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Tax

## Implementation of Withholding Tax on Dividend Distributions

The Ministry of Economy and Finance issued Prakas No. 518 on 5 May 2017 ("**Prakas**") concerning the implementation of withholding tax ("**WHT**") on dividend distributions. The Prakas aims to provide clarity and guidance on the application of the WHT regulations on dividend distributions from resident taxpayers in Cambodia to their non-resident shareholders with reference to Articles 26 (new) and 33 (new) of the Law on Taxation ("**LoT**").

As stipulated in Articles 26 (new) and 33 (new) of the LoT, a dividend that is distributed from a resident taxpayer to a non-resident taxpayer will be subject to a 14% WHT on the amount paid.

Previously, there had always been a question regarding the tax treatment and implications of the conversion of retained earnings to share capital in Cambodia. There had been controversial interpretation and handling of this sensitive tax issue between taxpayers and tax authorities due to unclear tax provisions. Taxpayers were of the view that the conversion should not be subject to any tax while tax authorities deemed that the conversion should be treated as a dividend distribution and subject to 14% WHT if the shareholders are non-resident. The General Department of Taxation ("**GDT**") provided no formal response despite several requests for rulings submitted by taxpayers.

According to Article 6 of the Prakas, if the conversion of retained earnings to share capital is correctly processed, it will not be considered as a distribution of dividends and therefore not subject to WHT. The conversion is treated as correctly processed when a taxpayer fulfils the below conditions:

- (i) Has a resolution of the Board of Directors approving the conversion, and
- (ii) Has any evidence to show that the change in share capital has been approved by the Ministry of Commerce, and the increase in share capital has been reflected in the Memorandum and Articles of Association.

However, Article 7 of the Prakas states that subsequent to the conversion, upon the sale of shares by the non-resident shareholders or the distribution of share capital to non-resident shareholders, either during operation or at liquidation, the portion of the share capital that has been originally converted from retained earnings will be subject to 14% WHT.

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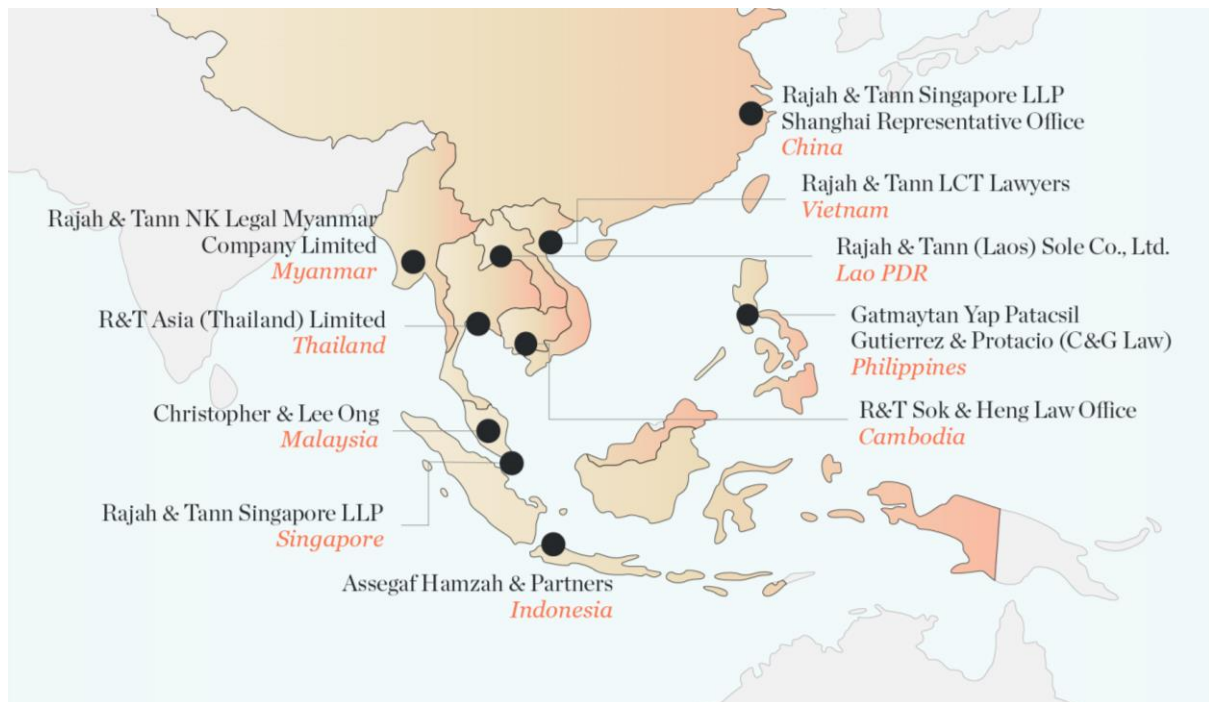
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