# Each Treaty Its Own Bargain

*Special Features and Concessions Across Cambodia's Double Tax Treaty Network*

*A provision-by-provision comparison against the OECD and UN Models, with an overlay of Cambodian domestic practice*

Dr. Antoine FONTAINE* and Sochara KRAUTCH**

## ABSTRACT

Cambodia entered the world of bilateral tax treaties unusually late, compared to its neighboring countries. Its first conventions took effect only in 2018, yet within a single decade, it has assembled a network of eleven double taxation agreements (DTAs) in force, two further conventions signed, a modernizing protocol, and a string of concluded and pending negotiations. The temptation is to ask whether this network has produced a single "Cambodian model." The better question, and the one this article pursues, is the opposite: the treaties are not created equal. Each convention is a separately negotiated bargain, marked by its own distinctive features and its own concessions of source-State taxing rights, and the practical task, for the administration and the adviser alike, is less to find a template than to navigate the differences. Proceeding article by article against the OECD and UN Models, and overlaying at each step the way the provision is actually applied under Cambodian law, the article maps where the conventions converge (a 10% withholding ceiling, source taxation of immovable-property-rich share gains, a distinctive pre-approval gateway) and, more importantly, where they diverge: on the permanent-establishment thresholds, the existence of a service PE, the deductibility of internal charges, the breadth of the royalty and technical-fee articles, and the availability and duration of tax sparing. The recurring lesson is that, in Cambodia, the line between taxation and exemption is drawn treaty by treaty, and the ability to read each instrument on its own terms is the whole of the craft.

**Keywords:** *Cambodia; double taxation agreements; OECD and UN Models; permanent establishment; service PE; beneficial ownership; associated enterprises; authorized OECD approach; force of attraction; technical service fees; tax sparing; principal purpose test; BEPS; China.*

---

* *Founding Partner at Anant Law Firm, Tax Lawyer, Co-Director of CITS*

** *Co-Director of CITS*

# Contents

# A note on method

The analysis proceeds article by article, weighted by practical importance, and applies two steps to each provision of significance. First, a comparison step: the OECD/UN Model baseline is stated, and the rendering of each Cambodian DTA is set against it, highlighting deviations from the Models and from one another. Second, a local-practice step: the way the provision is actually applied in Cambodia is overlaid, anchored to the governing domestic instrument: the relevant Law on Taxation (LOT) article, the applicable Prakas, or a General Department of Taxation (GDT) Instruction. For each article, the aim is to present the concept plainly, identify differences across the network, and explain the implications.

Two limits of the method. The numbering of articles is *not* uniform across Cambodia's DTAs. For instance, capital gains appear as Article 13 in some conventions and Article 14 in others, so article numbers are mapped per treaty. Second, this paper was prepared from the official texts supplied: the conventions currently in force as published by the GDT, the signed Laos and Philippines texts, the protocols to each convention, the consolidated Compilation of Cambodian Tax Laws and Regulations,[1] several GDT Instructions and Prakas, the 2025 Prakas on international waterway and air transport, etc. A word of caution that runs through the analysis: the protocol to each convention must be read alongside its main text, because protocols carry critical operative provisions (on insurance, on the direct application of reduced rates, and on the scope of exchange of information) that the body of the treaty does not disclose. Where a regulation needed for the local practice step was not supplied, the gap is flagged rather than inferred.

# I. Introduction

Few tax-treaty networks have grown as quickly from as late a start as Cambodia's. The founding members of ASEAN had woven dense webs of bilateral conventions by the close of the twentieth century; the Kingdom of Cambodia, admitted to ASEAN only in 1999, had concluded none. It was not until 2017 that Cambodia ratified its first agreements, with Singapore and Thailand, both of which entered into effect in 2018. In the years since, the network has expanded with unusual speed thanks to the relentless hard work of the GDT team. This Introduction makes three points: what a DTA does and why it is worth having; why Cambodia, in particular, must conclude DTAs with its ASEAN partners; and the present shape of the network across the three categories: in force, signed, and under negotiation.

## 1. What a double tax agreement does, and why it is worth having

> **Concept — juridical double taxation**
>
> Juridical double taxation is the imposition of comparable taxes on the same taxpayer, in respect of the same income and for the same period, by two States. It arises from the overlap of fiscal sovereignties: the source State taxes by reason of the territorial origin of the income, the residence State by reason of the personal connection of the taxpayer.
>
> It differs from economic double taxation, which strikes the same income in the hands of *two different people,* the paradigm being a transfer-pricing adjustment that increases one group company's profit without a matching reduction for the other (Section V.4).[2]

[1] S Krautch (ed), Compilation of Cambodian Tax Laws and Regulations, Part 1 (CITS 2025) — the consolidated source used throughout for the Law on Taxation and implementing Prakas and Instructions.

[2] BJ Arnold, *International Tax Primer* (5th edn, Wolters Kluwer 2023) ch 2 and Glossary: international (juridical) double taxation is "the imposition of income taxes by two or more sovereign countries on the same item of income (including capital gains) of the

A DTA answers that risk in five practical ways: it relieves double taxation (allocating taxing power and prescribing the exemption or credit method); it allocates taxing rights through distributive rules; it reduces source withholding (lowering Cambodia's 14% non-resident rate to a treaty ceiling, typically 10%); it provides a dispute-resolution mechanism (the mutual agreement procedure); and it signals investment-climate stability.[3] Two model conventions frame the field: the OECD Model, which favors the residence State, and the UN Model, which preserves more for the source State and is more congenial to capital-importing economies such as Cambodia.[4]

## 2. Why Cambodia must have DTAs with its ASEAN members

Cambodia's tax treaty network is an instrument of regional economic policy, and the case is strongest within ASEAN for three reasons. First, the intensity of intra-ASEAN trade and investment: the bulk of Cambodia's inbound capital, contracting, services, and lending originates from regional neighbors and the Greater China economies. Second, AEC integration: completing the network of bilateral double-taxation agreements among the member States is a stated objective of ASEAN economic integration.[5] Third, competitive parity: Cambodia competes with Vietnam, Thailand, and Indonesia for roughly the same investment, each offering a dense treaty network; a thin Cambodian network would be a measurable disadvantage.

## 3. The current network: in force, signed, and in negotiation

A tax convention prevails over contrary internal tax provisions by the Law on Taxation's own command.[6] Two qualifications arise throughout this article. First, a convention never creates a charge to tax; it allocates and, where appropriate, caps a taxing power that only domestic law can create. Second, a treaty cannot worsen the taxpayer's position: where the treaty rate would exceed the domestic rate, domestic law remains the practical ceiling.[7] The domestic backdrop is a flat 14% withholding tax on Cambodian-source dividends, interest, royalties, and certain service and management fees paid to non-residents, under Article 26 of the Law on Taxation, which the conventions reduce, most often to 10%.

**In force (eleven conventions).** In chronological order of effect: Singapore and Thailand (2018); Brunei, China, and Vietnam (2019); Hong Kong SAR (2020); Indonesia and Malaysia (2021); Korea (2022); Macau SAR and Türkiye (2024).

---

same taxable person for the same period"; economic double taxation is "the imposition of tax by two or more countries on the same amount of income" in the hands of different persons (e.g. corporate profit and the dividend paid out of it).

[3] On the functions of a convention—relief, allocation, reduced source taxation, prevention of evasion and avoidance, dispute resolution—see OECD Model, Introduction, paras 1–3 and 15.1–15.4; and W Haslehner, 'Introduction' in E Reimer and A Rust (eds), *Klaus Vogel on Double Taxation Conventions*, vol I (5th edn, Kluwer Law International 2021) m.nos 1–3.

[4] OECD Model (2017; 2025 Update) and Commentary; UN Model (2021) and Commentary; on the OECD/UN divergences, Haslehner, 'Introduction' (n 3) m.no. 14. Specifically, Arnold (n 2) 14 (the OECD members are "mostly wealthy developed capital-exporting countries") and 16 (the UN Model, issued in 1980, "better reflect[s] the interests of developing countries by providing expanded taxing rights for source countries").

[5] ASEAN Economic Community Blueprint (2007), measure to "complete the network of bilateral agreements on avoidance of double taxation among all Member Countries" (para. 27(v)); E Vanderbruggen, 'Salient Features of the ASEAN Model Tax Treaty' (2002) *Tax Notes International*.

[6] Tax-treaty supremacy rests on Article 191 of the Law on Taxation itself, which provides that "the provisions of tax treaties to which the Kingdom of Cambodia is a party take precedence over provisions of this Law."

[7] On the treaty/domestic-law relationship generally, see Haslehner, 'Introduction' (n 3) m.nos 157–167 (§E, 'Double Taxation Treaties and Changes to Domestic Law'). On the relieving-only nature of treaties, Arnold (n 2) 9: "tax treaties do not generally impose tax; in most countries, they are exclusively relieving in nature" — so a convention can neither create a charge nor worsen the taxpayer's domestic-law position.

**Table 1. Conventions in force**

| Partner | Status | Effect | Note of interest |
|---|---|---|---|
| **Singapore** | In force | 2018 | Earliest treaty; updated by Second Protocol (in force 2026) |
| **Thailand** | In force | 2018 | Financial-institution interest rate; branch-remittance tax |
| **Brunei** | In force | 2019 | Protocol restricts the exchange of information; bilateral tax sparing |
| **China** | In force | 2019 | No service-PE clause; no PPT |
| **Vietnam** | In force | 2019 | Omits the combination-of-activities sub-paragraph in Art. 5(4) |
| **Hong Kong SAR** | In force | 2020 | The preamble does not cover tax evasion |
| **Indonesia** | In force | 2021 | Most BEPS-complete PE article among in-force treaties |
| **Malaysia** | In force | 2021 | First BEPS-style preamble |
| **Korea (Rep.)** | In force | 2022 | POEM tie-breaker; no service PE; PPT (Art. 27); 10-yr tax sparing |
| **Macau SAR** | In force | 2024 | Latest-generation Art. 5(4) BEPS proviso; PPT (Art. 29) |
| **Türkiye** | In force | 2024 | Combines features granted piecemeal elsewhere: nine-month site threshold, delivery exception, PPT, no tax sparing |

**Signed (and protocols).** Two conventions with Laos and the Philippines have been signed but have not yet entered into force; both belong to the most recent, BEPS-aligned generation. The Singapore Second Protocol, which retrofits the BEPS preamble and a principal purpose test onto the 2018 convention, entered into force in 2026.

**Table 2. Signed instruments and protocols**

| Instrument | Status | Distinctive feature |
|---|---|---|
| **Singapore (2nd Protocol)** | Signed; in force 2026 | Adds BEPS preamble + PPT (new "Entitlement to Benefits" article) |
| **Laos** | Signed, not yet in force | No relief for international transport by ship or for vehicles used in road or rail transport. |
| **Philippines** | Signed, not yet in force | Most differentiated rate structure (10%/15% dividends) with minimum holding requirement; 365-day look-back on immovable-property-rich share gains |

**In negotiation.** Negotiations with Myanmar and France are concluded but unsigned (awaiting a signing ceremony). A further group is at the negotiation stage.

**Table 3. Negotiations concluded or under way**

| Partner | Stage |
|---|---|
| **Myanmar** | Negotiations concluded; awaiting signature |
| **France** | Negotiations concluded; awaiting signature |
| **United Arab Emirates** | Under negotiation |
| **Japan** | Under negotiation |
| **Morocco** | Under negotiation |
| **Qatar** | Under negotiation |
| **Azerbaijan** | Under negotiation |

The analysis is confined to the eleven conventions in force, supplemented by the two signed texts where they illustrate the trajectory of Cambodian practice.

# II. Object and purpose — the preamble

**Concept — why the preamble matters**

A treaty's preamble states its object and purpose. Under Articles 31–33 of the Vienna Convention on the Law of Treaties, a treaty is interpreted in good faith, in accordance with the ordinary meaning of its terms in their context and in the light of its object and purpose. The preamble is the interpretive instruction that courts and the administration must read into every ambiguous operative provision.[8]

The central point, frequently elided, is that **the avoidance of double taxation does not mean the prevention of tax avoidance.** The seven earliest conventions (Singapore, China, Thailand, Brunei, Indonesia, Vietnam, Hong Kong) open with the traditional formula aimed at the avoidance of double taxation and, in five of the seven, the prevention of fiscal evasion (the Indonesia and Hong Kong preambles omit even that); from Malaysia onward, the preamble adopts the BEPS Action 6 language, disavowing non-taxation, reduced taxation, and treaty shopping.[9]

## The five-dimensional preamble matrix

**Table 4. The five-dimensional preamble matrix**

| Treaty (Cambodia–) | Dbl. tax | Dbl. non-tax | Treaty-shop | Evasion | Avoidance |
|---|---|---|---|---|---|
| **Singapore (original)** | ✓ | — | — | ✓ | — |
| **Thailand** | ✓ | — | — | ✓ | — |
| **China** | ✓ | — | — | ✓ | — |
| **Brunei** | ✓ | — | — | ✓ | — |
| **Indonesia** | ✓ | — | — | — | — |
| **Vietnam** | ✓ | — | — | ✓ | — |
| **Hong Kong SAR** | ✓ | — | — | — | — |
| **Malaysia** | ✓ | ✓ | ✓ | ✓ | ✓ |
| **Korea (Rep.)** | ✓ | ✓ | ✓ | ✓ | ✓ |
| **Macau SAR** | ✓ | ✓ | ✓ | ✓ | ✓ |
| **Türkiye** | ✓ | ✓ | ✓ | ✓ | ✓ |
| **Singapore (post-Protocol)** | ✓ | ✓ | ✓ | ✓ | ✓ |
| **Laos (signed)** | ✓ | ✓ | ✓ | ✓ | ✓ |
| **Philippines (signed)** | ✓ | ✓ | ✓ | ✓ | ✓ |

[8] VCLT, 23 May 1969, art. 31(1)–(2) (a treaty is interpreted in good faith in the light of its object and purpose) and art. 31(2) (the preamble forms part of the context). For the object-and-purpose statement specifically: OECD Commentary on the Preamble (2017), paras 1–3 — the Convention is "not intended to create opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including … treaty-shopping)"; and OECD Commentary, Introduction, paras 15.1–16 (BEPS Action 6 minimum standard on preamble language). See also A Rust, 'Article 1 (Persons Covered)' in Reimer and Rust (n 3) vol I, m.nos 79 ff (Annex: Improper Use of the Convention).

[9] OECD/G20, Action 6 Final Report (2015); art. 6 MLI. A Rust, 'Article 29 (Entitlement to Benefits)' in Reimer and Rust (n 3) vol II, m.nos 5–19 (structure and main features) and m.nos 103 ff (the principal purpose test, art 29(9)).

## Does an omission permit abuse?

Where a preamble is silent on treaty shopping, double non-taxation, or avoidance, the omitted conduct is not thereby permitted. Under the VCLT, the absence of an express anti-abuse object does not create a positive entitlement to abuse; it merely removes the strongest *textual* anchor for construing an ambiguous provision against an abusive structure. The decisive question is not whether the preamble mentions abuse but whether, on its true construction, the convention was *intended* to confer the benefit claimed, and on that the OECD has been unambiguous since 2003.[10]

This is where Staringer and Szudoczky's *Anti-Abuse Rules and Tax Treaties* do real work, and they must be quoted rather than paraphrased. Rust and Emanuele trace the OECD's volte-face: in 1992 the OECD took "a nuanced position," recognizing in paragraph 23 of the Commentary that it is "a matter of domestic law to regulate which facts give rise to a tax liability," so that the application of domestic anti-avoidance rules "does not necessarily need to be confirmed in the text of the Convention"; then, as they record, "the OECD reversed its former position in 2003 and changed its Commentary on Article 1 … [t]he position taken was that there is no conflict between domestic anti-avoidance rules and tax treaties as a general rule." The authors explain the rationale: states that have enacted domestic anti-avoidance measures are unlikely to have agreed treaty provisions that would limit their use.[11]

Two propositions follow, both grounded in the same text. First, an omission in the preamble does not disable a domestic GAAR, because, on the OECD's own analysis as restated by Rust and Emanuele, "there is no conflict between domestic anti-avoidance rules and tax treaties as a general rule"; the GAAR and the convention occupy different planes. Second, even at the treaty level, the "guiding principle" of paragraph 61 of the Commentary on Article 1 supplies the interpretive answer: a benefit need not be granted where obtaining it was a principal purpose of an arrangement and granting it would be contrary to the object and purpose of the relevant provisions. Cambodia, therefore, retains, even under a preamble-light, PPT-less convention, a domestic general anti-avoidance rule (Article 194 (1) (i) LOT) to re-characterize substance-less arrangements designed to reduce tax; the detailed treaty-vs-GAAR hierarchy is developed in Section VI.2 below.[12]

# III. Taxes covered — the Cambodian side

On the Cambodian side, the conventions cover the Tax on Profit (now Tax on Income) and, according to the instrument, the minimum tax, the withholding taxes, the additional profit tax on dividend distributions, and the capital gains tax. The treatment of the minimum tax is inconsistent; express coverage of rental income from immovable property is a feature of the newest generation; and partner-side nomenclature varies widely. These rarely alter the allocation of taxing rights but govern the precise reach of each

[10] VCLT arts. 31(1)–(2); OECD Commentary on Art. 1 (2017), paras 54–80 (improper use of the Convention), and para. 61 (the "guiding principle").

[11] A Rust and V Emanuele, 'Domestic GAARs and Their Impact on Tax Treaties' in C Staringer and R Szudoczky (eds), *Anti-Abuse Rules and Tax Treaties* (Wolters Kluwer 2024) ch 1, sections 3.2.1–3.2.2 (quoting the 1992 OECD Commentary, para. 23, and recording the 2003 reversal of the OECD position on Art. 1). The OECD position is now reflected in OECD Commentary on Art. 1 (2017), paras 66–80 (relationship between domestic anti-abuse rules and the Convention).

[12] LOT art. 194(1)(i); OECD Commentary on Art. 1 (2017), para. 61 (guiding principle), reproducing the test now codified as Art. 29(9) (PPT). Rust and Emanuele (n 11) section 2.3.2 (relating the guiding principle to Art. 29(9)).

convention. The matrix below (Table 5) maps three coverage variables: minimum tax, rental income from immovable property, and income tax/capital gains tax across the network.[13]

**Table 5. Taxes covered — the three coverage variables**

| Partner / generation | Minimum tax | Rental income | Income tax/Capital gains tax |
|---|---|---|---|
| **Singapore** | — | — | ✓ |
| **China** | ✓ | — | ✓ |
| **Thailand** | — | — | ✓ |
| **Brunei** | — | — | ✓ |
| **Indonesia** | ✓ | — | ✓ |
| **Vietnam** | — | — | ✓ |
| **Hong Kong SAR** | ✓ | — | ✓ |
| **Malaysia** | ✓ | — | ✓ |
| **Korea (Rep.)** | ✓ | — | ✓ |
| **Macau SAR** | ✓ | — | ✓ |
| **Türkiye** | ✓ | — | ✓ |
| **Laos (signed)** | ✓ | ✓ | ✓ |
| **Philippines (signed)** | ✓ | ✓ | ✓ |

### The ambulatory clause (Art. 2(4)) and a later income-type tax

Where a Cambodian DTA contains the ambulatory clause of Article 2(4), catching “identical or substantially similar taxes imposed after signature”, a later income-type tax is caught even though it is not separately listed, most relevantly the tax on rental income from immovable property introduced in the two newest (signed) texts, which, being an income tax in nature, is “substantially similar” to the income tax the convention already covers and is governed accordingly. The case law supports the ambulatory reading: *Kinsella v The Revenue Commissioners* [2007] IEHC 250 (Irish High Court) read the taxes-covered article purposively to reach a later tax of the same essential nature, and the *Rohrmoser* decision (TGI Paris, 1985) applied the substantial-similarity test on the substance of the charge rather than its label.

## IV. Residence and the tie-breaker

> **Concept — dual residence and the tie-breaker**
> Residence is the gateway to a treaty: only a “resident of a Contracting State” may claim its benefits. A person can be resident in *both* States—an individual with homes in two countries, or a company incorporated in one State but managed from another. The tie-breaker assigns a single residence for treaty purposes.[14]

For individuals, every convention resolves dual residence through the same cascade, mirroring Article 4(2) of the OECD; there is no Cambodian deviation of note. For companies, Cambodia’s treaties take three

[13] On the scope and the ambulatory operation of the taxes-covered article (art. 2(4)), R Ismer and A Blank, ‘Article 2 (Taxes Covered)’ in Reimer and Rust (n 3) vol I, m.nos 64–72; OECD/UN Commentary on Art. 2(4).

[14] Individual cascade (permanent home, centre of vital interests, habitual abode, nationality, MAP): R Ismer and K Blank, ‘Article 4 (Resident)’ in Reimer and Rust (n 3) vol I, m.nos 85–121 (the tie-breaker criteria of art 4(2)) and m.no. 123 (MAP).

different approaches. The first is the place of incorporation: residence goes to the State where the company was set up. This test is automatic and predictable and is used in treaties with Thailand, Vietnam, and Türkiye. The second is the place of effective management, with mutual agreement in case of doubt, used in the Korean convention; it asks where the company is actually run. The third, and most common, provides no automatic test at all and refers the question to the competent authorities (China, Singapore, Brunei, Indonesia, Hong Kong, Malaysia, Macau and, on a reading of its signed text, Laos and the Philippines), which mirrors the post-2017 OECD Model but leaves the taxpayer without interim certainty: under the Laos and the Philippines Article 4(3), failing mutual agreement the person is denied treaty relief altogether.

**Table 6. Corporate tie-breakers across the network**

| Partner | Corporate tie-breaker | Certainty for the taxpayer |
|---|---|---|
| **Thailand** | Place of incorporation | High |
| **Vietnam** | Place of incorporation | High |
| **Türkiye** | Place of incorporation | High |
| **Korea (Rep.)** | Place of effective management (+ MAP) | Medium |
| **Laos (signed)** | Competent-authority MAP only | Low — no relief absent agreement |
| **Philippines (signed)** | Competent-authority MAP only | Low — no relief absent agreement |
| **China** | Competent-authority MAP only | Low |
| **Singapore** | Competent-authority MAP only | Low |
| **Brunei** | Competent-authority MAP only | Low |
| **Indonesia** | Competent-authority MAP only | Low |
| **Hong Kong SAR** | Competent-authority MAP only | Low |
| **Malaysia** | Competent-authority MAP only | Low |
| **Macau SAR** | Competent-authority MAP only | Low |

**Worked example — a regional holding company**

A company incorporated in Singapore, but with its directors meeting in Phnom Penh (effective management in Cambodia). Under a mutual-agreement-only treaty, residence is unresolved until the administrations agree; under an incorporation treaty, it is instantly resident where incorporated; under a POEM treaty, it is resident where managed, here, arguably, Cambodia. The structuring lesson is to weigh not only headline rates but the determinacy of the corporate tie-breaker.

**Local-practice overlay**

Cambodian law defines a resident enterprise as one organized or managed in, or with its principal place of business in, Cambodia, taxing residents on worldwide income and non-residents on Cambodian-source income only. Because the domestic test includes *management* in Cambodia, a foreign-incorporated company run from Cambodia can be a Cambodian resident under domestic law, the dual-residence trigger. Where a treaty assigns residence to the other State, the treaty prevails and Cambodia taxes only as source State.[15]

[15] LOT art. 3 (definition of "resident taxpayer": a legal person is resident if organized or managed in, or having its principal place of business in, Cambodia)

# V. The distributive rules, article by article

The distributive articles are presented in the order of the Models: permanent establishment (Art. 5), business profits (Art. 7), international transport (Art. 8), associated enterprises (Art. 9), the passive-income articles (Arts. 10–12), capital gains (Art. 13), personal services (Arts. 15–18), the elimination of double taxation (Art. 23). The administrative and anti-abuse overlay follows in Part VI. The conventions reveal how differently they are constructed, not in any overarching scheme but in their detail.

## 1. Permanent establishment (Article 5)

> **Concept — what is a permanent establishment?**
>
> A permanent establishment (PE) is the threshold of source taxation of business profits: under Article 7, a State may tax a foreign enterprise's business profits only if, and to the extent that, the enterprise carries on business there through a PE. The primary rule (Article 5(1)) is a fixed place of business through which the business is wholly or partly carried on; it must have a degree of permanence and be at the enterprise's disposal. Article 5 then *extends* the concept to certain projects, services, agents, and (in UN-style treaties) insurance, and narrows it through the preparatory or auxiliary exceptions.[16]

**Project (construction) PE.** A building site or construction, assembly, or installation project, and, in the UN-style treaties, associated supervisory activity, creates PE only once it lasts beyond a time threshold. Across the network, that threshold ranges from six months (Singapore, Thailand, Hong Kong, Macau) or 183 days (Brunei, Indonesia, Vietnam — in substance the same test in a different drafting) to nine months (China, Malaysia, Korea, Türkiye). The shorter the threshold, the more readily a short project becomes taxable in Cambodia; the difference of three months between a Singaporean and a Chinese contractor on the same site is the difference between a Cambodian charge and no charge.

**Service PE.** Most conventions deem a PE to arise when an enterprise furnishes services in Cambodia for 183 days within a 12-month period, even without a fixed place of business. Two conventions—China and Korea—contain *no general service-PE clause at all*, so a Chinese or Korean enterprise may provide services in Cambodia indefinitely without a PE, provided it occupies no fixed place; Korea recognizes instead only a substantial-equipment or natural-resources PE beyond six months. This single omission is the most consequential PE divergence in the network, and it is weighed against the others in the Conclusion.

**China and Korea in depth — the PE picture.** The two major-partner treaties sit at opposite ends of the permanent-establishment spectrum, yet share the service-PE gap. Korea's Article 5 is unusually UN-heavy: it creates a PE from substantial equipment used for natural-resource exploration or exploitation beyond 183 days; it carries a full insurance PE and the UN stock-of-goods delivery agent; and its independent-agent exception is narrowed by the UN "wholly or almost wholly" clause. Each is a UN Model addition that broadens Cambodia's taxing rights, and several appear in other treaties. China, by contrast, concedes: a nine-month construction threshold and no service-PE clause at all. The true effect of the missing service PE is a change of basis. A prolonged engagement that would mature into a net-profit PE under the Singapore or Thai treaty may be taxed only as a 10% gross technical fee under the China treaty, provided that the services provided are characterized as technical services.

[16] On the fixed-place primary rule and the disposal/permanence requirements, see E Reimer, 'Article 5 (Permanent Establishment)' in Reimer and Rust (n 3) vol I, m.nos 16–26 (the rule), m.nos 70–105 ('permanent') and m.nos 106–133 ('through': control by the taxpayer); OECD/UN Commentary on Art. 5(1).

**Insurance PE.** Some conventions deem an insurance enterprise to have a PE if it *collects premiums or insures risks* in Cambodia through a non-independent person, except for reinsurance, so that a foreign insurer writing Cambodian risks through a local intermediary is taxable even with no office of its own. Two cautions are essential. First, although this is a UN-Model addition with no OECD-Model counterpart, it is in fact widespread in Cambodia's network: a deemed insurance PE (Art. 5(6)) appears in the Singapore, Thailand, Brunei, Indonesia, Vietnam, Korea, and Türkiye conventions. Second, where a convention has no such deeming clause—China, Hong Kong, Malaysia, and Macau—a real fixed-place or agency PE is required before Cambodia may tax.

**How is the premium actually taxed?** Two questions settle it, in order: is there a taxable *presence*, and if so, on what *basis*? On presence, insurance profit is ordinary business profit, so under Article 7, the source State may tax it *only* through a permanent establishment, which arises in just three situations: a *deemed* insurance PE under Article 5(6); a *real* fixed-place or agency PE; or, prospectively, the new Article 12C (below). On base, the treaty would ordinarily attribute net profit to that PE, a measure ill-suited to insurers, because premium income is largely reserved against statistically expected claims, so little net profit is ever attributable. Cambodia avoids that, because its domestic charge is *gross*, not net: under Article 21 of the LOT, a general (non-life) insurer is taxed at 5% of the gross premiums it receives, in lieu of the tax on income, and some DTAs expressly preserve this domestic method for insurance income derived through a PE. So once a PE exists and the treaty leaves the domestic method intact, Cambodia reaches the premium at 5% of gross at once, so the reserves problem never arises.

**The corollary and the direction of travel.** It follows that, with no PE at all (no Article 5(6) clause and no real fixed-place or agency PE) and no Article 12C, neither route can engage the domestic 5% charge. That charge itself presupposes a PE, so a premium written cross-border into Cambodia with no local presence escapes Cambodian tax entirely and is taxable only in the insurer's State of residence. That is the ordinary position today, because no Cambodian convention yet contains Article 12C (the UN's structural fix), a gross withholding tax on premiums levied with no PE at all, in substance a treaty-level version of what Article 21 LOT already does domestically. A Cambodia that wishes to tax presence-free inbound insurance will have to adopt it.[17]

**Agency PE and commissionaire arrangements.** The fixed-place rule would be easy to avoid if an enterprise could simply trade through a local agent and keep no premises of its own; the agency PE closes that route. It works by distinguishing two kinds of agents. A dependent agent, one bound to the enterprise's instructions and economically reliant on it, creates a PE for the enterprise if it *habitually exercises authority to conclude contracts in the name of* the enterprise (and, in the UN-style treaties, also if it habitually maintains a stock of goods from which it regularly delivers on the enterprise's behalf). An independent agent acting in the ordinary course of his own business, a genuine broker or general commission agent, does *not*, because it is a separate business, not an extension of the foreign enterprise.

**The preparatory-or-auxiliary exceptions (Article 5(4)).** A fixed place used solely for storage, display, delivery, purchasing, or information gathering does not create a PE. A trap recurs here: seven conventions

[17] UN Model, art. 12C and Commentary—a gross withholding tax on insurance premiums levied without a permanent establishment—analyzed in DW Blum and TA Christodoulopoulos, 'Insurance Activities under the UN Model: The New Article 12C UN MC' in G Kofler and others (eds), *The UN Model Tax Convention: Recent Developments* (Wolters Kluwer 2025) ch 4, 46: Art. 12C "introduces a novel right for source states to levy a withholding tax on insurance premiums … without the need for a permanent establishment", adopted because profit attributable to a deemed insurance PE "does not raise sufficient tax revenue" given that premium income is largely reserved against expected claims.

(Singapore, China, Thailand, Korea, Macau, Türkiye, and Laos) include *delivery* among the excepted activities, while five (Brunei, Indonesia, Vietnam, Hong Kong, Malaysia) mention only storage and display—so under the latter, a facility used solely for delivery may itself be a PE. Vietnam alone omits the combination-of-activities sub-paragraph, and the most recent texts add the BEPS proviso, subjecting every listed activity to an overall preparatory-or-auxiliary test.

**Table 7. Article 5 thresholds across the network**

| Partner | Building site | Subst. equipment | Service PE | Insurance PE |
|---|---|---|---|---|
| **Singapore** | 6 months | 90 days | 183 days | Yes |
| **China** | 9 months | 90 days | None | None |
| **Thailand** | 6 months | 90 days | 183 days | Yes |
| **Brunei** | 183 days | — | 183 days | Yes |
| **Indonesia** | 183 days | — | 183 days | Yes |
| **Vietnam** | 183 days | 90 days | 183 days | Yes |
| **Hong Kong** | 6 months | 183 days | 183 days | — |
| **Malaysia** | 9 months | 183 days | 183 days | None |
| **Korea (Rep.)** | 9 months | 183 days | None | Yes |
| **Macau SAR** | 6 months | 90 days | 183 days | None |
| **Türkiye** | 9 months | 90 days | 183 days | Yes |
| **Laos** | 6 months | — | 183 days | Yes |
| **Philippines** | 6 months | 183 days / 90 days | 183 days | Yes |

## 2. Business profits and the attribution of profits to a PE (Article 7)

**Concept — what Article 7 does, and two questions it raises**

Article 7 is the basic rule for business profits: the profits of an enterprise of one State are taxable *only* in that State, unless it carries on business in the other State through a permanent establishment, in which case the other State may tax only the profits attributable to that PE. It thus does two things: it confirms the PE as the threshold to source taxation, and it confines the source charge to the PE's own profit.[18]

Two questions then arise. (i) Attribution: how much profit? The authorized OECD approach (AOA) treats the PE as a *separate and independent enterprise* dealing at arm's length with its head office. (ii) Force of attraction: may the source State also tax other income the head office earns in the country from the same or similar activities? The OECD Model *rejects* the force of attraction; the UN Model permits a *limited* version (head-office sales in the source State of the same or similar goods or services as those sold through the PE).

Which conventions restrict internal-dealing deductions, and which do not? Across the network, the conventions split on the deductibility of notional internal charges between a PE and its head office. The OECD separate-entity treaties (China, Thailand, Hong Kong, Malaysia, Korea, Macau, Türkiye and Singapore) permit the PE to deduct notional royalties, management fees, and interest paid to its head office. The UN-inspired treaties (Brunei, Indonesia, Vietnam, and the signed Laos) *restrict* (disallow) those deductions, thereby enlarging the profit attributable to the Cambodian PE and, hence, the Cambodian tax base. Separately, the force of attraction at the treaty level follows the same UN/OECD line: the UN-style

[18] OECD Model, art. 7(1)–(2); UN Model, art. 7; E Reimer, 'Article 7 (Business Profits)' in Reimer and Rust (n 3) vol I, m.nos 66–68 (taxation only of profits attributable to the PE) and m.nos 104–120 (the AOA and the methods of attribution).

conventions may carry the limited force-of-attraction wording in their Article 7(1); the OECD-style conventions do not; and the point must be confirmed against each text.[19]

**Local-practice overlay — Cambodia's domestic AOA and its limited force of attraction**

Cambodian domestic legislation adopts a rather liberal, OECD-style AOA. Article 18 of Prakas No. 574 on transfer pricing requires that the profits of a Cambodian PE of a non-resident be determined using the *separate-entity approach*, as if the PE were an independent enterprise engaged in the same or a similar business under the same or similar conditions.[20]

But the LOT adds a limited force of attraction: the PE's taxable income "shall include income from the sale of goods or services that are identical or similar to the business activities of the permanent establishment supplied by the non-resident taxpayer within the Kingdom of Cambodia." So Cambodia attributes to the PE not only its own profit but also the head office's direct sales of like goods or services in Cambodia, a UN-style add-on grafted onto an OECD base.[21] The practitioner must therefore check, treaty by treaty, whether the applicable convention permits this limited force of attraction or excludes it; where the treaty excludes it, the treaty prevails over the domestic attraction rule, and where the treaty is silent, the domestic rule operates within the treaty's separate-entity ceiling.

## 3. International transport (Article 8)

**Concept — residence-only taxation of shipping and air transport**

Article 8 is an exception to the PE principle: profits from the operation of ships and aircraft in international traffic are, by default, taxable *only* in the State of the operator's residence (or place of effective management), because attributing such mobile profits to source States would be unworkable. The UN Model offers an alternative allowing limited source taxation of *shipping* profits.[22]

The default residence-only taxation of both air and sea transport applies to aircraft across the network, but several conventions permit limited source taxation of shipping profits, typically through a 50% reduction of the source-State tax. The signed Laos text exempts air transport but does not extend the exemption to shipping and land transport, whereas the signed Philippines text introduces a 1.5% gross tax. The Thailand protocol pulls the other way, adding a most-favored-nation clause: if Cambodia later grants a lower tax on rail or road transport to any other State, that lower rate automatically flows through to Thailand.

**Local-practice overlay — the 2025 Prakas on International air and waterways transport**

Cambodia has recently established a domestic regulatory regime for the sector: Prakas No. 405 on international waterway transport and Prakas No. 648 on air transport of passengers and cargo, both of 2025, tax non-residents with a Cambodian PE at an effective rate of 3% on gross revenues and broadly define PE to include agents with contract authority and economic representation through subsidiaries or

[19] OECD Model, art. 7; UN Model, art. 7(1) (limited force of attraction) and art. 7(3) (restriction on internal deductions); E Vanderbruggen, 'About the Deductibility of Head Office Expenses' (2002) *Intertax* 270–284 (arguing the UN restriction is best read as excluding only a profit element on genuine internal services, not all internal charges);

[20] Prakas No. 574 MEF.PrK.GDT of 19 September 2024 (in force 1 January 2025), Rules and Procedures for Allocating Incomes and Expenses Among Related Persons — Cambodia's transfer-pricing Prakas, art. 18 (Attribution of Profits to PE);

[21] LOT art. 18(2)(b).

[22] G Kofler, 'Article 8 (International Shipping and Air Transport)' in Reimer and Rust (n 3) vol I, m.nos 8–9 (the rationale for exclusive residence-State allocation) and m.nos 25–26 (UN Model alternative B); OECD Model, art. 8; UN Model, art. 8 (alternative B).

forwarders. Both Prakas defer to the DTA: a treaty-resident operator applies the Article 8 international-transport rule, which generally reserves taxation to the residence State. The domestic 3% charge is thus the default that a treaty switches off or reduces.

## 4. Associated enterprises and the corresponding adjustment (Article 9)

**Concept — the arm's length principle**

**Article 9(1)** is the treaty home of the arm's length principle: where two *associated enterprises* deal on terms differing from those independent parties would have agreed, a State may adjust the profits to the arm's length figure and tax accordingly. Article 9(2) is the safeguard against the resulting economic double taxation: if State A increases Company A's profit, State B *should* make a corresponding downward adjustment for Company B.[23]

Crucially, Article 9 contains no definition of "associated enterprise." It describes participation in "management, control, or capital," but leaves the content of that test to be supplied by domestic law through Article 3(2).[24] The definition of related parties is therefore *national*, and can differ between the two States—a structural source of double taxation examined below.

**Local-practice overlay — Cambodia's related-party definition.** Cambodia's domestic threshold has recently shifted. Under the earlier regime two enterprises were related only at 51% holding; the new Law on Taxation (2023), at Article 5(10), redefines a "related person" by reference to 20% or more of the value or voting power of the equity interests, deliberately aligning the related-party test with the 20% common-ownership threshold of Article 18 of the LOT and with the transfer-pricing Prakas.[25]

**The mismatch problem: economic double taxation from divergent definitions.** Because Article 9 leaves "associated enterprise" to domestic law, the two States may classify the *same* pair of enterprises differently. Where Cambodia regards them as related (now at 20%) and makes an upward adjustment, but the other State, applying a higher threshold or a different control test, regards them as *un*related, that other State will decline to make the Article 9(2) corresponding adjustment, and the group is left taxed on more than 100% of its profit. The mismatch in the definition is itself a cause of unrelieved economic double taxation, independent of any pricing dispute.[26]

**Corresponding adjustments in practice.** Whether Cambodia must grant relief turns on the applicable treaty: the in-force conventions vary in whether they carry the Article 9(2) obligation (the Korea

[23] G Kofler and J Wittendorff, 'Article 9 (Associated Enterprises)' in Reimer and Rust (n 3) vol I, m.nos 40–44 (primary and corresponding adjustments) and m.nos 216–227 (art 9(2) and economic double taxation).

[24] Where a treaty term is undefined, Art. 3(2) refers the interpreter to its meaning under the domestic law of the State applying the convention—primarily its tax law—"unless the context otherwise requires", a renvoi that can yield divergent results between the two States. See AP Dourado and others, 'Article 3 (General Definitions)' in Reimer and Rust (n 3) vol I, m.no. 4 and m.nos 114–141 (the Art. 3(2) renvoi to the domestic meaning of an undefined term).

[25] LOT (2023) art. 5(10) (control = 20% of value or voting power; includes internal dealings between a PE and its head office); LOT art. 18 (allocation among enterprises under 20% common ownership); Prakas No. 574 MEF.PrK.GDT of 19 September 2024 (in force 1 January 2025), Rules and Procedures for Allocating Incomes and Expenses Among Related Persons — Cambodia's transfer-pricing Prakas. The reduction from 51% to 20% widens the population of controlled transactions subject to adjustment.

[26] On the divergence of domestic definitions of "associated enterprises" and the double taxation it produces, see C Rotondaro, 'The Notion of "Associated Enterprises": Treaty Issues and Domestic Interpretations – An Overview' (2000) *International Transfer Pricing Journal* (IBFD) Jan/Feb, and 'The Application of Art. 3(2) in case of Differences between Domestic Definitions of "Associated Enterprises"' (2000) *International Transfer Pricing Journal* (IBFD) Sept/Oct (the two papers analyzing precisely this mismatch).

convention, for example, expressly does). Domestically, the regime is asymmetric; Prakas No. 574 is designed to adjust profits *upward* to the arm's length figure but contains no mechanism obliging the GDT to make a downward corresponding adjustment in response to a foreign primary adjustment—so the taxpayer's route to relief is the treaty Article 9(2) read with the mutual agreement procedure (Prakas No. 318 of 12 May 2021). The recommendation for the administration is to confirm it will honor Article 9(2), where the treaty contains it, and to provide a domestic mechanism for the corresponding adjustment.

## 5. Dividends, interest, royalties, and technical services (Articles 10–13)

These are the most investor-visible articles, and providing the concept of each is essential because the divergences are easy to miss. The dominant pattern is a uniform 10% ceiling on dividends, interest, royalties and technical fees, available only to the beneficial owner. By way of comparison among the conventions, the Philippines (signed) is the network's dividend outlier, running a tiered rate (10%/15%) under which the lower rate is reserved for a qualifying corporate holding rather than applied across the board. Several treaties carve out exceptions and special rates, set out below (Table 8).

**Concept — what "beneficial owner" means**

The reduced source rate in Articles 10, 11 and 12 (and the technical-fee article, where present) is reserved for the beneficial owner of the income — a limitation aimed squarely at *conduit* arrangements. The authoritative gloss is the OECD Commentary: a direct recipient is *not* the beneficial owner where it has, "as a practical matter, … *so narrow [a power]* … that it renders [it] … a mere fiduciary or administrator acting on account of the interested parties," for instance an agent, nominee or conduit company "bound by a contractual or legal obligation to pass on the payment received to another person." Beneficial ownership is thus a *substance* test about who really enjoys the income, not a formal test of legal title.[27]

The concept has a litigated edge that Cambodian practice will eventually reach (or may already have reached). The leading authorities pull in two directions: a *narrow, legal-substance* reading, under which only a recipient legally bound to pass the income on (a nominee or back-to-back conduit) is denied the rate: *Prévost Car Inc. v The Queen* and *Velcro Canada Inc. v The Queen*, and the English *Indofood International Finance Ltd v JP Morgan Chase Bank*, which read beneficial ownership in its "international fiscal meaning"; and a *broader, anti-abuse* reading exemplified by the Court of Justice of the European Union's Danish cases (*N Luxembourg 1* and joined cases), which treat beneficial ownership and the general prohibition of abuse as overlapping tools against conduit structures. The Cambodian tax administration applies the OECD Commentary formulation alongside its domestic general anti-avoidance rule.[28]

**Table 8. Passive-income withholding ceilings**

| Partner | Dividends | Interest | Royalties | Tech. fees |
|---|---|---|---|---|
| **Singapore** | 10% | 10% | 10% | 10% |

[27] OECD Commentary on Art. 10 (2017), paras 12.1–12.6 (beneficial ownership; conduit companies; the quoted 'narrow powers' and 'obligation to pass on' formulations), with parallel guidance in the Commentary on Art. 11, paras 9–11, and Art. 12, paras 4–4.3. W Haslehner, 'Article 10 (Dividends)' in Reimer and Rust (n 3) vol I, m.no. 34 and m.nos 44–49 (on the autonomous, anti-conduit meaning of beneficial ownership). The concept operates alongside, and is reinforced by, the broader anti-abuse rules discussed in §VI.2: Rust and Emanuele (n 11).

[28] Prévost Car Inc. v. The Queen, 2009 FCA 57; Velcro Canada Inc. v. The Queen, 2012 TCC 57; Indofood International Finance Ltd v. JP Morgan Chase Bank N.A. [2006] EWCA Civ 158 ("international fiscal meaning" of beneficial ownership); CJEU, Joined Cases C-115/16, C-118/16, C-119/16 and C-299/16, N Luxembourg 1 and others, 26 February 2019 (beneficial ownership and the abuse-of-rights principle). For analysis, Haslehner, 'Article 10' (n 27) m.nos 44–49.

| Partner | Dividends | Interest | Royalties | Tech. fees |
|---|---|---|---|---|
| **China** | 10% | 10% (govt exempt) | 10% | 10% |
| **Thailand** | 10% | 10% (FI) / 15% | 10% | 10% |
| **Brunei** | 10% | 10% | 10% | 14% |
| **Indonesia** | 10% | 10% (govt exempt) | 10% | 10% |
| **Vietnam** | 10% | 10% | 10% | 10% |
| **Hong Kong** | 10% | 10% | 10% | 10% |
| **Malaysia** | 10% | 10% | 10% | 10% |
| **Korea (Rep.)** | 10% | 10% (govt exempt) | 10% | 10% |
| **Macau SAR** | 10% | 10% | 10% | 10% |
| **Türkiye** | 10% | 10% | 10% | 10% |
| **Philippines (signed)** | 10% / 15% | 15% | 15% | 10% |
| **Laos (signed)** | 10% | 10% (govt exempt) | 10% | 10% |

### (a) Dividends — and the deemed-dividend overlay

**Concept — dividends**

At its root, the dividend article addresses the economic double taxation of distributed company profits—taxed in the company, then again as dividends to shareholders—by capping (not surrendering) the source State's second-level charge and leaving residual relief to the residence State.[29] Article 10 caps the source State's withholding on dividends, often with a lower rate for substantial corporate holdings. The treaty does not exempt the dividend; it merely caps the domestic charge (Section I.3).

**Local-practice overlay — deemed dividends.** The deemed-dividend rule means that, even where a treaty caps the dividend rate at 10% or a residual capital-gains clause would exempt a share gain, Cambodia preserves a charge on undistributed profits at the point of distribution or transfer. A particular trap concerns returns of capital. Where retained earnings have been *capitalized* (converted into share capital), the capitalization itself is not a dividend, but a later *withdrawal* of that capital for distribution to shareholders, or a transfer of shares carrying those retained earnings, is treated as a deemed dividend to the extent the capital originates from retained earnings, and bears dividend withholding accordingly. A repatriation dressed as a return of capital, therefore, does not escape the dividend article, and the revised Capital Gains Tax Prakas No. 1130 (2025) extends the same logic to share transfers, deeming undistributed profits distributed at the moment of transfer (Section V.6).[30] The interaction of the treaty dividend article with the deemed-dividend rule is therefore central to any repatriation or exit planning.

---

[29]Haslehner, 'Article 10' (n 27) m.nos 2 and 6 (the compromise allocation, and the cap on the source State's charge with residual relief by the residence State).

[30]Prakas No. 372 MEF.PrK of 5 April 2019 on the Implementation of Withholding Tax on Dividend Distribution, arts. 4, 6 and 7: art. 6 — "the conversion of … retained earnings into capital/equity … shall not be considered as dividend distribution and not [be] subject to WHT" (subject to a board decision and recognition by the competent institution); art. 7 — on a transfer of part or whole of capital or equity, "retained earnings that are relevant to [the] transferred share even though [they have] been transferred into capital or equity … [are] treated as distributed dividend." See also Prakas No. 578 MEF.PrK.GDT, Prakas on Tax on Income on the dividend definition. Dividend WHT is 14% (resident-to-non-resident) under arts. 26 and 33 LOT.

### (b) Interest

> **Concept — interest**
> Article 11 splits one cross-border return between the two States. Because interest is normally a deductible expense for the payer, the source State is allowed only a capped charge (typically 10%) on the gross, available to the beneficial owner, while the residence State taxes the lender in full and relieves the overlap.[31]

Interest is treated as *arising* in the State of which the payer is a resident unless it is borne by a permanent establishment there, in which case the PE's State is the source. Many conventions exempt interest paid to (or guaranteed by) the government, the central bank, or specified state-owned financial institutions. The China protocol is the clearest illustration: its paragraph 3 names the qualifying institutions on each side—on the Chinese side the major state-owned banks (the Bank of China, the Industrial and Commercial Bank of China, the China Construction Bank, the Agricultural Bank of China, the China Development Bank and the Export-Import Bank of China, among others), and on the Cambodian side bodies such as the Rural Development Bank. The exemption, therefore, turns on the institution being on the agreed list, not merely on its being state-owned: because China's largest banks are state-controlled, the practical reach is broad, but it is the enumeration—not a general "all state-owned banks" rule—that governs.[32]

**Two points of variation.** First, the definition of interest (income from debt-claims of every kind) governs the boundary with dividends and other income: a *participating* or hybrid return may be re-characterized as a dividend (engaging the Article 10 rate and the deemed-dividend rules), and an *excess* interest charge above what unrelated parties would have agreed is, under the special-relationship rule of Article 11(6), reallocated and taxed under domestic law—often as a disguised dividend. Second, the rate structure is not uniform: the Thailand convention reserves the 10% rate for financial institution beneficial owners and taxes other interests at 15%. Cambodia's domestic interest-limitation rules then sit on top, capping deductibility and potentially recharacterizing the payment, so the governing treaty article and the rate can shift with the domestic characterization.[33]

**Interest only — but what about penalties and other bank charges?** A point worth pressing: Article 11 reaches *interest*, defined as "income from debt-claims of every kind," and not every sum a borrower pays a lender is interest. The Model itself draws the first line in the last sentence of Article 11(3): "Penalty charges for late payment shall not be regarded as interest for the purpose of this Article." Late-payment penalties therefore fall *outside* the interest article altogether—taxable, as Vogel explains, as business profits (Article 7) if attributable to a PE, or otherwise as other income (Article 21), which in the UN Model and several Cambodian texts permits source taxation. The same analysis governs ancillary loan fees—arrangement, commitment, management and guarantee fees: in so far as they are consideration for *services* rather than for the *use of money*, Vogel treats them as not being interest, so they are tested under the business-profits, technical-fee or other-income articles instead; only a fee that is in substance disguised remuneration for the credit is swept back into Article 11. The practical lesson is that a single loan agreement

---

[31] W Haslehner, 'Article 11 (Interest)' in Reimer and Rust (n 3) vol I, m.nos 6–13 (main features: the shared allocation and the capped gross-basis source charge).

[32] Haslehner, 'Article 11' (n 31) m.nos 121–133 (the source rules of Art. 11(5)) and m.nos 70–83 (source-taxation practice by type of interest, including exemptions for government and public-body lending); OECD/UN Commentary on Art. 11; Cambodia–China Protocol, para. 3 (re Art. 11(3), enumerating the qualifying government financial institutions of each State).

[33] Haslehner, 'Article 11' (n 31) m.nos 108–109 (the interest/dividend boundary for participating loans and instruments treated as dividends) and m.nos 142–146 (the special-relationship rule of Art. 11(6) on excess interest); LOT art. 12 (limitation on the deduction of interest expense).

can engage three different distributive articles, and the source result for the non-interest elements is frequently *more* favorable to Cambodia than the capped interest rate.[34]

### (c) Royalties — and the scope problem

> **Concept — royalties**
> Article 12 caps source taxation of royalties—payments for the use of, or right to use, copyrights, patents, trademarks, designs, secret formulas, and know-how. The *scope* of the definition is not uniform, and the differences change the result.

**The equipment scope difference.** The UN-Model royalty definition includes payments for the use of *industrial, commercial, or scientific equipment* (equipment leasing); the OECD-Model definition, since 1992, does *not*. Cambodia's conventions split accordingly—the Korea royalty article (and many other DTAs), for instance, expressly covers industrial, commercial, and scientific equipment, whereas the China DTA omits this coverage. The consequence is decisive for cross-border equipment rental: where the royalty article *includes* equipment, the rental is a royalty that Cambodia (the source State) may tax at 10%; where it *omits* equipment, the rental falls under business profits (Article 7) and, absent a PE, is taxable *only* in the lessor's State of residence. In short, omitting scientific equipment rental from the royalty article benefits the residence State that owns the equipment (the non-resident lessor escapes Cambodian tax), whereas including it benefits Cambodia as the source State.[35]

**Royalty or service? The characterization that decides everything.** Beneath the scope question lies a more fundamental fork, which must be flagged in every mixed contract. If a payment is a royalty, the source State *always* has a taxing right: the royalty article gives Cambodia a capped source tax regardless of presence. If the same payment is a service, the position is blurred—under the Models only *technical* services (through an FTS article or a service PE) are taxed at source, while ordinary services are business profits taxable only through a PE. The boundary is notoriously unstable: payments for software, the supply of know-how versus the rendering of a service, the use of a database versus access to a platform. The same sum can fall on either side. The lesson is that classification, not computation, is where Cambodian source taxation of intangibles is won or lost: a payment pushed from the royalty box into the non-technical service box moves from "always taxable at source" to, potentially, "not taxable at all."[36]

### (d) Technical service fees — definition, interpretation, and the digital gap

> **Concept — fees for technical services (FTS)**
> The default for services is Article 7: a service fee is business profit and is taxable only at source, through a PE. An FTS article (UN-Model Article 12A) departs from that default, allowing the source State to tax

[34] OECD/UN Model, art. 11(3), final sentence ("Penalty charges for late payment shall not be regarded as interest"); OECD Commentary on Art. 11, para. 22 (penalty charges excluded), and paras 21–21.1 (fees that are not consideration for the use of money fall outside the definition of interest); see UN Model, art. 21(3) (source-taxation option); Haslehner, 'Article 11' (n 31) m.nos 85–88 (the interest definition and the exclusion of penalty charges) and m.nos 105–107 (divergent treaty practice on the exclusion).

[35] UN Model, art. 12(3) (equipment included); OECD Model, art. 12(2) (equipment removed in 1992); M Valta and S Langner, 'Article 12 (Income from Royalties)' in Reimer and Rust (n 3) vol I, m.nos 70–118 (the scope of the royalty definition) and m.nos 160–168 (industrial, commercial and scientific equipment).

[36] Valta and Langner, 'Article 12' (n 35) m.nos 86–89 (the royalty/know-how boundary) and m.no. 14 (delimitation to business profits); Reimer, 'Article 7' (n 18) m.no. 40 (passive business profits); OECD Commentary on Art. 12, paras 11–11.6 (the supply of know-how versus the rendering of services); UN Commentary on Arts. 12 and 12A.

> managerial, technical, and consultancy fees on a gross basis, with no PE and no time threshold — using base erosion itself as the nexus.[37]

**Definition and the prevailing interpretive source.** Across the network, FTS are treated inconsistently: the Korea and China treaties carry an express FTS definition (managerial, technical or consultancy services, including the provision of personnel), while others merge FTS into the royalties article (Article 12) with the same definition; in practice, a Cambodian DTA with no FTS provision at all is not encountered. Where a treaty defines FTS, that definition governs; where it does not, the prevailing interpretive source should be the UN Commentary on Article 12A. On the substance of Article 12A, Malan's analysis is the leading account: she shows that the article *uses base erosion itself as the nexus*, *requires no threshold* (no PE, no physical presence, no minimum number of days), applies *only to technical services*, and permits source taxation on a gross basis, reaching income the source State was, before Article 12A, prohibited from taxing. Her conclusion is that it is a revolutionary provision, either "ahead of its time or a step too far," unproven because some developed States have so far declined to adopt it; but, critically for the digital question below, she argues a future Article 12A "could also provide a solution for the tax treatment of digital services."[38]

**China and Korea — the individual-consultant gap.** Because the China technical-fees article excludes remuneration taxable under the independent-personal-services article (Article 15 of that convention; Article 14 of the UN Model), a genuinely itinerant, fixed-base-free individual consultant escapes the 10% charge, an ordinary product of a UN-style IPS article, not a concession peculiar to China, but real. Korea closes that gap: its merged royalties-and-FTS article (Article 12) taxes managerial, technical, and consultancy fees at 10% gross. Because Korea has no IPS article at all, there is no carve-out, so the fee is caught whether rendered by a company or an individual. The worked example that follows illustrates the Chinese side; the deductible-payment escape it shows is disciplined only by the breadth of the FTS definition and the domestic GAAR (Art. 194 LOT).

> **Worked example — the vanishing service fee, and the gross-up**
>
> A Chinese group supplies and commissions a plant for US$10m, split as US$8.5m for offshore supply / US$1.5m for on-site commissioning. The supply bears no Cambodian tax. The commissioning, as a *technical fee*, bears 10% (US$150,000); recast as *business profits* with no fixed place, it bears nothing. The customer deducts the full US$10 million.
>
> And because who bears the tax is itself negotiable, the contract is typically written net of Cambodian tax: the supplier stipulates a sum "free of all withholding," and the Cambodian customer grosses up and bears any 10% charge (whose only friction is that the withholding it assumes, as opposed to the fee, is non-deductible). So, the residual charge, where it applies at all, is shifted from the foreign supplier to the domestic economy. Under the China treaty, the incidence of source taxation on Chinese services is determined less by the rate card than by the parties' bargaining power, and in the authors' experience the Cambodian side rarely prevails.

[37] OECD/UN Model, art. 7 (services as business profits, taxable only through a PE); Valta and Langner, 'Article 12' (n 35) m.no. 14 (delimitation to art 7) and m.nos 221–246 (Annex: art 12A UN MC on fees for technical services).

[38] MT Malan, 'New Article 12A of the UN Model Regarding Fees for Technical Services: Ahead of Its Time or a Step Too Far?' (2019) *Bulletin for International Taxation* (IBFD) §4 (Conclusions): Art. 12A (1) uses base erosion as a nexus, (2) requires no threshold, (3) applies only to technical services, and (4) permits gross-basis source taxation; and that a future Art. 12A "could also provide a solution for the tax treatment of digital services." UN Model (2017), Commentary on Art. 12A.

**Article 12B and recurring IT / automated digital services.** The newest UN development, Article 12B (2021), permits source-based taxation of income from automated digital services: the recurring software subscription, cloud, and platform fees that dominate modern cross-border IT. None of Cambodia's conventions contains Article 12B. The best practice, where a treaty lacks it, is to characterize the payment with care: a recurring IT or cloud fee that is neither a royalty (no right to exploit the underlying code) nor a defined technical service *falls into the "other income" article*, whose paragraph 3 (in the UN Model) allows source taxation but in many treaties refers the income back to domestic law. Cambodian domestic law has not caught up: the Prakas on Tax on Income (No. 578) does not yet address recurring IT services, so the income may be left to the general non-resident withholding rule (14%, reduced to 10% only where a treaty FTS or royalty article applies) — or may escape Cambodian taxation altogether.[39]

## 6. Capital gains (Article 13)

> **Concept — the architecture of the capital-gains article**
> Article 13 allocates the right to tax gains *category by category*, in a fixed cascade. Gains from immovable property (paragraph 1) and from the movable assets of a PE (paragraph 2) may be taxed at source; gains from ships and aircraft in international traffic (paragraph 3) are residence-only; gains on shares of an immovable-property-rich company (paragraph 4) may be taxed at source; and a residual clause (paragraph 5) sweeps up "any other property", most importantly, ordinary shareholdings, and assigns it *exclusively* to the alienator's State of residence.[40]

**The residual clause (paragraph 5).** This provision is the hinge of cross-border exit planning. Because it gives *exclusive* taxing rights to the residence State over gains not caught by the earlier paragraphs, a seller resident in a treaty partner who sells ordinary (non-property-rich) shares in a Cambodian company pays no Cambodian capital-gains tax at all: Cambodia, as the source State, is switched off. The clause is the single most valuable feature of the capital-gains article for an inbound investor, and the single largest leak of the Cambodian base on a share sale.

**It is not just about shares.** Because paragraph 5 catches "any other property" the earlier paragraphs do not allocate, its reach is far wider than share sales, and each category is, by default, taxable *only* in the alienator's State of residence: gains on bonds, debentures and other debt-claims; financial instruments such as options, futures and other derivatives; intangible property sold outright (patents, trademarks, designs, copyrights and goodwill) where the gain is a disposal rather than a royalty; partnership and other equity interests that are not immovable-property-rich shares; gains on foreign currency and on the alienation of a business as a going concern beyond its PE assets; and, on the prevailing view, gains on *crypto-assets* not otherwise allocated. For each, absent a specific source-taxing paragraph, Cambodia is switched off, and the residence State alone may tax.[41]

---

[39] UN Model (2021), art. 12B (income from automated digital services); art. 21(3) (other income, source-taxation alternative). Prakas No. 578 MEF.PrK.GDT, Prakas on Tax on Income, art. 8 (source income), enumerates interest, dividends, services performed in Cambodia, management and technical service fees, and royalties, but contains no category for recurring IT or automated digital services

[40] E Reimer, 'Article 13 (Capital Gains)' in Reimer and Rust (n 3) vol I, m.nos 2 and 39–50 (the category-by-category structure of Art. 13(1)–(4)); OECD Model, art. 13; UN Model, art. 13 (which adds a broader source-taxation right over shareholdings in para. 5).

[41] Reimer, 'Article 13' (n 40) m.nos 149–161 (the catch-all / residual rule of Art. 13(5)); OECD/UN Commentary on Art. 13(5). The OECD Commentary records positions by several States (e.g. Colombia, India, Vietnam) seeking broader source taxation of share and other gains—confirming that the residual rule is the default a source State must contract out of.

**The immovable-property-rich (or "land-rich") company rule (paragraph 4).** Paragraph 4 is the anti-avoidance counterweight to the residual clause. It prevents an investor from escaping source taxation of *Cambodian land* simply by holding it through a company and selling the *shares* rather than the land: where shares derive more than 50% of their value, directly or indirectly, from immovable property situated in Cambodia, the gain on the shares is taxed as though it were a gain on the underlying land. The test reaches *indirect* holdings, so an intermediate holding company does not defeat it. The practical question on any sale of a Cambodian land-holding structure is therefore whether the 50% threshold is crossed on the disposal date.

**The 365-day look-back.** A structuring weakness in the bare paragraph-4 test is timing: an investor could *dilute* the property ratio just before a sale by injecting cash or non-property assets so that, on the disposal date, immovable property is momentarily below 50%, and thereby fall into the residence-only residual clause. The BEPS-standard fix, adopted in the signed Philippines text, is a 365-day look-back: the 50% test is met if it is satisfied at *any time* during the 365 days preceding the alienation, so that a last-minute dilution no longer works. The in-force treaties, by contrast, assess the ratio only at the moment of disposal, leaving them open to exactly this timing play. The presence or absence of the look-back is thus decisive, and must be checked per treaty.[42]

**Can you simply inject cash where there is no look-back?** This is the question the look-back provokes, and the answer is more nuanced than the bare text suggests. On a *literal* reading of an in-force treaty that tests the property ratio only at the disposal date, an investor *could* inject cash or other non-property assets days before the sale to push immovable property below 50% and so claim the residual exemption. But two doctrines stand in the way. First, the manipulation is *contrary to the object and purpose* of paragraph 4, whose whole point is to tax gains on land held through a company as land gains; an interpretation under the Vienna Convention that defeats that purpose is suspect, and the 365-day rule was introduced precisely to codify the answer the purpose already implied. Second, where the dilution is a temporary, circular step whose principal purpose is to obtain the exemption, it is a textbook abuse: caught by a treaty principal purpose test where the convention has one, and, where it does not (the older treaties, China included), by Cambodia's domestic GAAR (Article 194 LOT), which may disregard the transient injection as a substance-less arrangement to reduce tax. The absence of a look-back might, therefore, be a drafting gap, not a safe harbor: the dilution works on the page but might not work against an administration armed with the PPT or the GAAR.[43]

### Where the gap bites: how Prakas 496 became Prakas 1130

Several conventions contain a residual capital-gains rule, granting the residence State exclusive taxing rights over non-immovable property share gains, thereby precluding the source State, Cambodia, from taxing such gains where the seller is a treaty resident. The recent history of the CGT Prakas is the story of Cambodia learning to live with that clause.[44]

**Prakas No. 496 (18 July 2025) the flawed first attempt.** The original Prakas took a blunt approach: under its Article 6(3), the *entire* transfer value of shares was treated as a capital gain taxed at 20%, and retained

[42] OECD Model, art. 13(4) (post-2017, incorporating the 365-day testing period); UN Model, art. 13(4). The Cambodia–Philippines (signed) convention adopts the 365-day look-back; the in-force conventions test at the date of alienation only.

[43] Reimer, 'Article 13' (n 40) m.no. 118 (the >50% immovable-property test for shares under Art. 13(4)) and m.no. 32 (structured transactions and potential abuse, of which the 365-day rule is the anti-avoidance refinement); on the application of a PPT and of domestic GAARs to such timing manipulations, OECD Commentary on Arts. 1 and 29; LOT art. 194.

[44] Located at art. 13 in the OECD/UN Models but numbered art. 14 in several Cambodian conventions. Reimer, 'Article 13' (n 40) m.nos 149–161.

earnings were *fully exempt* from deemed-dividend taxation. Domestically, this looked attractive: the entire transaction value bore a 20% tax, and it worked well enough when the seller was a resident of a non-treaty country. But for a seller resident in a DTA with an Article 14(5) residual clause (Article 13(5) in the Models' numbering), it was self-defeating: by characterizing the whole proceeds as a *capital gain*, it handed the entire amount to the residual clause, so Cambodia could tax neither the gain (exempt under the treaty) nor the undistributed profits (no deemed dividend). Against treaty-resident sellers, Cambodia risked collecting nothing.[45]

**Prakas No. 1130 (31 December 2025) — the correction.** The revision is a deliberate policy fix. It decouples dividend taxation from capital-gains taxation: at the moment of transfer, undistributed profits are deemed distributed as a dividend and bear withholding *regardless* of the seller's residence—so Cambodia keeps its tax on retained earnings whether or not a treaty applies—while only the *remaining* transfer value is treated as a capital gain, against which a DTA-resident seller may still invoke the Article 14(5) exemption. A relief mechanism prevents the same profits being taxed twice when the deemed dividend is later actually distributed, and CGT on *immovable* property is separately deferred to 1 January 2027. Cambodia now secures the dividend base it previously forfeited while honoring genuine treaty exemptions on the capital-gains element, aligning its practice with the residual clause instead of being defeated by it.[46]

## 7. Income from personal services: employment, directors, entertainers, pensions (Articles 15–18)

> **Concept — the personal-services rules**
>
> Employment (Art. 15): taxable where exercised, but the source State may not tax where the employee is present for under 183 days, paid by a non-resident employer, and the cost is not borne by a local PE. Directors' fees (Art. 16): taxable in the State of the company's residence. Entertainers and sportspersons (Art. 17): taxable where the activity is performed, overriding Articles 7 and 15. Pensions (Art. 18): private pensions are taxable only in the State of residence.[47]

Cambodia's treaties reproduce these rules with little variation in substance, but with one structural divergence worth flagging: the UN-style treaties retain a separate Independent Personal Services article (the old Article 14) for self-employed professionals, whereas others, the Korea convention among them, omit it, so that independent services fall under business profits (Article 7) or, if technical, the FTS article. The presence or absence of that article is decisive for an itinerant professional, as the China convention shows.

## 8. Elimination of double taxation and the tax-sparing credit (Article 23)

> **Concept — the credit method and tax sparing**
>
> Article 23 tells the residence State how to relieve double taxation, here by the ordinary credit. The decisive variable for Cambodia is the tax-sparing credit: a clause under which the partner State credits

[45] Prakas No. 496 MEF.Prk of 18 July 2025, art. 6(3) (entire transfer value taxed as a capital gain at 20%; retained earnings exempt from deemed-dividend taxation)

[46] Prakas No. 1130 MEF.Prk.GDT dated 31 December 2025. The DTA-relief procedure is now confirmed: GDT Instruction No. 23862 of 4 August 2025 on the Implementation of Capital Gains Tax under the Framework of Double Taxation Agreements (building on Instruction No. 4084 GDT of 2018) reaffirms that, under Article 191 LOT, an enacted DTA prevails over domestic law.

[47] L De Broe, 'Article 15 (Income from Employment)' in Reimer and Rust (n 3) vol II, m.nos 158–162 (the place-of-work rule) and m.nos 181 ff (the 183-day, non-resident-employer and PE-borne conditions of art 15(2)). On directors' fees, entertainers and pensions: A Cordewener, 'Article 16' and 'Article 17', and R Ismer, 'Article 18', in Reimer and Rust (n 3) vol II.

> the tax that Cambodia has notionally forgone under an incentive regime, so that a Cambodian tax holiday is not clawed back upon repatriation. Without it, the tax saved in Cambodia is simply collected at home, and the incentive leaks abroad.[48]

Tax sparing is present in seven in-force conventions (China, Brunei, Indonesia, Vietnam, Hong Kong, Malaysia, Korea) and absent in four (Singapore, Thailand, Macau, Türkiye). Of the seven, the Korea convention is the only one whose sparing credit is time-limited, effective for ten years from entry into force and extendable by mutual agreement (Article 22(b)(iii)), while the others are open-ended, and Brunei's is bilateral. The distribution bears directly on the Qualified Investment Project (QIP) and other tax incentive regimes, such as those in agricultural sectors: an investor routing through a tax-sparing jurisdiction retains the value of a Cambodian holiday, while one routing through Singapore, Thailand, Macau, or Türkiye may find it recaptured at home.

> **Tax incentives and the global minimum tax**
> Cambodia is not in the OECD/G20 Inclusive Framework and has adopted no Pillar Two rules. For in-scope groups (consolidated revenue ≥ €750m), an income tax below the 15% floor is now exposed to top-up tax abroad, so the incentive's benefit can flow to a foreign treasury regardless of any tax-sparing clause. A qualified domestic minimum top-up tax would allow Cambodia to collect the top-up itself—the lowest-regret response, because it reclaims revenue that would otherwise be lost.

**Does tax sparing still matter once the partner adopts Pillar Two?** For a multinational group whose residence State has adopted the GloBE rules, largely no. Tax sparing works by having the residence State *credit* the tax Cambodia notionally forgave, so a holiday survives repatriation. But the GloBE income-inclusion and undertaxed-profits rules bite on *effective* tax rates computed on tax *actually* paid: if QIP income is taxed in Cambodia below the 15% minimum, a top-up is levied in the group's parent (or another) jurisdiction to reach 15%, and that top-up is indifferent to any tax-sparing clause, because notionally-spared tax is not tax paid. The credit is therefore hollowed out for in-scope groups: the value the holiday was meant to deliver is recaptured abroad as top-up tax. Tax sparing retains real force only for *out-of-scope* groups (below the €750m threshold) and to the extent Cambodia's effective rate already reaches the floor, which sharpens the QDMTT point: if the top-up will be collected somewhere, Cambodia should collect it rather than leave a now-ineffective sparing clause to watch the revenue leave.[49]

---

[48] A Rust, 'Articles 23A and 23B (Exemption Method/Credit Method)' in Reimer and Rust (n 3) vol II, m.nos 37–60 (the credit method) and m.nos 62–66 (credit for notional taxes: tax sparing provisions); on tax sparing specifically, OECD, *Tax Sparing: A Reconsideration* (OECD 1998) ch III (the case against tax sparing) and its best-practice recommendations.

[49] OECD, Tax Sparing: A Reconsideration (1998) (questioning the effectiveness and abuse-susceptibility of tax sparing); OECD/G20, Tax Challenges Arising from the Digitalisation of the Economy — Global Anti-Base Erosion Model Rules (Pillar Two) (2021), arts. 2.1–2.6 (IIR/UTPR top-up to a 15% minimum effective rate, computed on covered taxes actually paid). The GloBE top-up is computed without regard to a tax-sparing credit, so the credit cannot preserve the incentive's value for in-scope groups.

# VI. Treaty access, anti-abuse, and dispute resolution

## 1. Treaty access in practice: administrative requirements and the pre-approval gateway

> **Concept — every State sets the modality for granting treaty benefits**
> A treaty allocates and caps taxing rights but leaves to each State the *procedure* by which a taxpayer claims the benefit. Almost every convention permits the source State to define the modality: a residence certificate, a claim form, a levy-then-refund, or direct application. The administrative layer is not optional decoration; it is where treaty relief is won or lost in practice.

Cambodia's modality is demanding. The reduction from 14% to 10% is not automatic: the taxpayer must obtain a formal pre-approval from the GDT through the DTA Implementation Management System, supported by a partner-State residence certificate and the underlying contracts. Under GDT Instruction No. 180 of 3 January 2024, the approval is valid only for the calendar year sought (retrospective to 1 January) and is transaction-specific, so multi-year loans, royalties, and service arrangements require annual renewal. Jaya's study of such requirements is directly on point: administrative pre-conditions, he argues, *increase compliance costs and reduce efficiency, and—when disproportionate—can defeat the treaty's very purpose of removing tax obstacles to cross-border investment*; he advocates streamlined, declaratory or multi-year procedures with safeguards rather than transaction-by-transaction pre-approval. The Cambodian regime sits at the demanding end of that spectrum, and the multi-year, arrangement-based reform Jaya describes is precisely what the private sector has urged.[50]

**And China is the exception.** Here, the China protocol bites again: by providing that the reduced rates are "directly applied rather than through a levy-then-refund procedure," it *exempts Chinese residents from the very modality* that Instruction 180 imposes on everyone else. While every other partner's investors run the annual pre-approval gauntlet, Chinese residents take the 10% rate at source. That a State may set the modality for granting benefits is orthodox; that one partner, the Kingdom's largest investor, has contracted out of it is the sharpest illustration in the network of how a protocol can quietly rewrite the practical bargain, and another concession that favors FDI from that single partner over all others.[51]

## 2. Anti-abuse, treaty access, and dispute resolution

Treaty access in Cambodia has moved from a formal enquiry toward a substance-based one, driven by three instruments: the beneficial-ownership limitation; the principal purpose test (PPT) from BEPS Action 6 (in Malaysia (Art. 28), Korea (Art. 27), Macau (Art. 29), Türkiye (Art. 28), and inserted into Singapore by the Second Protocol); and the domestic GAAR (Article 194 LOT), which carries the load for the older, PPT-less treaties, most notably China.

[50] YJ Jaya, 'Administrative Requirements for Claiming Treaty Entitlement: Problems and Solutions' (2016) 70(5) *Bulletin for International Taxation* (IBFD): administrative burdens significantly affect the economic competitiveness of enterprises, raise compliance costs and reduce efficiency, and disproportionate requirements may frustrate the treaty's object; the author favors simplified, declaratory or multi-year mechanisms with appropriate safeguards.

[51] Cambodia–China Protocol of 13 October 2016, para. 2 (re Arts. 10–13: direct application, not levy-then-refund), contrasted with GDT Instruction No. 180 of 3 January 2024 (annual, transaction-specific pre-approval) applicable to other partners.

**Table 9. Treaty-level anti-abuse (PPT) coverage**

| Partner | PPT | Article | Practical implication |
|---|---|---|---|
| **China** | No | — | Least equipped with treaty-level anti-abuse tools |
| **Thailand** | No | — | Reliance on domestic GAAR + beneficial ownership |
| **Brunei** | No | — | As above, the protocol also limits EOI |
| **Vietnam** | No | — | Reliance on domestic GAAR + beneficial ownership |
| **Hong Kong** | No | — | Reliance on domestic GAAR + beneficial ownership |
| **Indonesia** | No (formal) | — | BEPS PE rules give a partial anti-abuse effect |
| **Singapore** | Yes | Art. 28 (2nd Protocol) | Treaty PPT from 2026; original had none |
| **Malaysia** | Yes | Art. 28 | PPT + anti-treaty-shopping preamble |
| **Korea (Rep.)** | Yes | Art. 27 | Standard OECD/MLI PPT |
| **Macau SAR** | Yes | Art. 29 | Standard OECD/MLI PPT |
| **Türkiye** | Yes | Art. 28 | Standard OECD/MLI PPT |
| **Philippines** | Yes | Art. 29 | Signed; treaty PPT + BEPS preamble |
| **Laos** | Yes | Art. 29 | Signed; treaty PPT + BEPS preamble |

**Can Cambodia apply its GAAR against a treaty, especially where there is no PPT?** This is the live question for the China convention, which does not carry a principal purpose test. The answer, drawn from the recent literature, is a qualified yes. Whether a domestic anti-avoidance rule that *conflicts* with a treaty can prevail is not resolved by the treaty itself: as Mirembe and Staringer put it, "no treaty can derive its legal power … from itself," so the hierarchy between a treaty and a domestic anti-abuse rule "is, above all, an issue governed by the domestic legal order"—a constitutional question answered differently in different States. In Cambodia, the question is squarely answered by Article 191 of the Law on Taxation, under which treaties take precedence over the Law, so a domestic rule that genuinely conflicts with a convention cannot override it.[52]

But that is not the end of it, because applying a GAAR to a *genuinely abusive* arrangement does not *conflict* with the treaty at all—and here Rust and Emanuele are precise. As they record, "the OECD reversed its former position in 2003 … the position taken was that there is no conflict between domestic anti-avoidance rules and tax treaties as a general rule," and in the 2017 Commentary the OECD treats the PPT of Article 29(9) as giving "domestic GAARs a treaty foundation and … reconcil[ing] domestic GAARs with the treaty itself," such that "in the vast majority of cases, there will be no conflict between tax treaties and [domestic anti-avoidance rules]." The corollary the authors draw is the one that matters where there is *no* PPT: "the inclusion of a PPT in a tax treaty does not *per se* eliminate the conflict with domestic GAARs … the domestic anti-avoidance rule can have a broader scope of application and deny treaty benefits in situations where they would not be denied under the PPT." If a domestic GAAR can reach further than a treaty PPT, then *a fortiori* it operates where the treaty contains no PPT at all.[53]

On that footing, Cambodia can deploy Article 194 LOT against an abusive structure routed through a no-PPT treaty, such as China—re-characterizing a substance-less conduit or a fictitious arrangement—just as

[52] R Mirembe and C Staringer, 'Impact of Domestic SAARs on Tax Treaties' in Staringer and Szudoczky (n 11) ch 2: the legal hierarchy of domestic anti-abuse rules and treaty obligations "is, above all, an issue governed by the domestic legal order," typically a constitutional matter, with a presumption that domestic rules be read "treaty-friendly" where possible; and Rust and Emanuele (n 11). LOT art. 191 (treaty precedence).

[53] Rust and Emanuele (n 11) sections 3.2.1–3.2.2 (verbatim: the 2003 reversal; the PPT as giving domestic GAARs "a treaty foundation"; and the broader scope of domestic GAARs). The OECD position is reflected in OECD Commentary on Art. 1 (2017), paras 66–80, and the guiding principle in para. 61.

it would under a treaty PPT, and it does so *without* infringing the treaty, because (in the OECD's and the authors' shared analysis) no genuine conflict arises. What Article 191 LOT forecloses is the *misuse* of the GAAR to override the treaty's allocation of taxing rights in *legitimate*, commercially-driven cases; there, the treaty result stands. The absence of a PPT in the China treaty therefore narrows, but does not remove, Cambodia's anti-abuse armory: beneficial ownership and the Article 194 GAAR remain available against genuine abuse, while honest structures keep the benefit of the bargain. The one caveat Rust and Emanuele themselves flag is interpretive identity—a domestic GAAR and a treaty PPT do not always "coincide," so a Cambodian assessment under Article 194 should be argued in object-and-purpose terms that track the guiding principle, not merely in domestic-law conclusions.[54]

**The counter-position, named and met.** Candor requires acknowledging that not every commentator accepts the OECD's "no conflict" thesis. A *dualist* strand of the literature holds that, where a domestic anti-avoidance rule denies a benefit the treaty on its terms confers, the State has *breached* its treaty obligation regardless of domestic constitutional hierarchy—a breach that may engage State responsibility under the law of treaties and that a domestic "treaty override" cannot cure as a matter of international law. On this view the comfortable claim that a GAAR and a treaty "occupy different planes" simply relabels an override. The objection has real force as a matter of *international* law, but it does not change the Cambodian result for two reasons. First, the analysis above does not assert an override: a GAAR applied to a *genuinely abusive* arrangement denies a benefit the treaty, read in the light of its object and purpose under VCLT Article 31 and the guiding principle, never intended to confer, so there is no treaty breach to engage responsibility. Second, in the residual case of true conflict in a *legitimate* transaction, Article 191 LOT subordinates the domestic rule to the treaty, so the treaty prevails and the dualist's feared override does not occur. The counter-position thus sharpens rather than defeats the conclusion: GAAR for abuse; treaty for the rest.[55]

**And one protocol puts it beyond doubt.** Where most of Cambodia's conventions leave the GAAR question to be inferred, the Hong Kong protocol settles it in the text, providing that "nothing in the Agreement shall prejudice the right of each Contracting Party to apply its laws and measures concerning tax avoidance, whether or not described as such." That is an express domestic-anti-avoidance saving clause—precisely the "no conflict" position, written into the treaty itself. It confirms, for at least one no-treaty-PPT partner, that applying the Article 194 GAAR to abuse is not a breach but a reserved right; and it supplies a drafting template the Kingdom could seek in any future renegotiation of the older, silent treaties such as China's.[56]

**Dispute resolution.** Where a dispute persists, the mutual agreement procedure, organized by Prakas No. 318 MEF.PRK of 12 May 2021, allows a taxpayer to bring before the administration a taxation contrary to the convention, within three years of the first notification. MAP does not displace domestic remedies, but the two tracks must be sequenced with care: a final domestic court decision forecloses the procedure. For cross-border structures exposed to transfer-pricing adjustments or contested PE findings, the three-year

[54] Rust and Emanuele (n 11) section 3 (the residual non-coincidence of domestic GAAR and treaty PPT, and the need to anchor the domestic rule in the convention's object and purpose); Mirembe and Staringer (n 52) section 3.3 (hierarchy as a domestic-law question). LOT arts. 191 (treaty precedence) and 194 (GAAR); OECD Commentary on Art. 1 (2017), para. 61.

[55] For the dualist/treaty-breach critique of domestic anti-avoidance overrides, see the discussion and references in Mirembe and Staringer (n 52) and Rust and Emanuele (n 11); VCLT arts. 26–27 (pacta sunt servanda; internal law no justification for non-performance) and 31 (interpretation in light of object and purpose).

[56] Cambodia–Hong Kong Protocol (Phnom Penh / Hong Kong, June 2019), para. 1: "nothing in the Agreement shall prejudice the right of each Contracting Party to apply its laws and measures concerning tax avoidance, whether or not described as such." A textual instance of the OECD "no conflict" position (OECD Commentary on Art. 1 (2017), paras 66–80).

window and the interaction with domestic litigation should be factored into any dispute strategy from the outset.

## VII. Conclusion — no two alike

The comparison does not reveal a single Cambodian text reproduced from one convention to the next, and the search for a "Cambodian model" is the wrong frame. The building-site threshold ranges from six to nine months; the service PE is present in most treaties and absent in China and Korea; the insurance and equipment PEs appear in some and not others; internal head-office charges are deductible under the OECD-style treaties and barred under the UN-style ones; the royalty article taxes equipment rental in some conventions and not in others; and tax sparing is granted in seven treaties, withheld in four, and time-limited in only one. The treaties are not created equal. Each is a separately negotiated bargain, marked by its own special features and its own concessions, and the size and shape of those concessions track the bargaining weight of each partner.

Two of Cambodia's major-partner treaties, China and Korea, illustrate the spread from opposite directions, and they answer the question advisers actually ask—which gives the most away. **The verdict: the China treaty concedes the most.** It shares Korea's service-PE gap but adds an excluded equipment royalty, an individual-consultant escape, no treaty-level anti-abuse test, and a protocol that allows Chinese residents to apply for a direct rate. Korea, by contrast, is among the best-drafted treaties in the network from Cambodia's standpoint: source-taxing on equipment and technical fees, equipped with a corresponding adjustment and a principal purpose test, conceding only the service PE (and offering a tax-sparing credit that, tellingly, *sunsets*). Set beside it, the China DTA is **a concession of a different order**. An adviser who assumed Cambodia's conventions were interchangeable would misjudge both, and would most badly misjudge how much, and how quietly, through its protocol, the China treaty gives away.

**The stakes, in orders of magnitude**. That the China treaty concedes the most is not an abstract observation, because China is also, by a wide margin, the source of most of the capital those concessions touch. According to the Council for the Development of Cambodia's figures, China (including Hong Kong and Taiwan) supplied roughly US$3.4 billion of foreign direct investment in 2024, about three-quarters of total inflows, and accounted for close to half of cumulative approved investment, with a fixed-asset FDI stock on the order of US$25.9 billion by end-2023.[57] That is not to deny common threads. A 10% withholding ceiling, source taxation of immovable-property-rich share gains, residence-only taxation of (most) international transport, and a distinctive pre-approval gateway recur across the network, and behind every treaty stand the same domestic backstops. These shared traits express a coherent policy posture: the simultaneous pursuit of investment attractiveness and the defense of source-State taxing rights, rather than a fixed template. And over that posture lies a clear trajectory: from formal, first-generation instruments toward BEPS-aligned, substance-based ones, with the Singapore Second Protocol showing the administration retrofitting the new standards onto old treaties by amendment rather than renegotiation. For investors, the practical conclusion is therefore not a model but a method. The ability to navigate that variation is the craft itself, and this article has sought to equip the reader to do so.

[57] Council for the Development of Cambodia (CDC) data, as reported in the U.S. Department of State, 2025 Investment Climate Statement: Cambodia (Sept. 2025), and Khmer Times, "China remains Cambodia's largest FDI source" (2025): Chinese FDI inflows (incl. Hong Kong and Taiwan) of approx. US$3.4 billion in 2024 (~75% of inflows); cumulative fixed-asset FDI stock from China of approx. US$25.9 billion at end-2023. Figures are illustrative of magnitude and concentration, not a computation of revenue foregone.