

To the Minister of Finance  
H.E. Mr. Pouphe

Page | 1

February 16<sup>th</sup>, 2012

Respected Sir,

**Ref.: Proposed New Personal Income Tax Rates**

We are writing this letter for your kind consideration; as members of the international community of foreign companies that invested in the Lao PDR, we need some clarification regarding the possible interpretation of the proposed tax rates contained in the new tax law.

In particular it is unclear to companies in the Lao PDR which personal income tax rate they should apply to their employees as there have been multiple conflicting notices from various ministries and departments of the Government of Lao PDR. Thus, it is difficult for such companies to apply any proposed new tax rates starting 1 January 2012.

On December 30<sup>th</sup>, 2011, the Tax Department of the Ministry of Finance sent out a letter (No. 1190/MoF.TD), referring to

- the Edict of the President No.001/PM, dated 01 March, 2011,
- the Notification of Federal's Office No.495/FO, dated 28 September, 2011 and notification of Minister of Finance No. 2227/MoF, dated 07 August, 2011,
- the new Tax Law acceptance on 2<sup>nd</sup> ordinary congress from National Assembly set 7<sup>th</sup>, dated 20 December, 2011,
- the recommendation of the minister of finance, dated 27 December, 2011.

This letter indicates that a tax progressive tax rate, ranging from 0% to 28% to be applied from January 1<sup>st</sup> 2012 onwards. This letter was only received by some organizations after the 10<sup>th</sup> of January.

In a session of the Inter Ministerial Team Meeting of the Cross Sectoral Working Group of the LBF on January 6<sup>th</sup> 2012, which was co-chaired by Dr. Nam Vinyaket, Minister of Industry and Commerce, and Dr. Sannanh Chounlamany, Vice President of LNCCI, on the issue raised by the cross sectoral working Group on personal income tax an official from the Ministry of finances distributed a grid of income tax to be applied - but only from April 01<sup>st</sup> the top rate would be just 24%. The notice dated 30<sup>th</sup> of December from the Ministry of Finances was not mentioned in that session.

Page | 2

In the third week of January the Minister of Finance informed the Austrian ambassador during his visit to Laos that in the first quarter no new tax law would be applied, but the new version of the new law (24%) would come into effect from April 01.

Several days later we have been informed by LNCCI after a discussion between the latter and the Ministry of Finance that the tax law should be interpreted as follows:

The income of foreigners who are working in foreign invested companies or foreign invested government related projects AND who were hired before January 1<sup>st</sup>, 2012 is taxed at a 10% flat rate (i.e. the old regulations apply).

The income of foreigners who have been hired on January 1<sup>st</sup>, 2012 or thereafter is taxed at the same rate as the income of Lao citizens. The applicable rates are as follows:

Level	Salary in LAK	Basis of calculation in LAK	Rate in %	Tax for the specific level in LAK	Total tax in LAK
1	1,000,000	1,000,000	0	0	0
2	1,000,001 – 3,000,000	2,000,000	5	100,000	100,000
3	3,000,001 – 6,000,000	3,000,000	10	300,000	400,000
4	6,000,001 – 12,000,000	6,000,000	12	720,000	1,120,000
5	12,000,001 – 24,000,000	12,000,000	15	1,800,000	2,920,000
6	24,000,001 – 40,000,000	16,000,000	20	3,200,000	6,120,000
7	Above 40,000,000	...	24	...	...

Regarding the taxation of foreign citizens who work in FDI companies we see the legal situation as follows:

Article 12 of the 1994 Investment Law, under the Section 2 – Rights and Obligations of Foreign Investors, states that “Foreign investors and their foreign personnel working in Lao PDR shall pay to the Lao Government income tax at a flat rate of ten percent (10%) on their incomes earned in the Lao PDR”.

Article 14 of the 2004 Investment Law, under Chapter 3 “Rights, Benefits and Obligations of Foreign Investors” provides for the same provision.

Page | 3

The transitional provision, Article 65, of the Decree on the Implementation of the Investment Promotion Law (№ 119/PM, 20 April 2011) (“**Investment Decree**”) provides that “the rights and obligations of all enterprises having obtained Foreign Investment Licenses or having signed Concession Agreements prior to the promulgation of the Law on Investment Promotion № 02/NA, dated 8 July 2009 and official implementation are hereby acknowledged as provided for in the Domestic Investment License or Foreign Investment License until expiry of the term of investment”.

Article 99 of the Investment Promotion Law (No.02/NA, 08 July 2009) (“**Investment Promotion Law**”) further provides that “*all benefits that the enterprise obtained under previous laws or agreements signed with the Government remain unchanged*. However, those enterprises invested under previous laws, but wish to obtain investment incentives under this present Law have the right to request to the relevant authorities. The concerned authority shall inform the investor immediately on implementing the investment incentives.” (*emphasis added*)

The grandfathering provisions of the Investment Promotion Law and Investment Decree set out above leads to the conclusion that if a company was issued with a foreign investment license under a previous investment law or executed a concession agreement prior to the effectiveness of the Investment Promotion Law and did not petition the Investment Promotion Department to be bound by the Investment Promotion Law within 90 days of the date of the Investment Decree (i.e. 19 July 2011) then such company remains subject to the investment law under which it is licensed until the end of the current term of the foreign investment license and thus all benefits received under the previous investment law remain unchanged.

Further, Article 7, paragraph 2 of the Amended Tax Law 2011 provides explicitly for an “Exemption and Deduction of Tax Obligations” for reason of “compliance with the provisions prescribed in the Law on Investment Promotion”. Once entered into force, this provision also provides the concessionary reduced tax rates as per investment laws in case of conflict with the tax law.

Based on the above provisions from Lao Investment Laws and Tax Laws, the 10% personal income tax rate applied to foreign employees is still applicable to companies which registered under the 1994 and the 2004 Foreign Investment Laws. However, we note that companies that have been established under the 2009 Investment Law are not entitled to the investment right and obligation to pay 10% personal income tax rate applied to foreign employees.

Conclusion

We have different information on rates to be applied and dates of implementation: 28% or 24% maximum layer, 1<sup>st</sup> of January or 1<sup>st</sup> of April or even both rates and both dates..... Therefore we need an urgent clarification on the implementation of the decree.

Page | 4

Our understanding of the situation is that from January 01<sup>st</sup> 2012, for foreign staffs in FDI companies which were founded under the 2009 Investment law or after as well as for Lao citizens a progressive income tax as outlined in the chart above (tax rates between 0% and 24%) is applicable whereas the income of foreign citizens working in a company which has been licensed before, under the 1994 or the 2004 Foreign Investment Law is (and will be) taxed at a 10% flat rate, as to be compliant the pending investment laws.

We would appreciate if you could confirm our understanding and come back to us soon so that we can inform our members about the correct tax rates.

Yours truly

Guy Apovy

President of the **European Chamber of Commerce and Industry in Lao PDR**

Copies :

Mr Kissana Vongsay, President of LNCCI  
Delegation of the European Union