

# Rules for applying CIT Act amended (3/22/20)

The Cabinet of Ministers' amendments to Cabinet Rule No. 677 of 14 December 2017, *Application of provisions of the Corporate Income Tax Act*, were published on 7 May 2020. The Cabinet Rule prescribes how a non-resident entity should report income from real estate leases, explains the calculation of income for a permanent establishment, and adjusts the treatment of corporate reorganisations.

## The income of a permanent establishment ("PE")

There used to be confusion about the prescribed 10% rate of expenditure deductible in calculating a PE's taxable base. The amendments explain that the 10% is to be calculated from –

- any expenses the non-resident head office (HO) has in fact paid, whether wholly or partly, as long as those expenses are directly linked to the PE's business; and
- the value of goods the HO has supplied to the PE.

Of course, any indirect expenses within the 10% must be excluded from the cost of goods or services supplied by the HO to the PE or attributed to the PE as related expenses.

## A new condition for reorganisations

A deemed dividend will arise in the course of a reorganisation from any assets that are included in the acquiring company's share capital, with a CIT liability being deferred until the share capital is reduced.

Thus, if a company is split up and a share capital is established according to a valuation of the business activity transferred, then the value of assets included in it could represent a deferred CIT liability when the share capital is reduced.

Similarly, the value of assets transferred in a merger will represent a deemed dividend and attract CIT if the share capital is reduced by that amount in the future.

## Charging CIT on income from real estate leases

The Cabinet Rule now lists details to be filed and procedures for completing the form. This will enable non-residents to file an assessment of their rental income and any directly related expenses. Gross profit in this case will attract a 20% CIT. If a 5% CIT has been withheld on the rental income earlier, then an overpay could arise, which the non-resident will be able to recover.