 - e3- By-products (or scrap): these can be waste from the production process and are normally kept by the enterprise for sale (bits of cloth, wood, metal, paper ...), or can be scrap like salvaged parts or materials from a fixed asset which the enterprise dismantles or no longer uses. These materials are for use in the production cycle or for sale without processing.
- f- Stocks of goods: these are materials and products purchased by the enterprise for sale without processing. Any processing done to a good causing an increase in its production cost has changed the nature of that good into a finished product.
- g- Inventory in transit: this account is for the recording of:
 - g1- Materials, supplies and goods not yet delivered to the warehouse but which have already become a property of the enterprise.
 - g2- Products and goods already taken out of the warehouse and in the process of being delivered to the customer but for the time being are still property of the enterprise.
 - g3- Materials, supplies, products and goods stored at a shop outside of the enterprise compound or entrusted with a third person.

Section 3.2: Stock Valuation

- 1- Valuation by acquisition cost: this is a valuation by the actual purchase cost, which includes:
 - a- The purchase price in the invoice. Any rebate or allowance the supplier has agreed for that product must be deducted from the purchase price.
 - b- Other expenses directly related to the purchase or supply like the costs of transport, transit, commission and brokerage, unloading, handling, custom duty and other taxes except for those which can be claimed back like VAT. General expenses for the supply and storage expenses shall not be included in acquisition cost. Similarly, any accidental wastage or loss or any financial expense shall not be included in acquisition cost.
- 2- Valuation by production cost: the production cost includes:
 - a- The acquisition cost of materials and supplies used in the production.
 - b- Direct expenses incurred to bring the product to the place and in the condition where the product actually is. The enterprise may include also indirect expenses in the case where they can be included easily and logically in the production cost of the stock.
 - c- In general, shall not be included in production cost the general administrative expenses, storage expenses, research and development costs, and financial expenses.
- 3- Determination of the cost of outgoing inventory (or stock exit cost):

- a- For an item or a group of items which is separate and identifiable from each other, the cost of outgoing inventory is the entry (in stock) cost of that item or group of items.
- b- for an item which is interchangeable and which cannot be identified from each other, two methods as below are allowed for the determination of the cost of outgoing inventory:
 - b1- The weighted average which comprises two variants:
 - monthly weighted average: in this method the unit cost of outgoing inventory in any one month is sum of the cost of inventory at the beginning of that month and the cost of all entries (purchased or produced) in that month divided by the sum of the quantity of inventory at the beginning of that month and the quantity of all entries in that month. This unit cost is applied to all outgoing inventories in the month.
 - weighted average after each entry: the unit cost of outgoing inventory after any one entry is the sum of the cost of the remaining inventory before that entry and the cost of that entry divided by the sum of the quantity of the remaining inventory before that entry and the quantity of that entry. This unit cost is applied to all outgoing inventories after that entry until a newer entry is made.
 - b2- First-in, first-out (FIFO): in this method it is assumed that an item entering into stock first will exit stock first. As such, the remaining inventory shall be valued at entry cost of the items, which enter stock last. In this method, items in stock are grouped in batches by entry dates and by costs.

Section 3.3: Valuation of Work in Progress

- 1- A work in progress shall be valued at production costs which include mainly:
 - costs of materials used;
 - costs of materials not yet used but already delivered to the site;
 - labour costs;
 - various expenses at the site;
 - part of the overheads of the headquarters and part of depreciation costs and which parts are normally determined by estimate. The enterprise cannot to include pure distribution and administrative expenses, or financial expenses.

Chapter 4

General Rules on Business Income

Section 4.1: General

- 1. A real regime enterprise must comply with the general rules of accounting. For the purposes of TOP, an income must be reported in the period in which it is earned whether it is already paid or not (a claim the taxpayer has received or could receive on demand).
- 2- An enterprise which supplies goods or services must record income at the time of supply.
 - a- The time of supply of goods and services shall be the time the supplier must issue the invoice or the time the supplier issued the invoice if that invoice is issued before the time it must be issued by the supplier.
 - b- Where goods or services are applied to own use, the time of supply is the time at which the goods are first applied to own use or the time at which the performance of the services is completed.

- c- Where goods or services are supplied by way of gift, the time of supply is the time at which the goods are delivered whether that delivery takes on the characteristic of a transfer of the right to use or to dispose, or the performance of the services is completed.
- d- For goods supplied under a hire purchase agreement or a finance lease, the time of supply is the time by which the goods are delivered, whether that delivery takes on the characteristic of a transfer of the right to use or to dispose.
- e- Where goods are supplied under a rental agreement, or goods or services are supplied under an agreement or law which provides for periodic payments, or where there is a continuous supply of services, such goods or services are treated as successively supplied for successive parts of the period of the agreement, and the time of supply of each successive supply is the earlier of the date on which the payment is due and the date on which the payment is received.
- f- For financial services, the time of supply is the date by which interest, fee, or commission, accrues to the supplier of the service as stated in the contract for financial services, or the date on which the interest, fee, or commissions, is paid if the payment is made before the date by which the supplier of services should receive the payment.

Section 4.2: Payability of a Claim

1- For a sale: for an enterprise selling goods, payability arises at the time of transfer of ownership which in most cases occurs at the time of delivery of the goods.

- a- A sale under suspensive condition: in this case, the transfer of ownership is conditional on the realisation of an event in the future. If the event is not realised, the contract does not have any effect. If the event is realised, the sale is also realised meaning that there is a transfer of ownership and this transfer occurs at the date the event is realised. As such, the realisation of the condition causes the claim to become payable.
- b- A sale under resolutive condition: in this case, the transfer of ownership is immediate like in a straightforward sale through a simple contract. But the sale is cancelled if the condition stated in the contract is realised. As such, the income must be recorded in the period where there is transfer of ownership. If later on the resolutive condition is realised, the cancellation of the sale is recorded in the period in which the condition is realised.
- c- Money withheld as a guarantee: for the money temporarily withheld by the purchaser as a guarantee of the quality of the work supplied, the supplier enterprise must include it in the results of the current period at the time of delivery-reception of the work or at the time the work is put under the responsibility of its owner.
- d- Deposit: a deposit made by the purchaser at the time he orders a good or service is a part of the purchase price of that good or service and the supplier enterprise must record that money as an income at the date of its reception.

Section 4.3: Subsidiary Income

1- A subsidiary income is an income, which is not related to the main activity of the enterprise and which, must also be included in the results of the enterprise. A subsidiary income includes:

- a- income from immovable property;
- b- income from securities and shares;
- c- income from loans, caution money, savings accounts, current accounts,...
- d- royalties;
- e- donations and grants.

Section 4.4: Income from Immovable Property Recorded in the Balance Sheet

1- Immovable property used in the business: income from this type of property must be included in the results of the enterprise.

2- Immovable property not used in the business: only a legal person enterprise can have this type of property. Income from this property is a subsidiary income which is an element of the "other operating incomes".

- a- Rented immovable property: rental income from immovable property recorded in the assets of the balance sheet is taxable under TOP like other incomes from the main business of the enterprise.
- b- Immovable property given for use for free to the employee of the enterprise: in this case the enterprise shall be considered to have received a taxable income equal to the market price of the rent of that property and the employee user of the immovable property shall be considered to have received a fringe benefit equal to the market price of the rent of that property and the employee is liable to the tax on fringe benefits for this use.
- c- Immovable property given for use for free to a third person: in this case the enterprise shall be considered to have received an income and to have made a non-deductible expense the amount of which is equal to the market price of the rental of that property.
- d- Improvement made by the rentee: where the rentee has made at his own expense improvement on the rented immovable property without claiming any refund from the enterprise, the increase in value of the immovable property resulting from this improvement is a profit to be included in the results of the tax year in which the enterprise has taken back its property.

Section 4.5: Dividend Income

1- The provisions on dividend income are stated in paragraph 8 of section 10.2 of this Prakas.

Section 4.6: Income from Loans, Deposits, Guarantees and Current Accounts

1- The income from loans, deposits, guarantees and current accounts must be included in the taxable profit. This income is an element of the financial income.

Section 4.7: Royalties

1- Royalties are incomes from the exploitation of various intangible assets such as patent, copyright, model, franchise, brand, know-how, ... and must be recorded in the taxable profit.

Section 4.8: Donation and Grant

1- Donation and grant (or subsidy) must be included in the taxable income of the period in which such donation or grant is received. Donation and grant include mainly:

- a- various donations received from whatever sources;
- b- a business grant that the state, a community, or a third person, has given to the enterprise (for example price subsidy, grant to ease business expense, stability grant,...).

2- Special rule for investment grant:

- a- For an investment grant received, the enterprise may choose not to record it immediately in the taxable income. In such a case, the enterprise must record the investment grant part by part in the taxable income. The part to be recorded as taxable income for any one taxable year is equal to the depreciation in the same year of the asset received through, or created with, the investment grant. Example: for an asset in Class 1 with a straight line depreciation rate of 5% and which has been received through an investment grant with a value of 100

million Riels, the part to be recorded in the taxable income of each taxable year (except for the last year of depreciation) is 5 million Riels

- b- The rule for recording investment grand part by part in taxable income of this paragraph can be used only for an asset in class 1 with a value of 20 million Riels or more.
- c- For all assets in Class 2, 3 and 4, the full amount of the investment grant must be recorded in the taxable income of the taxpayer, deducting in the depreciation schedule to determine the amount available for depreciation in the first year the asset is put in service.

Section 4.9: Other Subsidiary Incomes

1- Other subsidiary incomes include mainly: income from the sale of scrap and waste, rental of business equipment, profit from consigned packaging, profit from business activities carried out for the benefits of the personnel,...

Section 4.10: Other Incomes

1- In addition to the income from the main business and subsidiary incomes, in the taxable income of the enterprise there are other incomes such as:

- a- Insurance compensation: the enterprise may receive an insurance compensation after the occurrence of a disaster (fire, theft, other property damages...), or within the framework of a life insurance policy which has been bought in favour of the enterprise. This compensation must be recorded in the taxable income of the enterprise. As for the loss sustained by the enterprise and the expense the enterprise has made to repair the damaged property, the enterprise must record them as expenses.
- b- Other compensations: they include mainly:
 - b1- compensation for the requisition of materials and equipment like boats requisitioned by the state for the evacuation of people in a flood disaster ...;
 - b2- compensation for a breach of contract;
 - b3- compensation for damages;
 - b4- compensation for unfair competition;
- c- Reduction of a tax, which was previously deducted from taxable profit: this tax reduction is an income for the period in which the enterprise has received this benefit.
- d- Debt reduction: the reduction of a debt which the supplier or a third person has agreed in favour of the enterprise and which causes an increase of the enterprise net assets, must be recorded as an income for the period in which the enterprise has received that reduction (remark: the repayment of a debt does not cause an increase or a decrease of the net assets of the enterprise and so it does not have any effect on the taxable profit). Shall be treated the same way the cancellation of a liability account which does not have proper supporting documents, or any other operation which causes an increase in the net assets of the enterprise.

Chapter 5

General Rules on Expenses

Section 5.1: Business Expense

1. A deductible expense is a charge or expense which the taxpayer has paid or incurred in the tax year to carry on the business and which does not cause the inclusion in the assets of a property or the elimination from the liabilities of a debt.

2- Expense paid or incurred in the taxable year: an expense is deductible only from the results of the period in which that expense meets the conditions as stated in section 5.2 of this Prakas. As such, the taxpayer cannot move the date of recording of an expense from one period to another. Each period is independent from any previous one and from any following one. For the determination of the results of a period, shall be taken into consideration only events and operations, which cause such results to be realised.

- a- Expense pertaining to previous periods: an expense, which has arisen and become a charge of any one previous period, cannot be deducted from the results of the current period.
- b- Expense not paid at the close of the period: if in accordance with the rules as stated in section 5.1 and 5.2 of this Prakas, an expense is a charge for the closing period but at the closing date that expense is not yet paid, the enterprise must record that expense in the accrued expense account (for example office rental not yet paid, accrued tax for the period,...). If there is no such recording, that expense cannot be recorded as a charge for in the next period.
- c- Expense of subsequent periods: for the purposes of TOP, the reporting in a period of an expense pertaining to a subsequent period shall not be allowed.
- d- A prepaid expense shall be deducted from the results of the period in which this expense is actually incurred only.

3- Expense incurred to carry on the business: shall be allowed for deduction only those expenses incurred to serve the needs of the business or for the benefits of the business. So any expense which is not linked to the normal management, or which provides benefits to a third person, is not deductible. An expense, which is not an expense incurred to carry on the business, includes mainly:

- a- Expense to serve personal needs of the owner of a sole proprietorship (for example expense on housing, taxes on the owner himself, expense on a car used privately,...).
- b- Conspicuous or extravagant expense which is of no use or of little use to the business. The term extravagant is best defined or characterized as spending excessively or wastefully, beyond what is reasonable, unreasonable high in price or cost, or flamboyant.

4- Expense that does not cause in return the inclusion of a property in the assets or the elimination of a debt from the liabilities: this is an expense, which causes a decrease in the net assets of the enterprise. For the purposes of TOP, any expense, which does not cause a decrease in the net assets of the enterprise, is not deductible. An expense, which does not cause a decrease in the net assets, includes mainly:

- a- Expense not born by the enterprise itself.
- b- Expense which causes in return the inclusion in the assets of a new element or which causes an increase in the value of an element of the assets.
- c- Expense incurred to increase substantially the duration of the use of an asset.
- d- Expense, which causes in return the elimination of a debt from the liabilities (for example repayment of a debt).

Section 5.2: Deductible Expense

1- For the purposes of TOP, an expense meeting the conditions as stated in section 5.1 of this Prakas must also meet the 3 conditions as below to be deductible:

- a- The facts determining the taxpayer's charge or expense have occurred: this means the reality of the charge or expense is proven by verifiable evidence (invoice, bill of entry, business letters,...).
 - b- The results of economic activities (or economic performance) with respect to that expense have occurred:
 - b1- Where a charge or expense requires the payment for the supply of a property or service, economic performance occurs as the property or service is supplied.
 - b2- Where a charge or expense arises through the use or the supply by the taxpayer of a property or service, economic performance occurs when the taxpayer has used the property or supplied the property or service (for example disbursement of a donation).
 - b3- Economic performance occurs when one of the following payments occurs:
 - for workers compensation, tort, or breach of contracts claims;
 - for rebates or refunds;
 - for prizes and awards;
 - under warranty or service agreements;
 - for taxes other than creditable foreign taxes, the minimum tax, and the tax on profit.
 - c- The amount of the taxpayer's liability has been precisely determined: this means the expense or charge:
 - c1- must be recorded in the period;
 - c2- must have proper proofs indicating clearly its amount (invoice,...).
- 2- In addition to the 3 conditions above:
- a- In order for an expense that remains unpaid at the end of a taxation year to be deduction for tax purposes, it must constitute a genuine liability of the taxpayer. If such an unpaid amount does not constitute a genuine liability, no deduction is allowed. For existing a genuine liability, there must be an enforceable claim by the creditor with a reasonable expectation that the debt will in fact be paid by the debtor.
 - b- For salary from employment, the enterprise can deduct the unpaid salary if it is paid within 60 days of the following taxation year. For the purpose of TOP, in order to prevent the unwarranted delay of taxable salary payment, a special rule has been established in sub-paragraph (c) limiting the company's scope for deducting unpaid salary.
 - c- As stated in sub-paragraph (a) and (b) of this paragraph, the enterprise can deduct the unpaid expense at the end of the taxable year except for:
 - C1-the unpaid salary from employment that remains unpaid within 60 days of the following taxation year.
 - C2-the unpaid amount to related persons that remains unpaid within 180 days of the following taxation year, except for a deductible outlay or expense for inventory, capital property and depreciable property.
 - C3-in the foregoing circumstances as mentioned in sub-paragraph c1 and c2 above, the deduct unpaid amount is to be re-include in the taxpayer's taxable income for that taxation year. This taxable income is subject to a tax reassessment.

Section 5.3: Non-deductible Expense

- 1- Except for contrary provisions, save for those expenses which meets the conditions as stated in section 5.2 of this Prakas, all other expenses are non-deductible expenses and must be written back for the calculation of the taxable profit.
- 2- For a depreciation or provision which is wrongly recorded or which exceeds the allowable level, the enterprise must comply with the rules as stated in paragraph 5 of section 6.8 of this Prakas.

Section 5.4: Preliminary and Formation Expenses

1- Preliminary and formation expenses are expenses incurred in operations which cause the enterprise to have its existence, its activities, or its development, but these expenses cannot be included in the production of any specific property or service. Preliminary and formation expenses (or expenses to be spread over several periods) includes mainly:

- a- Expenses for formation and initial development of the enterprise: this is the very first expense for the founding of the enterprise or in relation to a new activity. These expenses includes mainly: feasibility study for the founding of the enterprise, advertising, personnel training, advance funding, technical assistance,...
- b- Expenses pertaining to the articles of association of the company: these are expenses incurred at the founding of the company or to increase or decrease the capital of the company or expenses incurred in similar operations (reorganisation, merger, ...). These expenses include mainly registration tax on various documents of the enterprise (capital contribution, recapitalisation, merger,...), various fees at the founding of the enterprise, expenses for formal publicity,...
- c- Expenses on a bond floating: these are expenses incurred at the time contracts to borrow money are made.
- d- Expenses incurred in the purchase of an immovable property: these includes only taxes on the transfer of a right or ownership, various fees and commissions, and expenses on formal documents. All other expenses are a part of the cost of the immovable property or a charge of the period in which they arise.

2- The following expenses are not preliminary and formation expenses:

- a- Expenses which are a charge necessary for the period in which they arise (for example normal advertisement expenses).
- b- Expenses for the installation or assembly, which must be included in the acquisition cost of the relevant, fixed asset.

3- Preliminary and formation expenses which are expenses incurred at the time of the founding of the enterprise or at the time the enterprise acquires its permanent means to do business, are expenses which do not produce anything in return in the assets of the enterprise. All the accounts in which these expenses are recorded are asset accounts with no real value.

4- For the purposes of TOP, preliminary and formation expenses can be totally deducted from the results of the period in which these expenses arise. But if the enterprise chooses to do deduction through amortization, these expenses cannot be amortized in more than 2 years.

Section 5.5: Purchase

1- There are 3 types of purchase:

- a- A purchase which can be stored like various supplies and goods.
- b- A purchase which cannot be stored like water, electricity, fuels and lubricants, small office supplies, small tools which must be frequently replaced, ... (at the closing of the period these purchases are recorded not in an inventory account but in a prepaid expense account).
- c- The purchase of a study or of a supply of services which is an amount paid to a subcontractor for the production, the processing, the packaging of products, or the supply of services ... The subcontractor can be a jobbing producer (raw materials supplied by the purchaser), an industrial subcontractor, a subcontractor for the supply of goods or services (usually for works in civil engineering, constructions,...).

2- The recording of a purchase: a purchase must be recorded at the reception of the invoice and at the real cost of that purchase.

- a- For a domestic good, the purchase cost is a real expense for the enterprise for that purchase. This expense is the purchase price to which are added subsidiary expenses directly related to the purchase like transport cost, insurance, ... and from which are subtracted various rebates agreed for by the supplier.
- b- For an imported good, the purchase cost includes mainly:
 - b1- purchase price;
 - b2- cost of transport by sea, by air ...;
 - b3- insurance cost spent outside the national territory;
 - b4- transit cost, commissions and brokerage paid to various enterprises abroad (including bank charges, expenses for formalities, payment expenses);
 - b5- various costs after the good has entered the national territory like transit cost, commissions and brokerage paid to various enterprises in the national territory, cost of transport and insurance from the border to the warehouse.

3- Recording of the customs duty: customs duty (taxes on goods imported or exported) must be recorded in the "customs duty" account and not in the purchase account for goods and services.

4- Recording of the value added tax (VAT):

- a- For an enterprise making non VAT taxable supplies: this enterprise must comply with the rules specified for various taxes as stated in paragraph 5 of this section.
- b- For an enterprise making VAT taxable supplies:
 - b1- for a VAT which can be claimed as a credit: the enterprise must record it in a "personal account" (debtors/creditors accounts);
 - b2- for a VAT which cannot be claimed as a credit: the enterprise must comply with the rules specified for various taxes as stated in paragraph 5 of this section.
 - b3- for a VAT already recorded in a personal account as stated in sub-paragraph b1 of this paragraph but later on cannot be claimed as a credit, the enterprise must record this VAT in the relevant asset account or purchase account. But if this VAT cannot be logically recorded in an asset account or purchase account, the enterprise may record it, as an expense of the period in which there is such a credit refusal.

5- Recording of various taxes: various taxes such as turnover tax, specific taxes on certain merchandises and services, public lighting tax, ... shall not be deducted from the purchase cost. If these taxes are shown in the invoice for the purchase of the good or service, they must be added to the purchase price and must be recorded in the relevant expense account (purchase account or general expense account) or asset account.

6- Appropriation of goods or services for own use: for the appropriation of goods or services for his own use by the owner of a sole proprietorship, the enterprise must record it in the "sales" account for those goods or services at the fair market value of the goods or services.

7- Purchase period, purchase adjustment, stock, account payable - supplier: like other expenses, a purchase must be reported in the period in which the debt of the purchaser arises. In compliance with the rule on the recording of a purchase at the date of reception of invoice, at the end of the period there may be time lag between invoice reception, goods reception and recording in accounting books. So at stock taking the following adjustment entries shall be made:

- a- If the invoice is not yet received but the goods are already delivered and received, an estimated debt must be recorded in the account "Trade creditors-accruals for goods and services (supplier - invoice not received)" and a purchase account or asset account must be debited of the same amount.
- b- If the invoice is already recorded in accounting books but the goods are not yet received, these goods must be recorded in the stock-list at the closing of the period (the account "inventory in transit" can be used).

Section 5.6: External Charges for Services

1- Rentals which include:

- a- Rental of an immovable or movable property to serve the needs of the business: in this there may be various payments as follows:
 - a1- rental and charges on the renting by the enterprise of an immovable or movable property to serve the needs of the business (including any payment made within the framework of a finance lease): these amounts must be deducted from the results of the period in which they are incurred regardless of the date of actual payment;
 - a2- prepaid rental: this amount must be recorded in the assets of the balance sheet (for example in a "prepayment" account) and as such does not have any effect on the results of the period of payment. It is to be deducted only from the results of the period in which it is being used to pay for the incurred rental expense;
 - a3- deposit for guarantees: the amount paid as deposit for guarantees must be recorded in the assets of the balance sheet. Deposit for guarantees affects only the results of the period in which it is actually earned by the owner of the rented property;
 - a4- for tax purposes, key-money (lease-premium) paid by the enterprise to the owner of a rented property is a non-deductible expense.
- b- Rental of dwelling house: the rental of a dwelling house is taxable according to the exact use of the relevant property. For a dwelling house to serve the needs of the personnel of the enterprise, the rental is a fringe benefit received by the personnel. For a dwelling house to serve other needs, the rental is a non-deductible expense

- 2- Repairs and maintenance: in general, an expense in repairs and maintenance is deductible within a level which would allow a normal use of the asset of the enterprise by keeping such asset in a usable or operational state until the end of its depreciation period and which would not lead to a permanent improvement of that asset. A permanent improvement is a repair or improvement which would lead to a capital gain for the asset or would extend the duration of the use of that asset beyond the depreciation period as originally determined (a permanent improvement must be recorded in the relevant asset account).

3- Insurance premium: insurance premium paid on contract for insurance against risks on property (accident, fire, typhoon, ...) or against eventual expenses (mainly business or vicarious liability) must be deducted from the period in which that insurance premium becomes an incurred expense (calculated in proportion to the number of days in the period which are covered by the insurance contract).

4- Commissions and external remuneration:

- a- Commissions and various remuneration paid abroad: moneys paid for services provided abroad to the enterprise is deductible only in the case where the reality and usefulness of the services are proven and their amounts not exaggerated.
- b- Royalties for a concession, patent, license, brand, copyright: these royalties are deductible only in the case where they are not a consideration for the acquisition of an asset and their amounts are not exaggerated.

5- Mission: mission expenses are deductible only if the mission serves the needs of the business and their amounts are not exaggerated in comparison to the type and size of the business and to the profit realised. For mixed expenses (mainly travel and mission expenses for both business and tourist purposes), deduction is allowed only for the part which is irrefutably to serve the business. Travel and mission expenses abroad are deductible only when their usefulness for the enterprise is clearly shown.

Similarly, for the participation to, or the organisation of, a conference, seminar, meeting, ... the expenses incurred are deductible only if these activities are directly related to the enterprise business.

6- Amusement, recreation and entertainment: paragraph 1 of article 19 of LOT has provided that shall not be allowed as a deduction any expense on activities generally considered to be amusement, recreation, or entertainment, or the use of any means in connection with such activities. For entertainment in particular, this refers to offering guests tourist trips, meals in restaurant, hotel accommodations,...

Section 5.7: Taxes

1- Period to charge tax:

- a- For a tax which is not being collected through the filing of a tax return, this tax is a charge for the period in which it meets the conditions for a deductible expense.
- b- For a tax which is being collected through the filing of a tax return, in the case where it is deductible it must be deducted from the results of the period in which it becomes payable or is incurred.

2- Deductible taxes: for the purposes of TOP, the enterprise can deduct all taxes which are a charge for it except for the prepayment of the tax on profit, the tax on profit, and the minimum tax. These deductible taxes include patent tax (business registration fee), tax on import and export (customs duty), specific tax on certain merchandise and services, turnover tax, the non-deductible value added tax (non-deductible input tax), wealth transfer tax, stamp tax, tax on transportation forms and all kind of vehicles,...

3- Taxes collected through withholding: taxes collected through withholding are not a charge for the enterprise but they are a charge for the person who receives the taxable income (for example tax on salary). So these taxes cannot be deducted from the taxable income of the enterprise.

Section 5.8: Salary and Similar Expenses

1- Conditions for deduction: salary liable to the tax on salary, tax exempt salary and fringe benefits as stated in the Prakas on the Tax on Salary No 396-PK-MEF-TD dated 27 June 1997 of the Ministry of Economy and Finance, are all deductible if they are related to real work and not exaggerated in comparison to the service rendered. The word exaggerate is best defined as overstating or to make larger compared to reality or value.

2- Period to report the charge: personnel expenses have the characteristics of an annual expense and a normal expense for the business. As such, personnel expenses are to be deducted only from the results of the period in which these expenses are actually incurred. At the close of the period there may be salaries which are being paid in advance or not yet paid to the personnel. These salaries which have the characteristics of a definite debt are deductible through the recording in "prepaid charges" or "accrued charges" accounts.

3- Other types of remuneration:

- a- Remuneration of a salaried employee who is not a manager: this is the general situation, which is stated in details in the prakas on the tax on salary.
- b- Remuneration of the owner of a sole proprietorship and his family: the profit realised by a sole proprietorship is the remuneration for the owner and his spouse's work to serve the business and the remuneration for the capital invested in the business. So all appropriations by the owner or his spouse through their activities in the enterprise are a use of the profit and not a deductible charge. As the profit of a sole proprietorship belongs totally to the owner, the owner of a sole proprietorship is allowed to take that profit in advance for his own use without any liability for the advance tax on dividend distribution. But in the case where the tax administration has a sound basis to believe that the collection of taxes may suffer, the tax administration can require the taxpayer to pay tax immediately.

- c- Remuneration paid to other members of the owner's family: remuneration paid to a son, a son-in-law or other relatives of the owner is deductible if it is a compensation for real work, not exaggerated and actually paid out.
- d- Remuneration of managers of a legal person: because these persons have the right to supervise and to decide, their remuneration may be exaggerated. The following criteria may be used to identify and to determine the exaggerated amount (the exaggerated part of the remuneration is a non-deductible expense):
 - d1- importance of the activities carried out by the manager and of the responsibilities assigned to him;
 - d2- growth of the turnover and of the net profit of the enterprise;
 - d3- size of the enterprise;
 - d4- comparison of this remuneration with the remuneration of a person with similar job in another enterprise which carries on a similar business in the same area, or of a high ranking salaried employee in the enterprise;
 - d5- comparison of the total remuneration provided to managers and the total remuneration provided to all salaried employees.
- 3- It should be noted that amount debited to an expense account and credited to a shareholder account is considered paid in the taxation year the expense was debited.
- 5- For greater certainty the words "credits" and "credited" cover any situation where a resident of Cambodia or, in certain cases, a non-resident has set aside and made unconditionally available to the non-resident creditor an amount due to the non-resident such as where
 - a- A tenant or agent deposit rents in a bank account on behalf of a non-resident landlord;
 - b- A bank credits interest to the saving account of a non-resident;
 - c- An insurance or trust company deposits a pension or annuity payment in the bank account of a non-resident; or
 - d- The amount due is applied by the resident (or deemed resident) against an amount owing by the non-resident;
 - e- An amount is credited to a specific shareholder account.
- 6- Social security contributions: all social security contributions required by the Labour Law are deductible.

Section 5.9: Interest

1- Definition:

- a- The term "interest" refers to an amount paid by a debtor to a creditor in respect of moneys owing by the debtor to the creditor. Interest is a consideration for the loan of the moneys or for the forgiveness to sue for credit provided in the form of goods or services. Interest includes mainly:
 - a1- an amount paid or accrued under a debt obligation which is not a return of capital;
 - a2- any discount, premium, or similar payment.
- b- The term "debt obligation" refers to the obligation to pay an amount in cash or in kind to another person and includes the obligation of a bank or other financial institution with regard to a deposit, the obligation with regard to an account payable, a bill of exchange, a bond,...

2- Interest on money borrowed from a third person:

- a- Interest on money borrowed from a third person by the enterprise to serve the needs of the business is deductible from the results of the period in which that interest is incurred (the interest for a portion of the period). In this the enterprise must be able to demonstrate the reality of the borrowing by having proofs such as a borrowing contract with all the dates and terms of repayment of capital and interest clearly specified.
- b- Interest on moneys borrowed from a third person to serve the personal needs of the owner of a sole proprietorship is not deductible. For a sole proprietorship, this situation arises when the "proprietor's account" has debit balance (the balance of a proprietor's account at the close of the period is equal to the balance of that account at the beginning of the period subtracted with or added with any appropriation or capital contribution, as well as with any loss or profit in that period). In this the enterprise may be forced to borrow money to face a cash flow shortage resulting from an appropriation made by the owner which is bigger than the profit realised. In all these cases, the deductible interest is the one pertaining to the part of the borrowing, which exceeds the highest figure in the tax year of the debit balance of the proprietor's account.

3- Interest on capital: any money paid as a consideration for the enterprise owns fund is not deductible.

4- Interest paid to the proprietor's account of a sole proprietorship: this expense is not deductible.

5- Non-deductible interest expense: any interest expense, which is not deductible under the provisions of paragraphs 2, 3, and 4, of this section, is a non-deductible expense.

6- Limitation on interest deduction: for any one taxable year all interests which are deductible under the provisions of paragraphs 2, 3, and 4, of this section are subject to the limitation on interest deduction for that taxable year. The limitation on interest deduction for any one taxable year is the maximum amount of interest which is allowed as a deduction in that taxable year and which is calculated by using the formula as below. In this, any interest expense disallowed as a deduction in the current year may be carried forward as an interest expense to succeeding years for deduction under same limitation until such time the balance of that disallowed interest expense is completely used. The determination of the amount of interest allowed as a deduction for any one taxable year shall be made at the end of that taxable year.

$$\text{Interest limitation} = A + B$$

Where:

A= 50% of net profit calculated without interest income or interest expense where interest is defined in paragraph 1 of this section.

B = any interest income received or accrued in the taxable year.

Section 5.10: Exceptional or Extraordinary Expenses

1- Penalties: additional tax, late payment interest, and fines of all types, incurred by the enterprise for violation of various legal provisions must be written back for the determination of the taxable profit. These penalties include mainly:

- a- late payment interest and additional tax for non-compliance with tax obligation;
- b- customs penalty;
- c- fine for non-compliance with economic or price regulations;
- d- fine for personal offence (criminal penalty);
- e- fine for violation of a regulation on public order.

2- Charitable contributions:

- a- Shall be allowed as a deduction any charitable contribution made to governmental institutions, or various organisations, which carry out a non-profit activity as defined in section 1.6 of this Prakas, but the amount of charitable contribution which can be taken as a deduction in any one taxable year cannot exceeds 5% of the taxable profit (of that taxable year) before taking charitable contribution deduction. For an insurance enterprise this level of charitable contribution which can be taken as a deduction in any one taxable year is 5% of the gross premium in that taxable year.
 - b- For the balance of charitable contribution remaining from deduction taking as stated in subparagraph a of this paragraph, this amount cannot be carried forward for deduction in another taxable year and as such shall become a non-deductible expense for the tax year in which it arises.
- 3- Donations, grants and subsidies: a donation, grant or subsidy made by the enterprise for whatever purpose is a non-deductible expense.
- 4- Calling in or demand for additional or outstanding tax: deduction in this case must be in accordance with the type of the tax subject of the demand. Particularly for a withholding tax which the payer must withhold before payment but did not withhold and that payer is subject to the demand by the tax administration to pay this tax, this demand and payment for tax is not allowed as a deduction for the calculation of the taxable profit.
- 5- Loss on a claim: for the purposes of TOP, a loss on a claim is deductible where the impossibility to recover that loss can be clearly shown (e.g. by documented attempts to collect the debt or clear evidence of the efforts, steps and attempts to collect or obtain the amount owing by definitive insolvency of the debtor,...) and that claim has been written off from the accounting books of the enterprise. Except for contrary evidence, the giving up of a claim is an abnormal act of management and as such is not deductible.
- 6- Other exceptional and extraordinary expenses: in general various losses and expenses are deductible if they arise within the framework of a normal business operation of the enterprise, meaning that these losses and expenses are not related to an abnormal act of management. On the other hand, the enterprise must make sure that these losses and expenses have not been used as a deduction in another way (for example the loss of a good in a disaster or theft should not necessitate a separate deduction because this loss is automatically taken for deduction by the mechanism of the recording of purchase, sale and inventory).

Chapter 6

General Rules on Depreciation

Section 6.1: Definition

1. The acquisition of a fixed asset does not cause the net assets to decrease because the expense brings in return the inclusion of a new property in the assets of the enterprise. As such, the acquisition of a fixed asset does not have any influence on the taxable profit. But most of the fixed assets get depreciated because of use or obsolescence. So, must be normally taken into consideration this depreciation which is a real expense for the enterprise.
- 2- Depreciation is the recording of the definitive decrease in value of an asset as a result of use, passing time, technical change, or other cause. This is done by spreading the cost of the asset over the planned duration of its use (useful life) in accordance with a schedule of depreciation. Any major change in the conditions of use of an asset would require a review of the depreciation schedule currently under implementation.
- 3- For the purposes of TOP, to be deductible a depreciation must meet the 5 conditions as follows:

- a- it must be made only on a fixed asset recorded in the balance sheet of the enterprise;
- b- it must be made only on a fixed asset subject to depreciation;
- c- it must be made on the basis and within the scope of the cost price;
- d- it must be calculated with the straight-line method of depreciation for class 1 assets or the declining balance method of depreciation for class 2, 3 and 4 assets;
- e- it must be made actually by the enterprise.

4-In determination of taxable profit, a deduction shall be allowed to the owner of a tangible property, or to the lessee of the property in the case where the lessee bears the risk of loss or destruction of that property. Typically, the lessee will bear the economic risk in situation of a financial lease.

Section 6.2: Depreciation must be made only on a fixed asset recorded in the balance sheet of the enterprise

- 1- The enterprise must do depreciation only on fixed assets recorded in its balance sheet. For a fixed asset with a mixed use (serving the needs of the enterprise business and other needs external to the enterprise business):
 - a- Sole proprietorship: For the use of a fixed asset to serve the personal needs of the owner, the enterprise shall be considered to have sold at fair market value to the owner (to be recorded in subsidiary incomes) of the service of providing the fixed asset to serve the personal needs of the owner. And the owner shall be considered to have appropriated for his own use of this service of the enterprise. If the beneficiary is not the owner, this is a sale of a service, and a provision of fringe benefits or the making of a non-deductible expense.
 - b- Legal person: the enterprise shall be considered to have sold a service and to have provided a fringe benefits or made a non-deductible expense in relation to the use of the fixed asset for non-business purposes.
 - c- For an enterprise which has complied with the rules as stated in sub-paragraphs a and b of this paragraph, the mixed use of a fixed asset recorded in the balance sheet does not have any effect on depreciation taking.
- 2- For each intangible asset and class1 asset recorded in the balance sheet assets, the enterprise must open an asset account in which must be recorded all amounts related to that asset (purchase price, rebate, refund, permanent improvement, ...).
- 3- For a tangible asset (class2, 3 and 4) recorded in a pooled asset account, the enterprise must open an asset amount in which must be recorded the un-depreciated balance available for depreciation, all amounts related to additional acquisitions and all amounts related to disposition of assets during the taxation year.

Section 6.3: Depreciation must be made only on an element subject to depreciation

- 1- Definition of a fixed asset: a fixed asset is an element of the assets which would serve a durable use in the activities of the business unit and which would keep its original form from the date of its placement in service up to the date its ceases to be used. Can be considered as a fixed asset, any asset which meets the two following criteria:
 - a- Purpose: an asset of any type (movable or immovable, tangible or intangible) which the enterprise has bought or produced, which is not for transformation or for sale (if it is sold, the sale occurs after the asset is placed in service) but for a durable use (for example a car bought by the enterprise for sale is an element of the purchase account and inventory account, where as a car to serve the internal needs of the enterprise is a fixed asset).

- b- Duration: the keeping of an asset in the business unit shall be considered as durable if it lasts for more than one year from the date the asset was placed in service for the first time.
- 2- Difference between a fixed asset and an expense: an expense, which causes in return the inclusion of a new element in the assets of the enterprise, is a fixed asset. For an expense pertaining to an asset already recorded in the balance sheet, the enterprise must comply with the provision of paragraph 2 of section 5.6 of this Prakas.
- 3- Depreciable fixed asset: a depreciable fixed asset is a fixed asset the usefulness of which decreases normally on account of passing time, wear and tear, ageing process, unsuitability for new technical or economic conditions (obsolescence), or other causes. A depreciable fixed asset includes mainly:
- a- Tangible fixed asset: as stated in paragraph 1 of article 13(new) of the Law on the Amendment of LOT, a tangible fixed asset (or tangible property) depreciable is a tangible property used in the business, which is likely to lose value because of use or obsolescence. Land is not a depreciable property but an underground mineral deposit is depreciable.
 - b- Intangible property: intangible properties are mainly as below (but a number of fixed assets are not depreciable like the right to do business, the right to use a land,...):
 - b1- preliminary and formation expenses;
 - b2- research and development costs: these are the costs of a research and development made by the enterprise for its own account. Like the preliminary and formation expenses, these costs are expenses, which bring nothing in return in the assets of the enterprise. And the account in which are recorded these expenses are an asset account with no real value. So to record as a fixed asset any one research and development project, that project must be clearly identifiable and must have good prospect for a commercial success. For the purposes of TOP, these costs can be deducted totally from the results of the period in which they arise.
 - b3- patents, trade marks, licenses, concessions, computer software (items protected by law);
 - b4- purchased goodwill;
 - b5- other intangible assets.
 - c- Financial fixed assets: securities, shares and other financial fixed assets are not depreciable because they do not depreciate by use or by passing time.

Section 6.4: Depreciation must be made on the basis and within the scope of the cost price

- 1- Depreciation must be made on the basis of the cost price of the asset to depreciate. So, the accumulated depreciation made on an asset cannot exceed the cost price of that asset even if a newly calculated value is higher than this cost price. The cost price is the original value of the fixed asset as recorded in the accounting books. The original value, which is the value of the asset at the date when, and at the place where, that asset was included in the enterprise assets is also, called the historical cost.
- 2- An asset must be recorded in the accounting books at the date of its inclusion in the enterprise assets and at its cost price (or historical cost) which is:
- a- the acquisition cost if the asset is purchased by the enterprise: in this:
 - al- the recording in the accounting books shall be made at the direct cost of purchase which is the purchase price minus any rebate and plus any subsidiary expense (customs duty and any related charge, transport cost, transit and warehouse cost, cost to take delivery of the asset like handling, transport insurance, charge on the purchase of shares and securities ...) and any installation cost necessary to render the asset operational,

- a2- the general expenses and financial expenses incurred in the acquisition of the asset must not be included in the direct cost of purchase,
 - a3- where payment is deferred, the recorded value of the asset must be based on the agreed price and as such shall not be affected by the methods of payment in the future whether or not there is a change in the amount of the debt;
 - b- the production cost if the asset is produced by the enterprise:
 - b1- the recording in the accounting books shall be made at the real cost of production which is the direct cost of purchase of materials and supplies used plus all direct charges (personnel expenses, external charges for services) and indirect charges of production where these indirect charges can be easily and logically included in the production cost of the asset. The real production cost must be determined by cost accounting method or by statistical method where there is no such accounting,
 - b2- the production cost must not include storage cost, general administration and sale cost, research and development cost, or financial cost. But for the real production cost of very big assets like a factory complex construction, there are also interests on borrowed fund to finance the construction but these interests must be only for the period starting from the first disbursement up to the date the construction is finished;
 - c- the value of property contribution if the asset is received by the enterprise from the state, a community, or a private investor: the recording in the accounting books shall be made at the value of the contribution as specified in the capital contribution agreement;
 - d- the fair market value if the enterprise obtains the asset for free: in this, the recording in the accounting books shall be made at the fair market value which is the price an ordinary buyer would pay for the asset in the conditions and at the place where that asset is.
- 3- The turnover tax or the VAT which is incurred in the purchase or production of the asset and which cannot be reclaimed, is an element of the cost price to be depreciated.
- 4- The original value (historical cost) cannot be changed except in a revaluation authorised by the competent authority. Any differences due to the revaluation shall be considered as a taxable profit and will result in a step-up basic for depreciation purpose.

Section 6.5: Depreciation of Assets

- 1- Depreciation of intangible assets: as stated in article 14 of LOT, for intangible properties (or intangible fixed assets) having a limited life (mainly patent, copyright, drawing, model, franchise, ...) the depreciation rate for each property shall be calculated on the life of that property by using the straight line method of depreciation. If the life of the intangible property cannot be determined, the annual depreciation deduction shall be at the rate of 10% of the value of the intangible property. The depreciation of intangible properties shall be made according to the provisions of section 6.6 of this Prakas.
- 2- Depletion of natural resources: as stated in article 15 of LOT, for natural resources such as oil, gas,... the allowance for depletion shall be determined as follows:
- a- All exploration and development costs, including interests attributable to these costs, shall be added to the asset account of the resource.
 - b- The amount of the depletion for each natural resource deductible for a tax year shall be determined by multiplying the balance of the account for the natural resource with the ratio of the quantity produced from the natural resource in that year to the estimated total production from the natural resource.

- 3- Depreciation of tangible property:
- a- Methods of depreciation: for tangible properties, article 13 (new) of the Law on the Amendment of LOT has allowed two methods of depreciation: the straight line method of depreciation and the declining balance method of depreciation.
 - b- Class of tangible properties: all tangible properties shall be divided into 4 class:
 - b1- Class 1 shall include buildings structures included and their basic components. Each asset in this category shall be depreciated individually according to the straight-line method of depreciation at the rate of 5% per year of the acquisition cost.
 - b2- Class 2 shall include computer, electronic information systems and data handling equipment. The assets in this class shall be depreciated according to the declining balance method at a rate of 50% per year of the depreciation basis in the class.
 - b3- Class 3 shall include automobiles, trucks, office furniture and equipment the assets in this class shall be depreciated according to the declining balance method at a rate of 25% per year of the depreciation basis.
 - b4- Class 4 shall include all other tangible property. The assets in this class shall be depreciated according to the declining balance method at a rate of 20% per year of the depreciation basis.
 - d- For class 2, 3 and 4 depreciation for tax purpose is based on the declining balance method. The following calculation for the determination of the depreciation deduction of declining balance per class should be as followed:

Depreciation deduction = depreciation basis X rate of depreciation for that class

Depreciated basis = un-depreciated value of the class at the beginning of tax year + addition in the tax year – disposition in the tax year.

Un-depreciated value of the class at the beginning of the tax year = depreciation basis – depreciation deduction (including special depreciation and grants).

- 4-From 01 January 2004 onward, depreciation must be calculated by applying the rate of depreciation by property class according to the rules set forth in paragraph 3 of this section and section 6.6 and 6.7.

Section 6.6: Depreciation of Tangible Properties by the Straight Line Method

- 1- Depreciation of building, structure included, and their basis components (class 1 assets a normal useful life of 20 years) have a straight-line depreciation at a rate of 5% of the acquisition cost.
- 2- Starting sub-paragraph for depreciation: depreciation must be made from the date the asset is placed in service.
- 3- Ending sub-paragraph for depreciation: normally, the ending sub-paragraph is the date at which the asset is completely depreciated (at that time the accumulated depreciation must be equal to the cost price of the asset). The ending sub-paragraph may also be a date earlier than this date of complete depreciation like in the case of disposal of a property from the assets of the enterprise in a sale, scrapping or destruction.
- 4- Calculation of the depreciation: the yearly allowance for depreciation shall be the cost price (historical cost) of the asset multiplied by the depreciation rate for that asset. Particularly:
 - a- For the starting year of depreciation, the depreciation allowance is equal to the yearly depreciation allowance (calculated as one full year).
 - b- For the ending year of depreciation:
 - b1- in the case where the asset is disposed of by the enterprise, the depreciation allowance is equal to zero;

- b2- in the case where the asset has reached the end of its useful life, the depreciation allowance is equal to the remaining un-depreciated balance of the asset account of the asset to depreciate. But if this balance is bigger than the yearly depreciation allowance (for example there is a permanent improvement), the asset shall be considered to have its useful life increased and shall continue to be depreciated until such year this balance becomes smaller than the yearly depreciation allowance and then the asset is totally depreciated to end its depreciation.

Section 6.7: Depreciation of Tangible Properties by the Declining Balance Method

- 1- For the depreciation of tangible properties by the declining balance method, the enterprise must comply with the rules in paragraph 1, 2, and 3, of section 6.6 of this Prakas.
- 2- For class 2,3, and 4 the enterprise shall establish a pooled assets account for each class of assets, and shall record the aggregate un-depreciated value of all assets in the pooled assets account of each class.
- 3- Recording of an asset in the pooled asset account:
 - a- For an asset just placed in service: if such a property is placed in service in the taxable year, for the purposes of calculation of the deductible depreciation allowance, shall be recorded in the pooled asset account at the date the asset is placed in service the balance of the asset account of the asset to be recorded.
 - b- For an asset already depreciated but not yet completely depreciated as at 31 December 2003: the enterprise must do the property class classification according to section 6.5 of this Prakas. On 01 January 2004, the enterprise must record that asset in the pooled asset account by using the un-depreciated value of that asset as at December 31, 2003.
- 4- The allowable depreciation for any one taxable year shall be the balance in the pooled asset account at the end of that year, i.e. the depreciation basis as determined in section 6.5, paragraph 3, sub-paragraph c of this Prakas (after all adjustments to the pool have been taken into account, multiplied by the depreciation rate for that class of asset. The starting value of the pooled asset account at the beginning of the succeeding year shall be its balance at the end of the year minus allowable depreciation (including allowable special depreciation and grants as stated in section 6.9) in the succeeding year for this pool.
- 5- If during the taxable year a property in a pooled asset account as stated in paragraph 2 of this section is disposed of, the enterprise must record in the asset account of the disposed property all income and expense pertaining to that disposal before transferring them into the pooled asset account. If this recording results in a negative balance in the pool, an amount equal to such negative balance shall be included in the taxable income and the pooled asset account balance shall be restored to zero.
- 6- At the end of the taxable year, if a pooled asset account as stated in paragraph 2 of this section no longer contains any property, then any positive balance in the pool shall be recorded as a deductible loss and the pooled asset account balance shall be restored to zero.

Section 6.8: Depreciation must be made actually by the enterprise

- 1- In spite of the fact that at the end of each period the enterprise must check the existence and do the valuation at the real current value of all of its assets (detailed stocktaking), as a rule the enterprise cannot do, for tax purposes, any adjustment to the value of these assets because:
 - a- If the value recorded in the balance sheet is lower than the stocktaking value, in accordance with prudence in accounting, the balance sheet value must be retained except in cases specified by law.
 - b- If the value recorded in the balance sheet is higher than the stocktaking value, the balance sheet value must also be retained (tax provisions do not allow the deduction of a provision) except in the case of a major change in the conditions of use of the asset, the disposal of an

asset where it has been written of from the accounting books of the enterprise, and in other cases specified by law.

2- In each period, the enterprise must record all necessary depreciation for that period even if in that period it has an insufficient profit or no profit. In this:

- a- To be deductible a depreciation allowance must be recorded in the accounting books of the enterprise before the expiry date for the filing of the annual tax declaration for the payment of TOP.
- b- The enterprise is not allowed to defer the depreciation on any one of its assets (for example when it sustains a loss).
- c- Depreciation or partial depreciation for any one period, which has not been recorded in the accounting books at the close of that period, shall be, lost (meaning that it cannot be used as a deduction against the results of any other period).

3- The loss of the right to deduct a depreciation or partial depreciation which has not been recorded properly in the period, leads to the following consequences:

- a- A deferred depreciation cannot be used as a deduction in the calculation of the taxable profit and this is so even after the end of the useful life of the relevant asset.
- b- Depreciation for which deduction is denied as stated in sub-paragraph a of this paragraph, shall be considered to have been regularly made for the purpose of the calculation of the capital gain or loss in a sale.

4- Example:

- a- An enterprise purchases on 15 October 2004 a warehouse at a cost price of 40,000,000 Riels.
- b- This warehouse has useful life of 20 years and is regularly depreciated at each end of period by the straight-line method except in 2006 when it has a big loss.
- c- The warehouse is sold on 10 June 2022 for 15,000,000 Riels.
- d- The situation related to depreciation, capital gain or loss, of this warehouse is as follows:
 - d1- Depreciation rate: 5% (the warehouse with a 20 years useful life belongs to class 1 tangible assets).
 - d2- Depreciation as recorded in accounting books:

| | | | | |
|---|---|-----------------|---|-----------------|
| - 2004 | = | 40,000,000 x 5% | = | 2,000,000 Riels |
| (Depreciation for starting year equal to yearly depreciation) | | | | |
| - 2005 | = | 18,000,000 x 5% | = | 2,000,000 Riels |
| - 2006 | | | = | 0 Riels |
| - 2007 | | | = | 2,000,000 Riels |
| - 2008 | | | = | 2,000,000 Riels |
| - 2009 | | | = | 2,000,000 Riels |
| - 2010 | | | = | 2,000,000 Riels |
| - 2011 | | | = | 2,000,000 Riels |
| - 2012 | | | = | 2,000,000 Riels |
| - 2013 | | | = | 2,000,000 Riels |
| - 2014 | | | = | 2,000,000 Riels |
| - 2015 | | | = | 2,000,000 Riels |
| - 2016 | | | = | 2,000,000 Riels |
| - 2017 | | | = | 2,000,000 Riels |
| - 2018 | | | = | 2,000,000 Riels |
| - 2019 | | | = | 2,000,000 Riels |
| - 2020 | | | = | 2,000,000 Riels |
| - 2021 | | | = | 2,000,000 Riels |

- 2022 = 0 Riels

(No depreciation for the year of disposal)

d3- Book value:=Cost price – Recorded depreciation

Cost price = 40,000,000 Riels

Recorded depreciation = 34,000,000 Riels

Book value = 6,000,000 Riels

d4- Capital gain = Sale price – Book value

Sale price = 15,000,000 Riels

Book value = 6,000,000 Riels

Capital gain by book value = 9,000,000 Riels

e- For tax purposes, this capital gain by book value must be increased by the depreciation deferred wrongly of 2,000,000 Riels in the year 2006. So the taxable capital gain is 11,000,000 Riels (9,000,000 Riels + 2,000,000 Riels). For the determination of the taxable results the enterprise must include in the accounting profit an amount of 2,000,000 Riels (the depreciation irregularly deferred).

f- The case of a capital loss:

f1- If the warehouse is sold instead for 3,000,000 Riels, the capital loss is:

- Sale price = 3,000,000 Riels

- Book value = 6,000,000 Riels

- Capital loss = 3,000,000 Riels

f2- For tax purposes, the deductible capital loss is only 1,000,000 Riels (3,000,000 Riels - 2,000,000 Riels) because of the inclusion in the depreciation recorded in the accounting books of the wrongly deferred depreciation for 2006.

g- For the calculation of the capital gain or loss of an asset, depreciation wrongly deferred shall be considered as already deducted from the taxable results of the enterprise. In this example, the determination of the capital gain or loss shall be made by taking into consideration an accumulated depreciation amount of 36,000,000 Riels (34,000,000 Riels + 2,000,000 Riels) instead of the amount recorded in the accounting books (34,000,000 Riels).

5- Recording:

a- Through the example in paragraph 4 of this section, it is shown that the enterprise is liable to TOP for the depreciation deferred wrongly. In the actual implementation, the enterprise must record in the accounting books (especially the recording in the relevant asset account or pooled asset account) of the depreciation wrongly deferred at the date the mistake is found. At the end of the taxable year in which there is such an adjustment recording, the enterprise must write back this recorded depreciation wrongly deferred.

b- For depreciation or a provision made wrongly or in excess of the allowable level, the enterprise must record the rectification of this wrong depreciation or provision at the date the mistake is found.

c- For the case as stated in sub-paragraphs a and b of this paragraph, the enterprise must file an amended tax return as stated in paragraph 3 of article 117 of LOT.

- d- After the enterprise has complied with the rules in sub-paragraph a, b, and c, of this paragraph, it can continue its depreciation or provision recording as allowed by tax provisions.

Section 6.9: Special Depreciation

- 1- Special depreciation is an amount deductible in the first year of purchase or if later the first year the tangible property is placed into service by the qualified investment project (QIP) noted in paragraph 2 below. This amount deductible is equal to 40% of the capital cost of new and/or used tangible property used in manufacturing and processing. Special depreciation will reduce the capital cost of tangible assets for normal depreciation deduction.
- 2- A special depreciation of tangible property shall be deducted in determining a QIP's taxable income for a taxation year if the investor elected not to use the entitlement under paragraph 4 of Article 20(new) of the Law on the Amendment of the LOT.
- 3- There will be a minimum holding period of tangible property that had a deduction for special depreciation for a period of four years. If the asset disposing of by any means prior to the four years holding period during which the special depreciation has been granted, an amount equal to the special depreciation deduction reduced by 2% of that deduction for each month that the assets were in place, shall be re-included in the taxable profit. This amount will not affect the book value of the assets for determination of capital gains taxable according to Article 7 of the LOT.
- 4- Example 1:
Assume that a taxpayer owns at the beginning of the tax year 2004 three sewing machines that are used in his business. The sewing machines forming class 4 assets are reported on the financial accounts (book value) for tax purpose at 1,600,000 Riels. During 2004 one of the sewing machines is sold for 500,000 Riels and replaced by a newer model, with an acquisition price of 2,000,000 Riels. On this investment, a special depreciation of 40% is granted.

The depreciation basis for 2004 is calculated as follows:

| | |
|--|-----------------|
| -un-depreciated value of the class on 01 January 2004 | 1,600,000 Riels |
| -less: proceeds received on disposal of sewing machine | 500,000 Riels |
| -add: acquisition price of new sewing machine | 2,000,000 Riels |
| less: 2,000,000 Riels x 40% special depreciation | 800,000 Riels |
| -depreciation basis 2004 | 2,300,000 Riels |

The depreciation deduction for 2004 is calculated as follows:

| | |
|---|-----------------|
| -special depreciation (2,000,000 Riels x 40%) | 800,000 Riels |
| -normal depreciation of class 4 (2,300,000 Riels x 20%) | 460,000 Riels |
| -depreciation deduction 2004 | 1,260,000 Riels |

The un-depreciated value on 31 December 2004 (and consistently on 01 January 2005) will equal 1,800,000 Riels (i.e. 2,300,000 Riels – 460,000 Riels). The special depreciation has already been taken out of the normal depreciation basis.

- 5- Example 2:

Assume that in 2006, the taxpayer in example 1 sells the new sewing machine acquired in 2004 (16 month after acquisition). The taxable profit for 2006 has to be increased by the special depreciation deduction adjusted for an amount of 2% of that deduction for every month the asset was in service.

The taxable profit to be re-included in 2006 is calculated as follows:

| | |
|---|---------------|
| -special depreciation (2,000,000 Riels x 40%) | 800,000 Riels |
| -less: adjustment for time asset was in service (800,000 Riels x 20% x 16 months) | 256,000 Riels |
| -taxable profit to be re-include in 2006 | 544,000 Riels |

Chapter 7

General Rules on Capital Gain and Capital Loss on an Asset

Section 7.1: General

1. The taxable profit is the net profit obtained from the results of all types of operations realised by the enterprise including capital gains from the sale of various assets during the business operation or at the close of the business.
- 2- Capital gain or capital loss is the difference between the real value of the asset and its book value (value after deduction of depreciation),
- 3- For tax purposes, the capital gain or capital loss does not have any effect as long as its does not represent an actual flow of fund.
- 4- There are two types of capital gain and capital loss:
 - a- Realised capital gain or loss: this value arises through the disposal of an asset. The disposal may be a sale (most cases), a property contribution into another enterprise, an exchange, a distribution, a donation, a taking back made by the owner of a sole proprietorship (transfer of a property into the private assets) during the business operation or at the end of the business (activity cessation or death of the owner), a dismantling, a destruction, the taking out of service, ... The disposal may be an intentional act of the owner or manager of the enterprise or the consequence of an event outside of their will like an expropriation, a disaster,...
 - b- Recorded capital gain: this value arises through the recording in the accounting books of the current value of a fixed asset in replacement of its old value. So this is purely an accounting capital gain. In this aspect, a capital gain arising from an unauthorised revaluation of a fixed asset shall become a taxable profit of the business.
 - c- Tax regulations do not allow the recording of a capital loss in the form of a provision. A capital loss may be recorded only if it is a realised capital loss as stated in sub-paragraph a of this paragraph.
- 5- Whether realised during the operation or at the close of the business, a capital gain or loss becomes a profit or a loss for the enterprise to be taxed or deducted.

Section 7.2: Calculation of the Capital Gain or Loss

- 1- The sale of a fixed asset produces a capital gain if the sale price is higher than the book value of that asset.
- 2- Book value:

- a- For a fixed asset depreciated by the straight-line method: the book value is the balance of the asset account of that fixed asset minus the total depreciation, (including special depreciation & grants) which has been made for that asset.
- b- For a fixed asset depreciated by the declining balance method: for the purposes of TOP, in the case of the disposal of an asset of this type, the enterprise shall not calculate the capital gain or loss for that asset directly. Instead, the enterprise must comply with the rules as stated in section 6.7 of this Prakas and the capital gain or loss will be shown for the whole of each pooled asset account.

3- Example:

- a- An enterprise has bought a class 1 asset for 2,500,000 Riels and sold it back for 1,800,000 Riels after having depreciated it by the straight line method for 1,500,000 Riels.
- b- This sale produces a capital gain of:

| | | | |
|----------------|---------------------|---|-----------------|
| - Sale price | | = | 1,800,000 Riels |
| - Book value | 2,500,000-1,500,000 | = | 1,000,000 Riels |
| - Capital gain | 1,800,000-1,000,000 | = | 800,000 Riels |

Section 7.3: Special Cases

1- As stated in paragraph 4 of article 19 of LOT, the loss on a sale or exchange of property, whether directly or indirectly, between related persons is not deductible. The term related person refers to:

- a- A member of the taxpayer's family.
- b- An enterprise which controls, or is controlled by, or is under common control with, the taxpayer. The term control means the ownership of 51% or more in the value or voting power of the equity interests in the enterprise. For determining the degree of control of a taxpayer who is a physical person, shall be taken into consideration all equity interests owned by the taxpayer and those owned directly or indirectly by the taxpayer's spouse.

2- Property contribution into a company: the calculation of a capital gain or loss shall be made from the real value of the shares or securities received in return for the property contribution. As a rule, the real value of the shares or securities is equal to the estimated value of the properties brought by the contribution into the accounting books of the enterprise, which receives the contribution.

3- Exchange: an exchange, even without any additional cash payment, shall be considered a sale following by a purchase operation. The capital gain or loss shall be the difference between the fair market value of the properties received in the exchange and the book value of the properties given out in that exchange. An exchange is taxable in the period in which such exchange arises.

4- Donation, death of the owner, taking back of properties from the assets of the enterprise, cessation of activity: these operations or events produce a capital gain or loss which is determined by the fair market value of the properties at the date of the donation, or death, or taking back of properties, or cessation of activity.

Chapter 8

Withholding Tax

Section 8.1: General

1. As stated in article 25(new) and 26(new) of the law on the Amendment of the LOT, a tax related to incomes as specified in sections 8.2 and 8.3 of this Prakas shall be collected from 01 April 2004 onward by withholding before the payment in cash or in kind is made by a resident taxpayer carrying on business. This tax is called the General Withholding Tax.

Section 8.2: Withholding Tax on payments made to a Resident

1- Any resident taxpayer carrying on business who makes a payment in cash or in kind to a resident person shall withhold, and pay as tax, an amount according to the below mentioned rates which are applied to the amount paid before withholding the tax:

- a- The rate of 15% on income received by a physical person from the performance of services including management, consultancy, and similar services. For the purpose of the withholding tax, an income from the performance of services including management, consultancy, and similar services, refers to the income from the economic activities of a person except from the production and the selling of goods, the leasing, renting or selling of properties, and except from employment activities as stated in the Prakas on the Tax on Salary No 396 PK.MEF.TD dated 27 June 1997 of Ministry of Economy and Finance. This income includes mainly: the income from a commission or a brokerage; the income from transport, repair, construction, management, or consultancy activities; the income from similar services like scientific, technical, artistic, or educational services, or from services in the field of medical care, dentistry, legal consultancy, engineering, architecture, study and research, accounting, ...
- b- The rate of 15% on royalties for intangibles properties and interests in minerals,
 - b1- For the purpose of the withholding tax, royalties for intangibles refers to an income in cash or in kind received from:
 - The granting of permission to use the right to publish, to reproduce and to sell literary, artistic, and scientific works, and other similar rights (including the copyright on, and the right to broadcast, audio and video recordings ...); a patent, a brand name, a trade mark, a drawing, a model, a design, a scheme, a formula, or other trade secrets, and all types of intangible properties or rights.
 - A know-how, or skill, or information related to a knowledge or experience in the field of industry, commerce, science, technology, ...
 - The transfer of a right on knowledge or information as stated in this sub-paragraph b1.
 - A consultancy, or any other service related to the implementation or the use of a right as stated in this sub-paragraph b1.
 - b2- For the purpose of the withholding tax, royalties for interests in minerals, refer to any benefit in cash or in kind received in relation to these interests except for the profit

resulting from the exploitation of these resources, and the dividend, which are taxable under separate tax provisions.

- c- The rate of 15% on interests paid by a resident taxpayer carrying on business other than domestic banks and saving institutions to a physical person or an enterprise.
- d- The rate of 10% on income from the rental of a movable or immovable property: for the purpose of the withholding tax, an income from the rental of a movable or immovable property refers to an amount in cash or in kind paid by the rentee in consideration for the use of a movable property such as an industrial, commercial, technical, scientific equipment ... or an immovable property such as land, house, other constructions, ... In this, an immovable property shall include all other properties accessory to it as well as the right to act in accordance with the law on land ownership, the right of usufruct, and any other right which can bring about a payment in cash or in kind in a specified or unspecified amount.
- e- The rate of 6% on interest paid by a domestic bank or savings institution to a resident taxpayer having a fixed term deposit account.
- f- The rate of 4% on interest paid by domestic bank or saving institution to a resident physical person having a non-fixed term savings account.

Section 8.3: Withholding Tax on payments made to a Non-Resident

- 1- Any resident taxpayer carrying on business who makes a payment in cash or in kind to a non-resident person shall withhold, and pay as tax, an amount of 14% on the following payment before withholding:
 - a- Interest;
 - b- Royalties, rent, and other income connected with the use of property;
 - b1- For the purpose of the withholding tax, royalties are defined in sub-paragraph b1 of section 8.2 above. Royalties for interests in minerals, oils, or natural gas, refer to any benefit in cash or in kind received in relation to these interests except for the profit resulting from the exploitation of these resources, and the dividend.
 - b2- For the purpose of the withholding tax, rent is defined in sub-paragraph d of section 8.2 above.
 - c- Payment for management or technical services;
 - d- Dividends.

Section 8.4: Exemption from the Tax Withholding

- 1- A payment in cash or in kind as below is exempted from the tax withholding:
 - a- Interest paid to a domestic bank or saving institution or financial institution, and the payment of income exempted from tax as stated in article 9(new) of the Law on the Amendment of the LOT;
 - b- Payment to the Government or a government institution of the royalties or rental on a movable or immovable property (including among other things the rental of fishing lot or fishing area, the rental of ferry, the royalty on woodland concession, the market tax on goods,...) and which payment must meet the two conditions as below:
 - b1- the payment must pertain to a movable or immovable property recorded as state property in the property register maintained by the Ministry of Economy and Finance;

- b2- this payment must received certification from the Ministry of Economy and Finance that it is revenue to be paid to the state budget.
 - c- Payment of an income subject to the tax on salary or the tax on fringe benefits as stated in the Prakas on the Tax on Salary No 396 PK.MEF.TD dated 27 June 1997 of the Ministry of Economy and Finance.
 - d- Payment of interests made by the Government or a government institution to a non-resident on a loan which the Royal Government of Cambodia or the Minister of Economy and Finance has recognised and approved.
- 2- Exemption of the withholding tax on the income of a legal person enterprise in real regime:
- a- The withholding tax shall not be applies on the income from the performance of services including management, consultancy, and similar services of a legal person enterprise which has been registered under the real regime system of taxation.
 - b- For all cases as stated in sub-paragraphs a and b of this paragraph, an amount shall be exempted from the general withholding tax if that amount has been recorded in an invoice issued by the receiver of the money and which invoice must be made clearly and must contain all information as stated in the Prakas No 341-PK-MEF-TD, and the Prakas No 342-PK-MEF-TD, dated 30 May 1997 of the Ministry of Economy and Finance.
 - c- The payor is responsible to the tax administration for any amount of the general withholding tax for which the payor has decided not to withhold by determining that the relevant income meets the conditions as stated in sub-paragraph a and b of this paragraph, or for any other reason.

Section 8.5: Calculation of the Withholding Tax

- 1- The withholding tax to be withheld shall be calculated on the amount to be paid to a person before withholding the tax.
- 2- For the payment to a non-resident in relation to the supply of materials and equipment and of services, such as in the case of a payment for the purchase of a machinery from abroad which includes both the price of the equipment and the cost of its assembly by a non-resident technician provided by the supplier (for the initial operation of the equipment), the tax base for the withholding tax is only the part of the payment related to the service of assembly.

Section 8.6: Withholding Agents and their Obligations

- 1- As stated in article 31(new) of the Law on the Amendment of the LOT and 88 of LOT, a "withholding agent" is a person (physical or legal) on whom the tax provisions impose the requirement to withhold and to pay taxes to the state budget on behalf of a third person. The withholding agent has the obligation to submit a tax return and to pay the withheld taxes to the tax administration by the 15th day of the month following the month in which the withholding was made. This obligation must be carried out in the form and manner as specified by the tax administration.

Section 8.7: Penalties

- 1- The withholding agent is responsible wholly, and jointly with the person on whom tax withholding must be made, on the amount of tax to be withheld and paid to the tax administration. In the case where the withholding agent has not properly paid the tax that the law requires him to withhold and pay to the tax administration, he will be subject to the unilateral tax assessment, tax re-assessment, and various fines, the same way as for his own tax debt. The withholding agent is also subject to other penalties as provided in LOT.

Chapter 9

Calculation of the Tax on Profit

Section 9.1: Determination of the Taxable Results

1. Write backs and deductions: as there are separate tax provisions, normally the taxable profit is not the same as the accounting profit. For the calculation of the taxable profit of a tax year, the enterprise must take the accounting results of that year (which can be a profit or a loss) and carry out various adjustments as stated in sub-paragraphs a and b of this paragraph and in other paragraphs of this section.

a- Write backs of all expenses not deductible for the calculation of the taxable profit such as:

a1- non-deductible taxes: tax on profit, prepayment of the tax on profit, minimum tax,...

a2- adjustments for deferred depreciation allowance, ...

a3- all types of fines and penalties, ...

b- Deduction of various items such as dividend received as stated in paragraph 8 of section 10.2 of this Prakas, ...

2- After completing the write back and deduction as stated in paragraph 1 of this section, the enterprise must calculate the maximum deductible charitable contribution for the tax year. In this the enterprise must:

a- Determine the results before charitable contribution deduction of the tax year by adding to the results as calculated in paragraph 1 of this section the total amount of charitable contribution expended in the tax year.

b- Calculate the maximum deductible charitable contribution for the tax year by multiplying the results as calculated in sub-paragraph a of this paragraph with the rate of 5%.

3- The enterprise must calculate deductible charitable contribution for the tax year:

a- If the total amount of charitable contribution in the tax year is equal to or lower than the maximum deductible charitable contribution for the tax year, in this case the total charitable contribution in the tax year is the deductible charitable contribution for the tax year.

b- If the total amount of charitable contribution in the tax year is higher than the maximum deductible charitable contribution for the tax year, in this case the maximum deductible charitable contribution for the tax year is the deductible charitable contribution for the tax year and the enterprise shall have a balance of charitable contribution which cannot be used in deduction and which shall become a non-deductible expense for the tax year. In such case:

bl- the enterprise must calculate the taxable results after charitable contribution deduction.

- 4- The enterprise must:
- a- Calculate the net non-interest profit by subtracting the total interest income in the tax year from the sum of the taxable results after charitable contribution deduction and the total interest expense in the tax year.
 - b- Calculate the maximum deductible interest expense for the tax year by adding together the total interest income in the tax year and 50% of the net non-interest profit as calculated in sub-paragraph a of this paragraph.
 - c- Calculate the deductible interest expense for the tax year by comparing the total interest expense in the tax year with the maximum deductible interest expense for the tax year:
 - c1- If the total interest expense in the tax year is higher than or equal to the maximum deductible interest expense for the tax year, in this case the deductible interest expense for the tax year is equal to the maximum deductible interest expense for the tax year.
 - c2- If the total interest expense in the tax year is lower than the maximum deductible interest expense for the tax year, then this total interest expense in the tax year is deductible in totality for the tax year. In this case the enterprise must examine the balance of interest expense remaining from deduction in the previous year. If this balance is positive the enterprise must also brought forward this interest expense remaining from the previous year for deduction and this deduction is made under the condition that the sum of the total interest expense in the tax year and the amount (of the interest expense remaining from the previous year) brought forward for deduction shall not exceeds the maximum deductible interest expense for the tax year.
 - d- Calculate the net profit after interest deduction (or taxable results of the period) by subtracting the deductible interest expense in the tax year from the sum the net non-interest profit and the total interest income in the tax year. Any interest expense remaining from this deduction shall be considered an interest expense for the next taxable year and shall be deductible in accordance with the provisions of this paragraph.
- 5- If the taxable results of the period as calculated in paragraph 4 of this section is a profit, the enterprise must calculate the taxable results for the tax year by taking into account various losses sustained in previous years and brought forward in accordance with the provisions of section 9.5 of this Prakas.

Section 9.2: Determination of the Liability to the Tax on Profit

- 1- The calculation of the liability to the tax on profit shall be as follows:
- a- Calculate the liability to the tax on profit of the tax year (hereafter called liability for TOP under article 20(new) of the Law on the Amendment of the LOT) by applying the tax rate on the annual profit of article 20(new) of the Law on the Amendment of the LOT (as stated in section 9.6 of this Prakas) to the taxable results for the tax year as determined in section 9.1 of this Prakas.
 - b- Minus any foreign tax credit under new article 36 of the Law on the Amendment of the of LOT (as stated in section 9.7 of this Prakas for a resident enterprise which has a foreign source income) but not in excess of the tax liability in sub-paragraph a of this paragraph.
 - c- Minus additional profit tax on dividend distribution that is paid by the taxpayer in accordance with paragraph 1 of article 23(new) of the Law on the Amendment of the LOT at the amount as follows:
 - c1- 100% of the amount of tax paid, for the enterprise that is subject to the profit tax rate of 20% or 30%;
 - c2- 7/91 of the amount of tax paid, for the enterprise that is subject to the profit tax rate of 9%;
 - c3- 0% of the amount of tax paid, for the enterprise that is subject to the profit tax rate of 0%.
- The above amount shall not be exceeded the tax liability after deducting the foreign tax credit in sub-paragraph b of this paragraph

Section 9.3: Determination of the Tax Due or Tax Credit for the Tax Year

- 1- The determination of the tax on profit due or the tax credit for the tax year shall be as follows:
 - a- If the result from the calculation in section 9.2 of this Prakas is greater than the sum of any withholding tax made on behalf of the taxpayer in accordance with the provisions in chapter 8 of this Prakas, and the prepayments for the tax on profit made by the taxpayer for the tax year under article 28 of the Law on the Amendment of the LOT, the taxpayer shall pay the difference to the tax administration.
 - b- If the result from the calculation in section 9.2 of this Prakas is smaller than the sum of any withholding tax made on behalf of the taxpayer in accordance with the provisions in chapter 8 of this Prakas, and the prepayments for the tax on profit made by the taxpayer for the tax year under article 28 of the Law on the Amendment of the LOT, the taxpayer may apply for a refund of the difference, or carry forward the difference to be used as a prepayment in the following year.
 - c- Before making any tax payment under sub-paragraph a of this paragraph, or claiming any refund or doing any carry forward for use as prepayment under sub-paragraph b of this paragraph, the taxpayer must first determine any liability for the minimum tax according to the procedures as stated in section 9.4 of this Prakas.

Section 9.4: Determination of the Minimum Tax, and the Tax Due or the Tax Credit for the Tax Year

- 1- The minimum tax, the tax due or the tax credit for the tax year shall be determined as follows:
 - a- The taxpayer must pay the minimum tax as stated in article 24 of the Law on the Amendment of the LOT at the time of the liquidation of the tax on profit. The minimum tax due may be reduced by any liability for TOP under article 20(new) of the Law on the Amendment of the LOT for the same year.
 - b- In the case where the liability for TOP exceeds the liability for the minimum tax:
 - b1- the taxpayer who has a Qualified Investment Project or who is taxed under the estimated regime must comply with the provisions in sub-paragraph a and b of paragraph 1 of section 9.3 of this Prakas at the time of submission of the tax return;
 - b2- the taxpayer is not liable for the minimum tax.
 - c- In the case where the liability for TOP is less than the liability for the minimum tax:
 - c1- the taxpayer's tax credit under paragraph 1 of section 9.3 of this Prakas (that is the sum of any withholding tax made on behalf of the taxpayer in accordance with the provisions in chapter 8 of this Prakas, and the prepayments for the tax on profit made by the taxpayer for the tax year under article 28(new) the Law on the Amendment of the of LOT) shall be reduced by the difference between the liability for the minimum tax and the liability for TOP;
 - c2- the amount by which the tax credit is reduced in complying with the rule in sub-paragraph c1 of this paragraph, shall be considered as the payment of the minimum tax for the tax year;
 - c3- the taxpayer must comply with the rules as stated in sub-paragraphs a and b of paragraph 1 of section 9.3 of this Prakas at the time of submission of the annual tax declaration for the payment of TOP and in which the sum of any withholding tax made on behalf of the taxpayer in accordance with the provisions in chapter 8 of this Prakas, and the prepayments for the tax on profit made by the taxpayer for the tax year under article 28(new) of the Law on the Amendment of the LOT shall be replaced by the amount of the tax credit after reduction as stated in sub-paragraph c1 of this paragraph.

Section 9.5: Rules on the Carry Forward of Losses

1- As stated in article 17 of LOT:

- a- In the case of a loss in any one tax year, this loss is considered as a charge for the following tax year (to be called the first tax year for the carry forward of the loss) and shall be deducted from the profit realised in that following year. If this profit is not sufficient to completely settle it, the remaining part of the loss is carried over successively to following tax years until the fifth tax year.
- b- Where losses occur in more than one year, the rule in sub-paragraph a of this paragraph shall be applied to the losses in the order in which they arose.

2- Conditions for the carry forward of losses for deduction:

- a- Proof of a loss:
 - a1- To be deductible, a loss must be recorded in the tax declaration which has been submitted to the tax administration within the period of time as specified in tax provisions.
 - a2- A taxpayer subject to a unilateral tax assessment from the tax administration shall not be allowed to bring forward losses from previous years for deduction.
 - a3- A loss brought forward for deduction must be evidenced by accounting books and records which are properly maintained in accordance with the rules as specified in tax provisions and in a good accounting standard.
- b- Identity of the enterprise:
 - bl- A loss is allowed to be brought forward for deduction from the realised results of one same enterprise only. In this:
 - In the case where there is a change of owner, the loss sustained by the former owner cannot be brought forward for deduction against the profit of the new owner. The change of owner occurs mostly through the sale of the enterprise, the death of the owner and the business is taken over by the deceased's heirs,...
 - In the case where there is a change in the business activities which can be considered as a cessation of activity of the old enterprise and the creation of a new enterprise (for example the enterprise ceases its retailing activities and starts a business in construction, ...), the loss sustained by the enterprise in its former activities cannot be brought forward for deduction against the profit realised in its new activity.
- c- The period to bring forward a loss for deduction:
 - c1- A loss must be brought forward for deduction against the results of the first (subsequent) period which has a profit. The enterprise cannot determine at will the tax years in which to bring forward a loss for deduction.
 - c2- If for any reason the enterprise has not brought forward a loss for deduction against the profit of any one tax year as allowed by tax provisions (deduction of a loss in whole or in part), this loss cannot be brought forward for deduction against the profits of any other subsequent tax year.
 - c3- A loss sustained by an enterprise in the tax year of 1997 and in subsequent years can be carried forward for deduction for 5 years. A loss sustained by the enterprise before 1997 can be carried forward for deduction for 3 years.

Section 9.6: Rates of the Tax on Profit (Article 20(new) of the Law on the Amendment of the LOT)

The tax rates on the annual profit are as follows:

- 1- 20% for the profit realised by a legal person.

- 2- 30% for the profit realised under an oil or natural gas production sharing contract, or realised in the exploitation of natural resources including timber, ore, gold, and precious stones.
- 3- 9% for the profit of a Qualified Investment Project (QIP) approved by CDC to be entitled to the 5 years transitional period commencing from the taxation year after the date of the promulgation the Law on the Amendment of the LOI.
- 4- 0% for the profit of a QIP during the tax exemption period as determined by CDC.
- 5- According to the progressive tax rate by trench of the table below for the profit realised by a physical person.

| <u>Parts of the annual taxable profit</u> | | | | <u>Tax rate</u> |
|---|-------------------|----|-------------------|-----------------|
| From | 0 Riel | to | 6,000,000 Riels | 0% |
| From | 6,000,001 Riels | to | 15,000,000 Riels | 5% |
| From | 15,000,001 Riels | to | 102,000,000 Riels | 10% |
| From | 102,000,001 Riels | to | 150,000,000 Riels | 15% |
| | greater than | | 150,000,000 Riels | 20% |

6- The right, privileges and entitlement of a qualified investment project under the Law on the Amendment of the Law on Investment of the Kingdom of Cambodia may not be transferred or assigned to any third party except acquisition or merger.

Section 9.7 : Foreign Tax Credit (Article 36 of LOT)

1- A resident taxpayer who has received income from foreign sources and who has paid taxes according to foreign tax law, shall receive a tax credit for deduction from the tax on profit to be paid in the Kingdom of Cambodia under the condition that there is presentation of documents confirming this tax payment abroad.

2- In order to calculate the tax to be paid in the Kingdom of Cambodia before deduction of this tax credit, the total amount of income received from Cambodian sources and foreign sources shall be taken into account.

3- The tax credit is determined separately for the tax paid by a Cambodian resident in each foreign country. But the tax credit to be allowed for deduction in the tax year for the tax paid in any one foreign country is the smaller of:

- a- The tax amount actually paid in that foreign country.
- b- The amount obtained by multiplying the total tax on profit from all sources for the same period calculated according to the tax rate in article 20(new) the Law on the Amendment of the of LOT, with the ratio of income received in that foreign country to the total income from all sources.

4- The foreign tax credit is possible only if the resident taxpayer has complied with the formalities and supplied various documents as specified by the tax administration especially certification from the foreign tax payor and from the foreign tax administration.

5- In the case where the tax credit exceeds the tax liability, the amount of the excess may be carried forward to be used in succeeding years up to the fifth counting from the year following the year in which the credit arose. In the case of tax credits in more than one year, the credits must be taken in the order in which they arose.

Chapter 10

Taxation of Legal Persons

Section 10.1: General

1. As provided in article 3(new) of the Law on the Amendment of the LOT, a legal person is broadly defined to include any enterprise or organisation carrying on a business, whether or not officially recognised in the Kingdom of Cambodia. A legal person is a unit that takes on the character of a corporation, a government institution, a charitable or religious organisation, a non-profit organisation, a partnership (which is not a pass-through), or a permanent establishment located in the Kingdom of Cambodia.

2- As provided in article 3(new) of the Law on the Amendment of the LOT, a shareholder is a person who holds an equity interest or who may gain income or profit as a participant in a legal person as specified in paragraph 1 of this section.

3- As provided in article 3(new) of the Law on the Amendment of the LOT, a dividend is a distribution of property or money, made by the legal person to a shareholder by virtue of the equity interest held by the shareholder, other than a stock dividend or a distribution in a complete liquidation.

Section 10.2: The additional profit tax on dividend distributions:

The additional profit tax on dividend distributions shall be determined as follow:

- 1- An additional profit tax shall be paid in the amount of 20/100 upon
 - a. distribution of retained earnings or annual profit after tax, if an enterprise is distributing retained earnings or profit that were subject to a tax rate of 0% according to paragraph 4 of article 20(new) of the Law on the Amendment of the LOT ; and
 - b. any other distribution, except for those mentioned in paragraph 2 and paragraph 3 of this section as well as for any repayment of capital.

2- An additional profit tax shall be paid in the amount of 11/91 upon distribution of retained earnings or annual profit after tax, if an enterprise is distributing retained earnings or profit that were subject to a tax rate of 9% according to paragraph 3 of Article 20(new) the Law on the Amendment of the LOT.

3- An additional profit tax shall be paid on the distribution of retained earnings or annual profit after tax, if an enterprise is distributing retained earnings or annual profit that were subject to the normal rate of 20% according to paragraph 1 of Article 20(new) of the Law on the Amendment of the LOT.

4- If an enterprise receives a dividend from another enterprise that has paid tax under paragraph 1, paragraph 2, and paragraph 3 of this section, it shall record the amount of that dividend into its dividend account. When that enterprise subsequently distributes dividends to its shareholders the amount distributed which are taken out of the dividend account shall not be subject to additional profit tax on dividend distribution under paragraph 1, paragraph 2, and paragraph 3 of this section.

5- For the purpose of this section, any distribution of retained earnings or all annual profit after tax is deemed to be made in the following order;

- a. first out of retained earnings or annual profit after tax of which the profit tax is paid at the rate of 20% according to paragraph 1 of Article 20(new) of the Law on the Amendment of the LOT, or the rate of 30% according to paragraph 2 of Article 20(new) the Law on the Amendment of the LOT;

b. subsequently out of retained earnings or annual profit after tax of which the profit tax is paid at the rate of 9% rate according to paragraph 3 of Article 20(new) the Law on the Amendment of the LOT;

c. and more subsequently out of retained earnings or annual profit after tax of which the profit tax is paid at the 0% rate according to paragraph 4 of Article 20(new) the Law on the Amendment of the LOT.

6- An enterprise shall be submit a tax return the additional profit tax on dividend distribution as determined under Article 23(new) the Law on the Amendment of the LOT, and to pay to the tax administration in the form as specified by the tax administration by the 15th day of the month following the month in which the distributed is paid.

7- An enterprise distributing dividends is required to notify the dividend recipient in the form specified by the tax administration that the additional profit tax on dividend distribution has been paid at the time of distribution.

8- For the purposes of TOP, a person who receives dividends and can show proof by way of the notification as required in paragraph 7 of this section shall not include these dividends in his taxable income.

Chapter 11

Taxation of Particular Types of Enterprises

Section 11.1: Taxation of Insurance Enterprises

1. As provided in article 21 of LOT, an insurance enterprise normally is not subject to tax at the generally applicable rate of article 20(new) of the Law on the Amendment of the LOT. But an insurance enterprise is instead required to pay a tax on profit equal to 5% of the gross amount of premiums accrued during the tax year with respect to the insurance and re-insurance of Cambodian risks.

2- If for any reason, an insurance enterprise engages in activities which are not insurance or reinsurance activities, income from these activities is subject to TOP at the appropriate rate of article 20(new) of the Law on the Amendment of the LOT. In this case the taxable profit shall be calculated in the same manner as the profit on the activities of other enterprises.

3- An insurance enterprise must also pay the tax on fringe benefits as provided by article 48 of LOT. However since this tax is not imposed on the net taxable income, an insurance enterprise is not permitted to deduct from its gross premium income the cost of fringe benefits it may provide to its employees.

Chapter 12

Regime Systems of Taxation

Section 12.1: Types of Systems of Taxation

1. Article 4 of LOT has provided for 3 types of regime systems of taxation: the real regime, the simplified regime, and the estimated regime system of taxation. Provisions on the real regime are defined in chapter 13 of this Prakas and provisions on the estimated regime are defined in chapter 14 of this Prakas. Provisions on the simplified regime are defined in a separate prakas.

Section 12.2: Scope of the Real Regime

1- An enterprise is taxable or not under the real regime depending on:
a- the legal form of the enterprise, or

- b- the level of turnover, or
- c- the type of business activity.

2- Legal form: enterprises, which are not a sole proprietorship, are taxable under the real regime regardless of the type of business activity or the level of turnover. These enterprises are mainly state owned enterprises, joint venture companies, private companies, communities or private organisations doing activities for profit or receiving income from their assets,...

3- Level of turnover or type of business activity for a sole proprietorship: a sole proprietorship meeting the conditions in sub-paragraph a or b of this paragraph must be registered as a real regime enterprise:

- a- Level of turnover:
 - a1- An enterprise which has a turnover of 125 million Riels or more in the case of the supply of goods or mixed supply, or 60 million Riels or more in the case of the supply of services, or 30 million Riels or more in the case of the government contract, in any period of three consecutive calendar months. A mixed supply in the supply of goods and the supply of services added together (in the case where the enterprise supplies both goods and services)
 - a2- An enterprise which, at the beginning of any period of three calendar months, has reasonable grounds to expect for that period that it will have a turnover of 125 million Riels or more from the supply of goods or the mixed supply, or 60 million Riels or more from the supply of services, or 30 million Riels or more from the government contract.
 - a3- An enterprise which has an annual turnover of 500 million Riels or more in the case of the supply of goods or mixed supply, or 250 million Riels or more in the case of the supply of services, or 125 million Riels or more in the case of the government contract.
 - a4- For the purpose of this sub-paragraph a, the turnover is the turnover inclusive of all taxes.
- b- Type of business activity: a sole proprietorship which is an importer or exporter or a qualified investment project.
- c- A new enterprise: if the estimated level of turnover, or if the type of business activity (based on information recorded in the application for permission to start business) meets the conditions for real regime taxation as stated in sub-paragraph a and b of this paragraph.

Section 12.3: Scope of the Estimated Regime

1- The estimated regime is only for a sole proprietorship which does not meet the conditions for real regime taxation as stated in paragraph 3 of section 12.2 of this Prakas.

Chapter 13

Provisions for Real Regime System of Taxation

Section 13.1: Obligation of Declaration for the Enterprise

- 1- Declaration of existence:
 - a- As stated in article 101 of LOT:
 - a1- a person must register with the tax administration within 15 days after the person begins economic activity;
 - a2- a person shall inform the tax administration within 15 days of any change in the address, form, name, or object of the business, composition of the leadership, the person in charge of tax matters for the enterprise, or of any transfer or cessation of business.

- b- Article 103 of LOT has provided that the tax administration has the right to register a person who is required by law to be registered and who has failed to register. In this case, the tax administration can determine the effective date of registration.
 - c- Article 128 of LOT has provided that shall be considered as an obstruction to the implementation of tax provisions (and shall be subject to penalties as stated in articles 133 and 136 of LOT) in the case where the person has:
 - c1- failed to register with the tax administration, or
 - c2- failed to notify the tax administration of any change as stated in sub-paragraph a2 of this paragraph.
 - d- The registration and notification as stated in sub-paragraph a of this paragraph must be made in the form and manner as determined by the tax administration. Particularly for the application for registration, it must be attached with the following documents:
 - d1- For a legal person enterprise:
 - business certificate issued by competent authorities of which the stamp tax has been paid;
 - letter of authorisation issued by the CDC (for);
 - articles of incorporation of the enterprise;
 - identity card of the leadership (with photos);
 - business address certificate and eventually contract for the leasing of the enterprise compound.
 - d2- For a sole proprietorship:
 - business certificate issued by competent authorities;
 - identity card of the owner (with photos);
 - domicile certificate;
 - family certificate;
 - headquarters address certificate and eventually contract for the leasing of the enterprise compound.
- 2- The submission of tax return:
- a- Annual profit:
 - a1- As stated in article 29 of LOT, all taxpayers liable to the tax on profit who must pay taxes according to the real regime system of taxation shall send every year to the tax administration a tax return of the profit they have realised in the previous tax year. This tax return must absolutely be registered in the period of 3 months after the end of the tax year. This declaration must be made in the form and manner as specified by the tax administration and especially it must be attached with the balance sheet, the results account (profit and loss account), and various tables (schedules) of complementary information.
 - a2- An enterprise which has made no profit or has sustained a loss must file a tax return in the same manner and period of time as an enterprise realising a profit. Article 128 of LOT has provided that shall be considered as an obstruction to the implementation of tax provisions in the case where the taxpayer has failed to submit a nil tax return within 30 days of the date required by law.
 - b- Prepayment of the tax on profit:
 - b1- As stated in article 28 of LOT, an enterprise liable to the tax on profit under the real regime system of taxation including any Qualified Investment Project (QIP) liable to the tax on profit at the rate of 9%, has the obligation to make a monthly prepayment (of the tax on profit) at the rate of 1% of the turnover (inclusive of all types of taxes) realised in the previous month. This prepayment will be deducted from the tax on profit at the annual liquidation of the tax.

- b2- As stated in article 32 of LOT, the enterprise shall make the prepayment tax return in the form and manner as specified by the tax administration and shall submit this tax return and pay the prepayment to the tax administration by the 15th day of the month following the month in which the liability arose.
- c- All investors shall file a monthly return for each month and an annual tax return for that tax year, and pay all taxed payable as required by each tax provision
- d- As stated in paragraph 3 of article 116 of LOT, for a taxpayer who has failed to file a tax return within the period as required by law the tax administration may carry out a unilateral tax assessment on that taxpayer.

Section 13.2: Accounting Obligation

1- Bookkeeping:

- a- Paragraph 1 of article 98 of LOT has provided that the taxpayer must keep books of account, supporting documents, and other financial documents as determined by tax provisions and must submit these books and documents to the tax administration for inspection when required.
- b- Article 98 of LOT, and the Sub-decree No 05-SDC dated 05 March 1993 on the Obligation on Bookkeeping, have defined the main rules on bookkeeping such as:
 - b1- The enterprise must record in accounting books all transactions made.
 - b2- At the close of the period, the enterprise must take stock to check the existence and the value of all items in the assets and liabilities and must produce all necessary reports
 - b3- Bookkeeping must be done in Khmer with figures written in Khmer numerals or Arab numerals, but the enterprise may keep an additional accounting book in another language.
 - b4- All transactions must be recorded in Riels. Where necessary, the enterprise may apply to the Minister of Economy and Finance for permission to do bookkeeping in another currency than the Riel.
 - b5- The enterprise must use the double entry and accrual basis accounting system.
 - b6- Invoices must be issued for all transactions between the taxpayer and other persons.
 - b7- Supporting documents must be properly dated and filed.
 - b8- The enterprise must record in the accounting books all transactions in the order in which they arise.
 - b9- Each accounting entry must show for the relevant transaction the origin, the content, the charged accounts, a short description, and the reference to the supporting documents. In particular, the taxpayer must record properly in the journal the details of invoices.
 - b10- Any rectification must leave a trace of the mistake made. The accounting system must be organised in such a way as to be able to reveal the real amount of the flow of fund in the various accounts.

2- Presentation of accounting documents: the taxpayer must have proofs for all items of income and expense he has declared. When required by the tax administration to provide proofs, the taxpayer must present all accounting documents, stock-lists, receipts, disbursement vouchers, ... to prove the reality of the information recorded in the tax return. Article 128 of LOT has provided that shall be considered as an obstruction to the implementation of tax provisions in the case where the taxpayer does not allow the tax administration to examine accounting records or other documents.

3- The keeping of accounting documents: as stated in paragraph 3 of article 98 of LOT, the person who must keep books of account, documents, or journals, as prescribed by tax provisions or other provisions, must preserve these books or documents for a period of 10 years starting from the end of the tax year in which a recording of information concerning the enterprise transaction was made in them.

4- Penalties related to bookkeeping obligation:

- a- Article 128 of LOT has provided that shall be considered as an obstruction to the implementation of tax provisions (and shall be subject to penalties as stated in articles 133 and 136 of LOT) in the case where the person:
 - a1- fails to maintain proper accounting records and other documents or fails to issue invoices on transactions;
 - a2- makes or furnishes fraudulent records, documents, reports, or other information;
 - a3- conceals or deliberately destroys accounting books, records, documents, reports, or other information.

Section 13.3: Audit and Amendment of the Tax return

1- Control of the tax administration: the regime of assessment of the tax on profit on real profit (or real regime) is based on the taxpayer's tax return and this procedure must have a control phase at a later date.

- a- In the case where an accounting book is irregular meaning that it cannot provide proofs that the result as declared by the taxpayer is a correct and true one, the tax administration may rectify that tax return by complying with the rules and procedures as stated in the Prakas on the Assessment, Reassessment, and Collection of Tax No 073-PK-MEF-TD dated 03 March 1998 of the Ministry of Economy and Finance.
- b- As stated in paragraph 8 of article 92 of LOT, the tax administration has the right to redetermine transactions between related taxpayers. For purposes of this point b, the word "between related taxpayers" means between the taxpayer and a related person (as defined in paragraph 11 of article 3 of LOT and paragraph 6 of article 56 of LOT), or between taxpayers who are under common ownership (as defined in article 18 of LOT).
- c- The tax administration is responsible for the control of the accuracy and sincerity of the taxpayer's tax return. This control has two aspects as stated in paragraph 2, and 3, of this section.

2- Desk audit: this is a control of the accuracy and sincerity of the declared data by just checking and cross-checking various information that the tax administration has received from the taxpayer's tax return or clarification (as required by the tax administration), or from information received through the use of the right to receive information as stated in article 92 and 100 of LOT (especially the right of inquiry and cross-checking of information from outside sources).

3- On site audit: this control has the purpose of gathering information about the real situation of the business activity (mark-ups for each product or activity, checking of purchase value, staff number, various fixed assets, ...) for use in the cross-checking with the data shown in accounting books, with the living conditions of the managers of the audited enterprise,...

- a- Audit procedures:
 - a1- Paragraph 1 of article 100 of LOT has provided that in an inquiry, the tax agent with a letter of mission has the right to enter the business establishment, the place that is considered to be the business establishment, the place that is open to the public, or other places, to assess tax to be paid by a person or to collect taxes. The agent can use this right during the business hours or at any time according to the condition and reason stated in the warrant issued by a judge.
 - a2- In actual implementation and for a normal case, so as to facilitate the taxpayer's preparatory work (gather books and documents, find an advisor) the tax administration has adopted a policy of notifying the relevant enterprise of an on site audit at least 10 days in advance.
 - a3- If the tax administration is in the opinion that the notification as stated in point b of this paragraph may adversely affect the result of the audit, and particularly if the tax administration has a sound basis to believe that there is a big tax fraud, the tax administration has the right to carry out an on site audit without any advanced

notification. In this case the letter of notification is delivered to the enterprise at the start of the audit.

- b- Obligation of the audited taxpayer:
 - b1- Paragraph 1 of article 98 of LOT has provided that the taxpayer must keep books of account, supporting documents, and other financial documents as determined by tax provisions and must submit these books and documents to the tax administration for inspection when required.
 - b2- Paragraph 2 of article 100 of LOT has provided that the agent of the tax administration who has entered legally the place of a person can:
 - examine, compile or copy documents that are in that place;
 - confiscate documents or other evidence that can become information for assessing a person's tax that must be paid;
 - install different control instruments or seal goods if they are related to any application of tax;
 - make an inventory of assets, raw materials, work in progress, finished products, and all other stocks.
 - b3- The taxpayer must cooperate and give facilities to the audit work as stated in sub-paragraph b1 and b2 of this paragraph. Paragraph 1 of article 128 of LOT has provided that shall be considered as an obstruction to the implementation of tax provisions in the case where a person attempts to obstruct the assessment or the collection of taxes.

4- Right to receive information:

- a- Scope of the right to receive information:
 - a1- Article 99 of LOT has provided that for the purpose of determining the tax that a person must pay, or for the purpose of collecting taxes, the tax administration can issue a letter of notification to the taxpayer or a third person:
 - to provide information related to the taxpayer as stated in the letter of notification such as information on suppliers, clients, bank accounts,...
 - to present oneself at the time and place designated in the letter of notification for the purpose of presenting or providing information, documents, or data, that are in the possession of the person and that are clearly stated in the letter of notification.
 - a2- Paragraph 5 of article 92 of LOT has provided that the tax administration has the right to enter the residence or the business establishment of the taxpayer, the withholding agent, or a third person, to obtain information related to the taxpayer or the withholding agent (by complying with the provisions as stated in sub-paragraph b2 of paragraph 3 of this section).
 - a3- Sub-paragraph 6 of paragraph 1 of article 92 of LOT has provided that the tax administration has the right to receive from state institutions, information concerning or related to the taxpayer or the withholding agent.
- b- Implementation of the right to receive information:
 - b1- Paragraph 2 of article 99 of LOT has provided that the letter of notification for the supply of information (as stated in sub-paragraph a1 of this paragraph) must contain the name and the identification number of the taxpayer (if available) and the signature of the officer of the tax administration in charge of issuing this letter.
 - b2- The right to receive information is applicable within the period specified by law for the keeping of accounting books and records and other documents (10 years from the end of the tax year in which the transaction was made).
 - b3- The agent of the tax administration who uses the right as stated in sub-paragraph a2 of this paragraph must have a letter of mission. Paragraph 4 of article 100 of LOT has provided that when making inquiry on entry the agent of the tax administration must

- demonstrate the proper behaviour and avoid any possible damage to the honor or the business of the taxpayer or withholding agent or third person. In any case, the on site inquiry shall not be more than what is necessary.
- b4- As stated in article 94 of LOT, the tax administration and every person who is or has been official or agent of the tax administration must keep confidential the information pertaining to the taxpayer.
 - b5- Article 140 of LOT has provided that if the taxpayer believes that he has suffered financial loss or personal injury from the improper or illegal activities of the tax administration, the taxpayer can sue for compensation for those losses or injuries to court within three years following the date of the last financial loss or personal injury.
- c- Obstacle to the implementation of the right to receive information:
- c1- Any person who does not cooperate with, or creates difficulties for, or obstruct, the legal implementation of the right to receive information of the tax administration, that person shall be considered as having attempted to obstruct the assessment and the collection of taxes. This is an obstruction to the implementation of tax provisions which shall be subject to penalties as stated in article 133 and 136 of LOT.
 - c2- For the relevant taxpayer, the non-cooperation with, the creation of difficulties for, or the obstruction of, the legal implementation of the right to receive information of the tax administration shall not cause' that person to escape the tax administration's right to do tax assessment or tax re-assessment on him (Prakas on the Assessment, Re-assessment, and Collection of Tax No 073-PK-MEF-TD dated 03 March 1998 of the Ministry of Economy and Finance).

Section 13.4: Right of the Tax Administration to Pursue Tax Collection

- 1- The right of the tax administration to pursue the collection of tax debts is defined in the Prakas on the Assessment, Re-assessment, and Collection of Tax No 073-PK-MEF-TD dated 03 March 1998, and the Prakas on the Implementation of Measures for Enforced Tax Debts Collection No 074-PK-MEF-TD dated 03 March 1998, of the Ministry of Economy and Finance.
- 2- For an enterprise having a contract with the government, the accountant of the government can pay for goods or services supplied under contract only in the case where that enterprise has presented to him a paper from the tax administration certifying that the enterprise has complied with all of its tax obligations.
- 3- For a non-payment or an under payment of tax which has been established by a decision of the court, the tax administration can pursue the collection of this tax until the end of the year following the year in which the court has issued that decision.

Section 13.5: Taxable Person and Place to Assess Tax

- 1- Legal person enterprise: the taxation is made at the headquarters of the enterprise but the tax administration may select another place for taxation like the actual management office of the enterprise.
- 2- Sole proprietorship: like a legal person enterprise, a sole proprietorship under the real regime is taxable at its establishment if it has only one establishment or at the principal establishment if it has many establishments.
- 3- Special case of an enterprise doing business through many establishments located in different areas:
 - a- The tax on profit shall be assessed at the principal establishment, under one same identification number, and for all of the enterprise's establishments doing business in the Kingdom of Cambodia.
 - b- The enterprise must have a separate profit and loss account for each establishment because of the requirements as follows:

- b1- For the inventory of each establishment, there must be a separate stock-list and accounting recording.
- b2- Payroll and payroll ledger must be kept at the permanent workplace of the employees.
- b3- Each establishment must have a separate cashier or cash box.
- b4- Sales, especially cash sales, must be recorded daily.
- c- The enterprise must establish separate profit and loss account for each activity if each activity is subject to different profit tax rate.
- d- The profit tax return: the enterprise must:
 - d1- File with the tax administration unit of the place of the principal establishment, the annual tax return of the consolidated profit (which must be attached with the profit and loss account of each establishment) for the payment of the tax on profit on the total profit of the enterprise.
 - d2- File with the tax unit of the place of each secondary establishment:
 - a copy of the annual declaration of the consolidated profit which has been filed with the tax unit of the place of the principal establishment;
 - the profit and loss account of the relevant secondary establishment.

Chapter 14

Provisions for Estimated Regime System of Taxation

Section 14.1: Obligation of the Estimated Regime Taxpayer

- 1- In accordance with article 30 of LOT, the estimated regime taxpayer must file yearly by the 31 of October, a tax declaration with the tax administration unit of the place where the taxpayer carries out his business activities in the form provided by the tax administration.
- 2- The estimated regime taxpayer must pay tax on the estimated profit every month at the date specified by the tax administration.

Section 14.2: Tax Assessment in the Estimated Regime

- 1- In accordance with articles 4 and 98 of LOT, the estimated regime taxpayer does not have, for tax purposes, the obligation to keep accounting books according to the complete system (normal system). So the accounting records and other documents of the estimated regime taxpayer, in spite of the fact that they are an important source of information, do not have full value for the determination of the taxable estimated profit. As stated in article 30 of LOT, the amount of the estimated profit shall be determined by the tax administration after doing some controls on the business, and after discussions with the taxpayer or his representative.
- 2- Even though the estimated profit is contained in an contract signed by both the taxpayer and the tax administration, this estimated profit is not the result of a negotiation with the taxpayer but it is an estimation made by the tax administration on the basis of various factors that the tax administration can gather information on (purchases, general expenses, salaries, withdrawals in cash or in kind made by the owner, living conditions of the owner and his family, ...). On the basis of some indicative criteria for the identification of each business activity, the tax administration can make an assessment of the level of turnover and in such a case, in accordance with article 30 of LOT, the estimated profit is calculated by applying a profit rate (mark-up) pertaining to the type and the form of the business.
- 3- The level of the tax on the estimated profit shall remain constant for a specific period of 3 months, 6 months or 1 year.

Chapter 15
Closing Provisions

Section 15.1: Abrogation

1- All provisions contrary to this Prakas shall be abrogated.

Section 15.2: Effective Date

1- This Prakas becomes effective and in force from 01 January 2004 onward.

Senior Minister
Minister of Economy and Finance

(Signature and Stamp)

KEAT CHHON

cc to:

- General Secretariat of the Senate
- General Secretariat of the National Assembly
- Council of Ministers
- All Ministries and State Secretariats
- All Provincial and City Municipalities (for information)
- All units under the Ministry of Economy and Finance (for attribution)
- All tax units (for implementation)
- Archives – Chronology