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

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Lao PDR's Transfer Pricing Challenges and Lessons from ASEAN Member States

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<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>ADB</td>
<td>Asian Development Bank</td>
</tr>
<tr>
<td>ASEAN</td>
<td>Association of Southeast Asian Nations</td>
</tr>
<tr>
<td>BEPS</td>
<td>Base Erosion and Profit Shifting</td>
</tr>
<tr>
<td>CbCR</td>
<td>Country-by-Country Reporting</td>
</tr>
<tr>
<td>DTAs</td>
<td>Double taxation avoidance agreements</td>
</tr>
<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
</tr>
<tr>
<td>IISD</td>
<td>International Institute for Sustainable Development</td>
</tr>
<tr>
<td>IFFs</td>
<td>Illicit financial flows</td>
</tr>
<tr>
<td>IRAS</td>
<td>Inland Revenue Authority of Singapore</td>
</tr>
<tr>
<td>KPMG</td>
<td>KPMG International Limited</td>
</tr>
<tr>
<td>Lao PDR</td>
<td>Lao People's Democratic Republic</td>
</tr>
<tr>
<td>LDCs</td>
<td>least developed countries</td>
</tr>
<tr>
<td>MNEs</td>
<td>Multinational enterprises</td>
</tr>
<tr>
<td>OECD</td>
<td>Organization for Economic Cooperation and Development</td>
</tr>
<tr>
<td>OEDR</td>
<td>the Organization of Economic Dispute Resolution of Lao PDR</td>
</tr>
<tr>
<td>PWC</td>
<td>PricewaterhouseCooper International Limited</td>
</tr>
<tr>
<td>SGD</td>
<td>Singapore dollar</td>
</tr>
<tr>
<td>THB</td>
<td>Thai Baht</td>
</tr>
<tr>
<td>TPGs</td>
<td>Transfer Pricing Guidelines</td>
</tr>
<tr>
<td>USAID</td>
<td>United States Agency for International Development</td>
</tr>
<tr>
<td>USD</td>
<td>United States Dollar</td>
</tr>
<tr>
<td>VND</td>
<td>Vietnamese Dong</td>
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1 INTRODUCTION

1.1 THE ROLE OF TRANSFER PRICING RULES IN COMBATING TAX-RELATED FINANCIAL FLOWS

Transfer pricing rules are crucial for resource-rich developing countries for several reasons. First, these countries often rely on foreign investment such as multinational enterprises (MNEs) to invest in the extractive industries. Given the complexity of such industries and the potential for MNEs to engage in profit shifting through transfer pricing manipulation, the implementation of transfer pricing rules helps to ensure that these countries receive their fair share of tax revenues from the exploitation of their natural resources. Secondly, transfer pricing rules enable these countries to prevent tax evasion and erosion of their tax base, which is critical for financing public services, infrastructure and sustainable development initiatives. By establishing robust transfer pricing frameworks in line with international standards, resource-rich developing countries can increase transparency, minimize tax avoidance and create an environment favorable to investment and economic growth (Baungaard & Devlin, 2021). Ultimately, the adoption of transfer pricing rules enables these countries to protect their fiscal interests, ensure a fair distribution of the benefits derived from their valuable natural resources, and promote transparency and accountability, which can enhance public trust in the tax system and in the global economy.

Transfer pricing refers to the pricing of goods, services, and intangibles between related parties, such as a parent company and its subsidiaries. Transfer pricing rules are regulations put in place by tax authorities to ensure that transactions between related parties are conducted according to the Arm’s Length Rules or at market value, as if the parties were unrelated. Governments implement transfer pricing rules to prevent multinational corporations from intentionally shifting profits to lower-tax jurisdictions, thereby avoiding taxes in higher-tax jurisdictions where they actually conduct business in a hope to maximize their parent or controlling company’s aggregate profit. The transfer pricing rules are an important tool for helping to protect the revenue collection of exporting countries and ensuring that multinational corporations pay their fair share of taxes (United Nations, 2021). Although transfer pricing does not necessarily involve tax avoidance, issues of tax avoidance and evasion may potentially arise in the case that the pricing is not aligned with internationally applicable norms or with the arm’s length principle under domestic law (United Nations, 2021). In addition to preventing tax evasion, transfer pricing rules also promote fair competition by ensuring that MNCs do not gain an unfair advantage over domestic companies that are subject to domestic tax laws.

The Organization for Economic Cooperation and Development (OECD) Transfer Pricing Guidelines (TPGs) provide comprehensive guidance on transfer pricing rules and methodologies for multinational enterprises (MNEs) to ensure that transactions between related entities are conducted at arm’s length. For instance, suppose a Japan-based multinational company has subsidiaries in various countries, including Singapore and China. The TPGs would guide the company in determining appropriate transfer prices for transactions involving intellectual property rights between its Singaporean headquarters and its subsidiary in Singapore, ensuring compliance with international tax standards (OECD, 2022b). On the other hand, OECD introduced the Action Plan on Base Erosion and Profit Shifting (“BEPS Action Plan”) and BEPS Action 13 focuses specifically on Country-by-Country Reporting (CbCR), requiring MNEs to provide detailed information on their global financial status including income, taxes payment, and other business information. This documentation is comprised of 3 components: 1) a master file, a 360-degree look at the company’s global transfer pricing operations and policy; 2) a local file, where the company documents the details of its intercompany transactions in each country. Each company files this document with its jurisdiction’s tax authority; 3) a country-by-country report that summaries of the activities of the company’s entities that operate within a given jurisdiction, and 4) Transfer Pricing Documentation: This includes the supporting documents used to prepare the Master File, Local File, and CbCR. Some of those standards are meant to reduce domestic tax BEPS, which is a form of tax
avoidance involving multinational companies using the differences in countries’ tax systems to profit\(^1\) (Thomson Reuters, 2021) and (OECD, 2017).

Many countries follow the OECD Transfer Pricing Guidelines, which provide a framework for determining arm’s length prices. However, each country may have its own specific rules and requirements for implementing transfer pricing rules. According to KPMG, more than 100 countries have implemented CbCR requirements for years 2016-2022; more than 70 countries have implemented a Master File for years 2016-2022; more than 65 countries have implemented a Local File for years 2016-2022 (KPMG, 2023a). To compliance with the transfer pricing regulations, each participating country issues regulations that require its multinational corporate taxpayers to submit transfer pricing documentation to justify their transactions with their related parties are in accordance with the arm’s-length principle\(^2\).

Based on these guidelines, many accounting firms such as Deloitte, KPMG, Ernst and Young offer a range of services and resources such as whitepapers, webinars, and practical guides to help businesses and tax professionals navigate the complex landscape of transfer pricing documentation. Following is a brief summary of the abovementioned documentation and the requirements to accomplish them according to OECD guidelines. It is important to note that the requirements and format of these reports can vary by jurisdiction, and companies should consult the tax laws and regulations of each country where they operate to ensure compliance. This is true in the cases of ASEAN member states are at different steps and stages of adopting and implementing these documents (OECD, 2022b).

### 1.2 ADOPTION OF TRANSFER PRICING RULES IN ASEAN AND LAO PDR

ASEAN has experienced fast economic development in the last few decades. Many ASEAN member states, particularly those heavily rely on their natural resource exports, tax collection and royalties are major financial sources to support their national economic development, although statistics show that their average tax revenue to GDP ratios remain low as compared to many advanced economies in the world, which is below 20% (Chongvilaivan & Chooi, 2021)\(^3\). Among all the factors that deplete the tax collection efforts in this region, tax-motivated IFFs play an important part in their revenue losses. According to the estimation performed by Global Financial Integrity (2021), in 2018, the trade value gap between ASEAN member states with their global trading partner reached more than USD 290 million [Global Financial Integrity, 2021]. Up-to-date, only some advanced ASEAN member states are able to implement regulations for addressing the tax-motivated IFFs problems that are aligned with international practice. Still, many member states, especially those with relatively economically developed member states, still face challenges in their domestic legal establishment that is yet comprehensive enough to cover complicated tax-motivated IFF mechanisms arising along the cross-border trade.

In recent times, various ASEAN member states have taken initiative to enforce the transfer pricing regulations to address the taxation issues concerning multinational enterprises (MNEs). According to reports published by international leading audit firms, such as KPMG\(^4\), Ernst & Young, and Deloitte, reveal that out of the ten member states, Brunei, Cambodia, Indonesia, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam have already implemented transfer pricing regulations. However, Laos and Myanmar do not have specific transfer pricing regulations in place yet. Furthermore, six nations out of the eight with transfer pricing regulations, namely Indonesia, Singapore, Malaysia, Thailand, Vietnam, and Brunei are members of the Base Erosion and Profit Shifting (BEPS) Inclusive Framework initiative by the OECD and G20 to tackle non-taxation issues of

\(^1\) [https://tax.thomsonreuters.com/blog/transfer-pricing-documentation-by-country/](https://tax.thomsonreuters.com/blog/transfer-pricing-documentation-by-country/)

\(^2\) [https://tax.thomsonreuters.com/blog/transfer-pricing-documentation-by-country/](https://tax.thomsonreuters.com/blog/transfer-pricing-documentation-by-country/)


multinational enterprises (MNEs). The BEPS measures include countering harmful tax practices (Action 5), preventing treaty abuse (Action 6), transfer pricing documentation (Action 13), and enhancing dispute resolution (action 14). It is important to note that the establishment levels of transfer pricing rules vary from one country to another within the ASEAN region. However, it has become a growing trend among countries to implement rules that protect their tax base. Multinational enterprises (MNEs) play a significant role in contributing to the domestic economy in this region, as a result, many member states are adopting such rules to ensure that the multinational enterprises (MNEs) meet their tax obligations.

On the other hand, Laos PDR is the only one of two member states that still lack specific transfer pricing rules according to according to studies by Mehrotra, Nolintha, & Sayavong (2022) and Norasing, Musselli, & Bonanomi (2020) have mentioned. Mehrotra et al. (2022) found that transaction between affiliate firms is one of major causes of trade mispricing risks as the country lacks a specific legal and regulatory framework for transfer pricing. They suggest that the Lao government should explore the United Nations or OECD transfer pricing guidelines to establish a regulatory framework. Mahrotra et al. (2022) also found evidence of trade mispricing, indicating that the tax authority has difficulty detecting the problem. Their study estimated the scale of trade mispricing of certain commodity exports such as copper products and coffee for the period from 2012-2017, and found a significant magnitude of trade mispricing. The invoiced export prices agreed between the exporters and importers were found to be outside the range of the arm’s length price, which represents fair market values.

Norasing, Musselli and Bananomi (2020) conducted a review of Lao legal frameworks, including Tax Law, Income Tax Law, Excise tax Law, Value Added Law, Customs Law, Accounting Law, Law on Commercial Banks, Law on Anti-Money Laundering and Counter-Financing Terrorism, and Presidential Ordinance on Fees and Charges for Services, to determine if the current legal framework are adequate to address trade mispricing. They propose that Lao PDR can consider using simplified methods and legalizing the use of deemed profits to calculate the taxable basis in sectors that raise specific tax risks. However, they point out that the proposed simplified method could be significantly limited due to the lack of reference to the OECD Transfer Pricing Guidelines in the current applicable Lao tax laws.

Ka (2017) examined trade flows data between the Lao PDR and its major trade partners of China and Thailand to identify the correlation between tax evasion and tax rate. The study provides evidence of under-reporting of unit value for the years of 2009 and 2011. The study results indicate that tax evasion has increased over time in trade with China with strong evidence of tax evasion both in values and in quantities. The tax evasion in values is considered more severe than tax evasion in quantities which implies that the Lao customs authority’s inspection of imports is weak, creating a loophole for tax evasion.

Laudage Teles et al. (2023) studied the impact of transfer pricing regulations on revenues and investment in developing countries using country-level information on corporate tax revenue collection and foreign direct investments for more than 120 low and middle-income countries, including eight ASEAN member states, namely Cambodia, Lao PDR, Malaysia, Myanmar, Philippines, Thailand and Vietnam over a period of 30 years. Their study found that transfer pricing provisions actually help least developed countries (LDCs) to collect more revenue and improve goods and services supply to their citizens. However, to better manage the impact of transfer pricing regulations, governments in LDCs must balance these effects against the administrative burden from administering and enforcing transfer pricing laws.

For a resource-rich developing country like Lao PDR, has been facing various challenges in establishing a comprehensive legal system that enables effective tax collection from multinational enterprises (MNEs). One of the biggest challenges is to prevent revenue loss, that is to minimize and prevent tax-motivated illicit financial flows, and ensure that multinational enterprises (MNEs) pay their fair share of taxes. It is widely recognized that transfer pricing rules play a crucial role in achieving these goals. However, implementing transfer pricing rules is a long and challenging journey that requires significant effort and resources. Therefore, apart from adopting transfer pricing rules, Lao PDR may consider
alternative methods or simplified methods that have proven practical and effective in other regions for calculating taxable basis. These alternative methods can be especially useful for sectors that raise specific risks, such as the extractive industries. By improving its tax collection, Lao PDR can generate more revenue from these sectors.

1.3 PURPOSE AND CONSTRUCTION OF THE WORKING PAPER

This working paper aims to provide insights into challenges that Lao PDR face in introducing transfer pricing rules by referring to “Transfer Pricing and Developing Economies- A Handbook for Policy Makers and Practitioners” published by the United Nations published. This handbook outlines some basic precondition for transfer pricing reform as a simple guideline for developing countries to conduct self-evaluation for their readiness to implement the transfer pricing rules, which include the review of macroeconomic context, legal systems comprehensiveness, and administrative capacity. Also, through learning experience from the trade between Lao PDR and other ASEAN member states, this working paper provides recommendations does the working paper offer for Lao PDR to overcome the challenges in introducing transfer pricing rules.

The construction of this working paper consists of 5 sections. Section 2 presents data and information facts on empirical evidence of trade mispricing of natural commodities exports of Laos and its ASEAN trade partners. The data and information presented in this section include trade volume, export channels and major trading partners in ASEAN that could contribute the most to their losses. Section 3 provides a brief summary on status and lessons learned from ASEAN member states that already adopted transfer pricing regime in order to provide what challenges that Lao PDR may expect if it is to adopt the regime in the future. Section 4 presents the results of a factor analysis relating to the necessary precondition for transferring pricing reform based on the United Nations’ handbook and to provide possible entry point for the government to consider if the government is to prepare its infrastructure to adopt the transfer pricing rules based on various guidelines proposed by leading international organizations that could facilitate the establishment of transfer pricing rules in Lao legal framework. These factors include information exchange mechanism, cooperation with international organization, current laws that could be target for integration of transfer pricing rules, rule of law, human resources and management capacity, use of innovative technology and access to information. Section 5 concludes and briefly discusses the main findings and the implications for the future possibility of adoption of transfer pricing regulations in Lao PDR.

1.4 SOURCES OF INFORMATION AND DATA

The research conducted in Sections 2, 3, and 4 of this working paper is based on a range of data sources that cover the issue of tax-motivated illicit financial flows (IFFs). The data is obtained from reputable international organizations such as the Organization for Economic Co-operation and Development (OECD), United Nations, World Bank, and academic journals, websites, and publications. Additionally, surveys were conducted with the Ministry of Finance of Laos to gather relevant information. To supplement these primary sources, secondary data was obtained from selected websites of the World Bank (WB), Asia Development Bank (ADB), and OECD, as well as from official government websites of Lao PDR such as the Trade Portal of the Ministry of Industry and Commerce. Furthermore, the working paper references reports and publications issued by international accounting firms such as KPMG, Deloitte, and Ernst and Young, and Lao government agencies such as the Ministry of Investment and Planning and the Ministry of Industry and Commerce.
2 BRIEF REVIEW ON TRADES BETWEEN LAO PDR AND ITS ASEAN TRADE PARTNERS

2.1 AN OVERVIEW OF TRADE BETWEEN LAO PDR AND ASEAN

In the past ten years, Laos has witnessed a remarkable growth in trade with ASEAN, which has played a vital role in the country’s economic progress. As per Figure 1, Laos received a moderate amount of FDI inflows from the ASEAN countries in the last decade. It reached its peak in 2015 at around USD 222 million and gradually decreased in the following years to be around USD 80 million in 2020. According to data from the Lao Trade Portal, Laos had total trade with ASEAN worth over USD 13 billion in 2021, out of which the export volume was USD 6 billion. This reflects a 3% decrease compared to the average level between 2017-2021. In 2021, Thailand and Vietnam were the primary export trade partners of Laos with export values of USD 2.1 billion and USD 0.7 billion, respectively. They accounted for 36% and 12% of the total exports of Laos in that year, respectively. Laos's primary exports to ASEAN included mineral fuels, electrical machinery, and wood and articles of wood. In contrast, Laos's imports from ASEAN in 2021 were valued at USD 7 billion, which is a 6% decrease compared to the average volume between 2017-2021. Laos's primary imports from ASEAN included vehicles, electrical machinery, and iron and steel (Ministry of Industry and Commerce, 2021).

According to the ASEAN Statistical Yearbook's latest edition, Lao PDR has had a higher share of intra-regional trade in goods within the ASEAN region from 2011 to 2020 than with extra-ASEAN regions. The report shows that Laos conducted a significant volume of trade within the ASEAN region, with the total intra-ASEAN trade volume increasing steadily from USD 2,898 million in 2011 to around USD 7,000 million in 2019. However, the figure decreased to around USD 6,000 million in 2020 due to the impact of the COVID-19 pandemic. Additionally, Lao PDR's trade with outside ASEAN regions has also been increasing, from around USD 1,583 million in 2011 to a peak of USD 5,651 million in 2018, before gradually decreasing in the following years. However, in comparison with extra-ASEAN trades, it appears that Lao PDR has conducted a significant amount of trade within the ASEAN region. The government’s efforts to improve trade facilitation also suggest a commitment to further expanding trade opportunities. (The ASEAN Secretariat, 2021).

![Intra-ASEAN FDI Inward Flows by Host Country](image)

Figure 1. Intra-ASEAN FDI inward flows by host country
Lao PDR’s leading export goods are electricity, mining products such as gold, copper, and agricultural products such as coffee and rubber cover a large portion of total export of Lao PDR. Unlike other goods, the country mainly exports electricity to neighboring countries, such as Thailand, Vietnam, and Cambodia, based on fixed tariff agreements, which reduces the risk of trade mispricing loops. Copper and gold have been the leading natural resource exports of the country over the past decade, as depicted in Figure 3, which shows the trade volumes of these and other products such as copper ore, gold ore, coffee, and rubber from 2012 to 2020.

In terms of mining and agricultural products, Table 1 provides some insights into the recent year’s exports of copper, gold, coffee, and rubber from 2018 to 2020. Laos exports its majority of copper ore to Cambodia and Vietnam, with no transfer pricing rules currently in place. The majority of the rubber export destination in ASEAN is Vietnam, while copper and copper slags are mainly exported to Thailand. Over 50% of unprocessed coffee is exported to Vietnam, and the remaining small portions were exported to Thailand and Cambodia. Lao PDR’s only trade partner for concentrated gold ore is Vietnam, with 100% of recorded extracted concentrated gold ore sold to Vietnam. Meanwhile, 33% of pure gold and gold products were exported to Thailand, and 7% of those were exported to Singapore in 2020.
Table 1. Major export destinations of the leading mining and agricultural products from Lao PDR to ASEAN (in million USD)

<table>
<thead>
<tr>
<th>Export country</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Copper ore</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cambodia</td>
<td>126 (18%)</td>
<td>103 (7%)</td>
<td>108 (33%)</td>
</tr>
<tr>
<td>Vietnam</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>80 (18%)</td>
</tr>
<tr>
<td>Thailand</td>
<td>25 (3%)</td>
<td>39 (7%)</td>
<td>43 (10%)</td>
</tr>
<tr>
<td>Rubber</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vietnam</td>
<td>89 (53%)</td>
<td>120 (55%)</td>
<td>106 (24%)</td>
</tr>
<tr>
<td>Copper and copper slags</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Thailand</td>
<td>357 (75%)</td>
<td>400 (92%)</td>
<td>152 (73%)</td>
</tr>
<tr>
<td>Coffee (unprocessed)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vietnam</td>
<td>54 (56%)</td>
<td>35 (54%)</td>
<td>55 (65%)</td>
</tr>
<tr>
<td>Thailand</td>
<td>12 (12%)</td>
<td>10 (16%)</td>
<td>7 (8%)</td>
</tr>
<tr>
<td>Cambodia</td>
<td>2 (3%)</td>
<td>3 (5%)</td>
<td>6 (6%)</td>
</tr>
<tr>
<td>Concentrated gold ore</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vietnam</td>
<td>27 (100%)</td>
<td>6 (100%)</td>
<td>36 (100%)</td>
</tr>
<tr>
<td>Gold and Gold products</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Thailand</td>
<td>2 (1%)</td>
<td>14 (7%)</td>
<td>150 (33%)</td>
</tr>
<tr>
<td>Singapore</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>31 (7%)</td>
</tr>
</tbody>
</table>

Source: Ministry of Industry and Commerce of Lao PDR.
( ) : percentage as compared to the total export of that product in the year.

2.2 TAX DIFFERENCES IN ASEAN

The Association of Southeast Asian Nations (ASEAN) aims to establish an integrated regional market through the ASEAN Economic Community (AEC) initiatives. The primary objective of the AEC is to lower the regional trade barriers and standardize rules and regulations to boost intra-ASEAN trade and investments. However, the AEC has only been moderately successful in achieving its goals. Technical barriers to trade still exist, and rules related to trade in services and investments lack regional clarity and consistency. Additionally, the ASEAN has not yet started examining the implementation of a harmonized or integrated tax system. Investors face diverse tax rules and systems in each of the ten-member countries, leading to significant differences in tax system, tax rates, and tax coverage.

Table 2 compares the withholding tax rates across the ASEAN countries, highlighting the need for businesses to consider varying tax percentages within a tax legislation. The withholding tax rates depend on several factors, such as the nature of payment, resident status of the receiver, and whether the receiver is an individual or a company. Moreover, the rates may differ based on double tax avoidance agreements signed between two countries. By closely assessing the varying tax rates, businesses can determine the relative costs of doing business with a particular ASEAN state. For instance, the Philippines charges a withholding rate of 30 percent on dividends for non-residents, making it relatively expensive compared to Vietnam and Myanmar, which impose a zero percent withholding rate on dividends.
### Table 2. Corporate income tax rates vary among the ASEAN countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Corporate income tax rates</th>
<th>Withholding tax rate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Dividends</td>
<td>Interest</td>
</tr>
<tr>
<td>Brunei</td>
<td>20%</td>
<td>N/A</td>
</tr>
<tr>
<td>Cambodia</td>
<td>20%</td>
<td>14%*</td>
</tr>
<tr>
<td>Indonesia</td>
<td>25%</td>
<td>20%*/15%**</td>
</tr>
<tr>
<td>Lao PDR</td>
<td>24%</td>
<td>10%*/10%**</td>
</tr>
<tr>
<td>Malaysia</td>
<td>25%</td>
<td>NA</td>
</tr>
<tr>
<td>Myanmar</td>
<td>25%/35%</td>
<td>NA</td>
</tr>
<tr>
<td>Philippines</td>
<td>30%</td>
<td>30%*</td>
</tr>
<tr>
<td>Singapore</td>
<td>17%</td>
<td>NA</td>
</tr>
<tr>
<td>Thailand</td>
<td>20%</td>
<td>10%*/10**</td>
</tr>
<tr>
<td>Vietnam</td>
<td>22%</td>
<td>0%*6</td>
</tr>
</tbody>
</table>

*: for non-resident  
**: for resident  

### 2.3 Trade Value Gaps between Lao PDR and ASEAN

According to the data published by the Global Financial Integrity (2021), there has been a gradual expansion in the value gaps in trades between Lao PDR and its global trade partners. Figure 5 highlights this trend, showing that in 2018, the value gaps had increased to USD 1,500 million, with an average value gap of USD 851 million for the study period. While this may not appear significant when compared to other ASEAN member states, it is important to note that Lao PDR has an average GDP per capita of USD 7,811 in 2020. By better managing such revenue losses, the government could potentially finance more public development projects for the country.

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5 A withholding tax of 15 percent applies to interest paid to a non-resident, unless the rate is reduced under a tax treaty. However, interest paid to a non-resident by a bank operating in Malaysia is exempt from tax, except for interest accruing to the non-resident’s place of business in Malaysia and interest paid on funds required to maintain “net working funds,” as prescribed by the central bank. Certain other interest paid to a nonresident also may be exempt. From Deloitte (2020), Guide to taxation in Southeast Asia 2020 (Deloitte, 2020b).

6 No tax is imposed on dividends remitted overseas unless paid to an individual, where a 5 percent withholding tax is imposed. From Deloitte (2020), Guide to taxation in Southeast Asia 2020.
3 STATUS OF TRANSFER PRICING REGIME IMPLEMENTATION AMONG ASEAN MEMBER STATES

At present, many ASEAN member states have joined the force to implement the transfer pricing rules despite their adoption varies across the states, with some countries having more established frameworks than others (see summary in Table 3). According to various reports regarding current tax regime status of ASEAN Member States published by international leading audit firms such as KPMG (2023), Ernst and Young (2014), Deloitte (Deloitte, 2020b), and Grant Thorntons (2022). The recent developments in some of the transfer pricing regimes in the region are exemplified as below:

Table 3. Establishment of transfer pricing rules in the legal and regulatory frameworks in ASEAN

<table>
<thead>
<tr>
<th>Country</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brunei</td>
<td>There are no local transfer pricing regulations in Brunei, but Brunei has concluded around 10 income tax treaties that contain an article that resembles Article 9 (Associated Enterprises) of OECD Model Tax Convention (Ernst and Yong, 2014).</td>
</tr>
<tr>
<td>Cambodia</td>
<td>The earliest transfer pricing rules are the Prakas No. 986/MEF effective from October 2017 governing transfer pricing compliance requirements. Instruction No. 11946 released in August 2018 specifically requires taxpayers to apply the arm’s length principle in setting interest rates on related party loans. Intra-group interest-free loans will likely be challenged under the new regime (Deloitte, 2020a) &amp; (KPMG, 2023a).</td>
</tr>
<tr>
<td>Indonesia</td>
<td>Regulation No. 213/PMK.03/2016 regulates the application of the BEPS Action 13, in which both Master File and Local Files are required to be made available no later than four (4) months after the fiscal year and are to be submitted upon request within a very short time frame of seven (7) days (PWC, 2017).</td>
</tr>
<tr>
<td>Malaysia</td>
<td>The Transfer Pricing Rules 2023 are active for the year of assessment 2023 and the subsequent year of assessment. The newly published rules are believed to significantly enhance and strengthen the position of Malaysia's revenue collection authority on transfer pricing enforcement (KPMG, 2023a).</td>
</tr>
<tr>
<td>Philippines</td>
<td>The transfer pricing regulations are largely based on the OECD Guidelines and refer to them for further guidance and examples. The country initially published its first Transfer Pricing Guidelines in January 2013, followed by the issuance of Transfer Pricing Audit Guidelines in 2019 (Grant Thornton, 2022a; Grant Thornton, 2022a).</td>
</tr>
<tr>
<td>Singapore</td>
<td>The country remains one of the most active countries in ASEAN in adopting the latest global transfer pricing measures and has historically provided updates to the local transfer pricing guidelines in the first quarter of each year since 2015. Under the Income Tax (Transfer Pricing Documentation) Rules 2018 and Transfer Pricing Guidelines published in February 2018.</td>
</tr>
</tbody>
</table>
Thailand:
The Transfer Pricing Act was announced in September 2018 and came into force with effect from 1 January 2019. It is the exceptional country in the region to require taxpayers to submit transfer pricing documentation within a specified timeframe as opposed to being made available upon request by the tax authorities. The documentation is to be prepared in a specified format and submitted to the tax authorities within one hundred fifty (150) days from the financial year-end (Deloitte, 2020b; Crowe Malaysia, 2019; Deloitte, 2020b).

Vietnam:
The first Transfer pricing rules were introduced in 2005 through the Circular 117/2005/TT-BTC. In 2020 Vietnam’s tax authority issued Decree No. 132/2020/ND-CP that stipulate principles, methods, process and procedures for determines prices of related-party transactions (Grant Thornton, 2022b).

According to Table 3, not all ASEAN Member States have reached the same level of development in terms of transfer pricing rules. This can be attributed to the differences in their socioeconomic developmental stages. For those member states that have already begun developing legal frameworks for implementing transfer pricing rules, various factors such as trade volumes, nature of exports and imports, and major trade partners all play a crucial role in determining the scope of their frameworks. Those with significant trade incentives with OECD countries are more likely to have initiated and/or developed certain levels of legal frameworks for implementing transfer pricing rules. This is done in order to expand their taxation base, particularly with multinational enterprises residing in the country. Following we will take Singapore, Thailand and Vietnam to explain the differences in implementing the transfer pricing rules.

**Case 1. Singapore**

Singapore has transfer pricing regulations to ensure that related-party transactions are conducted at fair prices. These regulations are based on international standards and are enforced under the Income Tax Act and the Goods and Services Tax Act. Taxpayers in Singapore must prepare transfer pricing documentation for related-party transactions. This should include information on the pricing method used, the comparability analysis, and the documentation of the selection of the most appropriate method. The documentation should be prepared annually and must be provided to the Inland Revenue Authority of Singapore (IRAS) upon request. Taxpayers may also need to submit a transfer pricing report to the IRAS. The report provides detailed information on related-party transactions, transfer pricing policies and practices, and the application of transfer pricing methods. The report must be submitted within three months from the due date for filing the tax return. In Singapore, there is no specific revenue thresholds exist for submitting the transfer pricing report in Singapore. However, large taxpayers with related-party transactions exceeding SGD 15 million (approximately USD 11 million) per year are subject to a transfer pricing audit. These taxpayers must provide transfer pricing documentation and may need to submit additional information and explanations to the IRAS (Crowe Malaysia, 2019).

**Case 2. Thailand**

Since 2002, Thailand has implemented transfer pricing regulations to ensure that taxpayers conducting related-party transactions follow international best practices. The guidelines were updated in 2018 to align with the Organization for Economic Cooperation and Development (OECD) Transfer Pricing Guidelines and are enforced under the Revenue Code and the Royal Decree on the Establishment of the Revenue Department. Taxpayers are required to prepare transfer pricing documentation annually for related-party transactions. The documentation must contain details on the pricing method used, comparability analysis, and the selection of the most appropriate method. The Revenue Department can request the documentation at any time.

Additionally, taxpayers may be required to submit a transfer pricing disclosure form that provides information on related-party transactions, transfer pricing policies and practices, and the application of transfer pricing methods. The form must be filed by the due date for filing the tax return. While there
are no specific revenue thresholds for submitting the transfer pricing disclosure form in Thailand, large taxpayers with related-party transactions exceeding a certain amount are subject to a transfer pricing audit. The amount is currently set at THB 200 million (approximately USD 6.6 million). These taxpayers must provide transfer pricing documentation and may be required to submit additional information and explanations to the Revenue Department. To determine the arm's length price for related-party transactions, taxpayers are required to use one of the five transfer pricing methods specified in the regulations. These methods include the comparable uncontrolled price method, the resale price method, the cost-plus method, the transactional net margin method, and the profit split method. Failure to comply with transfer pricing regulations in Thailand can lead to penalties and fines (Grant Thornton, 2022b).

**Case 3: Vietnam**

Vietnam introduced transfer pricing regulations in 2010 through Circular No. 66/2010/TT-BTC, which was later updated in 2013 with Circular No. 201/2013/TT-BTC. The regulations are primarily based on the OECD Transfer Pricing Guidelines and the United Nations Practical Manual on Transfer Pricing for Developing Countries. The transfer pricing regulations are enforced under the Law on Tax Administration and the Law on Corporate Income Tax. According to these regulations, taxpayers in Vietnam are required to prepare transfer pricing documentation for related-party transactions. This documentation should include information on the pricing method used, a comparability analysis, and documentation of the selection of the most appropriate method. The documentation must be prepared in Vietnamese and kept for at least five years from the end of the tax year in which the transaction occurred.

Moreover, taxpayers must submit a transfer pricing report to the tax authorities if they meet certain revenue thresholds. In Vietnam, the revenue threshold for submitting a TPR is VND 50 billion (approximately USD 2.2 million) of total revenue for the fiscal year. However, for taxpayers with total revenue below this threshold, transfer pricing documentation must still be prepared and kept on file for potential review by tax authorities. The TPR must be submitted annually with the taxpayer's corporate income tax return and should include information on the taxpayer's related-party transactions, transfer pricing policies and practices, and any adjustments made to the prices of these transactions.

Finally, it is important to note that these three member states also share some common practices that Singapore, Thailand and Vietnam have signed double taxation avoidance agreements (DTAs) with many countries, including many in ASEAN, which contain provisions on transfer pricing. These agreements ensure that transactions between related parties in different countries are conducted at arm's length prices. All of these three ASEAN member states are a party to the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information and also a member of the Inclusive Framework on BEPS neither (OECD, 2022a) which enable these countries to have easier access to information and implement the documentations recommended by the OECD Transfer Pricing Guidelines and the United Nations Practical Manual on Transfer Pricing for Developing Countries (Deloitte, 2020b) (Grant Thornton, 2022b).
4 CHALLENGES IN INTRODUCING THE TRANSFER PRICING RULES FOR LAO PDR

4.1 NECESSARY PREPARATION FOR INTRODUCING TRANSFER PRICING RULES

The successful implementation of transfer pricing rules requires a coordinated effort between the government, taxpayers, and tax administration. This is according to the “Practical Toolkit to Support the Successful Implementation by Developing Countries of Effective Transfer Pricing Documentation” by the World Bank (2016), “OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations” by the OECD (2022), and “Practical manual on Transfer pricing For developing countries” by the United Nations the World Bank (2021), overall, introducing transfer pricing rules requires a coordinated effort between the government, taxpayers, and tax administration. Before introducing transfer pricing rules developing countries should carefully consider the necessary preparation works and seek technical assistance from international organizations if needed to ensure a successful implementation. It is essential for them to understand the concept of transfer pricing and its significance in international tax compliance.7

After confirming the need for endorsement of transfer pricing rules, the government should establish a legal and regulatory framework that governs transfer pricing practices. This framework should cover the documentation requirements, transfer pricing methods, and penalties for non-compliance. Meanwhile, the developing country should also determine the scope of application of transfer pricing rules to be applied depending on the nature of business, size of income generation, impact on the economic and tax avoidance risks of the companies that related to MNEs located within or abroad. This should involve identifying the types of transactions that will be subject to the transfer pricing rules, the associated parties, and the threshold for applying the rules8.

As mentioned in previous sections that Lao PDR has no transfer pricing regulations in Laos yet. According to VDB Loi (2022) the current practice of some tax auditors usually refers to point 11 of Article 18 of the Amendment of the Tax Laws No. 01/NA dated 7 August 2021 to reject any expense that is “higher than reality” (VDB LOI, 2022). This means that the company should have documentations and be able to defend the expenses when questioned by tax authorities. However, there are no published guidelines for what the tax authorities can refer to in order to judge and detect transactions that are not in line with the “arm’s length” principle. In addition, Laos has not yet joined the OECD’s Inclusive Framework, membership of which presupposes a commitment to implement the BEPS minimum standards, including Country-by-Country reporting.

The United Nations published a 3rd edition of Transfer Pricing and Developing Economies A Handbook for Policy Makers and Practitioners, this handbook outlines some basic precondition for transfer pricing reform proposed which cover the areas of macroeconomic context, and legal systems

7 This passage refers to the reference of “Transfer pricing is an accounting practice in which a particular division or subsidiary of a company charges a second division or subsidiary of the same company for goods or services. This can provide tax savings for the larger enterprise, as the companies are able to divide earnings among subsidiaries and affiliates”, extracted from an article under the title of “Transfer Pricing Documentation by Country” from https://tax.thomsonreuters.com/blog/transfer-pricing-documentation-by-country/

8 This passage refers to the reference of “Transfer pricing rules apply to taxpayers that conduct transactions with associated parties. In most countries, they require the taxable profit of such taxpayers to be computed in accordance with the arm’s length principle - that is, on the assumption that the price and other” from the “Practical Toolkit to Support the Successful Implementation by Developing Countries of Effective Transfer Pricing Documentation” from https://documents.worldbank.org/curated/en/505481569449944639/pdf/.
comprehensiveness, and administrative capacity (United Nations, 2021). This provides developing
countries a simple guideline to conduct self-evaluation for its readiness to implement the transfer pricing
rules. The author proposes using the United Nations guidelines to evaluate Lao PDR's level of
preparedness for adopting transfer pricing rules. The checklist involves reviewing three preconditions
for transfer pricing reform: macroeconomic context, legal systems comprehensiveness, and
administrative capacity, as mentioned above.

4.2 MACROECONOMIC CONTEXT

• Foreign direct investment (FDI)

Lao PDR has been witnessing a growth in foreign direct investment over the years. Sectors such as
hydropower, mining, and tourism have been attracting significant investments, many of which involve
multinational enterprises. It is crucial to note that Laos has received relatively large amounts of FDI
from the ASEAN region, as presented in Figures 1, 2, and 3. Large investment projects in the country
have been funded by inward FDI, leading to close relations between enterprises operating in Lao PDR
and their affiliate entities located abroad. Apart from ASEAN region, the figures also shows that Lao
PDR have received relatively large investment in extractive industries from its non-ASEAN member
neighbor such as China. Therefore, in author’s opinion, having transfer pricing rules in place would
assist the government to protect and expand its tax base more efficiently.

• Substantial levels of cross-border trade

Lao PDR has a relatively small economy, and its industrial sectors are still at very primary development
stages. It heavily relies on imports to meet its domestic consumption needs, including goods such as
machinery, vehicles, petroleum, electronics, and consumer products. Meanwhile, its major exports lie
within extractive industries such as minerals, electricity and agricultural products such as coffee and
rubber. For this reason, the country is heavily dependent on foreign trade, particularly with its neighbors,
namely China, Thailand, and Vietnam. In order to generate foreign exchange to support its import
needs, the export of natural resources, particularly those from the extractive sectors, is becoming increasingly
important and crucial to support the country’s economic stability. This dependency on cross-border
trade makes it essential for Laos to have transfer pricing regulations in place to protect and expand its
tax base.

4.3 LEGAL PRECONDITIONS

• Requirements for companies to maintain financial accounts in place

Laos has a number of accounting requirements for companies, including requirements to maintain
financial records and submit tax returns. However, previous studies for instance Musselli et al, (2021)
and KPMG (2023) all pointed out that although the current enforcing laws provide bases for tax
avoidance, but they are not transfer pricing rules practices thus the current account requirement could
not satisfy the internationally wide recognized transfer pricing documentation requirements.

• Comprehensive legal framework for addressing trade-related illicit financial flows

Lao PDR has a tax system that includes taxes on profits, income, and other types of revenue. However,
previous studies for instance Nalonglith, Musselli and Bonanomi (2020) and KPMG (2023) all pointed
out that although the current enforcing laws provide bases for tax avoidance, but they are not transfer
pricing rules practices. Based on previous mentioned studies, in this paper, the authors continue

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9 Please refer to Box 1.5 in “The United Nations published a 3rd edition of Transfer Pricing and Developing Economies A
Handbook for Policy Makers and Practitioners, 3ed edition, for detailed outlining of the precondition.
reviewing some of the above-mentioned laws that have recently been amended, and other regulations that are not covered by (Norasing, Musselli, & Bonanomi, 2020)’s study as listed below, and they were able to capture some notable progresses made by the government that could contribute to protect the country’s tax base from trade-related illicit financial-like transaction practices.

<table>
<thead>
<tr>
<th>Name of law</th>
<th>References</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Law on Tax (Amended in 2023)</td>
<td>(The Government of Lao PDR, 2023b)</td>
</tr>
<tr>
<td>4. Presidential Ordinance on Natural Resources Fees</td>
<td>(The Government of Lao PDR, 2023c)</td>
</tr>
<tr>
<td>5. Decree on Responsibilities Against Money Laundering and Terrorism Financing</td>
<td>(The Government of Lao PDR, 2020a)</td>
</tr>
</tbody>
</table>

The recent amendments to Lao PDR’s Law on Customs and its Implementation Instructions signify a proactive approach to address trade-related illicit financial flows and also the transfer pricing rules. The key provisions include:

- Data facilitation: The amendments emphasize the facilitation of legal and internationally standardized data and information, promoting transparency in customs operations.
- Modern customs database: The establishment of a modern, transparent, and auditable customs database enhances efficiency and accountability in customs operations, aligning with global best practices.
- Citizen involvement: The encouragement of citizens to report illegal tax evasion or avoidance practices fosters public cooperation, adding an extra layer of vigilance and compliance.
- International collaboration: The provisions allowing the exchange of customs information, technology, training, and tax authority capacity building, as well as enhancing participation in tax and customs-related international treaties, demonstrate a commitment to global cooperation.
- Guidelines for document inspections: Implementation Instructions offer simple guidelines for tax authorities conducting document and goods inspections of exporters or importers, streamlining compliance processes.

The recent Presidential Decree on Natural Resource Fees (The Government of Lao PDR, 2023c) lists the percentage of resource royalties or fees that extractive companies should pay to the government. The list includes resources such as minerals, forest products, soil, sand and rock, and natural resources used in hydropower projects. This Ordinance also provides guidelines for the calculation of natural resource royalties. It is worth mentioning that this regulation clearly stipulates that exporters should use reference prices from the international, regional or even local market should be used for the loyalty calculation of mineral products such as gold, copper.

Despite significant progress in the field, there are still notable gaps that persist in the tax system. Firstly, there is a lack of specific guidelines or manuals for tax authorities to inspect trade information through data exchange with international organizations, particularly concerning transactions involving multinational enterprises and their affiliates overseas. This lack of guidance creates confusion and ambiguity in the tax system, leading to potential revenue loss and difficulties in enforcing tax laws. Secondly, there is still no precise legal definition of trade-related illicit financial flows in the abovementioned amended and newly promulgated laws. Without a clear definition, it becomes challenging to ensure coverage and impose specific legal actions against movement resulting from tax
evasion and tax avoidance. This loophole in the system can be exploited by businesses, leading to significant revenue loss for the government. Thirdly, the fact that ASEAN is a major trade partner of Lao PDR, and its major commodity exports are dominated by foreign investors, highlights the importance of Laos introducing transfer pricing rules into its domestic legal framework, like other ASEAN member states have done. Transfer pricing rules are essential for minimizing revenue loss and recovering the lost revenue through more cross-agency collaboration in laws and regulations between the line government agencies involved. Thus, addressing these gaps in the tax system is crucial to ensure that tax laws are enforced fairly and efficiently, and to prevent potential revenue loss for the government.

- Taxpayer access to efficient and equitable dispute resolution procedures, including courts and appeals

Lao PDR has issued the amended Law on Economic Dispute Resolution in 2018 (The Government of Lao PDR, 2018). The government has established the Organization of Economic Dispute Resolution (OEDR) to manage and govern dispute resolution through an arbitration system. The OEDR handles economic disputes in accordance with the Law on Resolution of Economic Disputes. However, when a tax dispute arises, by directly negotiating with the tax authorities usually facing many challenges and barriers. Many law firms operating in Lao PDR recommend that the taxpayers should seek to resolve a tax dispute by consult with a legal professional for guidance on the specific procedures and options available (Lao Premier, 2008). Therefore, in author’s opinion, Lao PDR need a transfer pricing rules guidelines to inform the taxpayers in terms of dispute resolution procedures and penalties that may be imposed.

- Implementation of tax treaties

Currently, Lao PDR has signed 11 double tax treaties with other countries that can be utilized as a tool to tackle transfer pricing issues to a certain level. However, as the tax laws do not provide detailed guidelines on how to detect and judge risks of transfer pricing practices, the country is risks to lose revenue income imposed by such legal gaps. Currently, Laos has signed 11 double tax treaties with other countries that can be utilized to tackle transfer pricing issues. However, due to the lack of detailed guidelines in tax laws on how to identify and evaluate the risks associated with transfer pricing practices, the country is vulnerable to losing revenue income caused by these legal loopholes.

4.4 ADMINISTRATIVE PRECONDITIONS

- Relevant audit experience - experience with auditing multinational enterprise taxpayers

Given the fact that Lao PDR has no transfer pricing rules and it enterprise registration documentation does not require detailed information on the investor’ affiliate companies. In addition, Lao PDR is not a party to the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information which limits its data accessibility to affiliate company information located abroad. The author assume Lao PDR has very limited experience auditing multinational enterprise taxpayers for transfer pricing issues. In this area, Lao PDR would need to improve its data and information accessibility in the future if it is considering the adoption of the transfer pricing rules.

- Availability of human resources

According to the information from USAID (USAID) website, the performance score of tax administration is 0.25. In comparison, the average scores for tax administration in the ASEAN region and the world are 2.17 and 2.33, respectively, where higher scores indicate better performance. This suggests that there might be a shortage of auditors available in Lao PDR to receive specialized training on transfer pricing. Moreover, the percentage of staff with Bachelor's and higher-level education in the tax administration sector in Lao PDR is relatively low, according to the Asian Development Bank's report in 2021 (Chongvilaivan & Chooi, 2021). The situation could be more challenging in provinces where there are significant natural resources export activities. The situation could be worse in provinces where there are major natural resources export activities. As a results, such lack of human resources challenges would cause the government more time to be able to fully adopt any advanced transfer
pricing regimes in the near future. However, the government could consider alternative methods to protect its tax base from threats of transfer pricing practices, similar to what other developing countries have implemented. For instance,

Besides, the author also conducted a paper-based survey to enquire the staff from Legal Department, Customs Department and Tax Department in June 2023. The representative staff from these department demonstrated that they are not yet fully aware of the transfer pricing rules and they have never been attending any trainings relating to this issue elsewhere before. In other words, the tax authority has very limited awareness on the transfer pricing rules problems.

- Effective tax return filing and data processing

Based on a ADB report on “A comprehensive of tax capacity in Southeast Asia”, Laos has a relatively low level of digitalization comparing to other countries in Southeast Asia. Many small and medium sized businesses still prepare the filing using traditional paper-based method, which are prone to errors and time-consuming. This fact shows that Lao PDR is very likely to face challenges in processing tax returns and other financial data (Chongvilaivan & Chooi, 2021).

- Language abilities to monitor international developments

As many international transfer pricing developments are conducted in English, it can be a challenge for officials in Laos who may not be proficient in the language, especially in the provinces. However, the Lao PDR government has the option to seek translation services through international assistance or aid projects. Additionally, many tax staff have experience studying abroad, making them well-suited to be the first batch to handle transfer pricing regulations related documents. In the author's opinion, Lao PDR can overcome this difficulty and meet the necessary criteria.

5 CONCLUSION AND POLICY RECOMMENDATIONS

The findings of this working paper reveal that Laos may face several obstacles if it decides to adopt transfer pricing regulations. Firstly, the government may not have enough expertise or resources to implement and enforce such regulations. This may require significant investment in training, qualified personnel recruitment, and technical capacity development. To overcome these obstacles, Laos may need to take several legal actions, including legalize the definition of illicit financial flows, drafting and enacting transfer pricing regulations based on international best practices, while also considering the unique characteristics of the Lao economy to consider alternative methods focusing on certain sectors in risk.

An alternative approach to tax administration is called "Potential Administrative Approaches", which was introduced by the International Institute for Sustainable Development (IISD) and the Organization for Economic Co-operation and Development (OECD) " (2023). For instance, if governments implement "Taxpayer Guidance" in the case of auditing mineral product exports, they can publish recommended pricing methodologies for specific minerals. These methods include determining quality adjustments and processing costs. On the other hand, the "Safe Harbor Approach" encourages companies to apply prices in related-party transactions at or above the safe harbor pricing method to avoid attracting scrutiny from the government. Both "Taxpayer Guidance" and "Safe Harbor Approach" are commonly used tools by tax administrations worldwide. They aim to protect low-risk transactions, simplify compliance for taxpayers, reduce compliance costs, and reduce the audit burden of tax authorities.

Regarding alternative methods, there are certain areas that the government should continue to explore. One such approach, suggested by Musselli and Bonanomi (2022) is the approach called “the sixth method” under transfer pricing law. There are certain areas that policy makers need to explore and consider alternative methods for. This method requires taxpayers and tax administrations to use reference prices when determining the tax value of commodity sales, particularly in the context of
related-party sales. This means that in order to improve the valuations of commodity export, customs and tax authorities can use "reference prices" for customs purposes when assessing the value of the commodity being exported. However, to effectively implement this policy, there is an urgent need to develop a guideline on quality measurement and valuation of traded commodities, such as coffee, and assign a specific authority to certify the quality of the commodity in the country. This measure will help address the problem of trade mispricing in terms of the distortion in the reported quality. With this guidance, customs authorities could further audit export transactions that deviate significantly from the reference price or price range.

Policy makers are recommended to continue improving the existing legal framework in Lao PDR to allow transfer pricing rules in the future, especially in sectors that pose risks of profit shifting. They should also actively participate in international cooperation to exchange data and information, and invest in technology to improve and maintain trade, customs, and tax statistical recording practices. This will prepare the country for future participation in international data exchange protocols. Furthermore, policy makers should strengthen the enforcement of existing tax and customs laws and regulations, while considering adopting alternative methods to efficiently implement tax collection and prevent tax-motivated illicit financial flows, including transfer pricing related profit shifting. They should also allocate resources to enhance the capacity of tax, customs, and trade officials in the area of natural resource exports, price hedging, and valuation. This will equip the relevant authorities with sufficient knowledge and skills to manage the natural resource sector effectively.

REFERENCES


