



KINGDOM OF CAMBODIA
Nation Religion King

**Permanent Mission of the Kingdom of Cambodia
to the United Nations Office and other International
Organizations at Geneva**

Ref: 2017/10/423

The Permanent Mission of the Kingdom of Cambodia to the United Nations Office and other International Organizations at Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and, with reference to the Joint Urgent Appeal from Special Procedures dated 6 September 2017, has the honor to enclose herewith a clarification of questions number 4 and 6 concerning Administrative and Legal Measures against Media Outlets in Cambodia from the General Department of Taxation of the Kingdom of Cambodia as in attached file.

The Permanent Mission of the Kingdom of Cambodia to the United Nations Office and other International Organizations at Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 30 October 2017



Office of the United Nations
High Commissioner for Human Rights
Palais des Nations-1211 Geneva 10, Switzerland
E-mail: registry@ohchr.org
jkraft@ohchr.org

The General Department of Taxation's position on the case of The Cambodia Daily's tax reassessment

On 14 September 2017 the General Department of Taxation (GDT) received a letter from the Ministry of the Foreign Affairs and International Cooperation dated 12 August 2017, requesting both the Ministry of Information and GDT respectively to prepare an official response with clarifications to all the 6 points/questions brought forward via H.E Ney Samol, Ambassador Extraordinary Plenipotentiary, Permanent Mission of the Kingdom of Cambodia to the United Nations Office and other International Organisations in Geneva by the Human Rights Council in its letter dated 6 September 2017. Two of the 6 questions are directing to GDT on the case of The Cambodia Daily's tax reassessment and they are as follows:

- 1. Full details of the procedures and norms followed by the Ministry of Economy and Finance in undertaking the audit of The Cambodia Daily as well as the rules of due process.**
- 2. Information on legal framework governing bankruptcy in Cambodia as well as on the power of tax authorities to provide instruction to the immigration office.**

To be able to both informatively and comprehensively respond to the above 2 questions it is imperative to first start by giving a full overview of GDT's recent history/background and the recent transformation it has made to get to where it is today. Without having a full understanding and an insight into GDT's history and how GDT has progressively got to where it is today, one will surely be led to result in gross misleading or misjudgement of certain situations such as in this case, the Cambodian Daily's tax reassessment to be exact. The following is an overview of the background and the positive progress of the reform programs GDT has undertaken over the past 10 years.

It is also important to point out from the outset that while it has been acknowledged by various key stakeholders, including donor countries and key development partners, that the pace of the reform that GDT has undertaken over the past 10 years varied at different stages as the 1st 5 years (2008-2012) of which had been rather fragmented and slow due to the situation then and the environment. The pace of the 2nd 5 year phase (2013 - 2017) has been, however, at a much faster rate and more strategic in nature to transform GDT to its current modern status.

- GDT's reform programs, ranging from the very basic administrative, the Human Resource and operational and foundational structures, the introduction of IT system to the highest level strategic and directional side of GDT, have been undertaken directly in line with the Royal Government's Rectangular Strategy for the socioeconomic development of Cambodia (phase 1, 2 and 3) as well as the Public Finance Management Strategy (PFMS) & the Revenue Mobilisation Strategy (RMS) of Ministry of Economy and Finance. These reform programs have been undertaken with the strong technical support and assistance from its international development partners such as IMF, World Bank, Japanese International Cooperation Agency (JICA), and Overseas Technical Assistance (OTA) of the US Treasury Department etc.
- Prior to the introduction of Information Technology system in 2013-2014, the state of information management in GDT was inadequate. The Paper based systems in place were not only unreliable, but took excessive time and effort to manage. The current IT system has put GDT in a position to replace a major part of the old paper-based systems, giving GDT both eyes and ears to a wide range of activities and information both internally within GDT and externally - all of which has enabled GDT to improve hugely in key operating areas ranging from tax registration, tax return filing, tax audit to the tax payments etc.
- There is no secret that the history of GDT, prior to a few years ago, suffered from capacity, capability and foundational issues to name just a few. It has been undeniably accepted by all

stakeholders that Cambodia has only just recently started to experience political stability and emerging economy, emerging from a completely broken state due to legacies of the killing fields of Khmer Rouge, the Cold War era and the subsequent civil wars, which left our country in an untenable condition. Bringing Cambodia back from those conditions has been an enormously huge challenge and task for the government and its citizens. We have learned from those struggles and, in our own measured pace; we have learned to tell ourselves not to start running and jumping for fear of falling down.

- Given where GDT has come from, it is to be celebrated that the organization not only achieved the revenue targets set, but has produced revenues over the target consecutively, at an average of increased rate in tax collected of above 20% per year over the past 5 years. GDT has been able to do so due mainly to the collective efforts, cooperation, and dedication of all key internal and external stakeholders, including all development partners such as IMF, World Bank, Japanese International Cooperation Agency (JICA), and Overseas Technical Assistance (OTA) of the US Treasury Department etc.
- Key areas of improvements range from basic operational matters, tax services, tax registration to the tax payment, all of which are computerised with the introduction of modern IT systems making GDT more effective, efficient, transparent and just in its daily tax administration. Thanks to these improvements, GDT has been gradually and consistently improved in getting more and more tax payers into the tax net year on year, thereby eliminating existing and potential tax evasion.
- It is also paramount to point out that Cambodia Law on Taxation (LOT), which was adopted in 1993 with the support and assistance from both international and local experts, are just as good and comprehensive as the tax laws of any countries in the world. Like any well-established tax administrations or tax agencies in the world, GDT is operating under clear sets of Vision, Missions, Objectives and Core Values.

1. The following are some of the key facts & figures and the root cause of The Cambodia Daily's Tax issue and the audit and legal measures the GDT has taken:

- The Cambodia Daily, established and owned by Bernard Krisher since 1993, recently owned by Deborah Krisher Steele and operated by BERNARD KRISHER JIMUSHI Co., Ltd. is one of the many taxpayer entities/companies in Cambodia and it has been operating in Cambodia since 1993, during which time it had not registered and fulfilled its tax obligations with the General Department of Taxation (GDT) for more than 24 years. The Cambodia Daily only undertook steps to legally register its business entity with the GDT on 17 March 2017, with the tax identification number K003-901700890. By the Laws of Taxation of Cambodia, to this effect, The Cambodia Daily had been carrying out its operations without compliance with the tax law for 24 years prior to its official registration with GDT on 17 March 2017. As under any laws of any countries in the world, ignorance of the laws by any legal persons or business entities is not an excuse and for this reason it is in itself a serious act punishable by law as provided in the Law on Taxation (LOT), let alone the failure to pay its due taxes.
- After The Cambodia Daily has been discovered, among several other companies, as a potential non-compliant taxpayer, GDT made several phone calls to their offices followed by sending a number of invitation letters inviting them to come to GDT's office to initiate the discussion of their non-tax compliance and to resolve their tax obligations - all of which were deliberately ignored by The Cambodia Daily. To this end, GDT sent the final letter to invite the owner of The Cambodia Daily to GDT's office to discuss their non-tax compliant and tax liability. In return, Mr. Douglas Eric-Steel sent GDT a letter dated 1 August 2017, requesting to postpone the meeting until the end of August or to a much later date, without showing an intention to cooperate with GDT to discuss and to resolve its non-compliant of tax obligation.

- Article 117 of LOT gives GDT the full authority to assess the amount of potential unpaid tax covering a period of up to only 10 years, although The Cambodia Daily had been operating its business activities in Cambodia for over 24 years. According to Article 130 and Paragraph 3 of Article 131 of LOT, GDT has the authority to conduct *tax reassessment with an additional 40% tax penalty based on the amount of unpaid tax plus 2% monthly interest on the amount of the unpaid tax*. This mechanism applies to all companies/enterprises/taxpayers that obstruct the implementation of law and provisions of tax; thus, there is no exception for The Cambodia Daily.
- All GDT's tax auditors have all been professionally trained, some of which have been trained by key international development partners over the past years or so while some have been trained overseas by experts from well-established tax administrations or tax agencies both within and outside the region. This is to say that GDT's tax auditors have been both competently and professionally capable of conducting tax audits following the international best practices of due process transparently and ethically with full confidentiality.
- Under Article 101 and 104 of LOT, unlike other companies, since the beginning of its business activity, The Cambodia Daily failed: to register with the tax administration, to maintain books and records, to file tax returns and make tax payment, and to provide information required by the tax administration, the GDT had to conduct an assessment for 10 tax year period from 2007 to 2016, resulting an amount of USD 6.3 million.

The following are some of the key facts and how the tax reassessment on The Cambodia Daily was based on:

- Information mentioned on tax returns from April – May, 2017 submitted by The Cambodia Daily
- Other information received by the tax administration (example bank statements and tax deductions claim by other taxpayers for advertising expenses)
- The number of journalists and employees employed by The Cambodia Daily and their pay rolls.
- The result of the tax assessment included VAT, Prepayment of Tax on Income, Tax on Salary, Withholding Tax on Services and Rental and, last but not least, Patent Tax. The actual amount of unpaid taxes including 40% penalty and 2% interest per month which GDT discovered via the audit process was around USD 6.3 million.
- GDT took the necessary steps to explain the relevant provisions relating to the assessments, to demonstrate the procedures of the assessments, and what was more important was that GDT took the steps to encourage Mr. Douglas Eric-Steele to seek assistance and advice from any tax professionals or experts such as KPMG, PWC and other accounting professionals to prove the substance of any misvaluation or reassessment by GDT on its tax audit findings. Unlike many other business entities who cooperated with GDT to resolve and settle their unpaid taxes (whether in full or by way of instalment arrangement), unfortunately The Cambodia Daily has chosen to completely ignore this professional and legal advice and encouragement. Instead of focusing on addressing their non-tax compliant issue, The Cambodia Daily made accusations that GDT and the Royal Government were attacking them with the intention to restrict the independent of media outlet in Cambodia and that it was a politically motivated measure. This kind of irresponsible behaviour and action by The Cambodia Daily with regards to their non-tax compliant issue would certainly not be allowed in any other countries for an act of tax evasion is regarded as a criminal offense. This is no exception in Cambodia and so it must be distinguished the difference between the non-tax compliant measures and the politically motivated actions as the 2 are completely different matter from one another.

- It must also be pointed out here that according to article 118, article 120 of LOT, taxpayers can file a complaint to GDT within 30 days with regard to the tax reassessment matters after having received the notification letter from GDT, with concrete evidence or proof to support its case against the tax reassessment made by GDT. In line with this provision, despite many repeated request by GDT for The Cambodia Daily to exercise its rights, on the 25th of August, 2017, Mr. Douglas Eric-Steele, Representative and Chairman of board of Directors of BERNARD KRISHER JIMUSHI Co., Ltd, did show up to meet with GDT officials, who were hopeful that the matter could be resolved. Once again The Cambodia Daily had failed to provide any relevant evidence, proof or grounds to justify that GDT's tax assessment was wrong.
 - GDT has in fact received only 2 letters from The Cambodia Daily, one of which claims that the company had been acquired for USD 1,000 by Deborah Krisher-Steele, while the 2nd letter, written by Mr Bernard Krisher, claims that the profits/dividends of the company had been contributed to charity. While charitable act is a good cause, it is however by law, revenue generated by any business entities the company must be first subjected to tax and The Cambodia Daily failed to comply with this requirement. The substance of both letters is not in any way considered as supporting documents nor evidence or proof as a legitimate appeal against GDT's tax reassessment; it is for this reason that the said tax assessment remains valid to this day.
 - GDT has issued the tax assessment notification letter dated 4th August 2017 to The Cambodia Daily and it was collected by its representatives on the same day. The leak of the tax assessment notice occurred after the letter was collected by its representatives.
 - On 3rd September 2017, The Cambodia Daily publicly announced on its own published paper that the 3rd of September was its last edition with effective closure as of 4th September. It is thus clearly evident that GDT did not do anything to shut down The Cambodia Daily, but it was The Cambodia Daily itself who did it. The given deadline of 4th September 2017 was for The Cambodia Daily to cooperate with GDT to solve the said tax liabilities and instead of focusing on solving it in a professional and legal manner as required by law, The Cambodia Daily itself intentionally shut down without making any good faith to cooperate with GDT. As in any country in the world, a simple closing down of a business entity to avoid paying the unpaid taxes is certainly not the way it should be done. Likewise, because tax evasion is a criminal offense, the persons involved with such an offense are by law not allowed to run away or leave the country in which they committed such an offense.
- 2. A cooperation letter from GDT to the Immigration Authorities, seeking the office to only inform the owner and the manager of the Cambodia Daily to settle its tax case with the GDT.**
- In accordance with Sub-paragraph 2 of Paragraph 1 of Article 92 of LOT, the tax authority has power to require the presence of the taxpayer/s for the purpose of collecting due taxes. For The Cambodia Daily's case, GDT has exercised this power by notifying the Immigration Office to prevent the owners/management of The Cambodia Daily from leaving Cambodia before their unpaid taxes are solved or settled and this is the international norm of measures in dealing with people with relevant criminal records or with people who have unpaid tax.
 - **It is also imperative to point out here that** the way The Cambodia Daily has chosen to appeal its case by writing a letter of apology to the Prime Minister to seek his consideration for the granting of tax exemption, by seeking facilitation or interventions from foreign Embassies based in Cambodia are certainly not the normal practice. Usually all tax related appeals or complaints should be presented with proper evidence of proof, but The Cambodia Daily not only failed to lodge nor present any single documents to

GDT, but it has provoked the tax enforcement by manipulating the media and seeking intervention from third parties, without mentioning its own wrongdoing for more than 24 years of tax evasion in Cambodia.

- This is a straight forward tax matter of which an entity involved happened to be a newspaper company (The Cambodia Daily), which has been conducting its business activities in Cambodia without paying any tax for many years. How could anybody possibly make such a blatantly accusation that the act of an enforcement of tax laws by GDT on The Cambodia Daily, which committed a criminal offense of tax evasion, be regarded as a violation on freedom of opinion and expression? How could it be so when the content and the substance of The Cambodia Daily's daily publications has never been restricted or censored by GDT or the Government alike, but only the transactions of its operations are subjected to tax assessment? GDT's main job is to ensure taxpayers meet their tax obligations by fairly and firmly enforcing tax laws. It is unfortunate that GDT's actions to carry out its tax administrative jobs and the enforcement of tax laws on The Cambodia Daily be questioned and or be regarded as an act against the promotion and protection of the rights to freedom of opinion and expression in Cambodia? This is a very unfair accusation being made on GDT and the Royal Government of Cambodia.
- As pointed out above, the issue with The Cambodia Daily is simply a breach of Taxation Laws and instead of doing everything it could to provide the necessary evidence to disprove the GDT's tax findings, it has blatantly chosen to internationally publicise as well as politicise the case to discredit GDT and the Royal Government. GDT is deeply disappointed that The Cambodia Daily, instead of focusing on addressing their unpaid tax issue, has chosen to go as far as to approach the Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression and the Special Rapporteur of human rights in Cambodia on false grounds that GDT and the Royal Government of Cambodia are restricting freedom and expression of opinion. 7
