Curbing Illicit Financial Flows from Resource-rich Developing Countries: Improving Natural Resource Governance to Finance the SDGs


Transfer Mispricing Laws in Context: The case of Lao PDR

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Abstract

Illicit Financial flows-IFFs undermine the socio-political and economic stability of a country. Moreover, they erode a country’s tax base and are especially detrimental towards developing countries which most crucially need financing for development. Taxes, as an effective tool for domestic revenue collection and redistribution of resources, have figured high on the development agenda for developing countries to finance their development. However, in case of Lao PDR, where most revenues drawn from natural resource extraction should result in greater domestic revenue mobilization. The research and studies on IFFs and taxes including trade mispricing are limited. This paper attempts to analyze the trade mispricing on commodity trade-related IFFs such as copper and coffees, to find out whether or not any form of IFFs regarding to taxes exist in Lao PDR and how to curb it. His report describes firstly about the introduction and overview the legal system of Lao PDR; then it examines the existing laws regarding the transfer mispricing and assessing traditional and simplified transfer mispricing approaches in the context of Lao PDR. The findings of the paper reveals the alternative options to major challenges of curbing IFFs-trade mispricing in Lao PDR and conclusion and recommendations.
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I. Introduction and Overview

A. Country Legal System

The Lao People’s Democratic Republic (Lao PDR or Laos) is one of Southeast Asia’s poorest countries\(^1\) and the sub-region’s most ethnically diverse country. Its population of 6 million\(^2\) has four broad ethnolinguistic families: the Lao-Tai (67% of the population), the Mon-Khmer (21%), Hmong-Lu Mien (8%), and the Chine -Tibetan (3%). These categories further subsume 50 distinct ethnicities and some 200 ethnic subgroups.

The legal system of Lao PDR is inherited a typical civil law-based legal system from the French colonial administrators in Indochina sub-region in early 20 centuries, and mixed also with Socialism ideology and Lao customary rules of different ethnic groups in Lao PDR. After proclaiming and establishment of Lao PDR in 2\(^{nd}\) December 1975, the laws and regulations which enacted during the French colonial administration, especially the first Constitution and the civil code enacted in 1947 were abolished and replaced with new laws and regulations. Since then in 1986, the open-door policy or new economic mechanism was introduced, in order to be attractive to the Foreign Direct Investments (FDI); FDI inflows are seen as one method of boosting economic development and growth, and assisting in the transition process – from the central economic mechanism to the market oriented economy -consisting of both economic reforms and business liberalization measures; and inadequate legal infrastructure and weak enforceability, so in 1990s the country had started its legal reform with the supports by the international financial institutions such as the World Bank and IMF, and also by the foreign donors.

The first Constitution of Lao PDR was passed by the National Assembly in 1991 and laws related to the court system, civil and criminal procedures, private ownership, and so on were adopted. The country had introduced and aimed to build the Rule of Law State since 2009, the Legal Sector Master Plan (LSMP) aims to strengthening the rule of law in Lao PDR which lays out a comprehensive sectoral reform agenda to support the country on its way of becoming a State fully governed by the rule of law\(^3\). According to the 7\(^{th}\) NSEDP (2011-2015)\(^4\) followed by the 8\(^{th}\) Five-Year Plan (2016-2020)\(^5\), inter

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\(^{1}\) One of a Least Developed Countries-LDC status as categorized by the UN in 1971 as 133; Lao PDR has adopted its National Social Economic Plan from time to time setting path for successful graduation from Least Developed Country status, and for economic growth with quality beyond 2025.


\(^{3}\) the Legal Sector Master Plan (LSMP) was adopted by the Government, the Prime Minister Decree N0 265/PM, dated 11 September 2009, for more information at: [http://www.la.undp.org/content/lao_pdr/en/home/operations/projects/democratic_governance/support-project-for-implementation-of-the-legal-sector-master-pl.html](http://www.la.undp.org/content/lao_pdr/en/home/operations/projects/democratic_governance/support-project-for-implementation-of-the-legal-sector-master-pl.html)


alia, the country affirms its reform in the direction of rule of law, ensure equality and justice in society, and fight corruption: more specifically, “to focus on implementing prevailing laws, to ensure equality before the Law for the entire Lao population and further strengthen the legal framework to reflect the interests and concerns of citizens ... and to ensure people have access to the legal and judiciary system and gradually integrate the legal framework into the region”.

Lao PDR is the unitary State and the principle of democratic centralism applies to all of state organizations, including the Legislative Branch as National Assembly, Local People’s Assembly; Executive Branch as President, Government, Local Administrations; and Judicial Branch as the People’s Court and the Office of the Public Prosecutor. Democratic centralism is a method that embodies two elements of democracy and centralism by having the Lao People’s Revolutionary Party as the axle and the Lao Front for National Construction, the Mass Organization and Social Organization as the power. Specifically, this means the free and open discussion, and central control across the Vientiane Capital and 16 Provinces within the country in order to ensure the nation’s unity and discipline, and the minority must accede to the will of the majority, and the lower rank must obey the decision of higher ones.

Under the Constitution, the National Assembly represents people of the nation and acts as the legislative organ, which has the right to decide the fundamental issues within the country, and also supervises and oversees the function of the executive and judicial branches of the government. The President is the Head of State who is elected by the National Assembly with two-thirds of votes from all of National Assembly’s members attending the session and he/she has rights and duties to promulgate laws approved by the National Assembly, appoints or removes the Prime Minister with the approval of the National Assembly and members of the Government, and appoint provincial Governors and municipal Mayors on the recommendation of the Prime Minister. The government consists of the Prime Minister, Deputy Prime Ministers, ministers and chairmen of the ministry-equivalent organizations. The People's Courts comprises of the People's Supreme Court and People’s Local Courts (People's Provincial and Municipal Courts, People's Zone Courts and the Military Courts). The People's Supreme Court is the highest judicial organ of the State. The People's Supreme Court examines and reviews the decisions of the people’s courts and military courts. The Office of the Public Prosecutor has the duty to monitor the implementation of the laws and it consists of the Office of the Supreme Public Prosecutor; Offices of the Local Public Prosecutor;

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6 Art. 5, Constitution of Lao PDR 2015
7 Art 3 of the law on the Government of Lao PDR
8 Art. 53, Constitution of Lao PDR 2015
9 Art. 67, Constitution of Lao PDR 2015
10 Art. 71, Constitution of Lao PDR 2015
11 The People’s Zone Court has jurisdiction over several districts in the same provinces or area.
12 Art. 91, Constitution of Lao PDR 2015
and Office of the Military Prosecutor\textsuperscript{13}. The Office of the Supreme Public Prosecutor supervises the activities of the offices of the Public Prosecutor at all levels.

Lao PDR is partly monist and partly dualist in their actual application of international law in its legal system. According to the Article 8 of the Law on International Treaties and Agreements, which passed and promulgated officially in May 2017, regarding an international treaty or agreement and national laws that in cases when it is found that the provisions of an international treaty or agreement, which Lao PDR is a party to, is different from the provisions of national laws, and sub-laws, and relevant legislations on the same matter, the provisions of the treaty shall prevail; however, according to Article 6 of the law regarding the fundamental principles of implementation of the international treaty or agreement, the implementation as such shall not be contradicted to the Constitution of Lao PDR. In case where the provisions of the treaty and international agreement is explicit and not contracted to the Constitution, the Government of Lao PDR or the National Assembly must decide on how the individual organizations shall directly apply these provisions directly, partly or fully. In case of there is no provisions of laws or they are contradicted to the provisions of domestic law, the Government shall propose to develop, amend, or terminate the concerning laws and other legislations in the line with the provisions of that international law and agreement.

According to the pillar 1 of the Legal Sector Master Plan\textsuperscript{14}, the harmonization of the international conventions and treaties to the domestic laws is part of new law development as the confirm the country’s commitment to implement the regional and global obligations as such; as well as to leverage the domestic laws and regulations to meet the international standards. Presently, Lao PDR has developed and modernized its legislations continuously and gradually, there are promulgated 136 laws\textsuperscript{15}. The revised laws have been mostly enacted in the forms and approach of French civil law and socialist practices. Customary and traditional Rules is widely practiced by Lao people, but not officially recognized as part of State law.

Lao PDR considers international cooperation in all areas, especially free trade, investment, corruptions and the human rights as one of its international commitments. In this regard, Lao PDR has already acceded to a number of human rights related international instruments including the six core human rights conventions and two optional protocols. In addition, the country is also a signatory to the Convention on the Protection of All Persons from Enforced Disappearance, and the International Covenant on Economic, Social and Cultural Rights (CESCR) 1996 making it one of the few countries in the region to sign this core human rights treaty, including the International Convention on the Elimination of All Forms of Racial Discrimination 1966, UN

\textsuperscript{13} Art. 100, Constitution of Lao PDR 2015
\textsuperscript{14} See footnote 1
\textsuperscript{15} Lao gazette website at: http://www.laoofficialgazette.gov.la. The official gazette is under the Ministry of Justice and presently publishes laws and regulations in Lao language only. The draft laws are also listed in this website for public consultations.
Convention Against Corruption\textsuperscript{16}. These international instruments have gradually been translated into the Lao national laws and concrete measures. The country has entered into many international treaties and bilateral agreements regarding trade, investment, and double taxation. As a Member State of Association of Southeast Asia Nations (ASEAN), which it joined in 1997, and a member of the World Trade Organization, joined in 2013, in the area of international taxation, Lao PDR has signed significant trade agreements with all nine other members of ASEAN and is engaged in a range of negotiations as a member of ASEAN and also 8 Double Taxation Agreements with Brunei, China, South Korea, Luxembourg, Malaysia, Myanmar, Thailand and Vietnam\textsuperscript{17}. In addition, Lao PDR signed a Trade and Investment Framework Agreement with U.S.A in 2016\textsuperscript{18}. However, Lao PDR has not yet signed the 1988 Convention on Mutual Administrative Assistance in Tax Matters and 2014 Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information.

Box 1 as bellows describes relationship between the National Assembly and Lao Revolution Party in exercise the State’s power and Party Polices.

\textit{Box 1: State Structure in Lao PDR}

\begin{center}
\includegraphics[width=\textwidth]{state_structure.png}
\end{center}

\textsuperscript{16} See: \url{http://www.ilp.gov.la/}, Since 2001 until now, in order to support the implementation of the international conventions and treaties and promote them effectively in the country, with the technical and financial supports by the international communities including the EU, Finland, United States, UNDP and others, the “international law project” was agreed and established under supervision by the Ministry of Foreign Affairs with those donors, with aim to creating a functional legal framework in line with integration into the international legal system is the progressive realization of basic human rights and the alignment of domestic legal instruments. The lists of the Multilateral and Bilateral agreements, conventions and treaties which Lao PDR is a party to are posted online, however, it is available in Lao language most, for more information at \url{http://www.ilp.gov.la/}

\textsuperscript{17} source: Tax Profile, Lao PDR, KPMG 2016

\textsuperscript{18} https://www.export.gov/article?id=Lao%20PDR-Trade-Agreements
B. Laws and Regulations regarding Tax and Revenue Collections

Revenues from the Profit Tax Rate are an important source of income for the Government, therefore the Government realizes the importance of tax activities. Several policies, regulations, human resources, vehicles and necessary equipment and materials have been provided by the Government to promote the efficient tax activities in order to supervise the collection of tax revenues in a unified manner nationwide; and fair index revenues, and to contribute to the state budget aiming to promote the expansion of business production, domestic and foreign investment attraction, rural development and the alleviation of poverty among Lao citizens and ethnic minorities\(^\text{19}\).

Since 1986, Lao PDR has been adopted its legislations to address the taxation and revenue collections from time to time as it has attempted to improve its financial stability and effective management by implementing the reforms on its financial management system and administration from time to time.

The table 1 below is list of key legislations are governed taxation and revenue collections:

<table>
<thead>
<tr>
<th>Name of the laws</th>
<th>Adoption</th>
<th>Covering Areas/Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax Law</td>
<td>Firstly, adopted in 1995</td>
<td>Tax law provides the lax system in Lao PDR:</td>
</tr>
<tr>
<td></td>
<td>1(^{\text{st}}) revised in 2005</td>
<td>• Indirect Taxes consist of:</td>
</tr>
<tr>
<td></td>
<td>2(^{\text{nd}}) revised in 2001</td>
<td>1. Value-added tax;</td>
</tr>
<tr>
<td></td>
<td>3(^{\text{rd}}) revised in 2002</td>
<td>2. Excise tax(^\text{20}).</td>
</tr>
<tr>
<td></td>
<td>4(^{\text{th}}) revised in 2011</td>
<td>• Direct Taxes consist of:</td>
</tr>
<tr>
<td></td>
<td>(but entered into force in early 2012)</td>
<td>1. Profits tax;</td>
</tr>
<tr>
<td></td>
<td>5(^{\text{th}}) revised in 2014</td>
<td>2. Minimum tax;</td>
</tr>
<tr>
<td></td>
<td>(but entered into force in early 2015)</td>
<td>3. Income tax;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4. Fees and other service charges.</td>
</tr>
</tbody>
</table>

| Value Add Tax Law         | Firstly, adopted in 2006 (but due to lack of management and understanding, the effective date was proposed until 2006) | • It replaced the exercise tax (to some extent).               |
|                           | 1\(^{\text{st}}\) revised in 2014 (came into effect in 2015) | • It covers goods and services liable to value-added tax include goods imported into Lao PDR, goods and services provided within the country, the services of non-residents, legal entities and organizations unincorporated in Lao PDR. |

\(^{19}\) Art. 4 of Tax Law 2015

\(^{20}\) The excise tax is collected from certain types of goods and services that are sold or provided within the territory of Lao PDR.
<table>
<thead>
<tr>
<th>Legislation Type</th>
<th>First, Adopted in</th>
<th>1st Revised in</th>
<th>2nd Revised in</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Custom Law</td>
<td>1994</td>
<td>2005</td>
<td>2014</td>
<td>it provides custom clearance import-export system and administration. It provides import-export tariffs and duties (to some extent, since Zero tariffs applied on goods and services among ASEAN Member Countries and Free Trade Agreements).</td>
</tr>
<tr>
<td>Accounting Law</td>
<td>1997</td>
<td>2007</td>
<td>2013</td>
<td>it provided the accounting system for legal entities, including the Sole Limited Company (in line with the Law on Business, 1994). It introduces new accounting – (new) Lao Accounting Standards-LAS (in line with new auditing laws in 2007), which attempted that the LAS should be in compliance with the IFLR-referred as Accounting and Auditing “like” standards. 2nd revised law permits clearly that legal entities in Lao PDR to use IFRS in preparing and maintaining their accounting records. Previously, private entities doing business internationally had to use two types of accounting standards i.e. the LAS and IFRS.</td>
</tr>
<tr>
<td>Presidential Ordinance</td>
<td></td>
<td></td>
<td></td>
<td>it provides fees and charges rates for</td>
</tr>
</tbody>
</table>

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21 Article 4 of the Law on Legislation Drafting Procedure or Law Making provides that there are two types of legislation in Lao PDR, namely legislation of general application and legislation of specific application. Article 5 of such law provides legislation of general application which consists of:
- Constitution;
- Law;
- Resolution of the National Assembly;
- Resolution of the National Assembly Standing Committee;
- Presidential Ordinance;
- Decree of the Government;
- Resolution of the Government;
- Order or Decision of the Prime Minister;
- Order, Decision or Guideline of the Minister or head of the organization under the supervision of the Government;
- Order, Decision or Guideline of the Provincial Governor or Mayor;
- Order, Decision or Instruction of the District Governor or Head of municipality;
- Regulation of the village.
Taxes are monetary obligations to be fulfilled by individual, legal entities or organizations whose earnings are from occupational practice, business operations, consumption of goods and services in Lao PDR and abroad that shall pay taxes at different rates\(^\text{22}\).

The profit tax rate is a tax collected from companies. Its amount is based on the net income companies obtain while exercising their business activity, normally during one business year. As mentioned above, the tax law has been revised from time to time, the following table 2 summary the profit tax rate from 1995 up to present day.

<table>
<thead>
<tr>
<th>Year</th>
<th>Rate</th>
<th>Rate</th>
<th>Rate</th>
<th>Rate</th>
<th>Rate</th>
<th>Rate</th>
<th>Rate</th>
<th>Rate</th>
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</thead>
<tbody>
<tr>
<td>1995</td>
<td>35%</td>
<td>35%</td>
<td>35%</td>
<td>35%</td>
<td>28%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
</tr>
<tr>
<td>1997</td>
<td>35%</td>
<td>35%</td>
<td>35%</td>
<td>35%</td>
<td>28%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
</tr>
<tr>
<td>2010</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
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<tr>
<td>2011</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
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<tr>
<td>2012</td>
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<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
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<tr>
<td>2014</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
</tr>
<tr>
<td>2015</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
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<tr>
<td>2016</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
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<tr>
<td>2017</td>
<td>24%</td>
<td>24%</td>
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<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
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<tr>
<td>2018</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
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</tr>
</tbody>
</table>

Individuals, legal entities and organizations undertaking export and import, transit and movement of goods through customs border checkpoints shall bear the obligation of customs duties to the State as specified in the customs tariff nomenclature\(^\text{23}\).

Agricultural products and natural resources account for the greater part of exports. Lao PDR’s main exports are wood, clothing, coffee, electricity, metals (gold, copper, zins), corn and rubber. Export’s partners are Thailand, China and Vietnam. In recent years the manufactured products are continued to increase due to the implementation of the policy on the Special Economic Zones to attract more direct investment in Lao PDR. According to the monetary statistic report Q2 of 2017 the Bank of Lao PDR, the exports reached USD 1,037.63 million, increased by 4.71 percent compared to the quarter 1 and 21.13 percent compared to 2016, see below Figure 1\(^\text{24}\) below. In 2018, the exports increased to 1293.50 USD Million in the third quarter of 2018 from 1277.15 USD Million in the second quarter of 2018\(^\text{25}\).

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\(^\text{22}\) Art. 2 of Tax Law 2015  
\(^\text{23}\) Art. 2 of Customs Law 2011  
\(^\text{25}\) source: the Monetary Statistic Report- in Lao language, Bank of Lao PDR.
These above mentioned legislations are the main legal framework how calculation and payable taxes and customs regarding to the business activities in Lao PDR, for more information see part II of this report.

C. Tax and Revenue Administration

The Ministry of Finance (MOF) that is the main responsible body for financial management and accountability of the Government of Lao PDR is divided into 12 departments, 2 institutions, and colleges, see organization chart\(^26\) bellows:

Tax Department

The Tax department as the Tax Authority under MOF is in charge of the administration of taxes is\(^{27}\). The Tax Department has power to control and monitor the Provincial/Capital City Tax Division and the District/Municipal Tax Office\(^{28}\). These Tax administrations play the important role to implement and enforce the Tax Law, Value Added Tax and related sub-regulations.

The Tax Department is an organization under the Ministry of Finance and it has rights and duties as stipulated in the Article 87 of Tax Law. Specifically, the Department has the role of vertical management of tax activities and serves as a secretariat to the Minister of Finance in the macro-management, creation of revenue collection plans, the inspection-audit, implement calculation, monitoring and supporting the payment of tax revenues into the state budget in a centralized and uniformed manner nationwide in accordance with laws and regulations\(^{29}\).

Tax Department consists of the following divisions:

1. Personnel, Finance and Administration Division;
2. Inspection Division;
3. Law Division;
4. IT Division;
5. Income Service Division;
6. Income Declaration Audit Division.
7. Planning and International Tax Cooperation Division.

The Provincial/Capital City Tax Division is under the supervision of the Tax Department, It has the responsibility for the management of tax activities and serves as a secretariat to the Director General of the Tax Department in the creation of revenue collection plans, the inspection-audit, implement calculation, monitoring and securing the remittance of tax into the state budget monitoring and supporting the payment of tax revenues into the state budget in a centralized and uniformed manner within the area of their jurisdiction\(^{30}\).

Additionally, the District/Municipal Tax Office is under the Provincial/Capital City Tax Division, its responsibility is to manage tax activities and serve as a secretariat to the directors of Provincial/Capital City Tax Division in the creation of revenue collection plans, the inspection-audit, implement calculation, monitoring and securing the remittance of tax into the state budget monitoring and supporting the payment of tax

\(^{27}\) Art. 75 of Tax Law 2015
\(^{28}\) Art. 76 of Tax Law 2015
\(^{29}\) Art. 76.1 of Tax Law 2015
\(^{30}\) Art. 76.2 of Tax Law 2015
revenues into the state budget in a centralized and uniformed manner within the area of their jurisdiction\textsuperscript{31}.

\textbf{Customs Department}

Customs Department\textsuperscript{32} as the Customs Administration under MOF is in charge of the collection of customs duties and the customs administration\textsuperscript{33}. Under the Customs law, the Customs Department has power to control and monitor 11 Lao International border checkpoints\textsuperscript{34} and plays the crucial role to implement and enforce other related laws and regulations\textsuperscript{35}.

Customs Department consists of the following divisions:

8. Personnel, Finance and Administration Division;
9. Planning and Information Division;
10. Law Division;
11. Management of Tax Exemption Division;
12. International Cooperation Division;
13. Post Clearance Audit Division.
14. Anti-Goods Smuggling Division;
15. Inspection Division.

The anti-smuggling division has crucial role in monitor and check all activities and post customs clearance in order to the prevent duties avoidance\textsuperscript{36}. In addition, the activity of duties avoidance, particularly trade ispricing was not stipulated in the law; but the customs value of exported goods shall be the actual value of goods which include transportation costs delivered to the customs border checkpoints of export, thus the price shall not be higher or lower than the reality\textsuperscript{37}.

\footnotesize
\textsuperscript{31} Art. 76.3 of Tax Law 2015
\textsuperscript{32} Customs Department is online in Lao language; information about import-export procedure are published clearly; laws and relevant legislations are also published in full and completely to download; unfortunately, English publications are limited due to lack of funding for translations, the website provides also the ASYCUDA for import-exports, SmartTAX, SmartVAT which are used for registered members only. \url{http://customs.gov.la/}
\textsuperscript{33} Lao PDR have border connect with 5 countries, Northern connect with China and Myanmar, East connect with Vietnam, Southern connect with Cambodia and West connect with Thailand. Lao PDR no border with sea and ocean, only Mekong river is the biggest river in the country. Now Lao PDR have 27 international checkpoints around the country included Friendship Bridge, International Airport and some checkpoint: 2 international border checkpoints with China, 1 international border checkpoint with Cambodia, 1 international border checkpoints with Myanmar, 8 international border checkpoints with Vietnam, and 11 international border checkpoints with Thailand. However, among these checkpoints there are only 11 checkpoints where goods must be import-exported or transited.
\textsuperscript{34} Art. 74 of Customs Law 2011
\textsuperscript{35} Art. 73 of Customs Law 2011
\textsuperscript{36} Source: from the interview dated 16 January 2019, and in accordance with the provisions of Art. 75.9 of Customs Law 2011.
\textsuperscript{37} Art. 12 of Customs Law 2011
Banking and Financial Supervision and Anti-Money Laundering Agency

In 1988, and the Bank of Lao PDR and commercial banks were firstly introduced and they have operated since then. The Bank of Lao PDR (the BOL) is the central bank of the State and it shall be the financial institute of the Government, which is equivalent to the Ministry in rank. The BOL plays the role of macroeconomic management in regard to currency and credits by formulating and implementing the monetary policy, maintaining the stability of the LAK value and strengthening the efficiency of payments mechanism and solvency of banking system in order to create an efficient operation and transparency of monetary, credit system of Lao PDR. The BOL has rights and responsibility to supervise and oversee the operation of commercial banks and financial institutions and BOL inspectors shall conduct the investigation or examination in regard to accounts, documents, electronic data of commercial banks, Microfinance Institutions and their affiliates.

Commercial Banks are regulated by the Law on Commercial Banks. Under the law, commercial banks have the obligation for anti-money laundering by determining measures to prevent and counter such activity in accordance with the laws and regulation. The law also sets the requirement that the Board of Director of commercial banks shall not have been convicted by the court of any offence relating corruption and/or money laundering. Furthermore, the detailed record of the daily transaction, credit and account of customer shall be prepared and maintained by those commercial banks and they should have adequate regulations, mechanisms and procedures to identify their actual and prospective customers, and their customers’ transactions. In addition, the Decree on Microfinance Institution set the similar rules to this business, including the deposit-taking and non-deposit-taking microfinance institutions, and also financial projects. Microfinance Institutions has the obligation to prevent and counter money laundering in accordance with the laws and regulation by determining measures and rules to comply with the related anti-money laundering regulation, and the Board of Director of these institutions shall not have been convicted by the court of any offence relating to money laundering. Moreover, the detailed record of the daily

38 History of BOL, see https://www.bol.gov.la/english/ehistory3.html
39 Art. 2 of the Law on Bank of Laos 1995
40 LAK (Lao Kip) or Kip refers to the currency of Laos
41 Art. 3 of the Law on Bank of Laos 1995
42 Art. 4 & 5 of the Law on Bank of Laos 1995
43 Art. 64.2 of the Law on Commercial Bank 2006
44 Art. 69.2 of the Decree on Microfinance Institution 2012
45 Firstly, adopted and promulgated in 2006 and 1st revised and came into force in 2014
46 Art. 36 of the Law on Commercial Bank 2006
47 Art. 23.3 of the Law on Commercial Bank 2006
48 Art. 45.6 of the Law on Commercial Bank 2006
49 Art. 33.3 of the Law on Commercial Bank 2006
50 Art. 22.3 of the Decree on Microfinance Institution
51 Art. 22.3 of the Decree on Microfinance Institution
transaction, credit and account of customer shall be prepared and maintained by those institution as well\(^{52}\).

Commercial banks and other financial institutions are required to perform customer due diligence and file suspicious transaction reports (STRs)\(^{53}\) in accordance with the Law on Anti-Money Laundering and Counter-Financing Terrorism 2015. These financial institutions were named as the Reporting Entities and they have the obligation to report the information regarding suspicious activities of being money laundering to the responsible unit under the BOL, named Anti-Money Laundering Intelligence Office/Unit (AMLIO/AMLIU)\(^{54}\) which would be further explained on the next part.

The BOL cooperates with various ASEAN countries in technical areas, including Myanmar, Cambodia and several other developing countries. Most importantly, BOL also inked a MOU with the Korea Financial Intelligence Unit of the Republic of Korea to exchange information on preventing money laundering and the financing terrorism. This was a significant form of international cooperation to actively address the Central Bank’s anti-money laundering deficiencies.\(^{55}\). The Lao Government realized the importance of anti-money laundering and combating the financing of terrorism since early 2000s, the Ad Hoc Committee of anti-money laundering and combating the financing of terrorism was set up under the BOL in 2004 and the committee was consisted of representatives from department of Bank Supervision; Internal Audit; Currency Issuing; Operation and Administration within BOL. In 2006, the Decree on Anti Money Laundering No. 55/PM was enacted and in order to implement such decree, the Anti Money Laundering Intelligence Office (AMLIO) was established in 2007 and there are four divisions within the office currently, namely, Analysis Division; Information Technology Division; Monitoring and Inspection Division; and Administrative Division\(^{56}\). Later, in 2008, the Working Group on Anti Money Laundering was created and there are 14 members from different ministries and relevant government sectors. Importantly, the AMLIO has the responsibility to research regulations related to information gathering of customers, and also receive and analyse suspicious transaction report from financial institution\(^{57}\) and report the outcome to the management committee for consideration and further investigation.

The AMLIO has been mainly working on encounter the trade of drugs. An Analysis or investigation in relation to export trade is still considered as a rare case within the organization (according to the discussion with DG of AMLIO). In the past few years, the Anti-Money Laundering Intelligence Office has signed MOU on data exchange with several government bodies. The AMLIO has rights to request for any information in regards to the activities of money laundering from relevant ministries, organizations,

\(^{52}\) Art. 37.4 of the Decree on Microfinance Institution

\(^{53}\) Art. 18 of the Law on Anti-Money Laundering and Counter-Financing Terrorism 2015

\(^{54}\) Art. 17 of the Law on Anti-Money Laundering and Counter-Financing Terrorism 2015

\(^{55}\) The Bank of Lao PDR gears up battle against money laundering, BOL News, 1\(^{st}\) March 2017

\(^{56}\) See http://www.amlio.gov.la/eng/about-structure.html

\(^{57}\) Art. 4.2.3 of the Agreement on the establishment and activity of the Anti-Money Laundering Intelligence Office 2007
local authorities and others across the country\textsuperscript{58}. Therefore, the AMLIO has signed MOUs on Information Exchange concerning financial intelligence on money laundering with relevant agencies as follows\textsuperscript{59}: Additionally, the AMLIO also strengthens its regional and international cooperation through signing MOUs on information exchange on financial intelligence related to money laundering with foreign FIUs. For example: the State Bank of Vietnam; the Cambodia Financial Intelligence Unit (CAFIU); the Korea Financial Intelligence Unit (KoFIU); The Korean Financial Intelligence Office (AMLIO) of Kingdom of Thailand; the Indonesia Financial Transaction Report and Analysis Center (INTRAC); Federal Financial Monitoring Service of Russia; China Anti-Money Laundering Monitoring and Analysis Center; and the Japanese Financial Intelligence Center (JAFIC) of the National Public Safety Commission of Japan\textsuperscript{60}.

In 2015, the Law on Anti-Money Laundering and Counter-Financing Terrorism (Anti-Money Laundering Law or AML Law) was enacted and this Law repeals the Decree on Anti-Money Laundering 2006. The law provides more measures to suit with the current global situation and be more compliant with the international standard. In addition, the law also formulates the term of “reporting units”, which have the obligation to report the information related to suspicious activity which may lead to money laundering to AMLIO, the reporting units consist of both Financial Sector Institutions and Non-Financial Sector institutions; Financial Sector Institution include: commercial banks, micro-finance institutions, loan and credit providers, insurance companies, securities companies, money transfer service company, foreign exchange store, asset management company and other, and “Non-financial sector institutions” include commercial real estate representations, antique/precious metal dealers, law firms, auditors, notary agency, casino operator and other.

Under the AML Law, there is no any provision relevant to commodity trade, however, tax crime and smuggling in relation to customs were general mentioned that there are considered as the money laundering activity which is constituted as a predicate offence. The Law was not specified in further detail how these activities are defined and what are specific practices to consider as tax crime and smuggling. (According to the visit at the Anti-Money Laundering Intelligence Office with Gilles and the team, the Director General informed us that the said activities shall be referred to tax law and customs law).

Additionally, all persons, which include reporting units shall provide information on and act against money laundering and the financing of terrorism. However, the AML Law requires certain specific obligations on reporting units, for instance: they shall bear the responsibility to adopt an anti-money laundering and terrorism financing policy and provide the training of such policy for their staffs; reporting units shall verify the identity of customers as well as the intention and objectives behind the transactions through collecting the ID card, household registration book, passport, enterprise

\textsuperscript{58} Art. 4 of the Decision on the Organization and Activity of AMLIO 2016
\textsuperscript{59} http://www.amlio.gov.la/eng/about.php
\textsuperscript{60} Ibid
registration license or other official papers that can justify the customers’ identity or their representatives and if unable to do so, then reporting units must not continue or start a business relationship with that customer; the reporting units also must monitor customer accounts and transactions with an emphasis on unusual, complex, high-value or irregular transactions; and reporting certain transactions to the AMLIO.

Specifically, transactions which exceed certain thresholds or Threshold Reports (which are to be determined by the Bank of Lao PDR in later regulations) and transactions which are suspected to be connected to money laundering or terrorism financing or Suspicious Transaction Reports must be submitted by reporting units to AMLIO, these reports shall be submitted to AMLIO within three days. Such reports must be kept confidential or else the person filing may be subject to re-education measures, fines and any applicable criminal charges. However, reporting units will be indemnified if reports are filed in good faith and are in compliance with the law.

Foreign exchange (FX) control

The US dollars and baht were commonly used for large transactions in Lao PDR, the economy suffered fiscal and monetary difficulties in 2013, which resulted in low levels of foreign reserves. Thus, the BOL has restricted the sale of foreign currency to the public by stating that the local currency as Lao Kip must be encouraged for the greater use, and daily limits on converting funds from Lao kip into U.S. dollars and Thai baht have been imposed, these lead to challenges in obtaining foreign exchange within the country. However, there are no current reports of restrictions on, or difficulties in, repatriating or transferring funds associated with an investment. So far, Lao PDR has enacted strict rules of foreign exchange and capital controls through three main regulations, such as: the Law on Management of Foreign Currency 2014 (FX Law), the Presidential Decree governing the Management of Foreign Exchange and Precious Metals 2008 (FX Decree) and the Instruction on Implementation of the Presidential Decree on Management of Foreign Exchange and Precious Metals 2010 (FX Guideline).

The strict regime of foreign exchange and capital controls from the new regulation disrupt the liberalization of currency controls and this could affect exchange rates and investment flows into the country. However, in middle of 2013, the kip depreciated against the US dollar, and different rates might emerge on a black market that is reappearing for the first time since currency restrictions were lifted in 2008.

Lao FX regulation prohibits individuals and legal entities operating in Lao PDR from paying or receiving foreign exchange for the goods and services and the settlement of debts should not be conducted in foreign currency, unless the BOL has proposed such a transaction and the Lao Government has approved. However, companies that deal internationally have some leeway to conduct business in foreign currency, including paying for imported goods; import-related and export-related services; repaying foreign debts in accordance with a loan agreement and the approval from the BOL; and
transferring after-tax profits, income from technology transfer, initial capital, interest, wages and salaries, or other remittances by foreign investors to a third country or home’s country in accordance with the approval from the BOL as well as the Lao government.

If there are active black markets in foreign exchange within a country, the trade mis-invoicing may be conducted by the importer and exporter and this would lead to illicit financial flows. For example, an importer may over-invoice imports to reduce income tax if exchange rates in black markets are attractive or relatively high, and then they could reap the additional profit from exchanging it in the black market. These illicit profits can then be transferred abroad through one or more of the conduits of illicit flows with which the importer is familiar. On the export side, illicit financial flows are common when the black market premium is higher than the export subsidy. It will then be attractive to raise the necessary foreign exchange on the black market.

II. The existing laws regarding the transfer mispricing and assessing traditional and simplified transfer mispricing approaches in the context of Lao PDR

A. Understanding the Concept of “transfer mispricing”

It is great concern that Illicit financial flows (IFFs) have become an issue of great concern over the last years as huge sums of money are transferred out of developing countries illegally. This illicit money from developing countries that could be used to finance the much-needed public services, from security and justice to basic social services such as health and education, weakening their financial systems and economic potential. While such practices occur in all countries and are damaging everywhere, it is skeptical that Lao PDR could be also challenging and threatened, especially in terms of the transfer mispricing over the commodities for the exports namely coppers and coffee.

The “Arm’s Length” principle is supposed to stop this by ensuring that the prices are recorded as if the trades were conducted at ‘arm’s length.’ In practice, it is unworkable in many if not most situations: a lot of multinational corporate tax avoidance happens for this reason. Under this principle, it is understood that if two unrelated companies trade with each other, a market price for the transaction will generally result. This is known as “arms-length” trading, because it is the product of genuine negotiation in a market. This “arm’s length price” is usually considered to be acceptable for tax purposes. But when two related companies trade with each other, they may wish to artificially distort the price at which the trade is recorded, to minimize the overall tax bill. This might, for example, help it record as much of its profit as possible in a tax haven with low or zero taxes.
The “Arm’s Length” principle is supposed to stop this by ensuring that the prices are recorded as if the trades were conducted at ‘arm’s length.’ In practice, it is unworkable in many if not most situations: a lot of multinational corporate tax avoidance happens for this reason.

This (working) papers reiterates the definition by Washington-based organization Global Financial Integrity (GFI), which defines IFFs as ‘illegal movements of money or capital from one country to another’⁶¹. An alternative definition, one that has increasingly gained traction, is ‘money illegally earned, transferred or used’. However, there is far from universal consensus that these, or other, definitions accurately encapsulate IFFs. Rather, the term tends to be applied as an umbrella, grouping previously disconnected issues related to the movement of funds and assets across borders in contravention of national or international laws. According to the UN’s Sustainable Development Golds, the team is reflected by SDG indicator 16.4.1, ‘Total value of inward and outward illicit financial flows (in current United States dollars)’⁶², this is still ambiguous.

Transfer mispricing is known as transfer mispricing manipulation or fraudulent transfer mispricing, refers to trade between related parties at prices meant to manipulate markets or to deceive tax authorities. The legality of the process varies between tax jurisdictions; most regard it as a type of fraud or tax evasion. Generally, if two independent, unrelated parties negotiate with one other for a financial transaction and eventually reach a price, a transaction in correct market price will take place. According to the arm’s length principle by OECD (Organization for Economic Co-operation and Development), the price, at which the transaction occurs, is preferred for tax purposes as it is a fair reflection of the value of the goods or services. Whereas when the parties which negotiates with one other for transaction are related, they set on purpose an artificially lower the price with the intention to minimize the tax bills for both parties. Since both sides win in this kind of situation, it is preferred by the majority of large enterprises, although tax collectors are not in favour of it. OECD published its Guidelines covering the arm’s-length principle, transfer mispricing methods and comparability analysis⁶³. OECD Guidelines provide direction for tax authorities on the development of rules and procedures on documentation. Each taxpayer should try to determine transfer mispricing, ‘in accordance with the arm’s-length principle, based upon information reasonably available at the time of the determination’. The OECD Guidelines comment on various mispricing methodologies, with examples of their application, including (i). the comparable uncontrolled price (CUP); (ii). the resale price; (iii). the cost plus; (iv). profits split; (v). transactional net margin. These methods are complex and tough

⁶² UN, SDG 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels, and SDG 16.4. indicates that By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime; https://sustainabledevelopment.un.org/sdg16.
depending on its natures of transactions, which require the competent tax officers, legislations and resources to facilitate and examine in effective manners.

Consequently, the definition of IFFs and transfer mispricing are quite challenging to develop the instructive analysis to enable a holistic understanding of what is a complex and multifaceted phenomenon. The challenge is compounded by the multiplicity of sources generating (illicit) funds, and the variety of ways used to shift these funds to hide their origin and the range of actors involved in their transactions by various transfer mispricing methods.

It is skeptical and need to examine the understanding of the terms and phenomenon of IFFs occurring at international and regional levels, including transfer mispricing. Thus, the following studies on Copper and Coffee as trading commodities from Lao PDR to the sub-regional, regional and world markets is interesting to assess the practices in Lao PDR.

B. Lao PDR’s Legal Contexts – Literary Review

Within the scope what are the main incentives and legal/regulatory issues involved in trade-related IFFs? in Lao PDR’s laws regarding the taxation and revenue collections this part of report describes Lao PDR’s legal contexts, mainly the tax law and custom law.

Lao Tax law (“the tax law”), as amended in 2015 and came into force on 24 May 2016, replaces some provisions of the Tax Law (2011), with a few new inclusions, revisions and corrections 64.

**Profit Tax**

As defined in Article 28 of the tax law, taxable profit is profit deriving from all kinds and levels of business operations in Lao PDR. All form of legal entities which are registered under Lao law, or that are incorporated under foreign law but are carrying on business in Laos, are subject to Lao profit tax.

Profit tax is the national tax and only, so there are no provincial or local income taxes in Lao PDR. Article 29 of tax law defines the flat profit tax rate is 24 percent which applies to both domestic and foreign businesses; while the sole-trader enterprise and individuals are applied the progressive profit tax rate scheme from zero percent to 24 percent. The listed companies in the Lao Stock Exchange, will pay profit tax lower than 5 percent of said rate but within 4 years from the date of registration. This seems to be the tax incentive to some extent. While business operators or legal entities that produce the tobacco, import and distribute tobacco product must pay profit tax higher than flat

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64 Basic English Translation of Tax Law (2015) can be found in ANNEX 1, and more information can be located at Tax Department available online at [http://www.tax.gov.la/Default.aspx](http://www.tax.gov.la/Default.aspx)
rate 2% more and this surplus contribute to the Tobacco Control Fund. As shown in Table 3 below, shows the profit tax rates in ASEAN Members States, profit tax rate in Lao PDR is average, while Singapore imposes the lowest profit rate at 17 percent of the taxable income and Philipines imposes the highest rate at 30 percent.

Table 3: Profit Tax Rate in ASEAN

<table>
<thead>
<tr>
<th>Country</th>
<th>Profit Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brunei</td>
<td>18.5%</td>
</tr>
<tr>
<td>Cambodia</td>
<td>20%</td>
</tr>
<tr>
<td>Indonesia</td>
<td>25%</td>
</tr>
<tr>
<td>Laos</td>
<td>24%</td>
</tr>
<tr>
<td>Malaysia</td>
<td>24%</td>
</tr>
<tr>
<td>Myanmar</td>
<td>25%</td>
</tr>
<tr>
<td>Philipines</td>
<td>30%</td>
</tr>
<tr>
<td>Singapore</td>
<td>17%</td>
</tr>
<tr>
<td>Thailand</td>
<td>20%</td>
</tr>
<tr>
<td>Vietnam</td>
<td>20%</td>
</tr>
</tbody>
</table>

As mentioned above, profit tax is collected from domestic and foreign businesses and is imposed on profit from all types of business activities. Article 31 of the tax law provides that taxable income for profit tax purposes generally is calculated as net income from business activities, plus nondeductible expenses, less allowable deductions as prescribed in Article 34 (b) of the tax law. Taxpayers that do not follow accounting standards or that file an incomplete tax declaration and payment may be subject to a mandatory profit tax in accordance with Article 32 of the tax law, which is deemed to be the annual gross profit multiplied by the profit ratio for each type of activity and multiplied by the profit tax rate as provided in Article 33 of the tax law.

Article 30 of the tax law defines also the calculation formulation of profit tax for accounting year as follows:

1. Profit = Remaining Assets in balance sheet at the end of year - Liabilities, registered capital, reserves, provisions, revaluation of asset and retained earnings; or

Tax holidays and reduced profit tax rates are applicable to companies with investment activities that qualified as promoted investment activities or large investments in mining and hydro power project.

Under Article 39 of the tax law, the profit tax is paid at each quarter and it is considered as advance tax payment. Profit tax payments shall be made on a quarterly basis as follows:

- 1st Quarter: on or before 10 April – based on self-assessment by the entity submitted to tax authority;
- 2nd Quarter: on or before 10 July – based on self-assessment by the entity submitted to tax authority;
- 3rd Quarter: on or before 10 October – based on self-assessment by the entity submitted to tax authority;
- 4th Quarter: on or before 10 January of the following year – based on self-assessment (tax return) by the entity submitted to tax authority or assessment by tax authority

The quarterly liability for profit tax is calculated based on one of the following:

- The profit tax paid during the previous year;
- The actual profit during the current year;
- The profit of a project as stated in the tax payment plan.

If the profit tax paid within the year is not calculated based on the actual current year profit, and exceeds the actual annual profit tax payable, the excess profit tax shall be offset against profit tax payable in the following year. If the amount paid during the year is less than the actual amount due, the extra will be added to the year-end assessment.

**Taxation on Dividends**

Income from dividends or distribution of dividends or other benefits paid to individuals or legal entities as the partners or shareholders is considered as a direct tax but it is not subject to profit tax. Under Article 48 (2) of the tax law, such income paid to individuals or legal entities is subject to pay income tax at the rate of 10 percent; this income rate is also applied to the individuals or legal entities that are registered aboard and it is subject to withholding tax as states clearly in Article 34 (1) of the tax law.

**Taxation on Interests**

Income from interests paid to individuals or legal entities are subject to withholding tax at the rate of 10 percent as provides in Article 48 (3) of the tax law.

**Deductible Expenses and other Tax Adjustments**

Article 34 of the tax law provides wide-ranging lists of incomes that are not considered as profit tax, but subject to other kinds of taxation such as income tax. Article 34 provides the general rule for expenses are not deductible if paid or incurred during the
tax year, expended for business purposes, for a “reasonable” amount, invoiced and legally documented. The following table 4 describes non-deductible and tax adjustments.

**Table 4: Non-Deductible and Tax Adjustments.**

<table>
<thead>
<tr>
<th>Expenses/Incomes</th>
<th>Tax Adjustments</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Profit tax;</td>
<td></td>
</tr>
<tr>
<td>• Value added tax related to the purchase of fixed assets used directly in the business operations;</td>
<td></td>
</tr>
<tr>
<td>• Doubtful debts without evidence or certified documents from competent authorities;</td>
<td></td>
</tr>
<tr>
<td>• Depreciation of fixed assets that is deducted in accordance with accounting standards;</td>
<td></td>
</tr>
<tr>
<td>• Certain types of expenses and depreciation of fixed assets that are not registered as the enterprise’s assets;</td>
<td></td>
</tr>
<tr>
<td>• Salaries that a partnership enterprise pays to its partners who are not managers or employees of such partnership or the salary of the owner of a sole-trader enterprise;</td>
<td></td>
</tr>
<tr>
<td>• Interest paid on loans taken out by a partner/s in order to pay for the capital investment;</td>
<td></td>
</tr>
<tr>
<td>• Interest paid on loans taken outside the banking system and paid to the partner/s;</td>
<td></td>
</tr>
<tr>
<td>• Interest paid on loans that are not related to the business operations;</td>
<td></td>
</tr>
<tr>
<td>• Expenses that are not directly related to business operations, including: golfing, dancing, entertainment, gifts and prizes;</td>
<td></td>
</tr>
<tr>
<td>• Personal expenses of the owner or partner/s of an enterprise that are not allowed to be deducted in the accounting year;</td>
<td></td>
</tr>
<tr>
<td>• Expenses related to business operations but without certified documents or with invalid documents and any expenses that are higher than reality;</td>
<td></td>
</tr>
<tr>
<td>• Expenses paid to third persons without any contract or certified documents;</td>
<td></td>
</tr>
<tr>
<td>• Certain types of reserves made based on accounting standards;</td>
<td></td>
</tr>
<tr>
<td>• Provisions for the impairment of assets made based on accounting standards (e.g. impairment of fixed assets)</td>
<td></td>
</tr>
</tbody>
</table>

*Non-deductible expense*
- Assets, inventories, doubtful debts and others;
- Losses from revaluation of assets and liabilities in foreign currencies on the closing date;
- Deferred tax expenses;
- All penalties;
- Donations as defined in the investment agreement between the investor and government;
- Losses derived from exchange rates derived from asset evaluation and liabilities in foreign currencies on the closing date.

<table>
<thead>
<tr>
<th>Travel for administrative purposes</th>
<th>Deductible expense up to 0.3% to 0.6% of annual turnover</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reception and communication expenses</td>
<td>Dewtangle expense</td>
</tr>
<tr>
<td>Donations</td>
<td></td>
</tr>
<tr>
<td>Advertising costs</td>
<td></td>
</tr>
</tbody>
</table>

| Fixed asset tax depreciation      | Deductible expense                                      |
| Dividends received and already taxed | Non-taxable income                                    |
| Provisions recovered and already taxed | Non-taxable income                                    |
| Bad debts (previously taxed) with supporting evidence | Non-taxable income                                    |
| Income from deferred tax          | Non-taxable income                                      |
| Unrealized foreign exchange gains | Non-taxable income                                      |

**Depreciation**

In principle, depreciation on fixed assets is authorized; Fixed assets consist of tangible and intangible assets. Article 36 of the tax law recognizes three depreciation methods: straight-line, double-declining and activity based (straight-line method). Under Article 30 of the tax law, only the straight-line method with the depreciation rate is defined.

**Double Taxation Agreements**

Lao PDR has concluded bilateral Double Taxation Agreements (DTAs) with 8 countries, namely Brunei, China, South Korea, Luxembourg, Malaysia, Myanmar, Thailand and
Vietnam, the DTAs had been concluded with Indonesia, Kuwait and Russia but yet inter into force.

As a member of the ASEAN, Lao PDR is committed to implement the ASEAN Economic Community (“AEC”)\textsuperscript{66} which aims to establish “single market” across ASEAN countries as part of the regional economic integration. AEC aims to stimulate economic growth in ASEAN by allowing a free flow of human resources, goods, services and investment between countries, including double taxation. However, harmonization of the ASEAN’s tax policies among ASEAN Member States is still far more to be adopted, in past decades, there were ASEAN working groups and committees had attempted to draft multilateral double taxation treaty and this has been promoted for long time to towards establishing DTAs among ASEAN countries and removing withholding taxes that may locally apply on interest, royalty, dividend and service fee payments.

Under OECD Transfer Pricing Guidelines\textsuperscript{67}, the transfer prices between companies of multinational enterprise is \textit{the market value basis}, which means that \textit{prices} of the transaction is used for analysis whether or not it is considered appropriate if it is within a range of prices that would be charged by independent parties dealing at arm's length.

Lao PDR is not the member of OECD, and under the lax law, transfer pricing rule is not recognized or well addressed. However, in the light of the ‘price of the transaction’ which must be based on the market price; Article 34 of tax law provides the wide-ranging lists of regarding the non-deductible expenses that could be interpreted similarly in the different methods as provides in OECD Transfer Pricing Guidelines. In practice, tax auditors examine the prices of transactions comparing to the market price, for example, the coppers, the London market price is used in most case (\textit{see more in section b. royalty rate for copper of this part}) in order to prove the transactions – expenses whether or not such transaction or expense is not “\textit{higher than the reality}” as states in Article 34(12). If it is found that the transaction price is higher than market price it is considered as “\textit{unauthorized item}” for the calculation of annual profit. In this case, tax auditors can reject such expense until it is proven\textsuperscript{68}. \textit{This could be “arm’s length” principle in Lao context.}

\textsuperscript{66} The Association of South East Asian Nations (ASEAN) was established in 1967 with one of its central purposes being the acceleration of economic growth in the region. As outlined in the ASEAN Vision 2020 charter, which was agreed to by ASEAN member countries in 1997, the centerpiece of this economic acceleration is the creation of the ASEAN Economic Community (AEC). The AEC shall establish ASEAN as a single market and production base where there is a free flow of goods, services and investment; a freer flow of capital; equitable economic development; and reduced poverty and socio-economic disparities in the year 2020. ASEAN remains strongly committed to ‘Vision 2020’ and the creation of the AEC. In fact, ASEAN member countries have heightened their commitment to the AEC by accelerating the establishment of the AEC from 2020 to 2015. This commitment is reflected in the adoption of the AEC Blueprint by all member countries on 20 November 2007. The Blueprint provides detailed targets and timelines to be implemented by member countries in order to create the AEC by 2015.

\textsuperscript{67} The OECD has developed thorough guidelines on how the arm's length principle should be applied and 5 methods with explanations are elaborated in this Guidelines, view and download at \url{http://www.oecd.org/ctp/transfer-pricing/transfer-pricing-guidelines.htm}

\textsuperscript{68} source: interviewed with Tax Auditors, Tax Department, dated 20 January 2019.
B. Practices – Copper and Coffee

This part B examines and analyses deeply the taxes and export-customs duties regarding two objective commodities such as coppers and coffee in practice.

1. Copper

Lao PDR has significant mineral potential for the discovery of new ore deposits and the successful development of a medium to large scale mining industry. The figure 3 below shows the mineral potential in Lao PDR\(^9\). The Department of Mine or Mine Management (DOM), is an organization of the Ministry of Energy and Mine (MEM), has functions and role in all issues related to the mining industry, including mining administration, issuance of mining licenses, and calculation of mining royalty fees. DOM consists of 6 Divisions: (1). Administration; (2). Mining title and Policy; (3). Mining Technology and Metallurgy; (4). Mining Economics and Community Development; (5). Mining Information and Evaluation; (6). Mines Safety, Health and Environment.

![Figure 3: Mineral Potential Map of Lao PDR](image)

<table>
<thead>
<tr>
<th>Mineral</th>
<th>Potential</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gold</td>
<td>150</td>
</tr>
<tr>
<td>Copper</td>
<td>45</td>
</tr>
<tr>
<td>Zinc and Lead</td>
<td>75</td>
</tr>
<tr>
<td>Tin</td>
<td>45</td>
</tr>
<tr>
<td>Iron Ore</td>
<td>52</td>
</tr>
<tr>
<td>Bauxite</td>
<td>8</td>
</tr>
<tr>
<td>Other metals</td>
<td>36</td>
</tr>
<tr>
<td>Gypsum</td>
<td>6</td>
</tr>
<tr>
<td>Limestone</td>
<td>9</td>
</tr>
<tr>
<td>Potash</td>
<td>36</td>
</tr>
<tr>
<td>Coal</td>
<td>37</td>
</tr>
<tr>
<td>Gemstone</td>
<td>6</td>
</tr>
<tr>
<td>Other industrial minerals</td>
<td>14</td>
</tr>
<tr>
<td>Total Mineral occurrences</td>
<td>511</td>
</tr>
</tbody>
</table>

Figure 4: Copper Potential Map of Lao PDR

Copper deposits and occurrences in Lao PDR are widely distributed throughout the country especially distributed in the Indochinese fold belt. From summarizing data from geological and mineral reports, there are
46 copper occurrences that are in disseminated form or vein originated from granodiorite intrusion. These occurrences are located as shown in Figure 4.\(^{70}\)

According to the Department of Geology and Mineral, copper metal reserves in Lao PDR are evaluated to have an amount of 2.9 million tons and resources of 6 million tons. Adjudicating from the successful development of the Sepon copper deposit (Lanxang Mineral-MMG), the Phu Kham copper deposit, Phu Bua copper deposit, and features of copper mineralization in many localities, copper potential in Lao PDR could possibly range from 8 to 10 million tons of copper metal.

Since 1990, the government has approved 229 company’s investment in the Lao PDR. In 2001, according to the information from DOM, 48 companies invested in the mining sector. In March 2012, the mining licenses were issued by the Government for: (1). 205 exploration/mining projects; (2). 147 exploration projects; (3). 13 feasibility studies and (4). 58 mining operation projects.

Since 2012, the Lao government has announced a moratorium for 4 years on new mining investments and the granting of concessions for rubber plantations due to environmental and social concerns. Due to the Government moratorium, some mining companies have had licenses revoked or suspended from mining and related activities following findings that they lack experience in the mining industry or have had poor business performance. Other companies have been warned to take corrective measures in line with the Mining Law. There are 657 companies that have been granted permission to invest in the mining industry in Lao PDR, and there are 942 mining operations across the country. These include 226 companies allowed by central government and 400 companies approved by provincial authorities. Among these 226 companies, across the country there are 81 companies conducting mining activities and 146 companies conducting prospecting and surveying activities.\(^{71}\)

Gold, silver, copper, lead, potassium, and gypsum are mostly mined in the country. the GDP of the electricity and mining sector for the past five years was 95 trillion kip (over US$11.5 billion) including 68 trillion kip shared by mining sector and 27 trillion kip shared by electricity sector. Electricity has grown by 15% annually, meanwhile mining sector has grown at the slower pace of 6% annual growth due to plunges in the prices of gold, copper, silver and iron in the world market. However, the mining sector has still made a significant contribution to Lao government revenue and Lao exports over the last decade. This has supported Lao economic growth and helped the Lao government achieve its development outcomes.

Based on practices on mining activities in last decade, and in order to strengthen its legislative framework for mining and attract more investments in mining sector in Lao

\(^{70}\) source: Data from 2006, Department of Geology and Mineral, Ministry of Natural Resources and Environment (MONRE).

\(^{71}\) source: based on interviewed dated 19 January 2019, DOM
PDR, the Government has decided to improve the mining laws in 2017\textsuperscript{72}. Instituting a transparent and predictable mining legislative regime will attract quality investors. This will help ensure the Lao PDR gets the most out of its mining sector and high international environmental and social impact standards are maintained.

The biggest mines in Lao PDR, MMG-Lane Xang Minerals Ltd (LXML) Sepon and Sevannakhet; and PhuBia Mining (PBM), have contributed around 95 per cent of the government revenue from the mining sector, hundreds of millions of dollars per year. Both mines are on a pathway to closure and have less than five years’ left on their mine life. According to the MMG press release dated 7 December 2017, Since operations commenced in 2002, LXML has contributed US$1.4 billion in direct revenue to Lao PDR in taxes, royalties and dividends. LXML has invested more than US$17 million in environmental management, rehabilitation, and monitoring activities; generated around US$26 million in community incomes from local businesses; funded more than US$10 million in development projects; invested US$46 million in national road and electricity infrastructures; and US$48 million in UXO clearance\textsuperscript{73}. See boxes 4 below about brief information of MMG-Lane Xang Minerals Ltd (LXML) Sepon and Sevannakhet.

Table 4: Brief information about MMG-Lane Xang Minerals Ltd (LXML) Sepon and Savannakhet\textsuperscript{74}

\begin{center}

\begin{tabular}{|l|}
\hline
MMG-Lane Xang Minerals Ltd (LXML) Sepon and Savannakhet began copper production in 2005 with the annual capacity of 70,000 to 80,000 tons of copper cathode. Chifeng Jilong Gold Mining Co Ltd, a Chinese company, owns 90% of LXML after purchasing from MMG, which is another Chinese owned company, in the middle of 2018. The concession area covers 5,000 km\textsuperscript{2} in Sepone, Savannakhet province. The copper produced by LXML has been certified as grade A by the London Metals Exchange (LME). The output is exported to markets in China and Thailand. The expected life of copper mine is until 2020 or 2021. However, the company is very active in exploring other areas near its existing operation site and, if success, this could extend the life of the copper mine. LXML hires contractor companies to support its operations at the exploration stage such as digging, opening pits, and providing goods and services. It is interesting to note that LXML engaged local businesses since its early stage of operation to provide all necessary goods and services such as air transport, land transport, food, fuel, electricity and securities.

\hline
\end{tabular}
\end{center}

\textsuperscript{72} first mining law was adopted in 1997, then it was revised in 2006 and came into force in 2008; the new mining law was revised and adopted in 2017 and came into force in 2018. The new mining law drafting was assisted and supported technically by the World Bank and the Australian Government


\textsuperscript{74} source: analysis of working paper No R4D XXX 2018 on Abnormal Pricing in International Commodity Trade: Evidence from Lao P.D.R. (WP1)
In 2017, PhuBia Mining (PBM) announced its direct contribution to the government of Lao PDR of more than US$90 million includes profit and income tax, customs excise/import service fees, road tax, royalties, concession fees and dividends. See box 5 below about brief information of PhuBia Mining (PBM).

**Table 5: Brief information about LXML**

**Phu Bia Mining Limited (PBM)** is currently owned by Pan Australian Resource Limited (PanAust). PanAust owns 90% of PHB with the Lao government owning 10%. PanAust is owned by the Guangdong Rising H.K. (Holding) Limited which is a wholly owned subsidiary of Guangdong Rising Assets Management Co. Ltd (GRAM) from China. The concession area is 2,600 km². PHB’s producing assets are Phu Kham operation and Ban Houayxai operation. Phu Kham operation, located 140 km away from Vientiane Capital, produces copper and gold while the Houayxai operation produces gold and silver. The copper production capacity is 80,000 to 90,000 tons. Phu Kham operation began in 2008 and is expected to run until 2023. PBM produces and export copper concentrate to smelters mainly located in Asia. 80% of PBM’s copper concentrate is transported in containers to Vung Ang or Hon La ports in Vietnam and 20% of the products is exported to the Srirach Harbour in Thailand. PanAust invests in its own transport fleet to move concentrates in Lao PRD. PBM expends 176 million USD to Lao suppliers of good and services in which 43% goes to Lao companies and 26% is for Lao based international companies. In addition, the PHB employs 3,292 people in Laos of which 91% is Lao national and 29% of total employment is sourced from local area.

There are also other several medium and small scale operations, which are now mostly at the prospecting and exploration stage. The extractive sector contributes an average of 4.2 percent of total domestic revenues during 2012 to 2017, 92.8% of which is contributed by the two largest mining firms. The majority of investors are from China. Other investors include Vietnam, Australia, Canada, Hong Kong, Taiwan, South Korea and Germany. Domestic investors also have large presence in the copper sector.

**Supply Chain in Copper Industry in Lao PDR**

Laos mainly produces and exports copper concentrates and copper cathodes/refined copper (as shown in the Figure 2). For the ease of international comparison, the study will use the harmonized commodity description and coding systems (HS code system) to classify the selected product categories in our study. The HS code for the copper concentrate is HS260300 and the HS code for the copper cathodes is HS740311. LXML engages in the mining stage of the value chain to produce and export mining concentrate while PHB goes further the value chain to produce and export copper cathodes. Both LXML and PHB engage in all steps in mining, production and export. PHB export mainly to the firm’s affiliated smelter located in China. In 2016 other importing

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76 see footnote 74;

77 source: see footnote 74.
countries of Lao copper concentrates include Thailand, Vietnam and Switzerland. LXML exports the copper cathodes to markets in Thailand and China. Importers of copper cathodes in Thailand are electrical and electronic manufacturer, automobile manufacturer and trading company. The main importer of copper cathodes in China is the exporter’s affiliated company.

Figure 2: Supply Chain in Copper industry in Lao PDR

Despite the great contributions to the national budget as mentioned above, these figures are to be consider whether or not it had been paid properly in accordance with laws and international standards. As seen in supply chain above, copper mining and refining processes to export are subject to tax in Lao PDR.

As in elsewhere in the world, the mining taxation in Lao PDR is followed the tax and revenue collections on mining activities by:

(1). collection of corporate income tax-profit tax of the mining company; and

(2) collection of mineral royalty rates as mining tax levied on the extraction of minerals or metals and other related ‘like’ taxes or fees.\(^78\)

Profit Tax- Corporate Income Tax on Mining Company

As mentioned in the Part I of this report, Tax Department is responsible for the tax collection. In Lao PDR, profit tax rate is now flat rate of 24% of all next incomes (business turnover) of a mining company.

Royalty Rate for Copper

Regarding the royalty rate for copper there are at least two legislations under this analysis, namely the President Ordinance on Royalty Rates on National Resources and

\(^78\) the Mining company is required to pay or contribute to the environmental protection funds, social-development funds such as local roads, community’s schools, 'souk-sa-la'- clinics or small health services, source: from interview with DOM, dated 19 January 2019.
the Decision on Selling and Buying Mines [Ores] and Mining Products, these are sub-
laws which are developed under the scopes of the relevant laws\(^79\).

The President Ordinance on Royalty Rates on Natural Resources (hereafter called “the 
Ordinance”), No 001/PO, dated 15 December 2015 defines and provides the 
measurement and calculation for royalty fees. A royalty free/rate as stipulates in the 
Article 2 of the Ordinance is a financial obligation payable by domestic and foreign 
individuals or legal entities who are licensed to operate the mineral business activities in 
the Lao PDR. Mining royalty liability is calculated by using royalty rates set out in 
Article 5 of the Ordinance, which is 6 percent for copper. The Ordinance does not 
provide the details of copper (ores or refined/treated/processing copper products-
mineral; solid or concentration), however, Article 9 of the Ordinance defines the 
calculation methods that royalty fee on minerals must be calculated by two means (as 
shown in box 2 below).

Box 2: Article 9 of the Presidential Ordinance on Royalty Rates on Natural Resources

<table>
<thead>
<tr>
<th>Article 9 Calculation of Mineral Royalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mineral royalty must be calculated in two following means:</td>
</tr>
<tr>
<td>1. By real selling price multiply kind of royalty rate in percentage as provided for in this Ordinance; or</td>
</tr>
<tr>
<td>2. By quantities of explored minerals for sale or use multiply the royalty rate in value as provided for in the Ordinance.</td>
</tr>
</tbody>
</table>

The Decision on Selling and Buying Mines [Ores] and Mining Products (“the 
Decision”) issued by the Ministry of Energy and Mine, No 0481/MOEN, dated 20 April 
2012, defines the principles and measures related to the issuance of licenses, the 
management of selling and buying, exporting, importing, moving mines [ores] and 
mining products including the fulfilment of loyalty fee obligations in Lao PDR and the 
buying-selling of mines with other countries.

Article 10 of the Decision regulates measures on calculation of price of selling-buying 
minerals [ores] or mining products which is based on the international market price. 
This set preference price for selling-buying minerals [ores] shall be measured and 
approved by the Ministry of Energy and Mines-Department of Mines. And the loyalty 
fee will be determined based on the contract, commitments and the Presidential 
Ordinance on Royalty Rates on Natural Resources. (see box 3 below).

\(^{79}\) see …. 
Box 3: Article 10 of the Decisions on Selling and Buying Mines [Ores] and Mining Products

**Article 10 Price of selling-buying minerals [ores] or mining products Price of selling-buying minerals [ores] or mining products**

The price for selling-buying metal minerals [ores] or mining products to be exported or sold in the domestic market shall be based on the international market price. As for non-metal minerals [ores] it shall be based on the regional market price at the selling date or exporting date, as a basis to calculate the value of natural resource [loyalty fee] or mining products.

The price for selling-buying minerals [ores] shall be approved by the Ministry of Energy and Mines; as for the loyalty fee this will be determined based on the contract, commitments and the Presidential Edict regarding Natural Resources

There are 4 organizations involved in the calculation and collection of copper royalty, as follows:

- **DOM**: The Department of Mining Management (“DOM”), the Ministry of Energy and Mines is authorized to set the price and calculation of royalty.
- **DSA**: The Department of State’s Assets (“DSA”), the Ministry of Finance, issues the invoice per exporting copper lodge, as calculation referenced by the DOM to the mining licensed individuals or entities (“the exporter”).
- **DOC**: The Department of Custom (“DOC”), the Ministry of Finance, calls and collect the royalty fees for copper from the exporter.
- **DIMEX**: The Department of Import-Exportation (“DIMEX”), the Ministry of Industry and Commerce, issues the Certificate of Origin” for the exporter based upon the receipt of payment of royalty fees, then the cooper can be exported.

It is observed that for the solid copper (refined/processed/finished copper) in accordance with Article 9 of the Ordinance and Article 10 of the Decision “the selling price” is the price based on the international market price. This observation is confirmed by the DOM, and the copper price is based on the London Market Price. So the value of the royalty must be the amount that declared by the export multiply the London Market Price, of the date of calculation, multiply the 6% royalty rate as following formulation.

\[
\text{Royalty Value} = \text{Total declared amounts} \times \text{London Market Price} \times 6\%
\]

This royalty calculation is applied only for the solid or refined copper.
For the copper ores, according to interviewed information from those mentioned stakeholders, the copper concentration must be first determined. DOM determines the value of copper in declared copper ores by the exporter by these following steps:

- 3 Samples of Ores are taken by officers of DOM from the site before shipment
- A sample is kept by the exporter and one for DOM for lab-testing
- Testing
  - Sample is examined by a Lab to determine copper substances in Ores
- Calculation
  - based on copper concentration in Ores

Each time, before shipment of ore copper lodge, the officers of DOM or Provincial Department of Mine collects 3 samples of ores randomly from ore containers and sealed them. One of such sample is given to the exporter, and ones is sent to a laboratory of the Department of Geology, MOEM, for testing of substances/concentration of copper. The third sample is sealed and will be used when the testing result is refused. The exporter can also test the given sample in their own in house-lab or any laboratory. Then two testing results are compared and if the resulted tested by the lab of the Department of Geology exporter is accepted by the exporter, then such acceptable testing result is used to calculate the royalty fee. If such result is rejected, then third sample is delivered to the third-party [private] laboratories. According to the DOM, there are 2 private laboratories located in Vientiane, Lao PDR. ALS is an Australian Lab company provides testing, inspection, certification and verification of concentrate in Ores in Lao PDR. Another private lab is a Chinese laboratory. ALS is most used for testing due to its reputation and trust by the mining companies/exporters. 25% of copper concentration in copper ores is minimum standard for calculation.

The formulation of calculation of royalty of copper ores is allows:

\[
Royalty \ Value = Total \ declared \ amounts \ of \ ores \times \ testing \ result \times 6 \%
\]

source: DOM,
In summary, the calculation of the royalty for copper is under responsibility of DOM and DOM applies the flat royalty rate as provided in Presidential Ordinance which is 6% multiply the London market price and amount of the total exporting refined coppers/metal or 25% minimum copper concentration in ores for export.

**Value Add Tax**

According to Article 17 of the Value Add Tax (revised 2018 and came into force August 2018), zero per cent (0%) rate is applied to raw materials, including copper ores and refined ones. The following table 5 summaries the payable tax and income on Copper.

**Table 5: the payable tax and income regarding Copper.**

<table>
<thead>
<tr>
<th>Corporate Tax/Other taxes and payments</th>
<th>Mineral Taxes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Profit Tax (PT)</strong></td>
<td><strong>Royalty</strong></td>
</tr>
<tr>
<td>24% (flat rate)</td>
<td>6% royalty rate x market price-London market price x amount of solid copper or ores (25% concentration and up)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Level at which applied</th>
<th>National only (no provincial or district level)</th>
<th>Level at which applied</th>
<th>National only (no provincial or district level)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Income Tax</th>
<th>Deductible in evaluation of concentration</th>
<th>Yes but very limited</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Dividends, interest, commissions</th>
<th>10%</th>
<th>Environment Protection Fund</th>
<th>Yes, depending on negotiation</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Sale of Share</th>
<th>2% - 10%</th>
<th>Local Social Development Fund/Social Contributions</th>
<th>Yes</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Rental of real estate, vehicles,</th>
<th>10%</th>
<th>Others charges to localities</th>
<th>Yes (in different forms)</th>
</tr>
</thead>
</table>

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82 According to Article 16 of Value Add Tax Law, zero per cent (0%) rate is applied to raw materials, chemical substances, equipment, machinery for production [means] that are produced domestically and imported from foreign countries that could not be produced domestically or domestic production could not meet demand that is needed in the production and investment that are registered as fixed assets.
A private audit company operating in Lao PDR shares the observations on the tax and revenue collection from the Mining companies in Lao PDR that some mining companies were granted their concessions on mining during 1990s, and they pay their taxes and other payments mainly in accordance with their Concession Agreements (CAs), in which defines agreed profit tax rates and royalties. Today, those mining companies enjoy and exercise their rights and obligation under such CAs despite fact that before adoption of first lax law, the profit taxes under CAs were agreed at rate of 35%, which was the standard of profit tax rate of the first tax law (1994), subsequently it was reduced to 24% in existing tax law.

Another important point to be noted is that there are now discussions in technical forums whether to improve the VAT on export items, including the raw mineral, since 2014, the Government decided and approved by the National Assembly to set zero percent VAT on said exports, because VAT on refined, proceeding or manufacturing copper to export as one of main sources of revenues for the Government has been declined.

2. Coffee

Lao coffee industry began in early 1915 by the French residents who recognized the high altitude plateau with its fertile soils as a prime coffee growing area. The main coffee growing region is in the southern part of Laos, mostly in Parksong district, Champasack Province. This area is the high elevation Bolaven Plateau that has volcanic red earth soils. Coffee plant varietals include Arabica as well as Robusta and Liberica Coffee. In recent years, coffee becomes the significant agricultural export products to many countries around the world.

Coffee related policy is under the supervision of the Ministry of Agriculture and Forestry (MAF) for all aspects linked to production. There is no any specific government body responsible for the coffee sector currently. However, the Department of Agriculture (DOA) was established under the MAF to oversee and supervise the overall agricultural activities, which include coffee. In addition, the Ministry of Industry and commerce (MOIC) has the main role on the marketing issue and the early stage of establishing the business as to grant the approval for any form of general business, which is not the concession. However, the local authorities have intensively involved in the coffee sector, since most of coffee has been largely grown in southern provinces.

83 Article 12 of the Presidential Ordinance on Land Lease Fee and Concession Fee.
The Lao Coffee Association (LCA) is a representative of the coffee stakeholders which include producers, roasters and exporters to operate their businesses under one entity and it is one of the largest coffee exporter in Laos. LCA has been involved with the sector for 20 years and its main objective is to promote the Lao coffee sector and represent coffee stakeholders both on the national and international level. However, the LCA is under the supervision of Lao National Chamber of Commerce and Industry (LNCCI) and the LNCCI is supervised by the MOIC. In addition, the Bolaven Plateau Coffee Producers Cooperative (CPC) is considered as one of the largest coffee exporter as well. It was established in 2007 with the support of Lao Government and the French Development Agency (AFD), and it is a 100% framers’ own organization which gathers 1,855 households among 55 villages in the coffee growing area.

Figure 5: Coffee Plantation Map of Lao PDR

In Lao PDR, to receive the permission to establish the commercial entities is different from the type of investment, main related laws regulating these issues are the amended Law on Investment Promotion 2016 and amended Law on Enterprise 2014. According to the Investment Promotion Law, there are 3 types of doing an investment in Laos, for instance: to operate the general business shall require the license from the Ministry of Industry and Commerce (MOIC); concession business shall be under the supervision of the Ministry of Planning and Investment (MPI) to issue the concession license; and for any development activities of special economic zones and specific economic zones, the Secretariat to National Committee for Special Economic Zones at Government Office shall take the responsibility for the approval.

At institutional level, no specific supply chain coordinating organization has been set up in Laos. As a consequence, coffee trade is in the hands of private actors (exporters, importer agents, middlemen and producers) with a partial control of national authorities (taxes, certifications, overall control).

Roughly 1/4 of Lao coffee production is the Arabica bean, with the remaining 3/4 being the harder and stronger tasting Robusta. Coffee is one of the agricultural products for export earning about US$60 million in 2012, and became fifth largest export product of

Lao PDR contributing $70 million USD in 2013/14. Most of the crop is exported to Taiwan, Italy, Japan, Spain, Poland, Germany, the US, France, Belgium, Sweden, Thailand and Vietnam. For the past years, the estimated volumes of coffee exported by Laos vary between 11,000 t and 21,000 t (of green beans). The volume of Robusta production is very variable and sensitive to climate hazard. The popularity has changed from Robusta towards Arabica in the more recent years. For instance, the share of Arabica coffee in the total coffee export was 25% during 2006 to 2010 and it increases to an average of 52% during 2011 to 2017. However, still, the majority of Lao coffee export is in the form of green coffee beans (more than 90 percent in 2017) where coffee roasting is taken placed overseas.

Lao coffee industry mainly focus at plantation, primary processing and export stage of the coffee supply chain while most of the roasting is done offshore. As shown in Table 4 below, Lao coffee production market comprises of many players of different scales and several producer groups. The biggest planters are foreign companies and one domestic company. Pak-Song Highland, which is invested by one of Thailand’s largest conglomerates, has the largest concession plantation area of 3,100 ha. Dao Heung Group, which is a domestic private company, is the biggest manufacturer and it has the largest roaster factory in Asia that produces the instant coffee. Dao Heuang Group owns a small plot of land while purchasing large quantity of coffee bean from local farmers. In addition, there are many small scale producers especially at household level and many of them engage in some kinds of contract farming. There are several groups of farmers and cooperatives involving in coffee growing and they have important role in collecting their production and negotiate with wholesale buyers and agents of trading companies. Wholesale buyers and collectors usually engage in the processing and the exporters are responsible for the milling stage such as cleaning, sorting and grading. Lao coffees are roasted both in domestic and overseas.

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86 see footnote 82.
87 Outsapan - Olam from Singapore own more than 1,100 ha and three big Vietnamese companies also possess between 500 and 1,000 ha
88 Its mother company in Thailand actively involved in food and beverage, industrial and trading business, finance and insurance, property and real estate and agricultural and agro industry (http://www.paksong-highland.com and http://www.tcc.co.th)
89 UNCTAD 2013, p.9
90 such as farmers’ group in Pak Song district, Tatang district, Laongam district, the Heart of Lao Coffee group, the Km 40 Pak Song Coffee Cooperative and Bolavan Plateau Coffee Producers Cooperative
Table 4: Lao coffee supply chain\textsuperscript{91}

<table>
<thead>
<tr>
<th>Supply Chain</th>
<th>Activity</th>
<th>Main actors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Production</td>
<td>Cropping and processing</td>
<td>Individual producers, farmers’ group and private investors</td>
</tr>
<tr>
<td>Trading</td>
<td>Buying coffee products with producers. Provision of informal credit to individual farmers.</td>
<td>Village buyers and wholesalers</td>
</tr>
<tr>
<td>Export</td>
<td>Exporting services</td>
<td>Exporters and local importer agents</td>
</tr>
</tbody>
</table>

The Government has encouraged and promoted the agricultural products to the sub-regional, regional and world markets by issuing promotion policies, adoptions of legislatures and incentives to support and facilitate the productivities in agro-business activities, including coffee (neither coffee beans and manufactured/processed products). In doing so, the export tax, tariffs, as well as VAT had been gradually reducing to zero percent until now.

\textit{Profit Tax- Corporate Income Tax on Coffee Company}

As mentioned in the Part I of this report, the same rate of 24\% of all next incomes (business turnover) of a company doing coffee and coffee related activities in Lao PDR.

\textit{Royalty Rate for Coffee}

There is no royalty for coffee producers.

As shown in table 6, taxation on coffee in Lao PDR describes as follows:

\textsuperscript{91} source: see footnote 74.
Table 6: the payable tax and income regarding Coffee.

<table>
<thead>
<tr>
<th>Corporate Tax/Other taxes and payments</th>
<th>Coffee Taxes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Profit Tax (PT)</strong></td>
<td>Royalty</td>
</tr>
<tr>
<td>24 % (flat rate)</td>
<td>No</td>
</tr>
<tr>
<td><strong>Level at which applied</strong></td>
<td></td>
</tr>
<tr>
<td>National only (no provincial or district level)</td>
<td>No</td>
</tr>
<tr>
<td><strong>Income Tax</strong></td>
<td>Contribution to</td>
</tr>
<tr>
<td></td>
<td>Yes but very limited</td>
</tr>
<tr>
<td><strong>Dividends, interest, commissions</strong></td>
<td>Lao Association Register Fee</td>
</tr>
<tr>
<td>10 %</td>
<td>Coffee (LCA)</td>
</tr>
<tr>
<td></td>
<td>5,000,000 kip or 585 USD</td>
</tr>
<tr>
<td><strong>Sale of Share</strong></td>
<td>Lao Association Annual Fee</td>
</tr>
<tr>
<td>2 % - 10 %</td>
<td>Coffee (LCA)</td>
</tr>
<tr>
<td></td>
<td>500,000 kip or 58 USD</td>
</tr>
<tr>
<td><strong>Transport Tax</strong></td>
<td>Export fee to Lao Coffee Association (LCA)*</td>
</tr>
<tr>
<td>5% of Transport Service fee*10%</td>
<td>Coffee (LCA)</td>
</tr>
<tr>
<td></td>
<td>50,000 kip per ton or 5.8 USD</td>
</tr>
<tr>
<td><strong>Rental of real estate, vehicles, machinery, goods</strong></td>
<td>Land Use Fee (concession)</td>
</tr>
<tr>
<td>10%</td>
<td>Land use fee</td>
</tr>
</tbody>
</table>
|                                       | USD 80 x total amount of concession areas in ha

II. Findings

As the aims of this report is to analyze the potential revenue and tax losses comparing the transfer mispricing under arm length principle of OECD in both legal framework and practices on coppers and coffee. The following findings as result from the limited data collections and understanding of different applied rules and practices taken placed in different stakeholders in responsible organizations namely DOM, DIMEX, Tax Department, Customs Department. Thus, the findings are assisted as the information for further deep analysis and investigations.

The result of this study shows that there could be the norms of potential revenue losses due to corporate profit tax collections, lower tax rate and incentives, and zero percent VAT on export products including raw minerals and refined coppers and coffee beans.

92 Article 12 of the Presidential Ordinance on Land Lease Fee and Concession Fee.
Although, the London market prices is used to calculation of the royalty fee on coppers, which is reasonable and appropriated simplify method similar to OECD methods on transfer mispricing and the U.N method, but such calculation is rarely based for the calculation of the profit tax in our study. It is true that the tax profit calculation is complex and complicated. It is found that lack of the un-cleared or practical standardized methods for calculation and audit the profit tax declaration could be lead to misused or loopholes, although the burden of prove is done by the taxpayers, but the capacities of tax auditors and available resources for instance checking offshore transaction prices and tax information of multinational corporations as their inputs for auditing seem limited.

In case of copper, especially, in relation to the price filter analysis worked by (the WP1), it is found that there is abnormal pricing in copper concentrate exports, whether undervaluation, overvaluation, hedge, price arrangement that have been observed for its study, it could illustrate and explain the occurrence of trade mispricing in copper concentrate export. For instance, the collected data recorded by Customs Department is lower than the data recorded from the UN COMTRADE statistic, which is recorded as approximately 85 % of value of refined coppers exported from Lao PDR93. The VAT law of Lao PDR (since 2014) has numerous exemptions, especially in areas such as agriculture, forestry, mining and related activities. This small scale seems to imply that most Lao farmers are well below the threshold for compulsory VAT registration and would therefore not be affected by ending the exemption. The policy does not only in favor small farmers or producers but the larger agribusinesses and forestry operations, and mining companies that generate substantial revenues can also enjoy these incentives, so it seems imbalanced and another loophole in taxation system in Lao PDR. The zero VAT on refined coppers and coffee products to export illustrate perfectly the great loss to the Government in revenue collections. In addition, other incentive mechanism to support and promote the competitiveness of exporting products seems to provide the great opportunities for coffee beans smuggling to neighboring countries which could be also account for the declining in revenue collection.

III. Conclusions and Recommendation- Alternative options to Appropriate Transfer Price Rule in Lao PDR

As mentioned above Lao PDR is not the member of OECD, but in practice, to some extent the Tax Department, and DOM have been practicing the calculations using London market price for calculation of mineral royalty and to prove the transaction prices declared by the taxpayers. This could be something similar to arm’s length principle in Lao context. However, the following recommendations suggested to improve the potential gaps occurred in tax and revenue collections

93 note: this statistic is needed to check.
First, notwithstanding the tax reform programs have been implemented for recent years to simply the tax structures to make it more to easier the taxpayers to pay tax and single rates in corporate income tax, as stipulates in the new revised tax law (2017), however, the tax exemptions and incentives need to be adjusted as appropriated and balanced in order to minimize the loopholes in practice. These provisions not only erode the already narrow tax bases in Lao PDR, but also implicate tax administration.

Second, in parallel with tax law reform, the tax administration has been also reformed to improve the tax collection efforts. Although, tax administration and custom administration are now clearly defined in the new tax law, more effective, inefficient and tax arrangement must be established in the entire public tax administrative system. In order to do so, these following options are to be considered, including (i) common understanding on tax calculations and audits and systematic coordination and cooperation among tax and customs administrations and DOM, DIMEX and other relevant organizations shall be encouraged and put in place; (ii). clear tax policy and manners in assessment of accuracy of tax fillings and payments shall be strengthened to dampen down the tax avoidance and evasions; (iii). international tax cooperation with other tax administrations; information related tax activities of multinational corporations in the regional and international levers are required as inputs to assess and audit actual tax activities in Lao PDR; In an increasing globalized world, exchanging information on tax activities and lessons on tax issues as well as cooperating in tax collection can assist the tax administration in Lao PDR to cope with tax collections problems in a more complex tax payments of those multinational corporations.

With regarding to the transfer mispricing, the transfer pricing rules must be considering to put in place for better tax collections in Lao PDR. This include, the conduct need an assessment the well and workable tax collection system in Lao PDR, including substantiation of methodology used and confirmation of the arm’s length level of prices in controlled transactions, and preparing controlled transaction notifications; and pricing policies, in particular by reorganizing production and supply chains, and allowed-adjusting pricing approaches.

In addition, OECD Transfer Pricing Guidelines and other guidelines shall be considered and studied more in deep by and for tax and customs officials in order to strengthen their capacities, improve the tax administration and develop more tools of tax administration such as information system, calculation methods and better audit mechanism in Lao PDR

In conclusion, in my opinion, it is great concern that Illicit financial flows (IFFs) have become an issue of great concern over the last years as huge sums of money are transferred out of developing countries illegally. This illicit money from developing countries that could be used to finance the much-needed public services, from security and justice to basic social services such as health and education, weakening their financial systems and economic potential. While such practices occur in all countries and are damaging everywhere, it is skeptical that Lao PDR could be also challenging
and threatened, especially in terms of the transfer mispricing over the commodities to the exports namely coppers and coffees, thus the policy and legal framework on transfer mispricing shall be considered to put in place to tackle and cope with possible potential revenue losses as part of taxation reform in Lao PDR and importantly to improve the legal framework as to discourage tax avoidance and evasion and reduce improper activities of tax officials.
Reference (incomplete)

2. the Legal Sector Master Plan (LSMP) was adopted by the Government, the Prime Minister Decree NO 265/PM, dated 11 September 2009, for more information at: http://www.la.undp.org/content/lao_pdr/en/home/operations/projects/democratic_governance/support-project-for-implementation-of-the-legal-sector-master-pl.html
5. Lao gazette website at: http://www.laoofficialgazette.gov.la. The official gazette is under the Ministry of Justice and presently publishes laws and regulations in Lao language only. The draft laws are also listed in this website for public consultations.
6. The lists of the Multilateral and Bilateral agreements, conventions and treaties which Lao PDR is a party to are posted online, however, it is available in Lao language most, for more information at http://www.ilp.gov.la/
7. Tax Profile, Lao PDR, KPMG 2016
9. the Monetary Statistic Report- in Lao language, Bank of Lao PDR.
11. UN, SDG 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels, and SDG 16.4. indicates that By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime; https://sustainabledevelopment.un.org/sdg16.
13. The OECD has developed thorough guidelines on how the arm's length principle should be applied and 5 methods with explanations are elaborated in this Guidelines, view and download at http://www.oecd.org/ctp/transfer-pricing/transfer-pricing-guidelines.htm
Appendix
[as of 31 March 2018]

Stocktaking Report of

WP2

Curbing Illicit Financial Flows (IFFs) from Resource-rich Developing Countries: Improving Natural Resource Governance to Finance the SDGs

Lao PDR

Legal Research Team
I. General

A. Legal System of Lao PDR

Today the legal system of the Lao PDR is inherited a typical civil law-based legal system from the French colonial administrators in Indochina sub-region in early 20 centuries, and mixed also with Socialism ideology and Lao customary rules of different ethnic groups in the Lao PDR. After proclaiming and establishment of the Lao PDR in 2nd December 1975, the laws and regulations which enacted during the French colonial administration, especially the first Constitution and the civil code enacted in 1947 were abolished and replaced with new laws and regulations. Since then in 1986, the open-door policy or new economic mechanism was introduced, in order to be attractive to the Foreign Direct Investments (FDI); FDI inflows are seen as one method of boosting economic development and growth, and assisting in the transition process – from the central economic mechanism to the market oriented economy -consisting of both economic reforms and business liberalization measures; and inadequate legal infrastructure and weak enforceability, so in 1990s the country had started its legal reform with the supports by the international financial institutions such as the World Bank and IMF, and also by the foreign donors.

The first Constitution of the Lao PDR was passed by the National Assembly in 1991 and laws related to the court system, civil and criminal procedures, private ownership, and so on were adopted. The county had introduced and aimed to build the State of Law’s country (rule of law) since 2009, the Legal Sector Master Plan (LSMP) aims to strengthening the rule of law in the Lao PDR which lays out a comprehensive sectoral reform agenda to support the country on its way of becoming a State fully governed by the rule of law\(^1\). According to the 7th NSEDP (2011-2015)\(^2\) followed by the 8th Five-

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\(^1\) The Legal Sector Master Plan (LSMP) was adopted by the Government, the Prime Minister Decree N0 265/PM, dated 11 September 2009, for more information at: http://www.la.undp.org/content/lao_pdr/en/home/operations/projects/democratic_governance/support-project-for-implementation-of-the-legal-sector-master-pl.html

Year Plan (2016-2020), inter alia, the country affirms its reform in the direction of rule of law, ensure equality and justice in society, and fight corruption: more specifically, “to focus on implementing prevailing laws, to ensure equality before the Law for the entire Lao population and further strengthen the legal framework to reflect the interests and concerns of citizens ... and to ensure people have access to the legal and judiciary system and gradually integrate the legal framework into the region”.

The Lao PDR is the unitary State and the principle of democratic centralism applies to all of state organizations, including the Legislative Branch as National Assembly, Local People’s Assembly; Executive Branch as President, Government, Local Administrations; and Judicial Branch as the People’s Court and the Office of the Public Prosecutor. Democratic centralism is a method that embodies two elements of democracy and centralism by having the Lao People’s Revolutionary Party as the axle and the Lao Front for National Construction, the Mass Organization and Social Organization as the power. Specifically, this means the free and open discussion, and central control across the Vientiane Capital and 17 Provinces within the country in order to ensure the nation’ unity and discipline, and the minority must accede to the will of the majority, and the lower rank must obey the decision of higher ones.

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4 Art. 5, Constitution of The Lao PDR 2015
5 Art 3 of the law on the Government of Lao PDR
The diagram 1: The Party and State Structure of Lao PDR

Under the Constitution, the National Assembly represents people of the nation and acts as the legislative organ, which has the right to decide the fundamental issues within the country, and also supervises and oversees the function of the executive and judicial branches of the government\(^6\). The President is the Head of State who is elected by the National Assembly with two-thirds of votes from all of National Assembly’s members attending the session and he/she has rights and duties to promulgate laws approved by the National Assembly, appoints or removes the Prime Minister with the

\(^6\) Art. 53, Constitution of The Lao PDR 2015
approval of the National Assembly and members of the Government, and appoint provincial Governors and municipal Mayors on the recommendation of the Prime Minister. The government consists of the Prime Minister, Deputy Prime Ministers, ministers and chairmen of the ministry-equivalent organizations. The People's Courts comprises of the People's Supreme Court and People’s Local Courts (People's Provincial and Municipal Courts, People's Zone Courts) and the Military Courts. The People's Supreme Court is the highest judicial organ of the State. The People's Supreme Court examines and reviews the decisions of the people’s courts and military courts. The Office of the Public Prosecutor has the duty to monitor the implementation of the laws and it consists of the Office of the Supreme Public Prosecutor; Offices of the Local Public Prosecutor; and Office of the Military Prosecutor. The Office of the Supreme Public Prosecutor supervises the activities of the offices of the Public Prosecutor at all levels.

The Constitution of the Lao PDR defined also the roles and functions the Lao People’s Revolution Party (LPRP) in preamble of the Constitution and in Article 3 of the Constitution that the political rights of citizens are ensured and guaranteed by the Constitution in which the LPRP is the leading Party to facilitate the exercise of such rights.

The Lao PDR is partly monist and partly dualist in their actual application of international law in its legal system. According to the Article 8 of the Law on International Treaties and Agreements, which passed and promulgated officially in May 2017, regarding an international treaty or agreement and national laws that in

7 Art. 67, Constitution of The Lao PDR 2015
8 Art. 71, Constitution of The Lao PDR 2015
9 The People’s Zone Court has jurisdiction over several districts in the same provinces or area.
10 Art. 91, Constitution of The Lao PDR 2015
11 Art. 100, Constitution of The Lao PDR 2015
12 The Lao People’s Revolution Party is a Marxist-Leninist political party in the Lao PDR and it is only a ruling Party was founded in 1930 and has ruled and governed in Lao PDR since 1975. The policy-making organs of the Party are the Politburo, Secretariat and the Central Committee as mentioned in diagram 1; The Party Politburo is the centre of political power in the party with its membership drawn from and chosen by the Central Committee. The Politburo consisted of eleven members, which are also the elected to be the key State positions such as the President, the Chairman of the National Assembly and the Prime Minister.
cases when it is found that the provisions of an international treaty or agreement, which the Lao PDR is a party to, is different from the provisions of national laws, and sub-laws, and relevant legislations on the same matter, the provisions of the treaty shall prevail; however, according to Article 6 of the law regarding the fundamental principles of implementation of the international treaty or agreement, the implementation as such shall not be contradicted to the Constitution of the Lao PDR. In case where the provisions of the treaty and international agreement is explicit and not contracted to the Constitution, the Government of the Lao PDR or the National Assembly must decide on how the individual organizations shall directly apply these provisions directly, partly or fully. In case of there is no provisions of laws or they are contradicted to the provisions of domestic law, the Government shall propose to develop, amend, or terminate the concerning laws and other legislations in the line with the provisions of that international law and agreement.

According to the pillar 1 of the Legal Sector Master Plan\textsuperscript{13}, the harmonization of the international conventions and treaties to the domestic laws is part of new law development as the confirm the country’s commitment to implement the regional and global obligations as such; as well as to leverage the domestic laws and regulations to meet the international standards. Presently, the Lao PDR has developed and modernized its legislations continuously and gradually, there are promulgated 132 laws\textsuperscript{14}. The revised laws have been mostly enacted in the forms and approach of French civil law and socialist practices. Customary and traditional Rules is widely practiced by Lao people, but not officially recognized as part of State law.

The Lao PDR considers international cooperation in all areas, especially free trade, investment, corruptions and the human rights as one of its international commitments. In this regard, the Lao PDR has already acceded to a number of human rights related international instruments including the six core human rights conventions and two optional protocols. In addition, the country is also a signatory to the Convention on the

\textsuperscript{13} See footnote 1
\textsuperscript{14} Lao gazette website at: http://www.laoofficialgazette.gov.la. The official gazette is under the Ministry of Justice and presently publishes laws and regulations in Lao language only. The draft laws are also listed in this website for public consultations.
Protection of All Persons from Enforced Disappearance, and the International Covenant on Economic, Social and Cultural Rights (CESCR) 1996 making it one of the few countries in the region to sign this core human rights treaty, including the International Convention on the Elimination of All Forms of Racial Discrimination 1966, UN Convention Against Corruption\textsuperscript{15}. These international instruments have gradually been translated into the Lao national laws and concrete measures. The country has entered into many international treaties and bilateral agreements regarding trade, investment, and double taxation.

As a Member State of Association of Southeast Asia Nations (ASEAN), which it joined in 1997, and a member of the World Trade Organization, joined in 2013, in the area of international taxation, the Lao PDR has signed significant trade agreements with all nine other members of ASEAN and is engaged in a range of negotiations as a member of ASEAN and also 8 Double Taxation Agreements with Brunei, China, South Korea, Luxembourg, Malaysia, Myanmar, Thailand and Vietnam\textsuperscript{16}. In addition, the Lao PDR signed a Trade and Investment Framework Agreement with U.S.A in 2016\textsuperscript{17}, however, the Lao PDR has not yet signed the 1988 Convention on Mutual Administrative Assistance in Tax Matters and 2014 Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information.

These would support the Lao PDR to engage more into the international community, especially to enhance the regional and international cooperation on trade in order to boost the national economic growth and trade facilitation.

\textsuperscript{15} See: \texttt{http://www.ilp.gov.la/}, Since 2001 until now, in order to support the implementation of the international conventions and treaties and promote them effectively in the country, with the technical and financial supports by the international communities including the EU, Finland, United States, UNDP and others, the “international law project” was agreed and established under supervision by the Ministry of Foreign Affairs with those donors, with aim to creating a functional legal framework in line with integration into the international legal system is the progressive realization of basic human rights and the alignment of domestic legal instruments. The lists of the Multilateral and Bilateral agreements, conventions and treaties which the Lao PDR is a party to are posted online, however, it is available in Lao language most, for more information at http://www.ilp.gov.la/

\textsuperscript{16} Tax Profile, The Lao PDR, KPMG 2016

\textsuperscript{17} \texttt{https://www.export.gov/article?id=The+Lao+PDR-Trade-Agreements}
B. Information and Cooperation Network of Tax and Customs Administration

i. Tax Authorities

1. General

Taxes are monetary obligations to be fulfilled by individual, legal entities or organizations whose earnings are from occupational practice, business operations, consumption of goods and services in Lao PDR and abroad that shall pay taxes at different rates\textsuperscript{18}. The government of The Lao PDR realizes the importance of tax activities. Several policies, regulations, human resources, vehicles and necessary equipment and materials have been provided by the government to promote the efficient tax activities in order to supervise the collection of tax revenues in a unified manner nationwide; and fair index revenues, and to contribute to the state budget aiming to promote the expansion of business production, domestic and foreign investment attraction, rural development and the alleviation of poverty among Lao citizens and ethnic minorities\textsuperscript{19}.

In Lao PDR, the revenue agency in charge of the administration of taxes is the Tax Authority under the Ministry of Finance\textsuperscript{20} which has a vertical organizational system and consists of central and local levels, namely the Tax Department; Provincial/Capital City Tax Division and the District/Municipal Tax Office\textsuperscript{21}, and they play the important role to implement and enforce the Tax Law, Value Added Tax and related sub-regulations.

The Tax Department is an organization under the Ministry of Finance and it has rights and duties as stipulated in the Article 87 of Tax Law. Specifically, the Department has the role of vertical management of tax activities and serves as a secretariat to the Minister of Finance in the macro-management, creation of revenue collection plans,

\begin{itemize}
  \item \textsuperscript{18} Art. 2 of Tax Law 2015
  \item \textsuperscript{19} Art. 4 of Tax Law 2015
  \item \textsuperscript{20} Art. 75 of Tax Law 2015
  \item \textsuperscript{21} Art. 76 of Tax Law 2015
\end{itemize}
the inspection-audit, implement calculation, monitoring and supporting the payment of tax revenues into the state budget in a centralized and uniformed manner nationwide in accordance with laws and regulations. While the Provincial/Capital City Tax Division is under the supervision of the Tax Department, it has the responsibility for the management of tax activities and serves as a secretariat to the Director General of the Tax Department in the creation of revenue collection plans, the inspection-audit, implement calculation, monitoring and securing the remittance of tax into the state budget monitoring and supporting the payment of tax revenues into the state budget in a centralized and uniformed manner within the area of their jurisdiction. Additionally, the District/Municipal Tax Office is under the Provincial/Capital City Tax Division, its responsibility is to manage tax activities and serve as a secretariat to the directors of Provincial/Capital City Tax Division in the creation of revenue collection plans, the inspection-audit, implement calculation, monitoring and securing the remittance of tax into the state budget monitoring and supporting the payment of tax revenues into the state budget in a centralized and uniformed manner within the area of their jurisdiction.

Are there specific units / sub-units that deal with trade-based tax evasion or trade-based money laundering?
How do they perform their analysis?
Are there training programmes in places to strengthen capacities in this area?

a) Information sharing with other domestic agencies
Other relevant agencies in central and local levels shall be reached and coordinated by the Tax Department, Provincial/Capital City Tax Division, District/Municipal Tax Office respectively concerning tax issues and information collection. However,

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22 Art. 76.1 of Tax Law 2015
23 Art. 76.2 of Tax Law 2015
24 Art. 76.3 of Tax Law 2015
25 Art. 87.11 of Tax Law 2015
26 Art. 88.11 of Tax Law 2015
27 Art. 89.11 of Tax Law 2015
information sharing in the form of MOUs has been done between Tax departments and relevant organizations as follows:

<table>
<thead>
<tr>
<th></th>
<th>Customs agencies</th>
<th>Law enforcement</th>
<th>Financial intelligence units (FIU)</th>
<th>Banking supervisors</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Practice (both departments are under the MOF)</td>
<td>MOU</td>
<td>MOU</td>
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<tr>
<td>Yes, with restrictions</td>
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<td>No</td>
<td></td>
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</tbody>
</table>

**Is information sharing between tax authorities and other domestic agencies mandatory or voluntary?**

<table>
<thead>
<tr>
<th></th>
<th>Customs agencies</th>
<th>Law enforcement</th>
<th>FIU</th>
<th>Banking supervisors</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mandatory</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Voluntary</td>
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<td></td>
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<tr>
<td>Not applicable (if no exchange)</td>
<td></td>
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</table>

**Can customs authorities / prosecutors request information to tax authorities as part of an investigation on trade mispricing?**

b) Information sharing with foreign agencies

The state promotes foreign, regional and international cooperation on tax activities through the exchange of technical and professional experience, assistance, human resources development, exchange of information and other aspects, the
implementation of treaties and international conventions to which the Lao PDR is a state party.\textsuperscript{28}

<table>
<thead>
<tr>
<th>EOI arrangement</th>
<th>Yes (and with whom)</th>
<th>No</th>
</tr>
</thead>
</table>
| Exchange of information under Double Taxation Conventions/Agreements | According to the DTAs, the competent authorities of Laos and its contracting states could exchange information if there is a need to carry out the provision of agreements, and the supervision and enforcement of domestic laws of contracting states in regard to taxes covers under agreements, including the income tax of individuals and profit tax of enterprise and organization for Laos, and income tax and corporation tax for its 8 contracting states as follows:  
- Thailand;
- Luxembourg;
- Malaysia;
- China;
- Korea;
- Brunei;
- Vietnam;
- Myanmar
- Singapore | |
| Tax Information Exchange Agreements (TIEAs) OECD Convention on Mutual Administrative Assistance in Tax Matters | | |
| Automatic exchange of information (AEOI) | | |
| Other | | |

\textsuperscript{28} Art. 10 of Tax Law 2015
Is there any tax information exchange arrangement with Switzerland?

<table>
<thead>
<tr>
<th>Type of EOI arrangement</th>
<th>Date signed</th>
<th>Date entered into force</th>
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</thead>
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<td>Other</td>
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ii. Customs Agency

1. General

Individuals, legal entities and organizations undertaking export and import, transit and movement of goods through customs border checkpoints shall bear the obligation of customs duties to the State as specified in the customs tariff nomenclature.29

The Agency in charge of the collection of customs duties and the customs administration is the Customs Administration under the Ministry of Finance, which has a vertical organizational system and consists of central and local levels, namely Customs Department, Regional Customs and Customs Border Checkpoints. These agencies serve as the secretariat to the Minister of Finance regarding the customs operation management at the macro level and to carry out internal customs inspections, investigations and audits. Importantly, the agencies play the crucial role to implement and enforce the Customs Law 2011 and other related laws and

29 Art. 2 of Customs Law 2011
30 Art. 73 of Customs Law 2011
31 Art. 74 of Customs Law 2011
regulations.32

However, the Division of Post Clearance Audit within the Customs Department has the essential role for anti-smuggling activities or the prevention of duties avoidance (need more information about its works, and practice of customs duties avoidance which the division is handling for). In addition, the activity of duties avoidance, particularly trade mispricing was not stipulated in the law; but the customs value of exported goods shall be the actual value of goods which include transportation costs delivered to the customs border checkpoints of export, thus the price shall not be higher or lower than the reality.34

(Need more information for these)

Has Lao PDR established Trade Transparency Units (TTUs) to detect suspicious trade transactions? Not
What risk models / analytical tools do they use to carry out the analysis?
Has information or analysis led to specific investigations?
Are there training programmes in places to strengthen capacities in this area?

c) Information sharing with other domestic agencies

Do customs agencies share information with other domestic agencies?

Other relevant agencies in central and local levels shall be reached and coordinated by the Customs Department, Regional Customs and Customs Border Checkpoints concerning customs issues and information collection. However, information sharing in the form of MOUs has been done between Customs Departments and relevant organizations as follows:

32 Art. 73 of Customs Law 2011
33 Art. 75.9 of Customs Law 2011
34 Art. 12 of Customs Law 2011
35 Art. 75 A.8 of Customs Law 2011
36 Art. 75 B.8 of Customs Law 2011
37 Art. 75 C.6 of Customs Law 2011
<table>
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**Is information sharing between customs agencies and other domestic agencies mandatory or voluntary?**

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Has information or analysis led to specific investigations?

**d) Information sharing with foreign agencies**

Can customs authorities share information with foreign customs authorities / other foreign authorities? On which legal bases?

The government opens and promotes relations and cooperation with foreign countries, regions and the world on customs matters by the exchange of lessons, information, techniques, technologies, training and upgrading of staff capacity and others, and to implement international agreements, treaties or conventions of which Lao PDR is a Party to.

<table>
<thead>
<tr>
<th></th>
<th>EOI arrangement</th>
<th>Yes (and with whom)</th>
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<tbody>
<tr>
<td></td>
<td>Customs mutual assistance</td>
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</table>

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38 Art. 9 of Customs Law 2011
Has information or analysis led to specific investigations?

Is there any customs assistance arrangement with Switzerland?

- Type of arrangement
- Date signed
- Date entered into force

2. Literature

Key information/ literature on the topic.

C. Banking and financial supervision and anti-money laundering frameworks

i. Banking supervisors

In 1986, the New Economic Mechanism was presented by the Lao Government and it had significantly become the historic economic reforms in Lao PDR. The reform had the main objective to gradually transform its central-planned economy into a market-oriented economy. Therefore, the monobanking system was transformed into the two-tier banking system as a result of the agreement on transforming the banking system into business in line with socialist directive 1988, and the Bank of Lao PDR and commercial banks were firstly introduced and they have operated since then\(^\text{39}\). The Bank of Laos (BOL) is the central bank of the State and it shall be the financial institute of the Government, which is equivalent to the Ministry in rank\(^\text{40}\). BOL plays the role of macroeconomic management in regard to currency and credits by formulating and implementing the monetary policy, maintaining the stability of the LAK\(^\text{41}\) value and strengthening the efficiency of payments mechanism and solvency of banking system in order to create an efficient operation and transparency of monetary,

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\(^{39}\) History of BOL, see https://www.bol.gov.la/english/ehistory3.html

\(^{40}\) Art. 2 of the Law on Bank of Laos 1995

\(^{41}\) LAK (Lao Kip) or Kip refers to the currency of Laos
credit system of the Lao PDR, these may contribute to the socio-economic development of the nation. Specifically, BOL has rights and responsibility to supervise and oversee the operation of commercial banks and financial institutions and BOL inspectors shall conduct the investigation or examination in regard to accounts, documents, electronic data of commercial banks, Microfinance Institutions and their affiliates.

Commercial Banks are regulated by the Law on Commercial Banks 2006. Under the law, commercial banks have the obligation for anti-money laundering by determining measures to prevent and counter such activity in accordance with the laws and regulation. The law also sets the requirement that the Board of Director of commercial banks shall not have been convicted by the court of any offence relating corruption and/or money laundering. Furthermore, the detailed record of the daily transaction, credit and account of customer shall be prepared and maintained by those commercial banks and they should have adequate regulations, mechanisms and procedures to identify their actual and prospective customers, and their customers’ transactions.

In addition, the Decree on Microfinance Institution 2012 set the similar rules to this business, including the deposit-taking and non-deposit-taking microfinance institutions, and also financial projects. Microfinance Institutions has the obligation to prevent and counter money laundering in accordance with the laws and regulation by determining measures and rules to comply with the related anti-money laundering regulation, and the Board of Director of these institutions shall not have been convicted by the court of any offence relating to money laundering. Moreover, the

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42 Art. 3 of the Law on Bank of Laos 1995
43 Art. 4 & 5 of the Law on Bank of Laos 1995
44 Art. 64.2 of the Law on Commercial Bank 2006
45 Art. 69.2 of the Decree on Microfinance Institution 2012
46 Art. 36 of the Law on Commercial Bank 2006
47 Art. 23.3 of the Law on Commercial Bank 2006
48 Art. 45.6 of the Law on Commercial Bank 2006
49 Art. 33.3 of the Law on Commercial Bank 2006
50 Art. 22.3 of the Decree on Microfinance Institution
51 Art. 22.3 of the Decree on Microfinance Institution
detailed record of the daily transaction, credit and account of customer shall be prepared and maintained by those institution as well\textsuperscript{52}.

Commercial banks and other financial institutions are required to perform customer due diligence and file suspicious transaction reports (STRs)\textsuperscript{53} in accordance with the Law on Anti-Money Laundering and Counter-Financing Terrorism 2015. These financial institutions were named as the Reporting Entities and they have the obligation to report the information regarding suspicious activities of being money laundering to the responsible unit under the BOL, named Anti-Money Laundering Intelligence Office/Unit (AMLIO/AMLIU)\textsuperscript{54} which would be further explained on the next part.

\textbf{From which sources do banking supervisors receive trade-related information?}

<table>
<thead>
<tr>
<th>Customs agencies</th>
<th>Tax authorities</th>
<th>Law enforcement agencies</th>
<th>FIU (AMLIO)</th>
<th>Financial institutions</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes, with restrictions</td>
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<td></td>
<td></td>
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<tr>
<td>No</td>
<td></td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>

\textbf{With which of the following domestic agencies can they share trade-related information?}

<table>
<thead>
<tr>
<th>Customs agencies</th>
<th>Tax authorities</th>
<th>Law enforcement agencies</th>
<th>FIU (AMLIO)</th>
<th>Financial institutions</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>\textsuperscript{52} Art. 37.4 of the Decree on Microfinance Institution</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>\textsuperscript{53} Art. 18 of the Law on Anti-Money Laundering and Counter-Financing Terrorism 2015</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>\textsuperscript{54} Art. 17 of the Law on Anti-Money Laundering and Counter-Financing Terrorism 2015</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
In addition, the BOL cooperates with various ASEAN countries in technical areas, including Myanmar, Cambodia and several other developing countries. Most importantly, BOL also inked a MOU with the Korea Financial Intelligence Unit of the Republic of Korea to exchange information on preventing money laundering and the financing terrorism. This was a significant form of international cooperation to actively address the Central Bank’s anti-money laundering deficiencies.55

**ii. Financial Intelligence Units**

Lao Government realized the importance of anti-money laundering and combating the financing of terrorism since early 2000s, the Ad Hoc Committee of anti-money laundering and combating the financing of terrorism was set up under the BOL in 2004 and the committee was consisted of representatives from department of Bank Supervision; Internal Audit; Currency Issuing; Operation and Administration within BOL. In 2006, the Decree on Anti Money Laundering No. 55/PM was enacted and in order to implement such decree, the Anti Money Laundering Intelligence Office (AMLIO) was established in 2007 and there are fours divisions within the office currently, namely, Analysis Division; Information Technology Division; Monitoring and Inspection Division; and Administrative Division56. Later, in 2008, the Working Group on Anti Money Laundering was created and there are 14 members from different ministries and relevant government sectors. Importantly, the AMLIO has the responsibility to research regulations related to information gathering of customers, and also receive and analyse suspicious transaction report from financial institution57

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55 The Bank of the Lao PDR gears up battle against money laundering, BOL News, 1st March 2017
57 Art. 4.2.3 of the Agreement on the establishment and activity of the Anti-Money Laundering Intelligence Office 2007
and report the outcome to the management committee for consideration and further investigation.

So far, the AMLIO has been mainly working on encounter the trade of drugs. An Analysis or investigation in relation to export trade is still considered as a rare case within the organization (according to the discussion with DG of AMLIO).

In the past few years, the Anti-Money Laundering Intelligence Office has signed MOU on data exchange with several government bodies. The AMLIO has rights to request for any information in regards to the activities of money laundering from relevant ministries, organizations, local authorities and others across the country\(^{58}\). Therefore, the AMLIO has signed MOUs on Information Exchange concerning financial intelligence on money laundering with relevant agencies as follows\(^{59}\):

<table>
<thead>
<tr>
<th></th>
<th>Customs agencies</th>
<th>Tax authorities</th>
<th>Law enforcement agencies</th>
<th>Banking supervisors</th>
<th>Financial institutions</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>MOU</td>
<td>MOU</td>
<td>MOU</td>
<td>MOU</td>
<td>MOU</td>
<td>Law on Anti-Money Laundering MOUs with Economic Police Department, Ministry of Public Security; Anti-Corruption Department, Government Inspection Agency; Enterprise Registration and Management Department, MOIC; and Lao</td>
</tr>
</tbody>
</table>

\(^{58}\) Art. 4 of the Decision on the Organization and Activity of AMLIO 2016  
\(^{59}\) http://www.amlio.gov.la/eng/about.php
Additionally, the AMLIO also strengthen its regional and international cooperation through signing MOUs on information exchange on financial intelligence related to money laundering with foreign FIUs. For example: the State Bank of Vietnam; the Cambodia Financial Intelligence Unit (CAFIU); the Korea Financial Intelligence Unit (KoFIU); The Korean Financial Intelligence Office (AMLIO) of Kingdom of Thailand; the Indonesia Financial Transaction Report and Analysis Center (INTRAC); Federal Financial Monitoring Service of Russia; China Anti-Money Laundering Monitoring and Analysis Center; and the Japanese Financial Intelligence Center (JAFIC) of the National Public Safety Commission of Japan 60.

iii. Anti-money laundering legislation

In 2015, the Law on Anti-Money Laundering and Counter-Financing Terrorism (Anti-Money Laundering Law or AML Law) was enacted and this Law repeals the Decree on Anti-Money Laundering 2006. The law provides more measures to suit with the current global situation and be more compliant with the international standard. In addition, the law also formulates the term of “reporting units”, which have the obligation to report the information related to suspicious activity which may lead to money laundering to AMLIO 61, the reporting units consist of both Financial Sector Institutions and Non-Financial Sector institutions; Financial Sector Institution include: commercial banks, micro-finance institutions, loan and credit providers, insurance companies, securities companies, money transfer service company, foreign exchange

60 Ibid
61 Art. 17 of the Law on Anti-Money Laundering and Counter-Financing Terrorism 2015
store, asset management company and other\textsuperscript{62}, and “Non-financial sector institutions” include commercial real estate representations, antique/precious metal dealers, law firms, auditors, notary agency, casino operator and other\textsuperscript{63}.

Under the AML Law, there is no any provision relevant to commodity trade, however, tax crime and smuggling in relation to customs were general mentioned that there are considered as the money laundering activity which is constituted as a predicate offence\textsuperscript{64}. The Law was not specified in further detail how these activities are defined and what are specific practices to consider as tax crime and smuggling. (According to the visit at the Anti-Money Laundering Intelligence Office with Gilles and the team, the Director General informed us that the said activities shall be referred to tax law and customs law).

Additionally, all persons, which include reporting units shall provide information on and act against money laundering and the financing of terrorism. However, the AML Law requires certain specific obligations on reporting units, for instance: they shall bear the responsibility to adopt an anti-money laundering and terrorism financing policy and provide the training of such policy for their staffs\textsuperscript{65}; reporting units shall verify the identity of customers as well as the intention and objectives behind the transactions through collecting the ID card, household registration book, passport, enterprise registration license or other official papers that can justify the customers’ identity or their representatives\textsuperscript{66} and if unable to do so, then reporting units must not continue or start a business relationship with that customer\textsuperscript{67}; the reporting units also must monitor customer accounts and transactions with an emphasis on unusual, complex, high-value or irregular transactions\textsuperscript{68}; and reporting certain transactions to the AMLIO.

\textsuperscript{62} Art. 8.7 of the Law on Anti-Money Laundering and Counter-Financing Terrorism 2015
\textsuperscript{63} Art. 8.8 of the Law on Anti-Money Laundering and Counter-Financing Terrorism 2015
\textsuperscript{64} Art. 8.1 of the Law on Anti-Money Laundering and Counter-Financing Terrorism 2015
\textsuperscript{65} Art. 19 of the Law on Anti-Money Laundering and Counter-Financing Terrorism 2015
\textsuperscript{66} Art. 21 of the Law on Anti-Money Laundering and Counter-Financing Terrorism 2015
\textsuperscript{67} Art. 23 of the Law on Anti-Money Laundering and Counter-Financing Terrorism 2015
\textsuperscript{68} Art. 22 of the Law on Anti-Money Laundering and Counter-Financing Terrorism 2015
Specifically, transactions which exceed certain thresholds or Threshold Reports (which are to be determined by the Bank of Lao PDR in later regulations) and transactions which are suspected to be connected to money laundering or terrorism financing or Suspicious Transaction Reports must be submitted by reporting units to AMLIO\textsuperscript{69}, these reports shall be submitted to AMLIO within three days\textsuperscript{70}. Such reports must be kept confidential or else the person filing may be subject to re-education measures, fines and any applicable criminal charges. However, reporting units will be indemnified if reports are filed in good faith and are in compliance with the law\textsuperscript{71}.

\textit{iv. Literature}

Key information/ literature on the topic.

\textbf{D. Foreign exchange (FX) control}

While US dollars and baht were commonly used for large transactions in Laos, the economy suffered fiscal and monetary difficulties in 2013, which resulted in low levels of foreign reserves. Thus, the BOL has restricted the sale of foreign currency to the public by stating that the local currency as Lao Kip must be encouraged for the greater use, and daily limits on converting funds from Lao kip into U.S. dollars and Thai baht have been imposed, these lead to challenges in obtaining foreign exchange within the country. However, there are no current reports of restrictions on, or difficulties in, repatriating or transferring funds associated with an investment. So far, the Lao PDR has enacted strict rules of foreign exchange and capital controls through three main regulations, such as: the Law on Management of Foreign Currency 2014 (FX Law), the Presidential Decree governing the Management of Foreign Exchange and Precious Metals 2008 (FX Decree) and the Instruction on Implementation of the

\begin{itemize}
\item \textsuperscript{69} Art. 18 of the Law on Anti-Money Laundering and Counter-Financing Terrorism 2015
\item \textsuperscript{70} Art. 31 of the Law on Anti-Money Laundering and Counter-Financing Terrorism 2015
\item \textsuperscript{71} Art. 32 of the Law on Anti-Money Laundering and Counter-Financing Terrorism 2015
\end{itemize}
Presidential Decree on Management of Foreign Exchange and Precious Metals 2010 (FX Guideline)\textsuperscript{72}.

The strict regime of foreign exchange and capital controls from the new regulation disrupt the liberalization of currency controls and this could affect exchange rates and investment flows into the country. However, in middle of 2013, the kip depreciated against the US dollar, and different rates might emerge on a black market that is reappearing for the first time since currency restrictions were lifted in 2008\textsuperscript{73}.

Lao FX regulation prohibits individuals and legal entities operating in the Lao PDR from paying or receiving foreign exchange for the goods and services and the settlement of debts should not be conducted in foreign currency, unless the BOL has proposed such a transaction and the Lao Government has approved\textsuperscript{74}. However, companies that deal internationally have some leeway to conduct business in foreign currency, including paying for imported goods; import-related and export-related services; repaying foreign debts in accordance with a loan agreement and the approval from BOL; and transferring after-tax profits, income from technology transfer, initial capital, interest, wages and salaries, or other remittances by foreign investors to a third country or home’s country in accordance with the approval from BOL as well as the Lao government\textsuperscript{75}.

If there are active black markets in foreign exchange within a country, the trade misinvoicing may be conducted by the importer and exporter and this would lead to illicit financial flows. For example, an importer may over-invoice imports to reduce income tax if exchange rates in black markets are attractive or relatively high, and then they could reap the additional profit from exchanging it in the black market. These illicit profits can then be transferred abroad through one or more of the conduits of

\textsuperscript{72} https://www.bol.gov.la/english/index1.php

\textsuperscript{73} Government tightens foreign exchange rules, the Economist Intelligence Unit (EIU), 30\textsuperscript{th} August 2013.


\textsuperscript{74} Art. 10 of Law on Management of Foreign Currency 2014

\textsuperscript{75} Ibid
illicit flows with which the importer is familiar. On the export side, illicit financial flows are common when the black market premium is higher than the export subsidy. It will then be attractive to raise the necessary foreign exchange on the black market.

E. Transfer Pricing (TP) rules, procedures and documentations

i. Legal framework

In Laos, there are currently no formal regulations of transfer pricing. However, according to the practice of tax auditors, they shall consider any expenses as unauthorized item for the calculation of annual profit if such expenses are incorrect or too high. Meanwhile, tax auditors must reject any expense that is “higher than the reality”\(^{76}\). In addition, intragroup loans are also restricted under the regulation, which prohibits the tax deduction of interest paid to partners\(^{77}\).

Any transaction of the purchase and sale of goods and service requires invoice\(^{78}\) and any expenses which are not documented or certified shall be refused by tax auditors\(^{79}\). Contractual documents, such as bills, must be kept for 10 years\(^{80}\). If the taxpayer is part of a group that has a transfer pricing group policy, this documentation should also be maintained, even it’s not required by the law, this is for the explanation and providing supported evidence for the pricing used in transactions between the Lao entity and its related parties.

Furthermore, to prevent tax officer from abusing of his/her position, especially to request or receive bribes, for instance: to falsify invoices, receipts or other documents and collect tax revenue without the approval of the authorities, such officer shall be subject to criminal procedures\(^{81}\).

\(^{76}\) Art. 34.12 of Tax Law 2015
\(^{77}\) Art. 34.8 of Tax Law 2015
\(^{78}\) Art. 66 of Tax Law 2015
\(^{79}\) See footnote 75
\(^{80}\) Art. 41 of Accounting Law 2007
\(^{81}\) Art. 97.1 of Tax Law 2015
However, the “arm’s length” principle is the standard universally adopted in international tax law, thus, it should be followed by taxpayers for all expense transactions in Lao PDR, whether with third or related parties.

ii. Administrative arrangements

Is there a Transfer Pricing Unit (TPU) in revenue authorities/ customs agencies / mining departments or line ministers? NO

[How big is it (number of staff)?]

[How does it relate to other entities within the same agency (internal coordination)?]

[Does it work with other authorities (customs agencies, law enforcement agencies, relevant regulatory agencies for the extractive sector, etc.)? Which inter-agency coordination arrangements are in place?]

[Does it work with foreign authorities (customs agencies, law enforcement agencies, relevant regulatory agencies for the extractive sector, etc.)? Under which framework?]

iii. Transfer pricing documentation

What are the TP guidelines, toolkits, documentation templates used by the TPU, if established? NO

Are there TP information requirements for extractive companies and traders?

iv. Cases

Since the topic is apparently new in Laos and it has been just gradually got attraction from the government recently, and there are no formal transfer pricing rules in Laos as a moment. Thus, the investigation as well as case proceeding of this issue has not been raised so far.

v. Literature

Relevant literature on TP laws in Lao PDR (including Governmental reports).
b. Other anti-avoidance rules

Are there other anti-avoidance rules, for example on thin capitalization and on controlled foreign companies?

(apparently not:


c. Corporate disclosure requirements and transparency

   i. Payments to the Government

The Mine Law does not specifically require mining business operators to disclose their payment to the government but those companies shall bear the disclosure obligation regarding to its business operation.

   Are there other on-going initiatives that seek to improve the governance of extractive industries in Lao PDR?

   Is there any publicly available information about who is operating in the sector and under what terms, and about how much revenue is being generated?

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82 Reference is here to tax anti-avoidance rules. “The most relevant anti-avoidance rules in domestic tax systems include:

• General anti-avoidance rules or doctrines, which limit or deny the availability of undue tax benefits, for example, in situations where transactions lack economic substance or a non-tax business purpose;

• Controlled foreign company rules, under which certain base eroding or “tainted” income derived by a non-resident controlled entity is attributed to and taxed currently to the domestic shareholders regardless of whether the income has been repatriated to them;

• Thin capitalisation and other rules limiting interest deductions, which disallow the deduction of certain interest expenses when, e.g. the debt-to-equity ratio of the debtor is considered to be excessive;

• Anti-hybrid rules, which link the domestic tax treatment with the tax treatment in that foreign country thus eliminating the possibility for mismatches;

• Anti-base erosion rules, which impose higher withholding taxes on, or deny the deductibility of, certain payments (e.g. those made to entities located in certain jurisdictions)” (OECD, Addressing Base Erosion and Profit Shifting (OECD Publishing, 2013), 38.

83 Art. 64.5 of the mine law
The information of companies operating in the sector is publicly available, which includes their business/concession terms and revenue. Mostly, it has been published on the newspapers, magazine and news reporting from media agencies.

ii. Beneficial ownership and control

Under the AML Law, the reporting entities need to find the ownership whether the customers’ business ties are for their own behalf or for others. This would identify the beneficial owner such as fund or property owners as well as funds used in the enterprise’s establishment.\footnote{Art. 24 of the Law on Anti-Money Laundering and Counter-Financing Terrorism 2015}

The listed company\footnote{“Listed company” means a company that issues its securities to investors and listed on the securities exchange as defined by this Law (Art. 3.8 of Security Law 2012).} and issuing company\footnote{“Issuer” means a company that issues its securities to investors as defined by the Law (Art. 3.8 of Security Law 2012).} under the Lao Security Exchange (LSX) are required to disclose corporate affairs and other information in a timely and accurate manner in compliance with disclosure requirement\footnote{Art. 124 of the security law; there is the Disclosure Regulation under LSX.}. In particular, those companies should provide the quarterly financial statement, which is audited by an internal auditor; an annual financial report audited by a certified external auditing organization as well.\footnote{Art. 59 of Decree on Security and Security Market 2010} However, there are only 6 listed companies under LSX such as: BCEL bank, EDL Generation Public Company, Lao World Public Company, Petroleum Trading Lao Public Company, Souvanny Home Center Public Company, and Phousy Construction and Development Company.\footnote{See LSX website at: http://www.lsx.com.la/info/stock/listedCompany.do?lang=en} None of these companies belong to extractive industry.

The above provisions and requirement are regulated by the AMLIO and LSX under the banking supervisor as BOL and these agencies mainly take charge of monitoring and administration of the issue and also to implement such regulations.

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84 Art. 24 of the Law on Anti-Money Laundering and Counter-Financing Terrorism 2015
85 “Listed company” means a company that issues its securities to investors and listed on the securities exchange as defined by this Law (Art. 3.8 of Security Law 2012).
86 “Issuer” means a company that issues its securities to investors as defined by the Law (Art. 3.8 of Security Law 2012).
87 Art. 124 of the security law; there is the Disclosure Regulation under LSX.
88 Art. 59 of Decree on Security and Security Market 2010
iii. Corporate social responsibility (CSR) and industry self-regulation

Are there relevant industry initiatives and self-regulations to enhance information and transparency in coffee and copper (or generally the commodity sector) in Lao PDR? Take the company related to coffee or copper to be the example, and then we need the information from their organization (a big challenge for negotiation and seeking information – this could be done together with the interview session of WP 3).

iv. Literature

Key information sources / literature on disclosure requirements & natural resource governance in Lao PDR.
### Annex

Cases and legislation: indicate full reference (Exact title, registration number, date signed/adopted, date entry into force) to enable readers to identify the referred material and list specific provisions

<table>
<thead>
<tr>
<th>Regulatory field/area</th>
<th>Legislation title / case name (full reference)</th>
<th>Relevant provisions</th>
<th>Summary of prescriptive content</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Tax treaties</strong></td>
<td>Agreement between the Government of Brunei and the Government of Lao PDR for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respects to Taxes on Income, 27 Apr 2006</td>
<td>Exchange of information or administrative assistance in tax collection</td>
<td>According to the DTAs, the competent authorities of Laos and its contracting states could exchange information if there is a need to carry out the provision of agreements, and the supervision and enforcement of domestic laws of contracting states in regard to taxes covers under agreements, including the income tax of individuals and profit tax of enterprise and organization for Laos, and income tax and corporation tax for its 8 contracting states.</td>
</tr>
<tr>
<td></td>
<td>Agreement between the Government of the People’s Republic of China and the Government of Lao PDR for the</td>
<td></td>
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<tr>
<td>Agreement</td>
<td>Details</td>
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</tr>
<tr>
<td>1</td>
<td>Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respects to Taxes on Income, 25 Jan 1999</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Agreement between the Government of Union of Myanmar and the Government of Lao PDR for the Avoidance of Double Taxation and</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


<p>| <strong>Prevention of Fiscal Evasion with Respects to Taxes on Income</strong> |  |  |
| <strong>Tax Law</strong> | <strong>Law on Tax, dated 28 Jan 2016</strong> | <strong>The revenue agency in charge of the administration of taxes in Lao PDR – Tax Authority</strong> | <strong>Tax Authority has a vertical organizational system and consists of central and local levels, namely the Tax Department; Provincial/Capital City Tax Division and the District/Municipal Tax Office, and they play the important role to implement and enforce the Tax Law, Value Added Tax and related</strong> |
| <strong>Information sharing with other domestic agencies</strong> | Simply specified that the tax authority shall share the information with relevant sectors in accordance with the law (Detail might be in the MOU) |
| <strong>Provision related to transfer pricing rule</strong> | The current practice of some tax auditors is to refer to Art. 34 of the Amended Tax Law 2015 to reject any expense that is “higher than reality” and intragroup loans are also restricted, which prohibits the tax deduction of interest paid to partners. |
| <strong>Customs Law</strong> | <strong>Law on Customs, dated 16 Jan 2012</strong> |
| | <strong>The Agency in charge of Customs Duty and Customs Administration</strong> |
| | Customs agency has a vertical organizational system and consists of central and local levels, namely Customs Department, Regional Customs and Customs Border Checkpoints. These agencies serve as the secretariat to the Minister of Finance regarding the customs operation management at the macro level and to carry out internal customs inspections, investigations and |
| <strong>Financial and Banking Law</strong> | Law on Bank of Lao PDR, 14 Oct 1995 | The overall supervisory and regulatory authority relating to banking and non-banking financial business | BOL plays the role of formulating and implementing the monetary policy, maintaining the stability of the LAK value and strengthening the efficiency of payments mechanism and solvency of banking system in order to create an efficient operation and transparency of monetary, credit system and also to supervise and oversee the operation of commercial banks and financial institutions the Lao PDR. |
| <strong>Money Laundering Law</strong> | Law on Anti Money Laundering and Counter-Financing of Terrorism, 4 - | Agency responsible for receiving and analysing reports of suspicious activities | The Anti Money Laundering Intelligence Office (AMLIO) has the responsibility to |</p>
<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Feb 2015</td>
<td>transactions from financial institutions and other entities with reporting obligations transaction reports (STRs)</td>
<td>regulate the customs due diligence and suspicious transaction, such as information gathering of customers, and also receive and analyse suspicious transaction report from financial institutions and report the outcome to the management committee for consideration and further investigation</td>
</tr>
<tr>
<td></td>
<td>Reporting units which have the obligation to report the information related to suspicious activity</td>
<td>The reporting units consist of the Financial Sector Institution, such as: commercial banks, micro-finance institutions, loan and credit providers, insurance companies, securities companies, money transfer service company, foreign exchange store, asset management company, and Non-financial sector institutions, which include commercial real estate representations, antique/precious metal dealers, law firms, auditors, notary agency, casino operator.</td>
</tr>
<tr>
<td></td>
<td>Beneficial ownership and control</td>
<td>The reporting entities need to find the ownership whether the customers’ business ties are for their own behalf or for others</td>
</tr>
</tbody>
</table>
| FX Law                                                                 | Law on Management of Foreign Currency, 30 Jan 2015 | Restrictions on foreign exchange conversion | Lao FX regulation prohibits individuals and legal entities operating in the Lao PDR from paying or receiving foreign exchange for the goods and services and the settlement of debts should not be conducted in foreign currency, unless the BOL has proposed such a transaction and the Lao Government has approved.

Limitation of restrictions on foreign exchange conversion | Any companies that deal internationally have some leeway to conduct business in foreign currency, including paying for imported goods; import-related and export-related |
services; repaying foreign debts in accordance with a loan agreement and the approval from BOL; and transferring after-tax profits, income from technology transfer, initial capital, interest, wages and salaries, or other remittances by foreign investors to a third country or home’s country in accordance with the approval from BOL.
II. Coffee-specific

Lao coffee industry began in early 1920s by the French residents who recognized the high altitude plateau with its fertile soils as a prime coffee growing area. The main coffee growing region is in the southern part of Laos, mostly in Pakse district, Champasack Province. This area is the high elevation Bolaven Plateau that has volcanic red earth soils. Coffee plant varietals include Arabica as well as Robusta and Liberica Coffee. In recent years, coffee becomes the significant agricultural export products to many countries around the world.

A. Sector-specific regulatory authorities and state-owned enterprises

Coffee related policy is under the supervision of the Ministry of Agriculture and Forestry (MAF) for all aspects linked to production. There is no any specific government body responsible for the coffee sector currently. However, the Department of Agriculture (DOA) was established under the MAF to oversee and supervise the overall agricultural activities, which include coffee. In addition, the Ministry of Industry and commerce (MOIC) has the main role on the marketing issue and the early stage of establishing the business as to grant the approval for any form of general business, which is not the concession. However, the local authorities have intensively involved in the coffee sector, since most of coffee has been largely grown in southern provinces.

The Lao Coffee Association (LCA) is a representative of the coffee stakeholders which include producers, roasters and exporters to operate their businesses under one entity and it is one of the largest coffee exporter in Laos. LCA has been involved with the sector for 20 years and its main objective is to promote the Lao coffee sector and represent coffee stakeholders both on the national and international level. However, the LCA is under the supervision of Lao National Chamber of Commerce and Industry (LNCCI) and the LNCCI is supervised by the MOIC. In addition, the Bolaven Plateau Coffee Producers Cooperative (CPC) is considered as one of the largest coffee

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90 The Ministerial Decision on the Organization and Activity of the Agriculture Department
export as well. It was established in 2007 with the support of Lao Government and the French Development Agency (AFD), and it is a 100% framers’ own organization which gathers 1,855 household among 55 villages in the coffee growing area\(^92\).

At institutional level, no specific supply chain coordinating organization has been set up in Laos. As a consequence, coffee trade is in the hands of private actors (exporters, importer agents, middlemen and producers) with a partial control of national authorities (taxes, certifications, overall control).

In Lao PDR, to receive the permission to establish the commercial entities is different from the type of investment, main related laws regulating these issues are the amended Law on Investment Promotion 2016 and amended Law on Enterprise 2014. According to the Investment Promotion Law, there are 3 types of doing an investment in Laos, for instance: to operate the general business shall require the license from the Ministry of Industry and Commerce (MOIC)\(^93\); concession business shall be under the supervision of the Ministry of Planning and Investment (MPI) to issue the concession license\(^94\); and for any development activities of special economic zones and specific economic zones, the Secretariat to National Committee for Special Economic Zones at Government Office shall take the responsibility for the approval\(^95\). However, the following diagram may better demonstrate the approval procedure for investment\(^96\):

\(^{92}\) See: http://www.cpc-laos.org/index.html
\(^{93}\) Art. 100 of the Law on Investment Promotion 2016
\(^{95}\) See: http://www.investlaos.gov.la/index.php/start-up/special-economic-zone
Those who wish to do a business related to coffee sector in the form of Individual Enterprise, Partnership or Company (which these are considered as general business) shall seek the approval or an enterprise registration certificate from the Industry and Commerce Sector. The request of approval needs to be in line with the Investment Promotion Law and Enterprise Law in terms of condition, procedure and documentation. An enterprise registration certificate includes investment license, incentives, tax certificate and sectoral business certificate issued by concerned authorities\textsuperscript{97}. The following diagram shows the said procedure and its timeframe:

\textsuperscript{97} Art. 19 of the Law on Investment Promotion 2016
However, foreign investors wishing to establish the coffee factory do not need to apply for the enterprise registration, but this business falls under the conditional business type for foreign investor and it requires investor to have more than 1 billion LAK for the capital and the Foreign Equity Participation is 20%.

Furthermore, for the concession of agriculture activity which the coffee is included, the procedure of requesting the approval from the Government of Lao PDR comprises of 9 steps, according to the art. 45 and 46 of the investment Promotion Law. The following diagram may well demonstrate such procedure in detail:

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98 Notification on the Termination of Foreign Enterprise Registration for the Establishment Of Coffee Factory in Lao PDR, No.1036/MOIC.ERM
99 One-Stop Service Guidebook 2015, Investment Promotion Department, MPI, page 101
100 See: http://www.investlaos.gov.la/index.php/start-up/concession-tactical-activities/agricultural-activities
The One-Stop Service or OSS is located at the Investment Promotion Department, MPI. OSS is a permanent office for the Investment Promotion and Supervision Committee to facilitate foreign investors on the process of application for investment licenses and offer aftercare services to existing investors. There are two levels of OSS Office, such as: Central Investment One-Stop Service Office or COSO; and Provincial Investment One-Stop Service Office or “POSO”\(^{101}\). In addition, the concerned sector to provide the comments for concession license on the diagram shall be the Agriculture and Forestry Sector and there are its representatives in the working team at COSO and POSO as well\(^{102}\). Additionally, the investor shall receive the investment license for the concession within 65 working days throughout 9 steps above\(^{103}\).

In the past years, a certain number of private companies have started to develop coffee in land concessions granted by local authorities, particularly southern provinces as

\(^{101}\) Art. 80 of the Law on Investment Promotion 2016  
\(^{102}\) Art. 81 of the Law on Investment Promotion 2016  
\(^{103}\) Art. 46 of the Law on Investment Promotion 2016
Champasack, Saravan and Sekong are the best place to grow coffee in Laos and they have both domestic and international market demands, especially to produce for the large coffee factory in the area\textsuperscript{104} and many of those private companies are foreign companies, mainly from Vietnam, China and Thailand. The average length of land concessions for coffee planting is around 20 years.

The MAF takes the main responsibility for related coffee policy, management and regulation. Specifically, the DOA has been mainly working for policy formation, to draft and amend regulations in regard to the management of agricultural activities and to provide rule and guideline for farmer and business to operate their activity in compliance with the laws and regulation\textsuperscript{105}. Its role is also to supervise the agriculture land, planting tools and other machines involved in the plantation to be carried on in the efficient manner\textsuperscript{106}. Moreover, the Crop Standard Division under the DOA has been working to grant the standard of agriculture products, especially the organic coffee for export.

In 2014, Lao government enacted the decree to endorse the Strategic Plan for Coffee Promotion 2025 and assigned the MAF to take the main role to study and implement such plan with the support of concerned equivalent organization and local authorities\textsuperscript{107}.

**Which agencies fulfil trade-related/operation functions (state trading enterprises)?**

Thanaleng Warehouse State Enterprise (TWSE) is the only one state enterprise that gets involved in the coffee export. TWSE is under the supervision of Ministry of Finance and it has a responsibility for the storage of coffee (raw material in general). However, there is no State Own Enterprise doing a business on coffee plantation, processing and export.

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\textsuperscript{104} 8th Five-Year National Socio-Economic Development Plan (2016-2020), Ministry of Planning and Investment, June 2016, page 14  
\textsuperscript{105} Art. 3 of the Ministerial Decision on the Organization and Activity of the Agriculture Department  
\textsuperscript{106} Ibid  
\textsuperscript{107} Art. 2 of the Decree on the Adoption and Endorsement of strategic Plan for Coffee Promotion 2025, No. 190/GOV, 2014.
B. Transaction regime (internal marketing)

The Coffee Research and Experimentation Center (CREC) is the only research center working on coffee in Laos, it’s located 35 Km from Pakse, Champasack Province. The CREC is a governmental institute under supervision of National Agriculture & Forestry Research Institute – Ministry of Agriculture and Forestry (NAFRI). Its missions include the research for coffee; production of coffee seedlings; training; promotion of good quality practices among producers; promotion of other crops (fruit trees, vegetables) in the Boliven Plateau. However, the CREC was supported by several foreign funded projects as FAO, PAB and Oxfam with the aim to produce high quality arabica and providing trainings CREC staffs, farmer and producers. As a consequence, CREC has focused on coffee plants production that is sold either to private companies, coffee projects or directly to farmers.

CREC and its development partner have produced several coffee guidelines for farmers and producers, for instance: how to undertake the coffee plantation and production in the effective manner, especially the land and pesticide management; harvest methodology; collection and preservation. However, there is no any guideline or regulation to control the coffee price. Thus, farm-gate price of coffee is depended on the market price.

108 Ibid, page 55
109 Ibid, page 56
110 See: http://lao44.org/search
The MAF (DOA) shall monitor and inspect the quality of coffee or agriculture products for import and export by issuing the Phytosanitary Certificate to exporter. In addition, Thanaleng Warehouse State Enterprise (TWSE), which is under the supervision of Ministry of Finance has a responsibility for the storage of coffee. The Customs Agency was assigned to inspect materials and collect the fee\textsuperscript{111}.

C. Coffee valuation

Most of the Lao coffee is exported as FAQ (Fare Average Quality). Thus, most exporters haven’t set up the means to process coffee according to international quality standards. Specifically, to grant the Phytosanitary Certificate for agriculture product, which is certified the product does not contain a disease, regulated or harmful pests\textsuperscript{112}. The Crop Standard Division was established in 2009 with the aim to set up a Lao Certification Body (LCB) and standard for agricultural production. The Division has rights and duties to issue the certificate of the standard for clean agriculture product, which includes standards for Sustainable Natural Agriculture – SNA; Good Agriculture Practice-GAP; Organic Agriculture-OA; and Pesticide Free Production-PFP\textsuperscript{113}. Additionally, the Science and Technology sector also gets involved in the quality guarantee, which it has a role to issue the Quality Control Certificate during the exportation process.

D. Export regime

For certain types of product, it is necessary to request an export license from Department of Import and Export (DIMEX), MOIC\textsuperscript{114}. According to the Notification on Goods Subject to Automatic and Non-Automatic Import or Export Licensing, No. 0076, DIMEX does not require export license for coffee\textsuperscript{115}. However, if a product is not subject to licensing or to specific sanitary/phytosanitary or technical measures, exporters could directly submit a declaration to Customs Agency.

\textsuperscript{111} Decision No. 0751/MF of the Minister of Finance on the Establishment of Thanaleng Warehouse State Enterprise
\textsuperscript{112} Art. 40 of the Law on the Plant Protection and Quarantine 2016
\textsuperscript{113} Art. 3 of the Decision on the Organization and Activity of Crop Standard Division
\textsuperscript{114} Art. 8 of the Decree on Import and Export of Goods 2011
\textsuperscript{115} See: http://www.laotradeportal.gov.la/index.php?r=site/display&id=73
DIMEX has provided the guideline for import and export through the website and guidebook. The website is named Lao Trade Portal (http://www.laotradeportal.gov.la), it provides the comprehensive information regarding import and export goods in both Lao and English, including information related to the procedure of import/export, regulations for specific products, relevant laws and other useful guidelines. The Guide Book for Import and Export\(^{116}\) contains of the process of import and export in detail with the plain language and this could be easily used by business operators.

Coffee marketing in Laos is mostly carried on by the LCA, since it has . It acts as a secretary of the government to promote the coffee in local and international market in line with the government policies and its vision that “to be one of the key umbrellas in uniting all the Lao coffee stakeholders and to play lead role in the promotion of the unique image of the Lao coffee in the world markets, thus, it becomes better known and receives higher demand\(^{117}\). Additionally, CPC also has a good performance on the coffee export and one of its main objective is to support members for coffee marketing and promotion through producing the high quality coffee and establishing trustful relationship with roasters and international traders\(^{118}\).

Coffee supply chain in Laos includes several actors, for instance: production level comprises of producers, farmers’ groups and private investors; there are village buyers and wholesalers for trading; exporters and importers’ local agents at export level; roasting companies and retailers for domestic market and then come to consumers at the last stage. Some important secondary actors are government bodies, financial institutions, banks and development projects. Prices structure in Laos is mainly determined by contracts between exporters and importers.

\(^{118}\) See: http://www.cpc-laos.org/EN/EN-ourwork.html
The supply chain could have an impact on the coffee price from farmgate to export, the following diagram demonstrates the above-mentioned actors in coffee supply chain in Lao PDR:\textsuperscript{119}:

\begin{center}
\includegraphics[width=\textwidth]{coffee_supply_chain_diagram.png}
\end{center}

There are several procedures to export the coffee in Laos and these create costs for exporters. Specifically, local tax related to profit is levied from producers and middlemen level. As soon as exporters have coffee at the warehouse, several procedural steps including different certifications and tax payment shall be completely followed. The required certificates include Certificate of Origin (CoO); Phytosanitary Certificate (Phyto); and Quality Control Certificate (QCC).\textsuperscript{120} The certificate of origin that receives a trade preference is to certify that the goods have been produced or transited for production in Lao PDR. This also promotes the production and export of Lao products under the trade preference, and complies with regulations and international obligations that Lao PDR has committed. The authorities responsible to issue a certificate of origin include: the Department of Import and Export; the office of

\footnotesize
\begin{enumerate}
\item[\textsuperscript{119}] Particiative analysis of coffee supply chain in Lao PDR, Groupe de Travail Café (GTC), Nov 2007, page 32
\item[\textsuperscript{120}] Guide to Import and Export 2012, DIMEX, MOIC, page 8
\end{enumerate}
Industry and Commerce in the provinces, capital as well as special economy zones; the National Chamber of Industry and Commerce; and the office of Chamber of Industry and Commerce in the provinces.\footnote{See: http://www.laotradeportal.gov.la/index.php?r=site/display&id=571} In addition, importer and exporter are required to provide certificates on sanitary and phytosanitary (SPS) measures or to comply with technical regulations (TBT) from the Import and Export Administration Authorities,\footnote{Art. 9 of the Decree on Import and Export of Goods 2011} it was issued by the Agriculture and Forestry sector at the central and local levels. The Quality Control Certificate is also considered as technical requirement and it is issued by Science and Technology Sector of central and local levels. Once these documents are completed, the exporter may pay the profit tax and proceeds the export afterward. However, there is no customs for coffee export, this is to promote the export of certain types of products, including most agricultural products.\footnote{Art. 59 of Law on Customs 2011}

The Export Procedure of Coffee in Laos is in the detailed table as follows:\footnote{Trade Facilitation in the Lao People’s Democratic Republic: An Analysis of Time, Costs and Documents Required for Garments and Coffee Exports through Thailand and Vietnam, Wongpit, Piya, and Bounthone Soukavong, 2011, page 21}: 

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|}
\hline
\textbf{Step} & \textbf{Description} & \textbf{Documents Required} \\
\hline
1 & Importer and exporter are required & \textit{Certificate of Origin}, \textit{Certificate of Sanitary and Phytosanitary Measures}, \textit{Certificate of Quality Control} \\
\hline
2 & To comply with technical regulations & \textit{Certificate of Technical Regulation Compliance} \\
\hline
3 & To pay the profit tax & \textit{Certificate of Import Tariff Payment} \\
\hline
4 & Proceeds the export afterward &\ \\
\hline
\end{tabular}
\end{table}
<table>
<thead>
<tr>
<th>Activity/purpose</th>
<th>List of documents</th>
<th>Authority</th>
<th>Authority’s responsibility</th>
<th>Time (minutes)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apply for certificate of origin</td>
<td>Purchase order</td>
<td>Trade Section</td>
<td>Check application and issue the certificate of origin if correct</td>
<td>60</td>
</tr>
<tr>
<td></td>
<td>Invoice</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>Packing list</td>
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<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Request letter (To Trade Section)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Apply for phytosanitary certificate</td>
<td>Purchase order</td>
<td>Agriculture Section</td>
<td>Check application, physical examination</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>Invoice</td>
<td></td>
<td></td>
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<td></td>
<td>Packing list</td>
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</tr>
<tr>
<td></td>
<td>Request letter (to Agriculture Section)</td>
<td></td>
<td>Issue of phytosanitary certificate if the result of physical examination coincides with the application</td>
<td>60</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Apply for certificate of Quality Control</td>
<td>Purchase order</td>
<td>Technology Section</td>
<td>Check application, physical examination</td>
<td>10</td>
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<tr>
<td></td>
<td>Invoice</td>
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<td></td>
<td>Packing list</td>
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<tr>
<td></td>
<td>Request letter (to Technology Section)</td>
<td></td>
<td>Issue the certificate of quality control if the result of physical examination coincides with the application</td>
<td>60</td>
</tr>
<tr>
<td>Pay profit tax</td>
<td>Purchase order</td>
<td>Tax Section</td>
<td>Check application and collect profit tax</td>
<td>30</td>
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<td></td>
<td>Invoice</td>
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<td>Packing list</td>
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<tr>
<td></td>
<td>Request letter (to Tax Section)</td>
<td></td>
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<tr>
<td>Inform an export and pay fee</td>
<td>Purchase order</td>
<td>Lao Coffee Association</td>
<td>Record export information and collect fee</td>
<td>15</td>
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<tr>
<td></td>
<td>Invoice</td>
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<td>Packing list</td>
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<td></td>
<td>Request letter (To Tax Section)</td>
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<td></td>
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<tr>
<td>Total</td>
<td>Purchase order</td>
<td>Trade Section</td>
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<td>255</td>
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<td></td>
<td>Invoice</td>
<td>Agriculture Section</td>
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<td>Packing list</td>
<td>Technology Section</td>
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<td>Request letter (To Trade Section);</td>
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<td>Request letter (to Trade Section)</td>
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<td>Request letter (To Agriculture Section)</td>
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<td>Request letter (to Technology Section)</td>
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<td>Request letter (to Tax Section)</td>
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E. Literature review

Key literature on Lao PDR’s coffee trade (institutions, laws and regulations framing the supply chain).
III. Copper-specific

A. Sector-specific institutional and regulatory framework

1. Institutional set up

In Lao PDR, Natural Resources and Environment sector as well as Energy and Mines sector play significant roles to supervise and oversee mineral activities at district, provincial and central level. Prospecting, exploration and pre-feasibility studies phases are monitored by the Ministry of Natural Resources and Environment (MONRE)\textsuperscript{125}, and The Ministry of Energy and Mines (MEM) has a significant role to manage, monitor and promote the mining, mineral processing, and trade of mineral products and acts as the focal agency to coordinate with the relevant sectors as Planning and Investment, Industry and Commerce and other local authorities\textsuperscript{126}.

Specifically, MONRE has rights and duties to enact and develop regulations regarding prospecting, exploration and pre-feasibility studies; oversees and implements the mineral law; conducts prospecting and basic exploration; supervises business operators to comply with the environmental protection and mineral conservation policy; and issues, rejects, extends, and withdraws or cancels prospecting and exploration licenses\textsuperscript{127}. In addition, MEM has rights and duties to introduce and develop the necessary regulations and guidelines for the promotion of the mining and metallurgical sector; supervises the mining company to comply with mining regulations and contracts; oversees and implements the mineral law, mine safety, and mine closure regulations; and issues, rejects, extends, and withdraws or cancels mining licenses\textsuperscript{128}.

Local authorities (province and district) of both Natural Resource and Environment, and Energy and Mines sectors have the role as a secretariat to the central level. Particularly, provincial and district authorities shall elaborate and implement related regulations and strategic plans; study and provide technical comments on mineral

\textsuperscript{125} Art. 82 of the Law on Mineral 2011
\textsuperscript{126} Ibid
\textsuperscript{127} Art. 83.A of the Law on Mineral 2011
\textsuperscript{128} Art. 83.B of the Law on Mineral 2011
activities and mining operations and then propose to central levels, and also report the implementation of relevant work plan to central levels. However, there is an important and specific role for district and provincial authorities of Energy and Mines to handle, which is to supervise activities of artisanal mining, small scale mining, and extraction of industrial minerals and rocks, these are considered as a type of Special Categories of Mineral Business. Department of Energy and Mines at the Provincial or Capital City level has the right to issue and extend licenses on Special Categories of Mineral Business, and propose the consideration to the Ministry of Energy and Mines for suspending or cancelling these business operations.

Large-scale mining shall be issued, rejected, extended, and withdrawn or cancelled by the central authority which the Department of Mines under MEM is in charge. National Assembly shall involve in the approval process of mining license by providing its consideration on the Government proposal. However, investors who seek for the mining license shall proceed through the One-Stop Service which’s located at the Ministry of Planning and Investment.

Provide summary diagrams to illustrate entities, relationships and functions (entity-relationship diagram).

2. Legal and regulatory framework

Legal and regulatory framework governing the copper prospecting, exploration, and production in Laos include the Law on Mineral 2011 and contract/agreement between government and investors. The Mineral Law was stipulated that investor who received authorization to undertake mineral activities by the contract before the effectiveness of this revised law could continue their operations in accordance with such contract. However, if those who wish to continue their mineral activities to be in line with the

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129 Art. 84 and 85 of the Law on Mineral 2011
130 Art. 50 of the Law on Mineral 2011
131 Art. 40 of the Law on Mineral 2011
132 Art. 102 of the Law on Mineral 2011
revised Law, they shall propose to concerned sectors within one hundred and twenty days after the law enters into force\textsuperscript{133}.

Artisanal mining is defined under the law as a business of mineral extraction activity, which uses only primitive tools including 5 horses and 10 workers at the maximum. This is reserved for local resident in the concerned community. However, copper is not allowed for artisanal mining\textsuperscript{134}. Additionally, small-scale mining shall have an area not exceed 10 hectares and this is reserved for Lao entity as well, the small-scale mining includes the activity of stripping of top soil and overburden, digging, drilling, blasting, and sorting of minerals from the surface, underground or underwater where it is not appropriate for industrial mining\textsuperscript{135}. Further, the activity of the extraction of industrial minerals and rocks cover only non-metallic minerals\textsuperscript{136}. These are considered as the Special Categories of Mineral Businesses which are mainly monitored by local authorities and these are not required to undertake the prospecting and exploration as large-scale project\textsuperscript{137}.

The Amended Mineral Law was entered into force on 16\textsuperscript{th} April 2012, this law repeals the Law on Minerals No. 04/NA, dated 8 December 2008. But, the mining contracts between Lao government and investors are still effective, if those license holders wish to continue their mining operation in accordance with the amended law, they must propose to the concerned sectors within one hundred and twenty days from the date this law comes into force. However, the Mineral Law 2012 is the main the main framework to regulate mining business, but it does not cover everything under the law, particularly fiscal regimes as government share, royalty and tax incentive are still open for negotiation. Therefore, the benefit and some conditions vary from project to project and the mining contract has been kept confidentially.

\textsuperscript{133} Ibid
\textsuperscript{134} Art. 51 of the Law on Mineral 2011
\textsuperscript{135} Art. 52 of the Law on Mineral 2011
\textsuperscript{136} Art. 53 of the Law on Mineral 2011
\textsuperscript{137} Art. 49 of the Law on Mineral 2011
B. Establishment and operations

1. Overview of registration requirements

Main related laws to regulate the requirement and procedure of copper project are the amended Law on Investment Promotion 2016, amended Law on Enterprise 2014 and the amended Mineral Law 2011. An investor who wishes to operate the mining project/concession in Laos is required to establish the legal entity as an Individual Enterprise, Partnership or Company\textsuperscript{138} and the MOIC is responsible for issuing the enterprise registration\textsuperscript{139}. Then, an investor shall request for the concession license from MPI\textsuperscript{140}. However, such investor shall submit results of the prospecting, exploration and pre-feasibility study, and a mining work program, processing program and detailed feasibility study which are approved by the MEM for the consideration to issue the concession license\textsuperscript{141}.

The request of the approval for business license needs to be in line with the Investment Promotion Law and Enterprise Law in terms of condition, procedure and documentation. An enterprise registration certificate includes investment license, incentives, tax certificate and sectoral business certificate issued by concerned authorities\textsuperscript{142}.

The following diagram shows the said procedure and its timeframe:

\begin{itemize}
\item\textsuperscript{138} Art. 35 of the Law on Mineral 2011 / Art. 43 of the Law on Investment Promotion 2016
\item\textsuperscript{139} Art. 100 of the Law on Investment Promotion 2016
\item\textsuperscript{140} Art. 99.A of the Law on Investment Promotion 2016
\item\textsuperscript{141} Art. 41 of the Law on Mineral 2011
\item\textsuperscript{142} Art. 19 of the Law on Investment Promotion 2016
\end{itemize}
Lao PDR became the member of WTO in 2013. Meanwhile, it has a commitment for the market access rule, perform itself and develop domestic regulations in accordance with principles as well as agreements under WTO. Therefore, the amended 2016 Law on Investment Promotion introduced uniform business registration requirements; access to finance; tax and customs incentives that apply equally to foreign and domestic investors. The government also protects legitimate rights, interests and equality of all domestic and foreign investors under Lao PDR laws, treaties and agreements to which Lao PDR is a party. However, the artisanal mining was defined in the law that it is a non-permanent activity, which could be carried on seasonally and by primitive tools for excavation only. Importantly, this activity could not be regarded as a business. Thus, artisanal mining is reserved for Lao citizens residing in the concerned community.

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143 Art. 4 of the Law on Investment Promotion 2016
144 Art. 22 of the Law on Investment Promotion 2016
145 Art. 51 of the Law on Mineral 2011
Lao Government has the right to acquire for a share in the mineral business and it shall notify the investor within 120 days after the detailed feasibility study report is submitted. The mineral law was not mentioned about the maximum rate which government could undertake its participation and this is open for the negotiation process, but the minimum value is 20 million LAK (approx. 2400$) and this shall be considered and approved by the National Assembly. However, the concessional agreements between Lao Government and the large mining projects as Lane Xang Mineral Ltd., provided the Government to participate up to 10% of the shares. In addition, the Government could appoint its representative to be one of board of directors as it holds the equity share. The Government also could turn mineral deposits into capital for its equity participation.

2. Award of concessions / licences

Mining investors have to hand over the mining area which includes data and information of geology and mineral deposits, equipment, vehicles and machinery, and other properties to the State after rehabilitation and mining closure completes without any compensation. However, in case the Government refuses such transfer, the investor has to restore and rehabilitate impacted areas in accordance with the Environment Management Plan. Moreover, if the mining agreement is terminated, the mining operation shall be closed and returned to the State.

In regards to the concession award of the prospecting and exploration, after an investor could form an enterprise or company, its application and relevant documents to seek for the concession license shall be submitted to the One-Stop Service Office of central and local level. Application documents shall be firstly sent to relevant sector as

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146 Art. 49 of the Law on Investment Promotion 2016
147 Lao PDR: selected issues and statistic appendix, IMF Country Report No. 07/357, 2007
148 Art. 72 of the Law on Mineral 2011
149 Art. 71 of the Law on Mineral 2011
150 Art. 28 of the Law on Mineral 2011
151 Art. 27 of the Law on Mineral 2011
152 Ibid
MONRE and local administrator for comments and consideration\textsuperscript{153} and the Investment Promotion and Supervision Committee (IPSC) would then take it into account for an approval by referring to consideration provided from concerned authorities\textsuperscript{154}. Upon the IPSC’s approval in principle, the negotiation meeting for an agreement with the investor shall be held with the participation of relevant sector and local administration, the meeting outcome shall be reported back to IPSC in order to approve MPI to sign such agreement. However, this whole process takes 65 working days\textsuperscript{155} as the following diagram:

\begin{figure}
\centering
\includegraphics[width=\textwidth]{diagram.png}
\caption{Diagram of the process for obtaining an agreement with the investor.}
\end{figure}

Additionally, the award of the concession for mineral exploitation and processing activity is similar to prospecting and exploration in terms of procedure and timeframe. Specifically, the investor needs to have the report on the result of the pre-feasibility

\textsuperscript{153} Art. 46 of the Investment Promotion Law 2016
\textsuperscript{154} Ibid
\textsuperscript{155} Ibid
study which is approved by MONRE and also the report on the detailed feasibility study approved by MEM and these have to be submitted to the IPSC before the negotiation meeting is held as following detailed steps:\textsuperscript{156}:

The concession term is efficiently stipulated in the Law and this shall not open for negotiation. A reconnaissance could be carried on by desk study in the office as well as site visit for the studies of outcrops and possible mineralization, environmental circumstances, and to sample from the surface only for analysis and the Law was not mentioned about its term. However, A mineral prospecting concession has a two years term from the date the prospecting contract is signed with additional one year of extension. And, the term for a mineral exploration license is three-year term with the extension of two years\textsuperscript{157}. However, a mining license has the twenty-year term with

\textsuperscript{156} Art. 42 of the Law on Mineral 2011

\textsuperscript{157} Art. 36 of the Law on Mineral 2011
the extension of five years. The extension needs to be in line with the condition set out in the law and it could be approved and agreed by the State on a case by case basis\textsuperscript{158}.

Mining rights could be transferable for just some cases and the investor could not transfer a license without Government’ approval. For the prospecting phase, the investor is prohibited to transfer, buy or sell a concession right and also to enter into new joint investment arrangements. However, the license holder of the exploitation activity shall be able to have joint venture partners, if there is the information disclosure for and the approval of the State\textsuperscript{159}. While, Mining Business could be transform the Enterprise or Company to be another type of legal entity as partnership upon the approval from the State\textsuperscript{160}.

The exploration license could be withdrawn if the investor breaches a contract or commit a severe violation of the laws and regulations, and also causes the serious impact to the environment and society\textsuperscript{161}.

3. Regulation of, engagement in and monitoring of operations
The local authorities as the Provincial/City Level Departments of Natural Resources and Environment has rights and duties to monitor and assess the mineral operation activities and businesses on mineral prospecting and exploration\textsuperscript{162}, environmental and social impact together with the support and coordination of provincial government. The Environmental Impact Assessment includes the social impact\textsuperscript{163}. While, the mining business and operation as well as the investor’s commitment for the project shall be monitored by the Provincial/Capital City Level Departments of Energy and Mines and these local authorities would thereafter report to the MEM\textsuperscript{164}.

\textsuperscript{158} Art. 44 of the Law on Mineral 2011
\textsuperscript{159} Art. 35 of the Law on Mineral 2011
\textsuperscript{160} Art. 47 of the Law on Mineral 2011
\textsuperscript{161} Art. 38 of the Law on Mineral 2011
\textsuperscript{162} Art. 84.A of the Law on Mineral 2011
\textsuperscript{163} Art. 3 of the Decree on Environmental Social Assessment 2010
\textsuperscript{164} Art. 84.B of the Law on Mineral 2011
Which agencies are in charge of the calculation, transfers and reporting of revenues?
The Ministry of Finance, State Audit Organization and National Assembly are in charge of calculation, transfers, reporting and use of mining project’s revenue.

4. Foreign exchange and capital restrictions
Foreign Currency Management Law places no limitations on foreign investors transferring after-tax profits, income from technology transfer, initial capital, interest, wages and salaries, or other remittances to the company’s home country or third countries and these need to be approved by the BOL and Lao government. Specifically, residents and non-residents in Laos are allowed to open a bank deposit account in foreign currency at a commercial bank if they legally earn foreign exchange. Foreign investors normally hold commercial bank accounts in both local and foreign convertible currency at domestic and foreign banks in Laos to facilitate their business transactions. In addition, residents of Laos could open and use a bank deposit account in a foreign country with the approval of the Bank of Lao PDR for some certain activities, for instance: the transit business (transportation by land, air, sea and post; for insurance, tourism, labor exportation and contracting a construction project abroad); for an externally borrowing and debt settlement; and for the establishment of a branch or a representative office abroad and for the operation of foreign exchange business abroad and for the investment abroad as approved by BOL.

C. Collection of taxes and royalties
1. Competent authority and revenue distribution

The collection of resource-related revenues is split between the departments within MOF, the Tax Department collects profit tax, income tax and dividends. The State Asset Management Department (Natural Resource Management Division) collects royalties and land fees. Financial statements; balance sheets; tax statements, including

165 Art. 10 of the Law on the Management of Foreign Currency 2015
166 Art. 15 of the Law on the Management of Foreign Currency 2015
167 Art. 16 of the Law on the Management of Foreign Currency 2015
the minutes of partners or shareholders meetings regarding the use of, or the allocation of dividends shall be submitted to the tax authorities before the 1st of March each year\textsuperscript{168}. Private enterprises, legal entities, and organizations which pay salaries to employees, civil servants, workers and other individuals under contract or other binding obligations are duty bound to calculate and deduct income tax from the monthly salaries each month before making payment, and compile tax return accounts of such deductions and submit them to the tax authorities to which it is subject to before the fifteenth of the following month in order to pay income tax\textsuperscript{169}.

2. Regulatory framework

Tax Law is the main regulation to govern the taxation of any business units in Laos; the Mineral Law is only mentioned that mining company shall bear the taxation obligation and other relevant fees. The Tax Law is specifically stipulated that total profit ratio of mining activity to calculate compulsory tax is 20 percent\textsuperscript{170}. However, other fiscal terms for the mining sector as royalties, tax incentive and tax holiday, and the rate of government equity stake and how this share is paid are not mentioned in the Law and these are open for the negotiation during the meeting process before signing the mining agreement.

If a project-by-project approach is followed, are there transparency and accountability frameworks in place to monitor and audit revenue flows?\footnote{\textsuperscript{168} Art. 39 of the Law on Tax 2015 \textsuperscript{169} Art. 51 of the Law on Tax 2015 \textsuperscript{170} Art. 33.3 of the Law on Mineral 2011}

There are various organizations to monitor and audit revenue flows in order to ensure the accountability and transparency as the Ministry of Finance, State Audit Organization and National Assembly. In particular, the role of National Assembly members in policy-making continues to strengthen, and the State Audit Office has been expanded and now reports to the National Assembly rather than Government.
3. **Taxes and quasi-tax instruments**

**a) Corporate income taxes (CIT)**

Mining companies shall bear the responsibility of corporate income tax in line with the tax law and relevant regulation.\(^{171}\) The corporate income tax rate of 24 percent is applied to all domestic and foreign enterprises that have legal status in Laos. For companies listed on the stock exchange will receive profit tax reduction incentives of percent for a period of four years.\(^{172}\)

**b) Mineral taxes**

Royalties are calculated by the company and the amount are certified by the Department of Mines (MEM), and all royalty payments are made directly at the MOF. The necessary documents are finalized with the Department of State Asset Management and thereafter payments are made to central treasury by cash, check or bank transfer. Small companies pay royalties continuously as they extract and export, while large projects pay annually or in tranches. The royalty rate of minerals is regulated through the Presidential Ordinance on Royalty Rate of Natural Resources 2015, which different rates apply for different type of minerals. Specifically, the royalty for copper is calculated by 6 percent of the sale value of mineral products that could be extracted, while it’s 7 percent for silver and gold.\(^{173}\)

**c) Other taxes and payments**

Are withholding taxes collected on certain outbound payments, for example dividends, payments of royalties on IP, certain foreign remittances? Are investors subject to fund contributions (e.g., for mine rehabilitation, investment in community infrastructure, project monitoring, etc.)? What other taxes and fees apply? (land fees, technical fees, etc.)

\(^{171}\) Art. 65 of Law on Mineral 2011  
\(^{172}\) Art. 29 of the Law on Tax 2015  
\(^{173}\) Art. 5 of the Presidential Ordinance on Royalty Rate of Natural Resources 2015
Mining company has an obligation for the rehabilitation of the affected land from the prospecting and exploration activity by restoring, rehabilitating, filling, covering, improving the land, cleaning up chemical waste, and replanting of trees in order to build such area to be usable condition as before\textsuperscript{174}; and to compensate for the removal of land and agricultural products and to bear the responsibility for resettlement for people who are affected by the mining operation\textsuperscript{175}. Moreover, the company also needs to pay land concession fee, the rate of concession for exploration is 2 US$/hectare/year or 200 US$/Km2/year, while it’s 80 US$/hectare/year or 8,000 US$/Km2/year for the exploitation activity\textsuperscript{176}. Additional charges are applied as charges and technical service fee\textsuperscript{177}; contribute to Environmental Protection Fund; direct contributions to community development; human resources development; project management and sustainable development of the mineral area\textsuperscript{178}. Large mining projects always provide the financial support for rural roads, schools, and health centers.

4. Tax incentives

Tax incentives were granted to each project differently, because it’s open for negotiation during the process of the approval for mining license, especially tax holiday is an significant concern for investors. For instance, Phu Bia signed its concession agreement in 1994. In 2009, the Tax Department reported that only the Lane Xang’s Sepon mine company paid any profit taxes. While, other mining project were still enjoying tax holidays, or were under construction, or reported as not making profits (including the second major mine, Phu Bia’s Phu Kham mine). The Lane Xang company received a 2-year tax holiday on their beginning period of operation and another 2 years of a fifty percent profit tax reduction. First gold

\textsuperscript{174} Art. 63.4 of the Law on Mineral 2011
\textsuperscript{175} Art. 65.5 of the Law on Mineral 2011
\textsuperscript{176} President’s Statute on Rental and Concession Rates of State-Owned Land No. 02/ President, 2009
\textsuperscript{177} Charges and technical service fee during the process of the approval for mining business or concession could be referred to the Presidential Decree on the charges and technical service 2012. Main charges could be from the study, monitor and endorse the report of extraction, processing or pre-feasibility study of the mining project; the charge for issuing contracts for the exploration and prospecting, and mineral exploitation and others.
\textsuperscript{178} Art. 65.9 of the Law on Mineral 2011
shipments started in 2005 and commercial copper extraction only in mid-2008. Similar to the terms for the Sepon concession, Phu Bia originally enjoyed a tax holiday; this was renegotiated in 2007, ending the profit tax holiday, but then zero profit was made in 2008.\textsuperscript{179}

Further, investors shall receive the duty exemption and pay the value-added tax at zero percent when they import materials, equipment that may not be supplied or produced in Laos in order to form the fixed assets and machinery for production. However, the importation of fuel, gas, lubricant, administrative vehicles and other materials shall comply with relevant laws.\textsuperscript{180} These incentives also apply for the importation of raw materials, equipment and parts to be used in the production for export\textsuperscript{181} and when they use domestic raw materials, which are not natural resources for producing finished and semi-finished products for export as well.\textsuperscript{182}

Investors will receive the profit tax exemption for the next accounting year of one year if they re-invest their net profit for their additional operation or investment activities by based on the portion of profit re-invested. Moreover, if an investor suffers losses from business operation, the investor shall be permitted to carry the losses forward to three consecutive accounting years subject to proper certification by the tax authority. Upon such period the remaining losses will not be allowed for deduction from the profit.\textsuperscript{183}

\textbf{D. Mineral valuation}

The MEM requires investors to submit the concrete plan for exploration, processing or production, distribution and export of mining products after they receive the approval for mineral business activities and such plan will be approved by the MEM before the implementation is conducted. Those investors need to report to the MEM monthly,

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{180} Art. 12 of the Law on Investment Promotion 2016
\item \textsuperscript{181} Ibid
\item \textsuperscript{182} Ibid
\item \textsuperscript{183} Art. 14 of the Law on Investment Promotion 2016
\end{itemize}
\end{footnotesize}
quarterly, semi-annually, annually and five-yearly in regards to the quantity and quality of each type of mining product which has been produced\textsuperscript{184}. Particularly, the mining investors have to submit samples and results of mineral products to the MEM to check their quality before the distribution and exportation and the certificate of such products may be then issued as well\textsuperscript{185}.

The Ministry of Energy and Mines has a mechanism to monitor and inspect the quantity and quality as well as the assessment of mining product’s value prior to the movement of mining products out of the production or processing area by establishing the Committee which includes representatives from line Ministries, relevant agencies both central and local authorities and has the duty to collect samples of mining products to be tested and sign the export document\textsuperscript{186}. Moreover, the exploration area, processing factory or smelting factory have the checking point from government officials to monitor, inspect or investigate the mining products for export. However, there will be relevant officials to inspect the correctness of the export permit documents at the border checkpoint as well\textsuperscript{187}.

**Is there a government laboratory where the type/grade of the copper exported from Lao PDR is verified?**

**How is product quality determined?**

**E. Export regime**

In Lao PDR, the Ministry of Energy and Mines and line Ministries, agencies and local authorities were assigned to regulate the rules for the export of minerals and mineral products. However, domestic and foreign individuals, entities and organizations have the rights to export minerals and mineral products\textsuperscript{188} and they need to request for the

\textsuperscript{184} Art. 10 of the Decree on Mineral Product 2008

\textsuperscript{185} Art. 11 of the Decree on Mineral Product 2008

\textsuperscript{186} Art. 16 of the Decree on Mineral Product 2008

\textsuperscript{187} Art. 17 of the Decree on Mineral Product 2008

\textsuperscript{188} Art. 4 of the Decision on Import and Export Licensing Procedures of Minerals and Mineral Products
export license from the Department of Mines, MEM before proceeding the exportation\textsuperscript{189}.

Concerning the procedure of requesting for the export license, the investor who has the legal entity could submit the following required documents to Department of Mines:

- Application form for export license;
- Valid Enterprise Registration Certificate or Concession Registration Certificate
- An approval for mining extraction or concession license (in case exporter have been granted the concession from the Government); or supply contract from the concessionaire (in case exporter have not been granted the concession from the Government)\textsuperscript{190}.

The following diagram shows us the detailed procedure for the export license of mineral and mineral products\textsuperscript{191}:

\textsuperscript{189} Art. 5 of the Decision on Import and Export Licensing Procedures of Minerals and Mineral Products
\textsuperscript{190} Art. 6 of the Decision on Import and Export Licensing Procedures of Minerals and Mineral Products
\textsuperscript{191} See: http://www.laotradeportal.gov.la/index.php?r=searchProcedure/view1&id=22
After investor receives the export license, the license and relevant documents shall be presented to customs agency to proceed the exportation, which include certificate for mineral and mineral products issued by MEM; bill of lading; commercial invoice; packing list; road transit document; export customs declaration; export license/permit\(^2\). A declaration must be submitted within 15 days from the date of the Customs officers record for the goods according to the manifest\(^3\), and when a

\(^2\) Art. 23 of the Law on Customs 2011  
\(^3\) Art. 24 of the Law on Customs 2011
declaration has been submitted and accepted by Customs, exporter will be required to pay for any applicable duties. **Rate of customs duty for exporting the copper / the rate is different from each transaction depending on the normal exportation or be under free trade agreements.**

**F. Literature review**

Key literature on Lao PDR’s copper sector. List key documents and relevant literature focusing on the legal and regulatory framework, the fiscal regime, transparency initiatives, and the organization/regulation of export trade.