

Meeting between PACCOM and INGO PIT group
October 16, 2006, at the VUFO-NGO Resource Centre

AGENDA

- 1) Personal Income Tax (PIT)
- 2) Permits
- 3) Audits
- 4) Decree 64:
- 5) Additional: Typhoon Xangsane
- 6) Other

DRAFT MEETING MINUTE

1) Personal Income Tax (PIT)

Status on PIT for expatriate staff

COMINGO and PACCOM are supporting expatriate INGO staff to be exempted from PIT. For the past few months COMINGO/PACCOM has been in process of preparing a letter for the PM advocating for exemption of expatriate INGO staff. Presently, COMINGO has received a reply from MOFA in favour of the expatriate staff, but COMINGO is still waiting for the Ministry of Finance to provide written comments on the issue. It has been more than two months since the request for comments was sent to MOF. COMINGO could in principle move ahead, as it is administrative practise that an answer has to be provided within 7 days, however, COMINGO has not succeeded to put the issues forward, and therefore has to wait for MOF to provide a response. A response is expected by the end of October. However, MOF and the Tax authorities have expressed in support of principle of tax exemption, but only that tax exemption will be granted on a case to case basis, similar to ODA programmes. At the Prime Minister level COMINGO has also been informed of support of the tax exemption, however, the PM will not state anything formally until COMINGO has sent a request to the PM. For the same reason PM will not have a formal response to letter sent by the INGOs until the PM has received a letter from COMINGO.

The 'case by case' indicates that expatriate INGO staff in principle will be granted tax exemption, but that the exemption will be granted for specific staff of INGOs on a case to case basis, and that this will be stated in the MOU of the INGO. Therefore it will no longer only be INGOs with a Representative Office permit who will have to sign a MOU with PACCOM. According to the 340 implementation guidelines only INGOs with permits for Representative Office and Project Office are allowed to hire expatriate staff, hence only INGO with these permits will be able to enjoy the privilege of exemption. Presently, there are around 120 to 130 operating with either one of these permits.

Draft PIT law

The draft law on PIT is expected to be passed in 2007 and come into effect from 2009. However, expatriate INGO staff's PIT liability is decided by the MOU, which is regarded as an 'international

treaty' which overrule the national law, with COMINGO signing on behalf of the Vietnamese Government. Hence, the new PIT law is only relevant in relation to national staff.

PIT Guidelines

Presently, INGOs in Hanoi are submitting tax on salary and per diem to either Hanoi Department of Trade or Hanoi Tax Department. In HCMC INGOs are still submitting to FOSCO. Tax is submitted on a monthly basis.

Regarding withhold of 10%/25% for consultants Plan has contracts with individuals working full time for Plan on contracted labour basis. This means that it is not an employee contract, that there is no mentioning of consultant in the contract, and that the individual can provide his/or her writing document saying that his or her income will be less than 60 million VND per year. Plan will then not need to withhold the tax when paying to these contracted persons.

2) Permits

Status of MOUs

A revised MOU was sent to a number of INGOs on June 28. The reason for this revision was that PACCOM suddenly realised that INGOs were liable to paying PIT, hence clause 1.4/1.6 was deleted from the MOUs.

It was mentioned that as long as there are two different legal frameworks existing at the same time, the INGOs cannot assess how these will be operationalised, and how the INGOs will be impacted. Many country representatives are not able to sign revised legal document, without having assessed changed impact and obtaining permission from the head quarters. Hence, many INGOs are in need of clear guidelines in order to take further steps.

Some INGOs have been without a permit since October last year and some since spring 2006. Mr. Phong explained that this period can be regarded as a 'grace period', as the message or guidelines for the INGOs have not been made clear in this period, they cannot be made retrospective liable to paying PIT for their expatriate staff. PACCOM will provide a supporting document stating that INGOs will not be made liable within this period when the next permit and MOUs are issued. Mr. Phong proposed that COMING/PACCOM will provide a written explanation of this issue within 7 to 10 days. Such a document would be sufficient for the INGOs to feedback to their headquarters, after which they would be able to sign the revised MOUs.

3) Audits:

Between 10 and 20 INGOs have been contacted by the Hanoi Tax Department (HTD) with the purpose of carrying out audits for 2005 and first half year of 2006. HTD has contacted the INGOs that had not submitted tax reports for 2005 and/or first half year of 2006, however, in some cases the INGOs had submitted reports to other authorities. The INGOs include Save the children UK, OGB, CRS, AAV, DKT, Plan Pathfinder. Audits are planned to be carried out in the November and December based on a mutual agreement. CRS and Pathfinder already have the audit scheduled.

4) Decree 64:

The revision of decree 64 has been finalised and was put forward for the Prime Ministers approval on the 10/01/06. However, decree 64 can only be approved once the Law on Association. As decree 64 is related to aid effectiveness, and hereunder control and monitoring of aid implemented through NGOs the decree cannot be approved until the regulation of aid implemented by NGOs has been defined in

the Law of Association.

Presently, the Law has been withdraw by the Prime Minister, and at this point the whole law might be redrafted, possibly with a new drafting committee.

5) Additional: Typhoon Xangsane

Mr. Phong expressed appreciation that a few INGOs have already committed funds and that others are preparing interventions. At this point WVN, OGB & OHK, and IFRC have committed funds, while Save the Children UK, CRS are preparing. Mr. Phong also emphasised the need for coordination and the Disaster Management WG's important function in this relation.

6) Other

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