Administrative Reform to Strengthen Cooperative Tax Compliance in Cambodia: A Case Study in Domestic Revenue Mobilization

Edwin Vanderbruggen[1] and Sim Laysym[2]

https://doi.org/10.62345/jads.2024.13.3.3

Abstract

The focus of current study is to discuss the tax compliance structure and the role of administrative reforms in domestic revenue mobilization. There are several reasons why unresolved tax audits keep piling up with (particularly) large taxpayers, causing complaints. After the comprehensive review of existing tax structure, discussion on the existing infrastructure and based on empirical analysis, it is suggested that too much reliance on tax audit revenue, need for a more cooperative future relationship between GDT and large taxpayers, impartial express arbitration of tax disputes to clear the backlog and update the structure of the tax audit system. Lastly, taxpayers need (even[3]) more effectual education so they can comply faster and more accurately: Our research shows that delays at the taxpayer side are just as important, or even more so, than the delays observed at the GDT side. Even large taxpayers have difficulties understanding and preparing necessary documentation (26%) or are unclear about the correct application of laws and regulations (16%). Along the same lines, the GDT should consider to make the incentive for voluntary self-correcting of past tax returns permanent, at least to some degree.

Introduction

This contribution examines the challenges and opportunities for domestic revenue mobilization ("DRM") through policy and administrative reform in connection with the settlement of tax audit disputes in Cambodia. Cambodia is a rapidly growing lower income developing country which has introduced income tax and value added tax only in the late nineties. Since then, its Government has progressively developed its tax administration system and its tax authorities, the General Department of Taxation ("GDT"). It is clear that Cambodia has been able to significantly improve its tax revenue and its tax revenue to GDP ratio, especially since 2013. Its tax revenue to GDP reached nearly 20% just before COVID according to World Bank statistics. The GDT was able to significantly increase its number of tax audits, particularly those of "large taxpayers", to approximately 4,000 audits annually.

However, some challenges remain, particularly in connection with the resolution of tax audit disputes. One of the key indicators shown by research in this respect is that annual tax audits take 5 years on average to be resolved, which results in an accumulation of pending, unresolved tax audits for corporate taxpayers (VDB Loi Survey, 2024).

---

[1]*Senior Partner of VDB Loi. Formerly a full-time adviser to the GDT in Cambodia, he has consulted for the World Bank, UNDP, the IFC and JBIC and trained tax authorities in Thailand, Myanmar and Singapore. He lectured at IPO Ufsia University (Belgium), ITC Leyden (The Netherlands), Chulalongkorn University and Assumption University (Thailand), RULE University (Cambodia) and CFVG University (Vietnam).*
Email: edwin@vdb-loi.com
[2]*Partner of VDB Loi, As Head of the Tax Practice, he leads a team of more than 60 tax specialists with regard to tax disputes, compliance and advisory. He lectures advanced tax law at several university and business school master programs in Cambodia. Email: laysym.sim@vdb-loi.com*

Compliance with ethical standards: There are no conflicts of interest (financial or non-financial). This study did not receive any funding.

Key Indicators Data (VDB Loi Survey, 2024; ADB, 2018):

Table 1: Tax audits details	
Tax audits conducted by the GDT in 2021:	3,833
Tax audits conducted by the GDT in 2018:	907
Average time a Comprehensive Audit may remain open:	5 years
Delays in Large Taxpayer audits by GDT:	21.9%
Delays in Large Taxpayer audits by taxpayer:	26.2%
Tax officials working in audit and verifications in 2021:	746
Tax officials working in audit and verifications in 2018:	742
Tax officials working on Comprehensive Audits in 2023:	240
Total tax reassessments as a % of total main tax revenue Cambodia in 2019:	28%
Total tax reassessments as a % of total main tax revenue ASEAN in 2019:	5%
Tax collections % of GDP Cambodia (2019):	19.7%
Tax collections % of GDP European Union (2019):	19.7%
Number of Large Taxpayers:	Approximately 4,000 = 80% of tax revenue
Number of taxpayers Medium and Small:	approximately 8,000 = 20% of tax revenue
New/total pending appeals filed with the Committee for Tax Arbitration in 2021:	New 150/ Total 198
Number of Large Taxpayer tax audit disputes could be eliminated by improving information and reducing uncertainty in tax laws and regulations (See part II, paragraph 17).	up to 25%
Number of tax audit cases can be resolved smoother if clear guidance is provided on standards of evidence (See part II, paragraph 16).	up to 75%

Cambodia's DRM is significantly impacted by the inability to swiftly resolve tax audit disputes. The uncertainty and unpredictability of revenue collection from taxpayers engaged in disputes with the GDT results in less effective budgetary planning for the treasury, and in delays. In this contribution, we explore the nature and causes of the challenges in the resolution of tax audit disputes, and we propose opportunities for reform of Cambodia's policies and administration in this regard.

Methodology

We have conducted an in-depth survey ("the VDB Loi Survey 2024") of approximately 600 unresolved, pending tax audits of approximately 200 corporate taxpayers. These were all annual tax audits as well as some final tax audits in connection with the liquidation of the corporate taxpayer. The annual tax audits were in connection with tax years between 2014 to 2022. The survey was performed in 2023 and completed in 2024.

During the survey, we established a number of basic process issues such as how long these have been pending and whether a reassessment of the taxes of the taxpayer had been issued (yet). We have also verified whether delays were encountered in the process of the tax audit, defined as a period or period of inactivity or lack of responsiveness on either the taxpayer side or the GDT side, for 2 months. In such cases we tried to establish the cause of the delay.

We have also examined the tax audits from the perspective of substance. We tried to establish from an as objective point of view as possible, whether the tax issue or issues that are central to the tax audit rested on a clearly wrong interpretation or application of the tax law, by either the taxpayer or the GDT, as well as some other substantial issues.

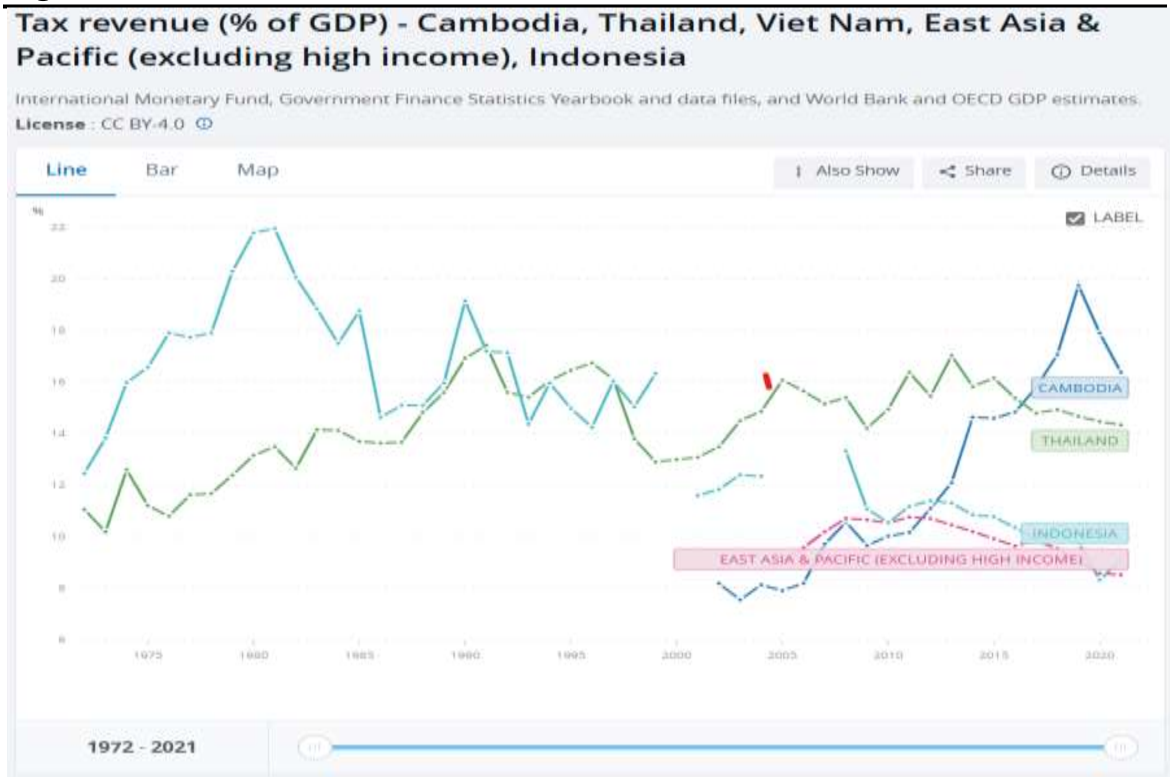
We do not maintain that the study we did is scientific or statistically sufficiently robust so that conclusions can be drawn for Cambodia as a whole. The population of this study consists mainly out of foreign-owned large taxpayer enterprises who have engaged a foreign tax advisory firm for the tax audit (and often the tax compliance) instead of conducting the exercise by themselves. Obviously, not all taxpayers in Cambodia are like this. Therefore, the data and the conclusions may not be representative for Cambodia as a whole, which features also Medium and Cambodian owned taxpayers, or even for Large Taxpayers in general. Also, all qualitative data is subject to interpretation.

Some Key Quantitative Data Concerning Tax and Tax Audits

Tax Revenue

1. Much to the GDT's credit, the tax revenue collection in Cambodia has increased dramatically in the last decades, also as a percentage of GDP, from 7.5% (of GDP) in 2003 to 19.7% in 2019 (just before COVID) and 16.4% in 2021 (The World Bank, 2024).

Figure 1: Tax Revenue of Cambodia



2. Especially just before COVID, the percentage of collected taxes compared to GDP seems to us quite high for Cambodia (19.7% in 2019), and is in fact identical to that of the EU (19.7% in 2019), significantly higher than in Thailand (14.7% in 2019), The Philippines (14.5% in 2019) and Indonesia (9.8% in 2019). In 2021, Cambodia's tax revenue to GDP ratio (16.4%) edged closer to that of Thailand (14.3%) (IMF, 2018).
3. The revenue from tax audits in Cambodia in 2018 is a significant percentage, around 28%, of the main tax revenue of the country (ADB, 2018, p. 163-164). That is significantly

higher, as a percentage of the total tax revenue, than most Southeast Asian countries. For example, in Indonesia the contribution of tax audit reassessments to the main tax revenue is around 5%, in Thailand 1.4% and in Vietnam 1.8%.

Number of Taxpayers

Cambodia has identified 12,398 corporate and VAT taxpayers in 2017 (ADB, 2018, p. 146). For 2019, these included 4,090 large taxpayers[4] and these are responsible for 80% or more of the revenue collections. The remaining approximately 8,000 taxpayers are, logically, medium and small taxpayers.

Table 2: Tax payers in Cambodia

Economy	Large corporate taxpayers managed (number)					Individual taxpayers managed (number)		Net tax of large taxpayers (% of all taxpayers net tax)*	
	2016	2017	2018	2019	Change 2016-19	2016	2017	2018	2019
Cambodia	3,464	3,847	3,609	4,090	606	0	0	80	80
Indonesia	4,527	4,560	2,714	2,792	(1,735)	1,315	1,309	32	30
Lao PDR	…	…	…	458	…	0	0	…	…
Malaysia (1)	59,768	37,060	49,178	49,721	(10,047)	3,743	4,801	31	33
Malaysia (2)	…	…	…	…	…	0	0	…	…
Myanmar	537	805	809	845	308	0	0	54	64
Philippines	2,320	2,822	2,768	2,765	445	0	0	68	67
Singapore	1,900	1,900	1,900	2,000	100	0	0	…	…
Thailand	3,473	3,580	3,920	3,920	447	0	0	46	46
Timor-Leste	0	0	0	0	0	0	0	0	0
Vietnam	429	429	429	429	0	0	0	…	…

Number of Tax Audits

The number of tax audits conducted by the GDT has increased dramatically in the past few years from 906 tax audits in 2018 to nearly 4,000 tax audits in 2021 (ADB, 2021, p. 119; 2018, p. 134) a very impressive increase of 400%.

[4] *It is worth noting that the number of Large Taxpayers in Cambodia seems disproportionally high compared to some other countries in the region. For example, Singapore has only 2000 taxpayers in its large taxpayer unit, and Vietnam less than 500. Malaysia, on the other hand, has almost 40,000 taxpayers in the same unit. Obviously, this is just a matter of setting the criteria and thresholds. In Cambodia, all subsidiaries or branches of multinational companies or licensed foreign investors are ipso facto included in the Large Taxpayers. See also Cambodian regulation ("Prakas") 009 dated 12 January 2021.*

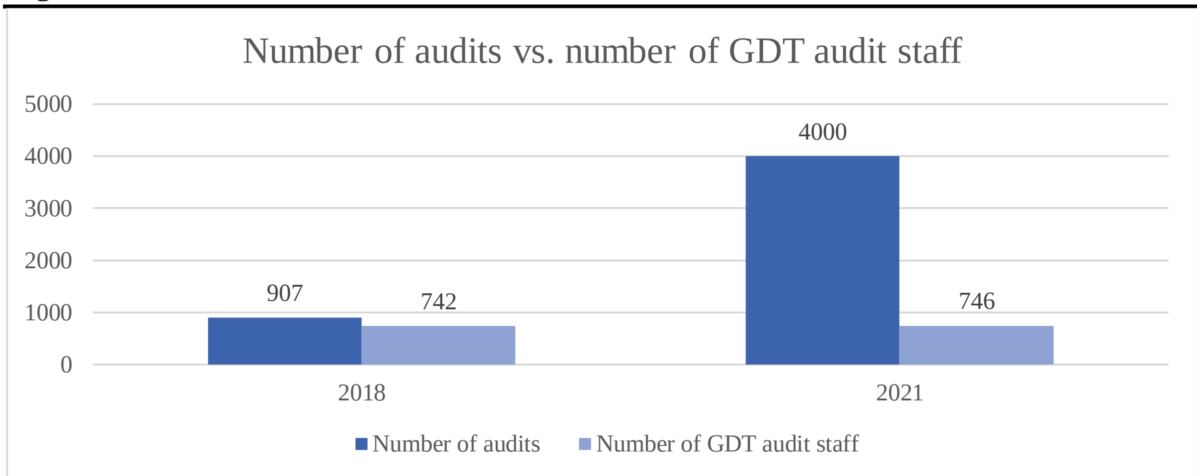
Table 3: Verifications

Economy	Audits and other verification actions (excluding electronic compliance checks)							
	Total completed cases				Total completed cases with adjustment			
	FY2018	FY2019	FY2020	FY2021	FY2018	FY2019	FY2020	FY2021
Brunei Darussala	…	…	75	202	…	…	75	…
Cambodia	906*	1,970*	4,201	3,833	…	…	2,922	2,533
Indonesia	160,247	158,042	89,886	455,548	81,406	54,209	42,639	455,548
Lao PDR	…*	…*	…*	…	…	…	…	…
Malaysia	2,019,431	2,152,451	2,140,162	2,408,455	540,649	764,496	803,226	831,264
Philippines	…	…	2,653	2,138	…	…	146	56
Singapore	…	…	…	…	…	…	…	…
Thailand	77,318	76,897	88,177	716	27,794	30,894	32,321	716
Timor-Leste	57	12	3	…	57	12	3	…
Vietnam	692,907	613,797	96,243	1,119,308	96,462	100,227	…	76,148

Number of Tax Officials

What is even more remarkable is that the GDT has achieved this almost entirely by improving the productivity and efficiency of the department. The human resources at the GDT have grown in this period, from 1958 officials in 2018 to 2508 officials in 2021 which is about a 25% increase. But, the portion of the total staff which is engaged in conducting tax audits was however not significantly increased in this period and remains at around 750 officials. However, if we limit our review to officials conducting Comprehensive Tax Audits, then the number of engaged tax officials drops to 240 (ADB, 2021, p. 158). Put another way, the GDT has in the last 5 years significantly increased the productivity of the existing audit team, and managed to very significantly increase the number of audits.

Figure 2: Number of audits vs. number



The Factors Slowing Down the Completion of Tax Audits

The process: tax audits are too protracted and subject to delays from both sides

1. We have conducted a study where we evaluated a statistically significant sample of Large Taxpayer open tax audits in Cambodia and tried to determine the process and the substantial factors which seemed to the tax advisors involved to slow down the completion of the tax

audit process. From the total number of audits open at the moment of the analysis, and the year they refer to, we are able to make some relevant observations:

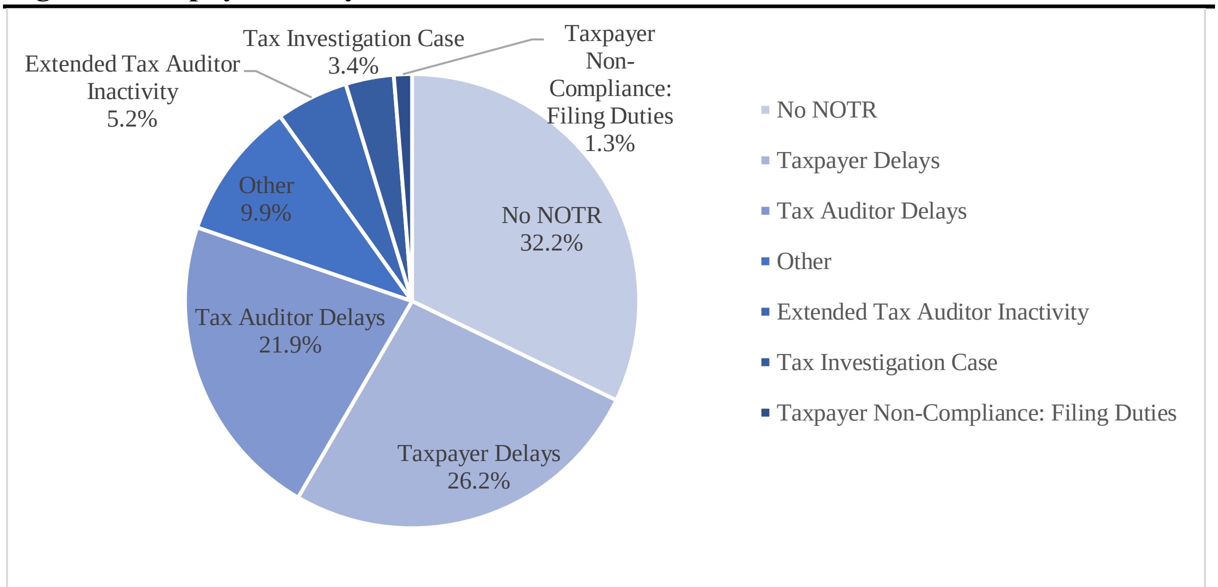
- A tax audit included in the population of this study requires on average 5 years to be completed (Comprehensive Audit);
- On average, Large and Medium Taxpayers have 3 or more tax audits pending simultaneously, although some outliers exist with Large Taxpayers, especially foreign invested ones with 6, 8 or 10 unfinished tax audits.
- 33% of tax audits (which are disputed with the assistance of an advisory firm) have been pending for 5 years or more;
- 60% of tax audits (which are disputed with the assistance of an advisory firm) have been pending for 3 year or more.

We have made an attempt, as impartially and objective as possible under the circumstances, to collect qualitative data as well on the process and the substance of the reassessments. Below are some of the key observations made.

2. Tax audits, especially Comprehensive Audits should not take more than 1 year to complete if backlogs are to be avoided. Yet, our research shows that at any given time, uncompleted audits have on average been 5 years pending. Aside from the structural process and substantive causes, audits are subject to delays (defined as a time period of 2 months passing before one side takes a new action) slowing down the progress. In 21.9% of the pending tax audits, it was observed that delays were found on the side of the GDT (which may be justifiable or otherwise), but in 26.2% of the cases we found delays at the side of the taxpayer. In about 5% of cases we found the period of inactivity delay was extreme (more than 6 months). About a 33% of pending cases remain in the information collecting stage, without a Notice of Tax Reassessment and this could be caused by either side. From the data it seems that on the GDT side, high work volume and time needed to obtain higher level decisions on cases is responsible for most delays. At the taxpayer side, it seems delays are mostly caused by retrieval of information and seeking instructions from overseas headquarters.

This data confirms that tax audits are progressing subject to substantial delays, but that delays occur at both sides of the audit.

Figure 3: Taxpayers delays



The Role of Facts and Evidence during Tax Audits

The factual basis and evidence of reassessments: It is clear that taxpayers have the duty to provide requested justifying documents and information to the GDT upon request. But from our research we find that taxpayers seem to need more education on this aspect. In almost 26% of the cases, the taxpayer is unable to provide documentation that was reasonably required by the official, or the evidence is clearly insufficient. However, there is even a larger situation with tax officials evaluating reasonably sufficient evidence. In 50% of the cases, we found that evidence is not or not timely accepted by the official, which might indicate more uniform guidance and training is needed on standards of evidence. Put another way, up to 75% of tax audit cases can be resolved smoother if clear guidance is provided on standards of evidence (for example in the GDT's forthcoming Tax Audit SOP's) and taxpayers are better informed on the same.

Legal Basis of Reassessments

The legal basis of reassessments**:** One of the more difficult to assess data points is if the GDT or the taxpayer is correct in its reading of the tax law. We have tried to collect some information on this despite the obvious challenges[5]. Cases where the taxpayer is clearly wrong, are somewhat rare (2.4%), perhaps because these are Large foreign-owned taxpayers who often engage professionals to do their tax returns. On the other hand, in 7.8% of the audits, we found the official has clearly misread or misapplied the law or regulation[6]. In 13.6% of audits, both sides have reasonable arguments but the law or regulation is vague, broad, or subject to various interpretations. This data suggests that up to 25% of tax audit disputes could be eliminated by improving information and reducing uncertainty in tax laws and regulations.

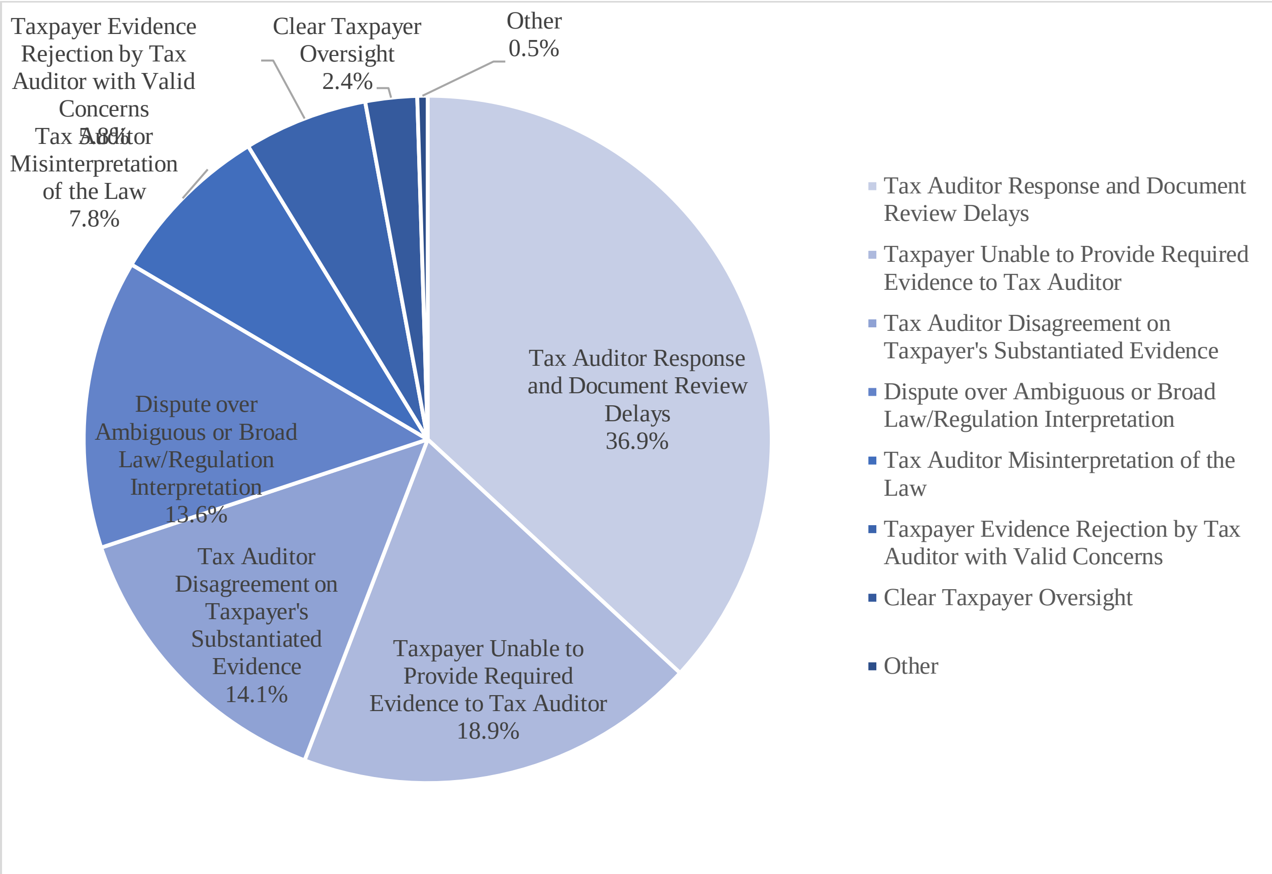
Other Issues

1. *No Notice of Tax Reassessment issued yet:* In 32.2% of the pending cases, the verification was in a relatively early stage where the officials are mostly just gathering information and a Notice of tax reassessment was not yet issued.
2. *Transfer to Litigation Department:* In approximately 15% of pending cases, the audit is or was passed on to the Litigation department. Tax investigation cases comprised approximately 3% of the tax audits in the population.
3. Compliance with the process of the compliance and reassessment process by large taxpayers with foreign ownership using a tax advisory firm was of course high; in approximately 1.3% of cases did we find the taxpayer had missed a filing deadline for a tax return or a protest to a notice of tax reassessment.
4. For Cambodia only 4 court cases in tax matters were reported by the GDT to the ADB/ISOR for the period 2018-2021, which included just 1 case in 2021. The internal review of disputes (tax committee cases) amounted to 68 in 2019 and 198 in 2021, which is also in sharp contrast to the several thousand of disputed tax audits (ADB, 2018, p. 163; 2021, p. 167).

[5]*Such as in being impartial or the importance of the different factual situations underlying a reassessment*

[6]*We counted as a "clear case" when the official has ignored a tax law or regulation provision.*

Figure 4: Tax Payers Documentary Evidence



Suggestions for Policy and Administrative Reforms

Clean up the backlog of tax audits with an impartial arbitration panel

1. It is clear that the current Cambodian tax dispute settlement system (administrative – "committee for tax arbitration" at the MEF and judicial – the regular courts) is not much relied upon by taxpayers, including foreign-owned large taxpayers, to resolve the disputed tax audits. Even if foreign-owned large taxpayers would have confidence in the institutions, we believe that without significant administrative reform and allocation of much more resources, the MEF or the courts will not be able to handle the sheer volume of cases.
2. Instead, we propose the formation of a temporary, express and perhaps voluntary arbitration panel to hear the deadlocked tax audit disputes. The private sector may appoint one arbitrator, the GDT another arbitrator and an international financial institution such as the ADB or the IMF may appoint the presiding arbitrator. All arbitrators must be impartial and experienced in tax disputes, such as retired tax court judges or retired senior foreign tax officials. To avoid even the appearance of bias in the eyes of foreign-owned large taxpayers, as is the case with investment disputes, the majority of the panel should initially not have the Cambodian nationality.
3. The arbitration panel should follow an expedited, 3 months written process with only one actual hearing before deciding the case, and all cases of one taxpayer are decided in one proceeding.
4. Alternatively, the MEF could radically reform and provide resources to the existing Committee, including nominating a majority of external impartial members with the same credibility in the eyes of foreign-owned large taxpayers.

5. The above is a temporary, urgent solution. But in due course, it is absolutely crucial for the Cambodian tax system that there is a permanent, ongoing, impartial, knowledgeable (Thuronyi, 2013, par. 144); and fair settlement of tax disputes which is credible for foreign-owned Large Taxpayers. As is the case in any developed tax system, there needs to be some kind of a check on overzealous tax officials -even if this is rare-, and taxpayers need to at some point accept that the reassessment issued to them is indeed fair and correct (IMF, 2018, par. 91).

Reassessments must be based on evidence, not on a “deemed” basis

1. The forthcoming GDT audit SOP’s and the Prakas on Tax Audits should provide that officials who suspect that the taxpayer’s financials or other evidence is not in accordance with reality, are not permitted to base a reassessment on a belief or an estimate, but must find alternative evidence and some proof that the taxpayer’s financials or documents are not credible.
2. For example, when a taxpayer (a hotel) has submitted financials with a very low turnover, or with high expenses, it does not suffice for the official to just reject these financials and apply a more or less arbitrary method for determining turnover or profit by himself. Instead, the official should do investigations such as find the bank account the undeclared turnover has been collected, or prove from expenses such as use of electricity and water that the hotel was occupied to a larger degree than declared.

Some common situations (such as renting a no-rent or low rent premises) should be accepted by the GDT (no WHT on “deemed rent”), or be the subject of a clear guidance setting uniform standards (such as for minimum acceptable local salaries for expatriate employees)[7].

Reduce the space for uncertainty and discretion in tax audits, on the law and on the facts

1. **Resolving a number of long-standing unclear tax situations for a wide range of industries** by creating detailed regulation and, where possible safe harbors (profit margin/allocation percentages that are usually acceptable to the GDT), such as for:
   - Aviation industry[8]
   - Shipping and logistics companies[9]
   - Leasing and rental companies
   - Construction and real estate development

2. **Create detailed regulation to prescribe exactly the evidence that is acceptable** to the GDT in a wide range of common situations, such as:
   - The evidence acceptable to write off a bad debt for a bank or MFI.
   - Minimum salaries of expatriate employees (and evidence which can be accepted for a low/no salary).
   - Evidence acceptable for an unremunerated director position.
   - Prescribe that allocated head office expenses should not be re-examined exactly as if these are directly incurred expenses. The externally audited statements of the head office are sufficient.
   - Prescribe in detail the evidence requirements for WHT-free reimbursement of disbursements.
   - Provide more detailed rules and evidence standards on unearned income.
   - Evidence acceptable for a loan.

---

[7] *A high minimum salary threshold was for example set by the Indian government at over US$25,000 (salary and allowances).*

[8] *A draft regulation on this subject is in process by the GDT at this time.*

[9] *An advance draft of a detailed regulation on this industry has been prepared for the GDT by the authors.*

- Which services are "management and technical services" as set out in the Prakas TOI.
- Which evidence is acceptable to prove that bank transfers are not taxable income.
- Which evidence standards for a purchase of imported goods from an unregistered taxpayer

3. Give more resources to a "ruling and Advance Pricing Agreement ("APA") committee" within the GDT to allow advance opinions to and Transfer Pricing related agreements with taxpayers. Publish (without names) all rulings, APAs and DTA application approvals and create a legal framework for enforceability of rulings. As Thuronyi pointed out:

   One of the most effective ways to reduce disputes is to implement systems to inform and assist taxpayers in accomplishing their duties. This can be done using a number of tools: General rulings or other published statements of the tax administration […] Mandatory publication of private rulings (redacted to protect taxpayer privacy) is recommended as a way of providing transparency, […] Advance Pricing Agreements (Thuronyi, 2013, par. 14).

4. All notices of tax reassessment should state explicitly the legal and factual basis of the reassessments to improve transparency. Currently the Prakas on tax audits does require that officials explain the reassessment, but not all Notices include the explanation in writing (Prakas, 2019).
5. Simplify laws and regulations whenever possible.

De-multiply and streamline the tax audit process

1. *De-multiply the number of tax audits and restructure the departments that conduct them:* The system of several overlapping tax audits (desk, limited and comprehensive) was created in 1997, when Cambodia had a few hundred corporate taxpayers. It is not efficient to sustain in the current situation. The GDT can only reassess an underpaid tax one time, regardless of how many tax audits are started, but each one of these audits eats up valuable GDT resources – without sufficient reward. Limited audits, originally conceived as fast and simple audits, have evolved in quasi-Comprehensive Audits which may also go on for years. Accordingly, we believe the GDT should, as it is already internally considering, abolish limited audits and maintain desk audits only if they are pure mathematical exercises (such as a mistake between VAT and PPT turnover) and completed within 3 months. The LTD officials engaged in limited audits should instead perform comprehensive audits, as the DEA does (IMF, 2018) .Either both departments can share the large taxpayer audits, or officials are transferred, or a new structure is conceived. We note that the IMF has called for several years that the audit function in the GDT should not be fragmented between the DEA, the LTD and the DMST: "While there is continuing reliance on audit to generate revenue, there is no clear central oversight of national audit operations and the audit function remains fragmented*"* (IMF, 2018, par. 77). If properly implemented, this measure should result in a significant reduction in number of audits for foreign-owned large taxpayers, while avoiding a drop in tax collections.
2. Furthermore, the same official(s) should conduct several years of the tax audits for the same large taxpayer, instead of the taxpayer facing different teams with different opinions and requests for several years.
3. The forthcoming audit SOP of the GDT should provide that tax audit officials have a limited period of time (for example 6 months) during which they can collect information and documentation from the taxpayer, to avoid the process from dragging on and on. Comparable to the "discovery process" in court proceedings, introducing or asking for new evidence cannot continue indefinitely. After the 6 months period, the taxpayer cannot bring and the official cannot ask for new evidence.

Allocate more resources to the GDT for hiring and training additional tax auditors and increase taxpayer education/services

1. To speed up the processing of tax audits, particularly comprehensive audits, more trained tax officials will be needed. Taking into account training needs, we suggest increasing the number from currently around 700 officials with 200 officials per year for 3 or 4 years.
2. A significant portion of taxpayers are not sufficiently aware of their obligations. Despite very substantial efforts in this regard by the GDT in recent years, the GDT still needs additional resources to boost taxpayer education (IMF, 2018, par. 57).
3. As part of taxpayer services, the GDT could create an independent "Ombudsman" position, as was already raised earlier for Cambodia (Vanderbruggen, 2008). The Ombudsman can receive complaints from taxpayers confidentially, mediate and if needed take disciplinary action on officials (ADB, 2011).

Some Proposed Measures that May Enhance Revenue for the GDT

1. Expand the external audit requirement to all companies and organizations. Currently small taxpayers are really only "small" simply because they say so. Many companies are Medium Taxpayers but are not required to have an external auditor, which means the audits will be more controversial and drawn out.
2. Strengthen the push for formalization of unregistered businesses[10] as has often been recommended (Bissinger, 2023) and convert much more mischaracterized small taxpayers to large and medium. If the GDT would dedicate the same resources to formalization and classification as it does to tax audits (700 officials), Cambodia would be far less dependent on its small number of large taxpayers.
3. Voluntary and penalty free or reduced correction of tax returns should become a permanent possibility for all taxpayers (Prakas, 2024).
4. Strengthen role tax agents and auditors can play in the self-assessment. Improve scrutiny on questionable auditors and tax agents, impose fines and consider revoking their licenses in extreme circumstances.
5. Require transfer pricing documentation to be submitted at the same time as the annual tax return and impose penalties systematically.

Conclusions and Recommendations

1. There are several reasons why unresolved tax audits keep piling up with (particularly) large taxpayers, causing complaints. The increase in tax audit officials is significantly lagging behind the increase in the number of audits, and this is one of *several important factors causing delays.* Other factors are found in the structure, the process and the substance of tax audits and dispute resolution. In this note, we recommend several key measures to improve these, and we offer some thoughts at a more fundamental level.
2. *Too much reliance on tax audit revenue, need for a more cooperative future relationship between GDT and Large Taxpayers:* Firstly, at a fundamental level, Cambodia may be depending too much on its tax audit revenue (28% of all main tax revenue) compared to most other ASEAN countries. To put this another way, almost 1/3rd of the tax revenue results from an antagonistic process and not from voluntary compliance by taxpayers. It may be beneficial for the treasury in the short term that there are more audits and that the reassessments are high (exasperated by the incentive scheme for officials official). But particularly if taxpayers believe there is no credible external and impartial final appeal

[10] *Cambodia's Ministry of Commerce has more than 38,000 companies registered. The Ministry of Industry, Science, Technology and Innovation has more than 43,000 enterprises on record. The total number of current taxpayers is estimated at merely 12,000, many of which are small taxpayers which are not audited.*

system, there will be serious long-term side-effects. Excessive tax assessments can happen in any country. As the IMF's Thuronyi pointed out (not in relation to Cambodia) "*tax officials may take an inflexible attitude in viewing the facts and interpreting the law, which can be reinforced by incentive systems that reward additional amounts assessed. This may lead to overly aggressive assessments, and hence to disputes*" (Thuronyi, 2013, par. 30). Instead of an antagonistic relationship, IMF and OECD studies are clear that a "cooperative compliance" relationship especially with Large Taxpayers (OECD, 2013); is more beneficial. Of course, it takes both sides to create a more cooperative relationship. Revenue wise, to reduce dependence on reassessments of its Large Taxpayers, Cambodia needs to, in line with existing GDT plans, get better at mobilizing revenue from its wide basis of informal enterprises and misclassified Small Taxpayers (Bissinger, 2023). We have also suggested some measures to boost the efficiency of general self-assessment in that regard, including expanding external audit and scrutinizing tax agents.

3. *Impartial express arbitration of tax disputes to clear the backlog:* At a more practical level, in order to clear up the backlog of pending tax audit disputes for foreign-owned Large Taxpayers we believe a new temporary final impartial dispute settlement method must be offered (besides the regular courts), external to the GDT and beyond potential appearance of nationality bias. The present Committee for Tax Arbitration and the regular courts of Cambodia do not suffice. In 2021 there were 150 new appeals made to the Committee. Still pending at the end of the year were approximately 200 appeals (ADB, 2018, p. 167). In addition, there are just a handful of tax cases that are submitted to the regular courts (after the Committee). One way to do this is to create an express arbitration facility with impartial arbitrators (such as foreign retired tax court judges or senior tax appeal officials), appointed in part by the ADB or the IMF. Excessive tax reassessments are not the rule in Cambodia, but like everywhere they do happen, and Foreign-owned Large Taxpayers must have some resort for these. On the other hand, sometimes taxpayers need to hear from a final, impartial source that the tax the GDT imposed is indeed fair and correct, and then they will pay voluntarily. It is a lot easier to accept one lost if one has confidence in the impartiality and professionalism of the dispute settlement process. In the long term, the volume capacity of the Committee for Tax Arbitration must be significantly improved and a tax court should be established. Finally, an independent office of *"Ombudsman"* should be created for certain confidential complaints by taxpayers.
4. *Update the structure of the tax audit system: no more Limited Audits, cap Desk Audits at 3 months:* The 1997 system where taxpayers may receive several audits for each year no longer works. It is a waste of resources to look 3 times for the same underpaid tax, which can only be reassessed 1 time anyway. Therefore, we suggest that all limited audits are replaced by comprehensive audits and that desk audits are limited in duration to 3 months. The desk audits should really be very limited, almost purely mathematical verifications such as a discrepancy between VAT turnover and prepayment of profit tax. Upon finding the issue, grant to taxpayer 1 month to self-correct at a lower penalty. If the taxpayer does not agree, refer the discrepancy to the comprehensive audit and close the desk audit. Accordingly, it will be necessary for the teams and responsibilities of the DEA and LTD to be updated, which is something the GDT has already been working on.
5. *Shorter Comprehensive Audits by streamlining the process and -in due course- more audit officials:* By abolishing Limited Audits, the audit teams of the LTD are freed up for Comprehensive Audits instead. Still, in the long run the GDT needs to be given more resources for extra audit officials (add 200 per year for 3 or 4 years). But in and of itself more officials do not suffice. The process of audits must also be streamlined. To avoid a never-ending cycle of information requests and responses, *a 6 months limit is proposed for information exchange* during tax audits. Furthermore, officials and taxpayers should be

provided clear and binding guidelines on the standards of evidence which should be acceptable in audits (see below).

6. *Smoothen audits by improving the transparency, reducing uncertainty and discretion, both on the laws but also on the evidence/facts:* Recently Cambodia has already taken a number of initiatives that will clarify the tax regime, but more can be done with law and policy reform that will speed up and smoothen the tax audit process. There remain long-standing questions of interpretation, some are industry-specific, which could be clarified in detail or simplified and thus reduce the potential for disputes. In addition, the GDT could prioritize and publish opinions, rulings, safe-harbors and APA's so that Large Taxpayers have more advance certainly of their tax treatment (the IMF's Victor Thuronyi calls this "*one of the most efficient tools to avoid disputes*" (Thuronyi 2013, par. 14). Reducing uncertainty is needed for questions of law, but perhaps even more so, on questions of fact and evidence. There are too many cases where there is no clarity or uniformity yet on the standard of evidence officials should accept. Detailed guidelines will help resolve this. More transparency is needed e.g. for Notices of Tax Reassessment to list the legal and factual basis for each item. Most importantly, *tax officials should not be allowed to reassess on a "deemed" basis* without actual facts in evidence. Tax officials should indeed be able to challenge information or evidence provided by taxpayers, such as faulty financial statements, but reassessments must nevertheless be based on facts (such as bank statements or expense reports) and not only suspicions.
7. *Taxpayers need (even[11]) more effectual education so they can comply faster and more accurately:* Our research shows that delays at the taxpayer side are just as important, or even more so, than the delays observed at the GDT side. Even Large Taxpayers have difficulties understanding and preparing necessary documentation (26%) or are unclear about the correct application of laws and regulations (16%) (VDB Loi Survey, 2024). Along the same lines, the GDT should consider to make the incentive for voluntary self-correcting of past tax returns permanent, at least to some degree.

References

- ADB, (2018), *Tax Administration in Asia Pacific*. International Survey of Revenue Administration, 5th edition.
- ADB, (2011). *Strengthening the ombudsman institution in Asia: Improving accountability in public service delivery through the ombudsman.* Mandaluyong City, Philippines: Asian Development Bank.
- ADB, (2020). *Tax Administration in Asia Pacific.* International Survey of Revenue Administration, Comparative Analysis of Tax Administration in Asia Pacific, International Survey of Revenue Administration, 2020, 7th edition.
- ASEAN Briefing, (2021). *Taxpayer Classification in Cambodia: New Criteria from January 2021* (Prakas 009 dated 12 January 2021). https://www.aseanbriefing.com/news/taxpayer-classification-in-cambodia-new-criteria-from-january-2021/#:~:text=On%20January%2012%2C%202021%2C%20Cambodia%E2%80%99s%20Ministry%20of%20Economy,of%20taxpayers%2C%20which%20was%20issued%20in%20January%202018.
- Bissinger. J., (2023). *Understanding the Paths to Formalization.* UNDP, available at https://www.undp.org/sites/g/files/zskgke326/files/2023-

[11] *It is remarkable that taxpayer education remains an issue despite more than 900 online and live training events offered by the GDT in 2023, averaging almost 3 programs per day. See GDT-Newsletter No. 46 dated 15 February 2024 https://www.tax.gov.kh/en/tax-news-letter*

12/Understanding%20the%20Paths%20to%20Formalization%20in%20Cambodia_An%20Integrated%20Vision.pdf

- IMF, (2018). *Technical Assistance Report, Cambodia Tax Administration Priorities* 2019-2023.
- KPMG. (2024). *Incentives for Voluntary Amendment of Tax Declarations.* (Prakas 071 MEF P.GDT dated 30 January 2024). https://assets.kpmg.com/content/dam/kpmg/kh/pdf/technical-update/2024-/eng/prakas-071-notification-3830-.pdf
- OECD, (2013). *Cooperative Compliance: A Framework.* Available at https://www.oecd.org/en/publications/co-operative-compliance-a-framework_9789264200852-en.html
- PWC, (2019). *Cambodia news brief* (Prakas 270 on Tax Audits dated 13 March 2019). https://www.pwc.com/kh/en/publications/newsbrief/kh-newsbrief-march-2019.pdf
- The World Bank, (2024). *The World Bank statistics consulted in June 2024.* https://data.worldbank.org/indicator/GC.TAX.TOTL.GD.ZS?locations=KH-TH-VN-ID-PH-EU
- Thuronyi, V., & Espejo, I. (2013). *How Can an Excessive Volume of Tax Disputes Be Dealt with?* IMF Legal Department, December 2013, available at https://www.imf.org/external/np/leg/tlaw/2013/eng/tdisputes.pdf
- Vanderbruggen, E. (2008), *Introduction of binding arbitration in tax matters; Ombudsman in tax procedures. Modernization of certain older tax laws.* Asian Development Bank. Available at https://www.adb.org/sites/default/files/project-documents//39473-cam-dpta.pdf
- VDB Loi Survey. (2024). *Referred to in "Methodology".* https://www.vdb-loi.com/update_types/tax_updates/