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VAT Refunds in Lao PDR

I. Background and Context

The VAT refund process has been described by exporters in Lao PDR as particularly onerous, non-transparent and time-consuming. They note that refunds often exceed the 30-day timeframe that is stipulated in the VAT law; in addition, many VAT refund requests have been rejected outright without explanation.¹ Companies that import key inputs from abroad that are subsequently processed and re-exported (i.e., textile imports that are processed into garments for export, commonly referred to as Cut-Manufacture-Trim or CMT) have been denied input VAT refunds since 2013.²



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The following steps are involved in the VAT refund process: 1) companies submit relevant documentation to provincial tax office or Vientiane Capital Tax Authority for review;

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This brief is published by the Secretariat of the Lao Business Forum, based at the Lao National Chamber of Commerce & Industry (LNCCI).

The LBF Brief provides a summary and analysis of a specific business issue that was highlighted as a priority during the annual LBF process and which significantly impacts the Lao PDR business environment. The views expressed in the LBF Brief reflect the opinions and perspectives held by relevant stakeholders.

2) documents are forwarded to the Tax Department for final sign off. However, the tax authorities do not provide a clear timeframe for document processing.³

The Tax Department of the Lao Ministry of Finance has referenced Articles 26 and 28 of the VAT Law as well as Section 7.2.2 of the VAT Implementation Instruction as a justification for denial of the VAT refunds; however, the government's interpretation of the VAT law and implementation instruction does not reflect a full understanding of the law and its nuances.⁴

II. VAT Refunds and the LBF

– Issue Analysis

The inability of exporters to secure VAT refunds for imported inputs has reduced the overall competitiveness of many Lao PDR exports – particularly in the garment industry – by increasing production costs and reducing the attractiveness of Lao PDR to foreign investors.⁵

The reasons for VAT refund rejections are not clearly understood by Lao exporters. Although the issue was on the agenda of the 10th Lao Business Forum in 2017, there has been minimal progress in addressing the problem.⁶

There are also inconsistencies in the relevant VAT legislation and implementation instruments along with erroneous interpretations of the laws on the part of the Lao PDR government. CMT exporters are authorized to obtain a refund for input VAT.⁷ The VAT implementing instruction explicitly states that the processing of imported inputs for goods being exported technically occurs in the country to which the goods are being exported.⁸

Based on this interpretation, the goods are being processed overseas (not in Lao PDR); accordingly, the imported inputs are not subject to Lao VAT.⁹ The VAT

refund is authorized according to Article 25.1 of the VAT Law and Section 7.2.1. of the VAT Implementing Instruction.¹⁰

Actions Taken to Address the Issue

- In April 2017, the Ministry of Finance established a public hotline to enable companies and individuals to provide feedback on tax-related issues, including VAT. Based on discussions with relevant stakeholders, it is unclear whether this hotline has had any impact in improving the VAT refund issue.¹¹
- On July 9, 2017, the Prime Minister's Office issued Notification No. 1194/PMO on action required to address four issues raised during LBF 10. Section 1.2 of the Notification states the following: "the relevant authority should urgently establish an effective mechanism for VAT refunds by reviewing all required documents; streamlining VAT refund procedures; and improving related legislation for consistent implementation throughout the country." However, there is little evidence of any progress achieved to date.¹²
- The LBF Secretariat engaged an international VAT expert to conduct a thorough analysis of VAT-related issues raised during LBF 11, including the VAT refund process for imported inputs. The consultant conducted approximately thirty interviews over the course of three visits to Lao PDR. Key meetings included relevant departments within the Ministry of Finance; the Lao National Chamber of Commerce and Industry (LNCCI); the Bank of Lao PDR; various banks and financial institutions; transport companies; freight forwarders; international accounting firms; and local businesses.¹³ The consultant prepared a comprehensive study with recommendations for both the public and private sectors. Recommendations have been submitted to the Fiscal Policy and Tax Departments within the Ministry of Finance and they are being reviewed.



Image Source: Pixabay

III. VAT Refund Procedures – International Examples

The LBF VAT consultant prepared the following comparative analysis of VAT refund procedures for exporters in a select group of Asian countries.¹⁴

Country	VAT Refund Policy
Vietnam	<ul style="list-style-type: none"> • Raw materials imported for the production or processing of goods for export under contracts signed with foreign parties are viewed as non-taxable transactions (out of scope of the VAT); • 0% Tax Rate applies to exported goods and services, which includes work for export processing enterprises. • 0% Tax Rate applies to exported goods and services, which includes work for export processing enterprises. • Condition for applying 0% tax rate for exported services <ul style="list-style-type: none"> - Having a contract on service provision with an overseas organization or individual; - Having documents of via-bank payment for exported services and other documents under law; - Having a commitment from the overseas organization that it neither has a permanent establishment in Vietnam nor is a VAT payer in Vietnam; or - Having a commitment of the overseas person that it is a non-resident foreigner or overseas Vietnamese and stays outside Vietnam during the service provision.
Cambodia	<ul style="list-style-type: none"> • Under Cambodian VAT Law, the export of goods from the Kingdom of Cambodia, taxable supply of a service rendered outside the Kingdom of Cambodia, and goods and services in connection with the export of goods are <u>zero rated</u>.
Thailand	<ul style="list-style-type: none"> • Under Section 80/1 (2) of the Thai VAT Law, zero rate applies for the provision of services performed in Thailand and used in a foreign country in accordance with the type, rule, procedure and condition prescribed by the Director-General.
Bangladesh	<ul style="list-style-type: none"> • Under Section 24 (3) of the Bangladesh VAT Law, subject to the following conditions, the supply of a service for the repair, maintenance, cleaning, renovation, modification and the like, of any good shall be zero-rated, namely— • <u>if</u> such good is temporarily imported into Bangladesh under the Customs Act; or • <u>if</u> such good is brought temporarily into Bangladesh for receiving a service, and is exported from Bangladesh after the service is given without being used in Bangladesh for any other purpose.

IV. Gender Inclusion and VAT Refund Procedures

The challenges related to obtaining VAT refunds in Lao PDR are shared across businesses. The LBF has not identified any unique VAT refund-related issues encountered by women-owned businesses. The LBF will explore the possibility of convening a roundtable on VAT issues with a specific focus on gender-related elements. The LBF will consult the Lao Businesswomen’s Association and the Lao Women’s Union as part of the planning process.

V. Post-LBF Update and Next Steps

Based on the findings in the study prepared by the LBF VAT consultant as well as the presentation at the July 5, 2018 LBF plenary meeting by the president of a Lao PDR export-import company, the following recommendations were proposed:

- Lao tax authorities should review the existing VAT refund mechanism and develop a transparent mechanism (i.e., a manual) that details specific documents required, steps, timeframes and reasons for refund denials.
- VAT refunds should be granted to exporters on the basis that the service being provided is considered to be taking place abroad (i.e., where the customer/buyer is based), as per Lao PDR's VAT legislation. The fact that the goods are being exported does not by itself constitute the basis for a refund. Since Cut-Manufacture-Trim (CMT) producers are fundamentally different from Freight-on-Board (FOB) producers, the specific conditions for granting refunds for both types of producers should be clearly delineated in the VAT law's implementation instruction.
- Lao tax authorities should proactively engage with companies that have applied for but not received VAT refunds as well as those that have been denied refunds without a clear explanation.

Government Responses to LBF Private Sector Recommendations

During the July 5, 2018 LBF 11 plenary meeting, the Vice Minister of Finance responded to the private sector's presentation of the VAT recommendations.¹⁵

The Tax Department of the Ministry of Finance has submitted amendments to the VAT Law which were approved by the National Assembly on 20 June 2018. Key amendments are as follows:

- o Introduction of a 10% VAT on imported and domestic goods and services
- o Removal of the 10% VAT for exported natural resources which are not finished products
- o Article 17 stipulates that exported goods are subject to 0% VAT
- o Articles 23 and 26 state that the tax authority will provide a refund on outstanding VAT inputs that cannot be completely deducted within 3 months of the date that the input VAT payment was made
- o VAT refund procedures have been decentralized: the Tax Department in the MoF, as well as the provincial and Vientiane Capital tax authorities, can approve VAT refunds
- o The MoF will more proactively circulate VAT-related information, including legislation, to the private sector
- o The MoF will eventually instruct the tax department and line agencies to draft implementing instructions for all VAT refund procedures, pursuant to the requirements of the amended VAT law

Post-LBF Assessment from Private Sector Participants and Other Stakeholders

A post-LBF interview was conducted with a senior partner of a leading international tax firm with offices in Lao PDR. From his perspective, obtaining a refund is a secondary issue with respect to the VAT. He noted that in most countries, VAT refunds are automatic. The fundamental issue in Lao PDR is the lack of compliance with the VAT law by local companies.

¹ Vetsaphong, Valy. *Position Paper on Value-added Tax Refunds for Export Producers*, Lao Business Forum, 2018, p.1

² *Summary of Prioritized Issues and Progress - Public-Private Dialogue through the Lao Business Forum*, Lao Business Forum (LBF) Secretariat, 2018, pp. 21-22

³ Vetsaphong, p.1.

⁴ Vinck, Andre. *Challenges in the Application of the Lao PDR Value Added Tax Legislation – Draft Final Report*, Lao Business Forum, January 2018, pp. 24-25

⁵ *Lao Business Forum (LBF) Secretariat – Summary of Prioritized Issues and Progress*, pp. 21-22

⁶ Vetsaphong, p. 1

⁷ Vinck, p. 25

⁸ Ibid., p. 25

⁹ Ibid., p. 25

¹⁰ Ibid., p. 25

¹¹ *Lao Business Forum (LBF) Secretariat – Summary of Prioritized Issues and Progress*, pp. 21-22

¹² Vetsaphong, p. 1

¹³ Vinck, p. 1

¹⁴ Ibid., pp. 25-26

¹⁵ Vetsaphong, p. 2 and Vinck, pp. 26-27



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The Lao Business Forum is a public-private dialogue platform that was launched in March 2005. The objectives of the LBF are to: 1) facilitate public and private sector dialogue, including participation by the broadest range of private sector companies, from domestic SMEs to foreign investors; 2) ensure consistent enforcement and transparent interpretation of laws and regulations; 3) remove the bureaucratic impediments that businesses encounter in entry and exit processes and provide feedback on business-related policies, laws and regulations that impact the private sector; and, 4) provide feedback on draft government laws and regulations that could potentially impact the business community and assist the Lao government in private sector-related policy development.

