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NEW PRECEDENT ON STATUTORY LIMITATION ON TIME FOR GOV'S TAX CLAIM

A landmark Supreme Court Judgment practically changes the statutory limitation on time on Government's claim for income tax from 5 to 10 yrs. (Supreme Court Judgment No. 4546/2561).

It was believed until this judgment is entered that a statutory limitation on time on government's claim for income tax (either CIT or PIT) for a practical purpose is 5 yrs from a filing date due to certain limitations under the Revenue Code.

A. Tax Assessment Based on Investigation/Audit under Section 20 of the Revenue Code



Before an assessment official may make any tax assessment based on an investigation/audit under Section 20 of the Revenue Code, the assessment official has to issue a summons to demand for accounting records and documentary evidence from a taxpayer under Section 19 of the Revenue Code first.

Section 19 requires that the assessment official must issue the summons to the taxpayer within 5 yrs from a tax return filing date. And practically after this deadline (or the period of 5 yrs) passes, the assessment official can no longer issue any

summons under Section 19 and practically may not (cannot) make any tax assessment based on an investigation/audit under Section 20. Logically, the assessment official has to do some investigation/audit before deciding to make an assessment or not.

B. Tax Assessment Based on Information Containing in Tax Return under Section 18 of the Revenue Code

In addition to the Section 20 assessment, alternatively an assessment official may make any tax assessment based on the information in a tax return in accordance with Section 18 of the Revenue Code. But this Section 18 assessment was understood to cover only apparent mistakes in the tax return in question, such as miscalculation, or wrongly claiming a deduction. As there is no requirement to issue the summons under Section 19, so that 5 yr period does not apply and the assessment official may make the Section 18 assessment within 10 years from a deadline to file any particular tax return.

Recent Supreme Court Judgment

In this Supreme Court Judgment, it is held that an assessment official may alternatively make the Section 18 assessment under of the Revenue Code. (Effectively, the requirement to issue the summons within 5 yrs from a filing date under Section 19 does not apply here and the assessment official will now have up to 10 yrs from a return filing deadline to make the tax assessment under Section 18.) In this case, the assessment official did not issue any summons to a taxpayer to turn over the accounting records and documentary evidence under Section 19 because the period of 5 yrs under Section 19 had already passed. But the assessment official inspected



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the business of the taxpayer and requested the taxpayer to turn over details on allocation of revenue and expenses of the BOI's investment promoted business and the non-investment promoted business. Eventually, the assessment official ended up making the tax assessment under Section 18 of the Revenue Code (as it was not possible to make the tax assessment under Section 20).

The taxpayer filed a lawsuit against the Revenue Department, challenging a validity of the Section 18 assessment made by the assessment official, which allegedly was based on the information not containing in the tax return in question.

The court noted that the only dispute/difference in this case is a method for computing rights and benefits under the investment promotion for 17 projects and further noted that it did not appear that both the Plaintiff and the Defendant were disputing the authenticity of the facts pertaining to a profit or a loss. It was held that the fact that assessment official verified the facts and requested the taxpayer to turn over additional documents is an audit according to the items the taxpayer filled in the tax return to obtain the fact that the items which are exempt from tax, the taxpayer filled in correctly or not. The

Supreme Court by a resolution of the general meeting of the Supreme Court rules that the assessment by the assessment official made by virtue of Section 18 of the Revenue Code was lawful.

This legal article was written by Narit Direkwattanachai, a corporate & tax attorney at NARIT & Associates with expertise in corporate & commercial, commercial dispute and tax law.



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150% SPECIAL TAX DEDUCTION FOR MACHINERY INVESTMENT 2020



on any expenses incurred in a purchase of a machine from January 1, 2020 to December 31, 2020. Certain terms and conditions apply, including the below conditions.

1. A machine must be brand new (has never been used before).
2. The machine must be procured and ready for using within Dec 31, 2020. (A contract, a purchase order, a hiring order or a similar agreement must happen from Jan 1, 2020 to Dec 31, 2020).
3. The machine must be in Thailand.
4. The machine must not fall under any other tax privileges/benefits (i.e. BOI's investment promotion or targeted industries law or Easter Economic Corridor law).

Needless to say at a time of pandemic, reserving a cash for rainy days and putting off an immediate investment may make sense. However, the government wants those who can to invest in the machinery now within this year (2020).

Under the Royal Decree No. 695 issued by virtue of the Revenue Code, a corporate taxpayer may claim 150% additional deduction (as a deductible expense in computation of a net profit/loss for a purpose of paying corporate income tax)

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