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# Part I

## INTRODUCTION TO THAILAND'S TAX SYSTEM

### INTRODUCTION

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## INTRODUCTION

### ¶1-010 Overview

The collection of taxes and duties in Thailand can be traced back to the Sukhothai Period B.E. 1781-2126 (1238-1583). The earliest forms of tax collection were customs duties, with the first 'Royal Warehouse' to collect taxes on imports being established during the Ayutthaya period B.E. 1894-2310 (1351-1767).

Modern Thailand has a comprehensive system of both direct and indirect taxation applicable to individuals and 'juristic persons'. The range of taxes is broadly consistent with that found in other nations. Direct income taxes apply to individuals and juristic persons. Indirect taxes include VAT, import duties and excise tax.

In addition to these 'generic' taxes, Thailand also has more 'homegrown' taxes which may apply to specific activities, such as Specific Business Tax (financial transactions) and Petroleum Income Tax (exploration and production of hydrocarbons) or ownership of certain classes or assets, such as House and Land Tax.

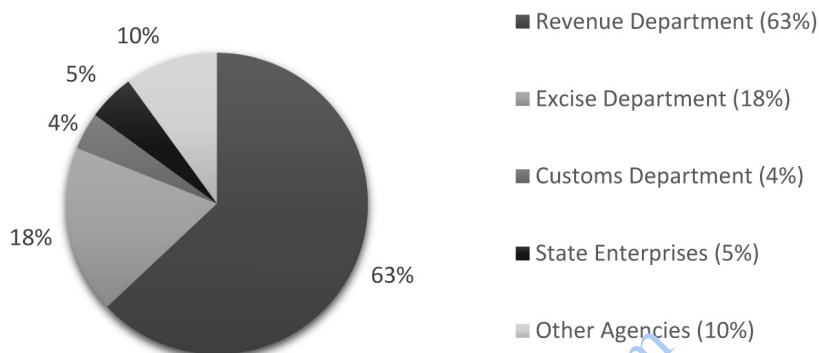
### ¶1-020 Tax Administration and Organisation

#### Ministry of Finance

Prime responsibility for the administration of the tax system and the collection of tax is in the hands of the Ministry of Finance. The Ministry can trace its history to the establishment of the Royal Treasury Department in B.E. 1991 (1448). The Ministry itself was formed in B.E. 2536 (1933), following Thailand's transition to a Constitutional Democracy.

Taxation is the main source of government income, amounting to 85% of total revenue in 2016. A large part of tax collection comes from three main agencies under the Ministry of Finance. These are the Revenue Department, the Customs Department, and the Excise Department. In order of magnitude; collections from the Revenue Department amount to 63% of the government's revenue, with the Excise Department and Customs Department earning 18% and 4% respectively.

## Government revenues collected in FY2016 by agency



### Revenue Department

During the reign of King Rama V, the Revenue Department was organised as two separate departments: the External Revenue Department and the Internal Revenue Department. The External Revenue Department was responsible for the collection of taxes and duties outside Bangkok and was under the Royal Treasury Ministry (today's Ministry of Finance). The Department was subsequently brought under the Ministry of Interior. The Internal Revenue Department was responsible for the collection of taxes and duties within Bangkok and was under the Ministry of the Metropolis. During the reign of King Rama VI B.E. 2453-2468 (1910-1925) the Internal Revenue Department was moved under the control of the Royal Treasury Ministry. The two Departments were finally combined and named 'The Revenue Department' on 2 September B.E. 2458 (1915).

The Revenue Department is responsible for collecting Corporate Income Tax, Individual Income Tax, Value Added Tax, Stamp Duty and Petroleum Income Tax.

The Revenue Department is headed by a Director-General, supported by four Deputy Director-Generals. There are 22 sub-departments of the Revenue Department (see Appendix 2) excluding the regional and area offices.

For the purpose of administering and collecting tax, Thailand is divided into 12 regions, 3 of which are located in Bangkok. Each region has a Regional Revenue Office which is responsible for planning and evaluating tax collection for the region and the management of Area

Revenue Offices. Regional Revenue Offices also deal with tax appeals and litigation for the Region and provide tax rulings. Area Revenue Offices are responsible for collecting taxes, conducting tax audits and processing tax returns.

## Customs Department

The liberalization of international trade in Thailand can be traced to the Bowring Agreement of B.E. 2398 (1855). This treaty, signed between Thailand and the UK, allowed for free trade in Bangkok by British subjects and fixed import duties at 3% for all articles (except opium and bullion, which were exempt). The Bowring Agreement was followed by similar agreements between Thailand and other major trading nations.

The growth in trade led to the establishment of the 'Customs House' to collect taxes and duties. A new Customs office was built in B.E. 2497 (1954) to replace the Customs House and was renamed the Customs Department.

The Customs Department is responsible for collecting Import and Export Duty.

The role of the Customs Department as a tax collection agency has declined as import duties have been reduced under bilateral and multilateral agreements to which Thailand is a party. With continuing growth in international trade, a significant role of the Customs Department is now the facilitation of global trade and supply chain security.

## Excise Department

Excise tax collection in Thailand is assumed to have started in the Sukhothai period. However the earliest evidence was found in the early Ayutthaya period when the Juridical Procedures Law specified the liquor tax but did not mention how the tax was to be collected and at what rate.

Excise tax was originally levied on two types of products; opium and liquor. Tax collection on each product was originally handled by two different departments, which were the Opium Department and Liquor Department. The department responsible for tax collection of these two products frequently changed up until B.E. 2467 (1924), when a Royal Decree was enacted to restructure the organizations under the Ministry of Finance. In the same year, the Ministry and Department Restructure Act B.E. 2476 (1933) was enacted, under

which the name 'Excise and Opium Department' was changed to the Excise Department.

Today, the Excise Department is responsible for collecting Excise Tax.

The Excise Department is headed by a Director-General, supported by four Deputy Director-Generals and there are 10 regional excise offices.

### **Department of Lands**

The origins of the Department of Lands is believed to date to B.E. 2444 (1901) under the Reign of King Rama V. Initially named the Department of Land Registry, the government body was created in order to establish security of land tenure for the Thai people.

More commonly known the 'Land Department', the agency operates under the Ministry of Interior.

The Department is responsible for collecting, on behalf of the Revenue Department, Withholding Tax on the transfer of immovable property. It is also responsible for any transfer fees on the transfer of land and buildings.

### **Department of Mineral Fuels**

Originally established under the Department of Mineral Resources in B.E. 2515 (1972) as the Mineral Fuels Division, the division was responsible for developing Thailand's energy resources to reduce the nation's dependency on imported energy. Due to the increasing responsibilities and significant role the division played in the development and growth of the nation, the Department of Mineral Fuels was officially established under the Ministry of Energy in B.E. 2545 (2002).

The Department is responsible for collecting Special Remuneratory Benefit Tax from petroleum enterprises.

## **¶1-030 Hierarchy of Legislations and Regulations**

Since Thailand became a parliamentary democracy in B.E. 2475 (1932), the obligation of its citizens to pay taxes has been enshrined in the constitution. The power to impose tax must be derived from an Act of Parliament or a body (such as a National Legislative Assembly) which has been empowered with equivalent authority in times of suspension of parliamentary democracy.

In times of crisis, legislation may be enacted by Emergency Decree. However, such decrees are void unless ratified by Parliament or equivalent body.

The primary source of rules relating to the calculation and payment of tax are the various statutes for each tax. The main laws are:

- The *Revenue Code*
- The Customs Act
- The Excise Tax Act

These laws are supported by regulations which may implement, vary or interpret the law. The hierarchy of these regulations is:

- Royal Decrees
- Ministerial Regulations
- Notifications of the Director-General/ Notifications of the Revenue Department
- Notification of the Minister of Finance/ Notifications of the Ministry of Finance
- Departmental Regulations
- Departmental Instructions

### **Royal Decrees**

Royal Decrees are signed into law by the sovereign in the same way as statutes and have the same effect as tax legislation. The power to issue Royal Decrees is granted under Section 3 of the *Revenue Code* which provides that Royal Decrees may be issued to grant:

- Reduction of tax rates or exemption according to particular circumstances or industries;
- Exemption to persons or organizations pursuant to international obligations or agreements;
- Exemption to the Government, national and local government organisations and utilities and charities.

The principle use of Royal Decrees is to provide exemption or exception from the taxes imposed under the *Revenue Code*. As at March 2017 there are 152 Royal Decrees in force relating to taxes under the *Revenue Code*. The vast majority of these deal with the grant of exemption to specific groups (such as diplomats or charities), industries, or in specific circumstances (such as in times of natural

disaster). Royal Decrees remain in force until replaced or repealed. In rare cases, the exemption or exception granted under a decree may be for a limited period of time.

### **Ministerial Regulations**

The power to issue Ministerial Regulations is granted to the Minister of Finance under Section 4 of the *Revenue Code*. Ministerial Regulations are issued either as a requirement under either the *Revenue Code* itself or Royal Decrees. The main purpose of the regulations is to provide detailed guidance on certain provisions under the law, such as the circumstances in which bad debts may be written-off or rates at which domestic withholding taxes are collected.

### **Notifications of the Director-General/ Notifications of the Revenue Department**

The power to issue notifications is granted to the Director-General in the *Revenue Code*, as well as under a number of Royal Decrees and Ministerial Regulations.

Notifications of the Director-General and Departmental Regulations (mentioned below) are both deemed acts of law and share the same level of legal hierarchy.

Notifications of the Revenue Department contain supplementary information/provisions relating to Notifications of the Director-General. These notifications are also deemed acts of law and share the same level of legal hierarchy as the notification of the Director-General.

As at March 2017 there are a total of 547 notification of the Director-General in force dealing with matters such as tax filing via the internet, rules on writing-off bad debts, businesses not subject to SBT registration etc.

### **Notification of the Minister of Finance/ Notification of the Ministry of Finance**

The power to issue notifications is granted to the Minister of Finance in the *Revenue Code*, as well as under a number of Royal Decrees and special incentive laws. The Ministry of Finance issues notifications under regimes which provide relief from tax and/or tax incentives such as under the Investment Promotion Act. Notifications of the Minister of Finance/ Notifications of the Ministry of Finance are both deemed acts of law and share the same legal hierarchy.

The vast majority of the notifications deal with appointment of assessment officers, as well as covering other matters such extensions for corporate income tax filing for Board of Investment companies, names of approved research and development companies, names of approved public charity organisations etc.

### **Departmental Regulations**

Various provisions in the *Revenue Code* empower the Director-General to issues regulations governing the calculation or collection of taxation. This power is exercised through the issue of Departmental Regulations.

As at March 2017 there are a total of 186 in force. The vast majority of these deal with places to receive tax returns and payments for tax, as well as covering other matters such as domestic withholding tax rates, application of the accrual basis for tax computation etc.

### **Departmental Instructions**

Departmental instructions are internal instructions provided by the Revenue Department to assessment officers. They provide the assessment officers with guidelines as to how certain tax matters are to be addressed. These instructions are not legally binding upon tax payers as they are merely internal guidelines. However, where a dispute arises where the tax payers opinion differs from the guidelines of the Revenue Department, the Revenue Department is more likely to reject the tax payers opinion.

As at March 2017 there are a total of 116 in force, providing guidelines on matters such as transfer pricing, donation expenses, sale of goods outside of Thailand etc.

### **Tax Authority Rulings**

In addition to legislation and accompanying regulations, the tax authorities may be approached for a ruling on the interpretation or application of tax law. A substantial body of tax rulings has accumulated over the years. Rulings represent the tax authorities' opinion on the interpretation of tax law or its application to a particular situation. They are not legally binding and do not operate as precedents for other taxpayers. It is not uncommon, therefore, to find rulings which reach different conclusions on apparently similar facts.



In keeping with their source, rulings tend to apply an inflexible interpretation of the law and, on balance, favour outcomes of benefit to the tax authorities.

## ¶1-040 Primary Sources of Tax Law

### **The Revenue Code**

The *Revenue Code* is the primary source of taxation law for all taxes falling under the jurisdiction of the Revenue Department. Its sections cover the following:

- Individual Income Tax (including Inheritance Tax)
- Corporate Income Tax
- Value Added Tax
- Specific Business Tax
- Stamp Duty

The *Revenue Code* first became effective in 1938. No new Code has been enacted since that time, although a number of changes have been made. A number of taxes covered by the code were repealed after 1945 and the taxes limited to Individual Income Tax, Corporate Income Tax, Signboard Tax, entertainment duty, Stamp Duty, and local maintenance tax. The Signboard Tax, entertainment duty and local maintenance tax have since been repealed, moved to other agencies or amalgamated with VAT or business tax.

A major change took place in 1992 with the introduction of VAT. A second major change was the re-introduction of Inheritance Tax in 2016 (this was previously repealed shortly after WWII).

Despite the number of taxes covered, the *Revenue Code* contains 105 sections, though these are subdivided to provide a more substantial body of legislation.

The *Revenue Code* is divided into chapters as follows:

Title I

Preliminary matters

Title II

Chapter 1: General Provisions

Chapter 2: Procedures concerning tax filing, appeals and punishment

Chapter 3: Income Tax

Chapter 4: Value Added Tax

Chapter 5: Specific Business Tax

Chapter 6: Stamp Duty

Each Chapter may have a number of divisions.

The *Revenue Code* also provides for the establishment of both the Board of Taxation and the Board of Appeals.

### **The Board of Taxation**

The role of the Board of Taxation is to:

- Define time limits for the exercise of the powers of Revenue officers;
- Provide rules, procedures and time limits for assessments and tax audits;
- Give rulings on matters where its opinion is sought by the Revenue Department;
- Give advice to the Minister of Finance on matters connected with the administration and collection of taxes.

The Board of Taxation consists of:

- The Permanent Secretary of State of Finance;
- Director-General of the Revenue Department;
- Director-General of the Customs Department;
- Director-General of the Excise Department;
- Director of Fiscal-Policy;
- Secretary-General of the Juridical Council;
- Three technically qualified persons appointed by the Minister of Finance.

### **Board of Appeal**

The role of the Board of Appeal is to hear and adjudicate upon appeals against assessments for taxes falling under the *Revenue Code*. For appeals within the Bangkok and Chonburi area, the Board is composed of The Director-General of the Revenue Department, a representative of the Department of Public Prosecutions and the area Public Prosecutor.

For appeals outside Bangkok and Chonburi the Board consists of the area Governor, the regional Revenue Officer and the area Public Prosecutor.

All named members of a Board of Appeals may be represented by a proxy. In practice this is often the case.

### **The Customs Act**

In Thailand, the Customs Act B.E. 2469 (1926) is the principal legislation for the administration of customs duties. As with the *Revenue Code*, the law is supplemented by a number of implementing Ministerial Regulations, Customs Announcements, Notifications, General Orders and Rulings.

### **The Excise Tax Act**

Excise Tax is collected on a limited range of products generally categorised as either 'sin' products (tobacco, alcohol, petroleum products, playing cards) or luxury products (motor vehicles). Excise Tax is collected under a number of statutes including:

- The Excise Tax Act B.E. 2527 (1984)
- The Excise Tariff Act B.E. 2527 (1984)
- The Liquor Act B.E. 2493 (1950)
- The Tobacco Act B.E. 2509 (1966)
- The Card Act B.E. 2486 (1943)
- The Excise Allocation Act B.E. 2527 (1984)
- The Liquor Tax Allocation Act B.E. 2527 (1984)

### **Other Tax Laws**

#### *Investment Promotion Act 1977*

The Board of Investment (BOI) is able to provide tax benefits for investors, both domestic and non-residents. Under the Investment Promotion Act, the BOI is empowered to designate business activities eligible for promotion and to grant incentives to qualified investments.

#### *Petroleum Income Tax Acts*

Profits derived from exploration and production activities in Thailand are subject to income tax separately from other corporate profits. A

total of six petroleum income tax acts have been introduced since B.E. 2514 (1971). These are:

- The Petroleum Income Tax Act BE 2514 (1971)
- The Petroleum Income Tax Act (No 2) B.E. 2516 (1973)
- The Petroleum Income Tax Act (No 3) B.E. 2522 (1979)
- The Petroleum Income Tax Act (No 4) B.E. 2532 (1989)
- The Petroleum Income Tax Act (No 5) B.E. 2541 (1998)
- The Petroleum Income Tax Act (No 6) B.E. 2550 (2007)

Of these, the first in 1971 and the fourth in 1989 are the most significant and apply to companies holding concessions granted, respectively under the Petroleum Act B.E. 2514 (1971) and the Petroleum Act B.E. (No 4) 2532 (1989).

### *Local Development Tax Act*

A local development tax is imposed on certain land which is deemed idle and not being utilised.

### *House and Land Tax Act*

Owners of land or buildings, used for any purpose, are subject to House and Land Tax. Exceptions are available for owner occupied residences, government owned buildings, religious buildings, etc.

### *Signboard Tax Act*

An annual signboard tax is imposed on signs or billboards, which display a name, trademark or product for the purpose of advertising or providing information about a business.

## **Bilateral Agreements**

### *Double Taxation Agreements*

Thailand has a comprehensive tax treaty network. As of April 2017, Thailand has concluded double taxation agreements with over 60 countries.

### *Free Trade Agreements*

Thailand is a party to the ASEAN Free Trade Area (AFTA) and the World Trade Organization (WTO) under which imports of certain

goods from ASEAN and WTO members are exempt from, or subject to preferential tariffs.

## ¶1-050 Tax Audits and Tax Appeals

### The Role of the Courts

The Courts act as the ultimate arbiters in disputes between the tax collection agencies and taxpayers. The Courts may decide on questions of the interpretation and application of tax statutes.

Thailand operates under a Civil Law System, though with certain characteristics of Common Law. Decisions of the Courts serve as indicative, rather than definitive, precedents. Decisions of higher Courts are not automatically binding on lower Courts, though decisions of the Supreme Court do carry a certain authority.

The Court of first recourse is the Tax Court. In most circumstances, the submission of a case to the Tax Court will come after an Appeal has been heard by the Board of Appeal. Thus, in the majority of cases, the taxpayer will be the plaintiff, with the tax authorities acting as defendant. As a result, the onus of proof lies with the taxpayer.

Either party who is unsuccessful in the Tax Court may appeal to the Appeals Court, failing that, the ultimate court to which parties can appeal to is the Supreme Court.

## Appendix 1: Statistics

### Statistics

**Table 1 – Government revenues collected in FY 2016<sup>1</sup>**

Government Agent	Ratio
Revenue Department	63%
Excise Department	18%
Customs Department	4%
State Enterprises	5%
Other agencies	10%
<b>Total</b>	<b>100%</b>

Source:

## Appendix 2: Departments of the Revenue Department

Inspector General Office

Internal Audit Office

VAT Refund for Tourists Office

Public Sector Development Group

Bureau of Investigation and Litigation

Bureau of Policy and Tax Planning

Bureau of Legal

Bureau of Central Audit Operations

Bureau of Information Technology

Bureau of Electronic Processing Administration

Bureau of Large Business Tax Administration

Bureau of Tax Supervision and Audit Standards

Bureau of Tax Collection Standards

Bureau of Tax Auditing Standards

Bureau of Tax Appeals

Bureau of Central Administration

Bureau of Human Resource Management

Tax Training Institute

Bureau of Finance and Revenue Management

Centre of Investigating and Tracking Non-Compliance Businesses

RD Call Centre

Small and Medium Business Tax Administration

<sup>1</sup> Ministry of Finance, Annual Report 2016

Regional Revenue Office  
Area Revenue Office  
Area Revenue Branch Office

### **Appendix 3: Departments of the Customs Department**

Administrative System Development Directorate  
Internal Audit Directorate  
Overseas Customs Offices (3 branches)  
Central Administration Bureau  
Human Resources Management Bureau  
Legal Affairs Bureau  
Planning and International Affairs Bureau  
Customs Tariff Bureau  
Customs Standard Procedures and Valuation Bureau  
Tax and Duty Incentives Bureau  
Post Clearance Audit Bureau  
Investigation and Suppression Bureau  
Bangkok Customs Bureau  
Bangkok Port Customs Bureau  
Lad Krabang Cargo Control Customs Office  
Laem Chabang Port Customs Bureau  
Suvarnabhumi Airport Cargo Clearance Customs Bureau  
Suvarnabhumi Airport Passenger Control Customs Bureau  
Regional Customs Bureaus 1-4  
Customs Houses (43 branches)

### **Appendix 4: Departments of the Excise Department**

Bureau of Audit, Prevention and Suppression  
Bureau of Legislation  
Bureau of Finance and Revenue  
Bureau of Tax Planning  
Bureau of Human Resource Management  
Department Secretary Office  
Technical Development and Audit Office  
Goods and Exhibit Analysis Office  
Executive System Development Group  
Internal Audit Group  
Playing Cards Factory  
Liquor Distillery Organisation  
Information Technology Center  
Bureau of Excise Tax Collection Standard and Development 1  
Bureau of Excise Tax Collection Standard and Development 2

Regional Excise Offices 1 and 6  
Regional Excise Office 2  
Regional Excise Offices 3 and 4  
Regional Excise Office 5  
Regional Excise Office 7

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