

3 July 2023

Save The Children Australia

33 Lincoln Square South
Carlton, Victoria, Australia
3053

Attention: Sophie Coleman
Acting General Counsel

Re: Green Climate Fund Due Diligence Request – Strengthening Climate Resilience of the Lao People’s Democratic Republic Health System

1. Background

- 1.1. Save The Children Australia (**STC**) is a non-for-profit charitable organisation incorporated in Australia.
- 1.2. We understand that STC is an accredited entity of the Green Climate Fund (**GCF**) and have been provided with a copy of the Accreditation Master Agreement entered into between GCF and STC dated 20 December 2019.
- 1.3. STC has operations in the Lao PDR, which are conducted through Save the Children Laos (**SCI Laos**).
- 1.4. We understand that STC has applied to the GCF to obtain funding for a health and climate resilience project to be administered by SCI Laos in the Lao PDR (**Project**).
- 1.5. The key activities to be implemented under the Project are (collectively the **Proposed Activities**):
 - (a) development of policies, training materials and guidelines;
 - (b) enhance government climate and health data systems;
 - (c) conduct training activities for health care workers, communities and government officials;
 - (d) conduct refurbishments to healthcare facility infrastructure, focusing on upgrading basic electrical, water, sanitation and hygiene services for existing health care facilities, without setting up new buildings or structures;
 - (e) provide early warning alerts to communities for weather events or climate related health risks; and
 - (f) providing communities with climate resilience funds to implement community action plans.
- 1.6. As a condition of obtaining this funding, GCF requires STC to undertake research on the relevant laws and regulations in Lao PDR (**Lao PDR Laws**) which will be relevant to the implementation of the Project and to be complied with by SCI Laos.

1.7. We have been requested to address the following in our advice (**Advice**):

- (a) the government or regulatory approvals, licenses or permits required for SCI Laos to implement and operate the Project and the Proposed Activities, the relevant issuing authority, and the date of issuance or expected date of issuance.
- (b) the taxes applicable to SCI Laos and the Project, or exemptions thereof;
- (c) the foreign exchange regulations applicable to the Project; and
- (d) the insurance policies or requirements applicable to the Project.

1.8 We have considered the following Lao PDR Laws for the purposes of our Advice:

Amended Taxation Law	Law on Amendments to Certain Articles of the Law on Taxation (№ 01/NA, 07 August 2021)
Bank Account Opening Decision	Decision on Opening Bank Accounts, Transferring Funds and Importing Cash into and Exporting Cash Out of the Lao PDR (№ 454/BOL, 30 May 2019)
FX Law	Law on the Management of Foreign Currency (№ 7/NA, 7 July 2022)
Income Tax Guidelines	Guidelines on the Implementation of the Income Tax Law (№ 0819/MOF, 10 February 2021)
Income Tax Law	Law on Income Tax (№ 67/NA, 18 June 2019)
INGO Decree	Decree on International Non-Governmental Organizations (№ 013/PM, 8 January 2010)
INGO Guidelines	Guidelines For the Implementation of the Prime Minister's Decree on International Non-Governmental Organizations (№ 1064 /AE.OI.3, 17 February 2015)
Insurance Law	Law on Insurance (№ 78/NA, 29 November 2019)
Tax Administration Law	Law on Tax Administration (№ 66/NA, 17 June 2019)
VAT Instruction	Instruction on the Implementation of the VAT Law (№ 1939/MOF, 12 April 2021)
VAT Law	Law on Value Added Tax (№ 48/NA, 20 June 2018)

2. Advice

2.1. Government or regulatory approvals, licenses or permits required for SCI Laos to implement and operate the Project and the Proposed Activities, the relevant issuing authority, and the date of issuance or expected date of issuance

2.1.1. SCI Laos is an international non-governmental organization registered in the Lao PDR under the INGO Decree and accompanying INGO Guidelines.

2.1.2. SCI Laos holds a Representative Office Approval (№ 642/AE.OI.3, dated 13 June 2011) and an Operating Permit (№ 081/AE.OI.3, dated 16 August 2022) (**Operating Permit**) issued by the Department of International Organisations (**DIO**) within the Ministry of Foreign Affairs.¹

¹ Art. 5 and 6, INGO Decree; Art. 4, INGO Guidelines

2.1.3. The validity period of the Operating Permit is from 11 August 2022 to 10 August 2023 and can be renewed.²

2.1.4. To renew the Operating Permit, SCI Laos will need to submit the following documents:³

- (a) letter from SCI Laos to MOFA seeking renewal of the Operating Permit;
- (b) A letter of support from the relevant Ministry (MOU counterpart);
- (c) copy of the recent Operating Permit; and
- (d) background activities of existing activities of SCI Laos and plan for future activities.

The statutory timeframe for consideration of the extension of the Operating Permit is a minimum of ten working days.⁴

2.1.5. To implement the Project and the Proposed Activities, SCI Laos also needs to submit a project proposal to DIO and sign a memorandum of understanding (**MOU**) with the relevant GOL ministry.⁵

- (a) In order for SCI Laos to undertake the Proposed Activities an MOU will need to be entered into which requires:⁶
 - SCI Laos to have a valid Operating Permit;
 - the Project should be in line with the approved plan and priority areas of the GOL;
 - the Project should have a clear objective, concrete activities and be in line with the GOL's development strategy;
 - the Project should have the appropriate budget;
 - the Project should clearly identify the role and responsibility of the GOL Ministry and implementing agencies;
 - the Project should clearly identify concrete activities and appropriate budget allocation for each activity;
 - the bulk of the budget should be allocated to the Project activities; and
 - the Project should be managed by a Project Implementing Committee consisting of representatives from all concerned agencies and the INGO.
- (b) SCI Laos must submit the following documents to the DIO:⁷
 - letter from SCI Laos or its headquarters to the MOFA requesting Project implementation approval;
 - Project design documents;
 - draft the MOU of the Project;

² Art. 4.1.2, INGO Guidelines

³ Art. 5.8, INGO Guidelines

⁴ Art. 5, INGO Guidelines

⁵ Art.4.4 and 6, INGO Guidelines

⁶ Art. 7, INGO Decree

⁷ Art. 6, INGO Guidelines

- agreement from the GOL Ministr/ies.

The statutory timeframe for consideration of Project proposal and the draft MOU after submission of the application to DIO is 60 working days,⁸ however in practice this may take longer. After receiving approval from DIO the MOU signing ceremony is to occur within 30 days; until the MOU is signed the Project cannot be started.⁹

- 2.1.5 SCI Laos will also need to obtain approval for SCI Laos' representative, project director and staff¹⁰ as well as entry visa, stay permit and multiple entry permit for foreign nationals working on the Project in the Lao PDR.¹¹

2.2. Applicable taxes in Lao PDR

- 2.2.1. The generally applicable taxes for INGOs in the Lao PDR are:

- value added tax (**VAT**);
- personal income tax (**PIT**); and
- other taxes applicable to service and consultancy contracts.

2.2.2. VAT

VAT is an indirect tax collected on the value-added proportion of goods and services in the Lao PDR.¹² As SCI Laos is an INGO and does not supply goods and services under the VAT regime, SCI Laos is not required to declare and pay the VAT as required under the VAT Law.¹³

However, under the VAT Law,¹⁴ SCI Laos will need to pay the VAT charged by domestic suppliers on the sale of goods and services in the Lao PDR unless the domestic supplies of goods and services to SCI Laos is exempted from the VAT under an agreement with the GOL.¹⁵

2.2.3. PIT

The Income Tax Law imposes income tax on various types of income.¹⁶ Income from employment that is subject to income tax is defined as follows:

“Salary and wage income, which includes salary, wages, bonuses, overtime, position and title honoraria, annual allowances, allowances relating to board of directors meetings, and other

⁸ Art. 4.4, INGO Decree

⁹ Art. 4.5, INGO Guidelines

¹⁰ Art. 11, INGO Decree

¹¹ Art. 4.2,4.3 and 13, INGO Guidelines

¹² Art. 2, VAT Law

¹³ Art. 10, VAT Law

¹⁴ Art. 6, VAT Law

¹⁵ Art. 12.1.19, VAT Law, Art. 2II, Amended Taxation Law

¹⁶ Art. 34, Income Tax Law

benefits received in cash or in kind (for example, this may include housing or the use of a company car)”

If the benefits are not in the list of exempt incomes included in Article 35 of the Income Tax Law, they are taxable.

2.2.4. Consultant Tax

- **Independent consultant**

(a) Resident individual

If the consultant is a resident individual (i.e. Lao national or foreigner residing in the Lao PDR), they will be subject to the income tax rate of 5% of the gross fees or payments.¹⁷

The Income Tax Law requires an income earner (independent consultant) to declare and pay the income tax with the relevant tax authorities where it is registered within 15 working days from the receipt of the income.¹⁸ However, in practice, the tax authorities require that the payer must withhold income tax and make a declaration and payment of tax within 15 working days.

(b) Non-resident individual

If the consultant is a non-resident individual (i.e. not residing in the Lao PDR), they will be subject to income tax rate at 5% of the gross fees or payments.¹⁹

The payer (i.e. SCI Laos) in the Lao PDR must withhold income tax of 5% before making a payment and make a declaration and payment of tax within 15 working days from the date of payment.²⁰

- **Non-resident enterprises**

(a) Withholding of profit tax

A non-resident enterprise will be subject to profit tax if it derives income from sources in the Lao PDR, regardless of whether the non-resident enterprise has a permanent establishment in the Lao PDR. The profit tax is paid through a withholding tax by SCI Laos before making payment to a non-resident enterprise. SCI Laos is responsible for filing a separate tax declaration with the relevant Tax Department within 15 working days from the date of payment.²¹

This withholding is levied on a deemed profit basis.²² The profit tax rate is 20%, and the deemed profit ratio is calculated as a percentage of the contract value (exclusive of VAT). The effective profit tax rate is calculated by multiplying the profit tax rate of 20% by the deemed profit ratio.

¹⁷ Art. 39(4), Income Tax Law

¹⁸ Art. 44, Income Tax Law

¹⁹ Art. 49(3), Income Tax Law

²⁰ Art. 50, Income Tax Law

²¹ Art. 20.2, Income Tax Law

²² Art. 14, Income Tax Law

The supply of services is subject to a deemed profit ratio of 15%. Thus, the effective tax rate is 3% (i.e., profit ratio of 15% x profit tax rate of 20%) on the service fees.

(b) Withholding VAT

The withholding VAT of 7% on service fees paid to non-resident enterprises will be applied if the services are deemed to take place in the Lao PDR.²³ Under the VAT Law, the place of supply of general services (with some exceptions) is deemed to be the place of the recipient (i.e. Lao PDR as this is the place where activities are undertaken).

The taxable amount of VAT to be withheld is the amount as stated in the contract price to the foreign supplier, excluding VAT.

AS SCI Laos is not registered in the VAT regime, the tax withheld is required to be filed with the Tax Department within 15 days from the date of payment.²⁴

- **Government counterparts**

Income from non-business activities of State and mass organizations, such as Lao Front for National Construction, Lao Women's Union, Lao Federation of Trade Unions and Lao People's Revolutionary Youth Union, are subject to income tax.²⁵ If SCI Laos receives services and support from government counterparts and pays service fees or income to the government counterparts, such as service fees or income that is subject to income tax.²⁶

The basis for the calculation is the total income received from such activities.²⁷ The applicable income tax rate is 10%.²⁸ The government counterparts must declare and pay the income tax at 10% within 15 working days from the date of receipt of income in accordance with the Income Tax Law and Income Tax Guidelines.

2.2.5. Equipment and Vehicle Exemptions

Pursuant to the INGO Decree²⁹ SCI Laos is exempt from customs duties and taxes on the importation of equipment and vehicles for its Representative Office as well as equipment and vehicles for a project as defined in the MOU. In accordance with the INGO Guidelines³⁰ the Regional Representative and the Country Director are entitled to one tax exempt vehicle.

²³ Art. 17, VAT Law; Art. 2.II, Amended Taxation Law

²⁴ Art. 31.3.2, VAT Law

²⁵ Art. 34(12), Income Tax Law

²⁶ Art. 34(12), Income Tax Law

²⁷ Art. 38(12), Income Tax Law

²⁸ Art. 39(5), Income Tax Law

²⁹ Art.17.2.3 and 17.3.3, INGO Decree

³⁰ Art. 16, INGO Guidelines

2.3. Foreign exchange

- 2.3.1. The FX Law generally governs the foreign exchange control regime and imposes capital controls in the Lao PDR.
- 2.3.2. Pursuant to the Bank Account Opening Decision, SCI Laos (a “resident” for the purposes of the regulation) is permitted to open a bank account with a commercial bank in the Lao PDR and deposit money in a foreign currency.³¹ There is no restriction on SCI Laos receipt of the GCF funding in USD currency, provided such GCF funding is in accordance with the applicable MOU, deposited into the onshore bank account in and transferred through the commercial bank in the Lao PDR.³²
- 2.3.3. The onshore use of foreign currency is restricted under the FX Law,³³ with permitted uses of foreign currency to be addressed in separate regulations to be issued by the Bank of Lao PDR (**BOL**). The FX Law requires that SCI Laos use Lao Kip (**LAK**) for transactions within the Lao PDR.³⁴ Before using the foreign currency received for any transactions in the Lao PDR, SCI Laos is required to exchange the USD into LAK with a commercial bank in the Lao PDR.³⁵
- 2.3.4. In accordance with the currently applicable Bank Account Opening Decision³⁶ and subject to supporting documentation being filed by SCI Laos with the local commercial bank, SCI Laos may transfer foreign currency offshore for the following purposes:
1. payment for imported goods;
 2. payment for service charges relating to the import of goods, such as transportation services, insurance, warehousing charges and other service charges;
 3. repayment of BOL-approved foreign loans and commercial credit;
 4. repatriation or transfer of profits, dividends, principal, interest, and other service charges by foreign-invested companies and wages of foreigners to their country of origin or to a third country;
 5. transfer of capital for BOL-approved investment abroad;
 6. transfer of funds for study, tourism, or medical treatment in a foreign country; and
 7. other purposes.

The remittance of the funds back to STC will be for “other purposes”. SCI Laos must provide supporting documentation evidencing the need to conduct the relevant foreign currency transaction.³⁷ The decision to permit the remittance of the foreign currency offshore is made by the relevant commercial bank in Lao PDR, which will make its determination in accordance with their internal regulations and regulations issued by the BOL.

The transfer of unused GCF funding must also be in accordance with the MOU discussed in Section 2.1.5.

³¹ Art. 5, Bank Account Opening Decision

³² Art. 16, FX Law

³³ Art. 9, FX Law

³⁴ Arts. 10 and 28(1), FX Law

³⁵ Art. 9, FX Law

³⁶ Art. 9, Bank Account Opening Decision; such decision having been verbally confirmed by the BOL as still being applicable

³⁷ Art. 10.8, Bank Account Opening Decision

2.3.5 There are no withholding taxes on the transfer from SCI Laos to STC of the unused amounts of the GCF funding. If the remittance relates to payment of service fees of STC, Section 2.2.4 is applicable.

2.4. Insurance

2.4.1. The applicable compulsory general insurance for the Proposed Activities which must be obtained by SCI Laos to implement the Project is the vehicle insurance.³⁸ In the ordinary course of undertaking Project activities SCI Laos may obtain professional indemnity, public liability, health etc. insurance and in addition, the MOU may provide for other specific insurances to be obtained for the Project.

2.4.2. The Insurance Law provides that each type of insurance contract that has an insurance purpose in the Lao PDR shall only be made with an insurer registered and operating in the Lao PDR.³⁹ There are no restriction for foreign reinsure by local insurers.

3. Qualifications

Our Advice is subject to the following qualifications:

- (a) The Advice is not a compliance review of SCI Laos with respect to all licensing and regulatory approvals required for the Project and Proposed Activities, nor a comprehensive advice with respect to taxes, foreign exchange and insurance requirements in the Lao PDR. SCI Laos should ensure it is in compliance with all relevant Lao PDR laws applicable to the implementation of the Project and the Proposed Activities and for its operations generally in the Lao PDR;
- (b) The Law on Making Legislation (№ 06/NA, 16 November 2021) provides that the government authority responsible for making the legislation must submit the legislation adopted or promulgated to be published in the official gazette or posted in a way that people can access it easily. Some legislation is not published in the official gazette nor posted in the media. DFDL have considered only such laws and regulations as set forth in Section 1.8;
- (c) While the Civil Procedure Law (№ 13/NA, 4 July 2012) requires that the decisions of the Lao PDR courts be in writing and printed, this requirement is not observed in practice. Access to the decisions of the Lao PDR courts, whether printed or not, is not readily available to the public. As such, our advice does not consider, and is not based upon, decisions of Lao PDR courts. The Lao PDR courts and government authorities may interpret laws and regulations in a manner which is not in accordance with our Advice;
- (d) The Advice is confined to and given based on the Lao PDR laws. We have made no investigation of the laws of any country other than the Lao PDR and we do not express or imply any opinion as to such other laws; and

³⁸ Art. 14, Insurance Law

³⁹ Art. 22, Insurance Law

- (e) The Advice is to be construed in accordance with, and is governed by, the Lao PDR laws.

4. Reliance

This letter and the Advice herein:

- (a) is addressed only to the addressee listed on the cover page and GCF, for its sole benefit and the intended purpose as set out in Section 1, and may not be relied upon by any other person or for any other purpose without our prior written consent;
- (b) may not be provided to any third party, filed with any governmental agency or authority or quoted in any public document, in any such case, our prior written consent;
- (c) is not a legal opinion from DFDL and shall not be relied on as such;
- (d) is limited to the matters stated herein and does not extend, and is not to be read as extending by implication, to any other matter; and
- (e) will not be updated to take account of subsequent changes to the legislation or other practices of regulatory authorities. It is the responsibility of the addressee to seek further advice if you are to rely upon this at a later date.

Yours sincerely,

DFDL (Lao) Sole Co. Ltd.