PROBLEMS OF THE COMPUTATION ON
CORPORATE INCOME TAX UNDER
INVESTMENT PROMOTION ACT B.E. 2520

BY
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AN INDEPENDENT STUDY PAPER SUBMITTED IN PATRIAL
FULFILLMENT OF THE REQUIREMENTS FOR
THE DEGREE OF MASTER OF LAWS
(TAXATION LAW)

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ABSTRACT

The purpose of this research is to study the problems of interpretation of law in imposing corporate income tax by different authorities which are; Interpretation by Board of Investment, Interpretation by Revenue Department, and Interpretation by Central Tax Court, and by the different interpretation could lead to the conflict of interpretation. This research also studies about the deficiencies of law that might affect the rights of taxpayers. Therefore, there are the studies of foreign tax incentive laws which are Vietnam tax incentive and Singapore tax incentive which can be the guidelines to improve to our tax incentive law. Moreover, there are some recommendations to solve such problems as well.

From the study, it is found that the problems occurred because of the interpretation of the authorities are different. The Board of Investment granted the promoted person by the exemption of corporate income tax on the net profit derived from the promoted projects. The method of calculation must be calculated separately on each project. If loss occurs, taking all loss arisen from the privileged period subtract from net profit obtained after the privileged period which is not exceeded 5 years after the expiration. But the Revenue Department disagreed with the method of calculation of the Board of Investment. The Revenue Department imposes taxation under the general rule which applies to all companies and partnerships. And the method of calculation must be combine net profit and net loss of all business activities first, if the profit remain, must be exempt, if loss occurs, will be loss carry forward. In addition, The Central Tax Court has opinion on the interpretation that Taxation law is a public law, so that the interpretation must be strictly interpreted, and must not affect the rights of taxpayers. The taxpayers should be entitled to the benefits and not to increase tax burden to the taxpayers. However, Investment Promotion Act did not legislated about the method of calculation on net profit and net loss for promoted person.
This research recommends to amend the Investment Promotion Act to legislate the method of calculation on the net profit and net loss for the promoted person who obtains the promoted business activities. Also should adopt the foreign tax incentive laws which are Vietnam tax incentive law and Singapore tax incentive law; which is to provide tax incentives to only one juristic person on one promoted business activities. Therefore, the interpretation must be correct to benefit the taxpayers.
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Chapter 1
Introduction

1.1 Background and General Statement of the Problem

Thailand is the country with an open economy system which means Thailand has to contact neighboring countries to trade goods and services, therefore, international trading is an important role for developing mechanism and bringing growth to the country as well as it is an important part in driving the rapid expansion of national economy. As Thailand is the Capital Import Neutrality (CIN) country, guidelines and measures are required in order to encourage investors and investment promotion, so the government has issued Promotion Investment Act B.E. 2520 in providing tax privileges to encourage and convince investors making investment in Thailand which some provision of this Act specifying tax holiday, loss carry forward, import duty exemption etc. All 10 ASEAN member countries enter into ASEAN Economic Community (AEC) completely both in economy, social and cultures in 2015, we have to be well prepared particularly in part of tax measures in investment promotion and we must legislate Investment Promotion Act effectively as well as in accordance with good tax imposition.

There are some problems in Thailand regarding the interpretation of profit-loss calculation method of the promoted company as specified in Article 31 of Investment Promotion Act B.E. 2520. There is a case study, such case study is dispute between NM-Minebea Co., Ltd. and Revenue Department as NM-Minebea Co., Ltd. is a manufacturer which receives investment promotion more than 2 projects and Central Tax Court has made final decision in guidelines of profit-loss calculation in accordance with the intention of Investment Promotion Act B.E. 2520. Although Article 31 the this Act is not defined specific calculation method whether the calculation is made separately by each business or by each project to exercise tax exemption right for net profit or taking net loss to subtract from net profit that obtained after the investment promotion period. And such interpretation is not made to affect privileges of the promoted entrepreneur.

Therefore Central Tax Court has considered Article 16 and Article 19 accompanied by Article 31, paragraph 1 of Investment Promotion Act B.E. 2520, it is decided that the intention of the law allows to calculate net profit of the promoted

1 See Supreme Court Judgment No.3545/2528, No. 4174/2528.
entrepreneur separately by business or by project because privilege of each project is different in term of criteria, condition and duration of investment promotion as specified in each BOI certificate, if it is allowed all businesses in all projects of each BOI certificate to calculate profit-loss collectively, the promoted entrepreneur shall not be treated completely and correctly in accordance with the expected privileges.

After the Court has considered Article 31 of Investment Promotion Act B.E. 2520 accompanied by Article 65, paragraph 1 of Revenue Code, it is decided that the Investment Promotion Act has intention in profit-loss calculation of the promoted entrepreneur differently from the interpretation of general profit calculation as defined in Revenue Code. Although the administrative law and tax collection law are Public Laws, the interpretation of public law, in some cases, requires some consistent private law for collaborative interpretation too. Therefore, the profit-loss calculation to exercise the right as specified in Article 31 shall be made separately by each project by taking all loss arisen from the privileged period as specify in Article 31 to subtract from net profit obtained after the privileged period which is not exceeded 5 years after the expiration of such period by selecting to subtract from net profit of any year or many years which is the most appropriate.

For example, Business 1 gains profit while Business 2 has a loss, if they offset against each other and profit amount is more than loss and the remained net profit is exempted from tax but net profit amount of Business 1 which deducted by loss of Business 2 shall prevent the promoted entrepreneur from exercising tax exemption due to net profit of the promoted business which is not appropriate as it is specified in Article 31, paragraph 1 of Investment Promotion Act. In contrast, in case of such offset, if loss amount is more than profit, the loss amount of Business 2 which is subtracted by profit amount of Business 1 shall not allow the promoted entrepreneur to subtract such amount from net profit obtained after the promotion period is terminated which is not exceeded 5 years from its expiry. The promoted entrepreneur may lose such privilege which is not appropriate as it is specified in Article 31, paragraph 4 of Investment Promotion Act.

However, Revenue Department disagrees with Plaintiff’s calculation based on Article 31 of Investment Promotion Act as Article 65 of Revenue Code should be considered likewise which means income arisen from the accounting period deducted by expenses must be considered and Article 65 must be used to consider income-expenditure of all promoted businesses as they are deemed as one person or one tax unit, if the business gains profit, the privileges as defined in Article 31, paragraph 1 shall be provide but the privileges as specified in paragraph 4 is not allowable because the business is not
loss. The consideration of profit or loss of business must consider based on provisions of Revenue Code and all promoted businesses in all project shall be considered likewise, the consideration by each separated project is not appropriate as it is specified in Article 65 of Revenue Code (Declaration of Revenue Department on Net Profit and Loss Calculation of the Promoted Companies or Registered Ordinary Partnerships date 5 February, 1987).

Moreover, there is Board of Taxation Rulings in case of the company operates both the promoted business and normal business and the promoted businesses which receive privilege of corporate income tax exemption more than one project. In this case of the promoted company which has the investment promotion in business of each type of business more than one project, due to Article 31 of Investment Promotion Act B.E. 2520 amended by Investment Promotion Act (No. 3) B.E. 2544 which is the provision imposed on net profit or loss calculation of the promoted business in all cases which means income and expenditure of all types of promoted businesses in the same accounting period must be calculated as defined by provisions of Revenue Code. Therefore, any promoted company which receives investment promotion in many projects, income and expenditure of all promoted projects in the same accounting period must be calculated in order to finalize net profit or net loss amount of the promoted businesses, if there is net loss, it shall be deemed as annual loss of the promoted company and the company may take such annual loss arisen from corporate income tax exemption period deducted from net profit of the promoted business that obtained after corporate income tax exemption period which is defined as 5 years after its expiry by choosing to subtract from any year or many years as specified in Article 31, paragraph 4.

After the company calculates net profit from the promoted businesses in respect of the above mention principle and it is found that the company has annual loss, later the corporate income tax exemption period of any promoted business is expired, the company still receive the corporate income tax deduction for net profit obtained from the investment 50% of normal rate in the period which is not exceeded 5 years after the expiry of corporate income tax exemption period as defined by Article 35(1) of Investment Promotion Act B.E. 2520. The company may have both promoted business with privilege of corporate income tax deduction and normal business which has no corporate income tax exemption privilege, therefore, the company is eligible to take the whole of annual loss arisen from all promoted businesses to subtract from net profit of the promoted business with privilege of corporate income tax deduction in 50% of normal rate as defined by Article 31, paragraph 4 prior, if the annual loss of the promoted
businesses is still remained, the company is eligible to take such annual loss to subtract from net profit of the normal business which pays corporate income tax in normal rate as specified in Article 62 bis (12).

However, the interpretation and law enforcement both in part of Office of the Board of Investment and Revenue Department should be in the direction which is emphasized significantly both on investors’ benefits and being affected least to investor’s rights but our country must disadvantage least too. Moreover, investment promotion law of Thailand must be developed for more clarification, reducing difference and more efficiency for being the center of investment in ASEAN region.

1.2 Hypothesis of the Study

According to Thailand is the CIN country, which is needed to encourage the investors by provide tax incentives. But there are some problems of the interpretation and the method of calculating between Revenue Department, Board of Investment, and Central Tax Court. Revenue Department method is to deduct profit and loss first, if remained profit shall be exempt, if it is loss it deems as loss carry forward. BOI method deducted separately, if company gain profit shall be exempt. While court has opinioned that the interpretation of law must be strictly and not cause more tax responsibilities to taxpayer. But BOI did not state the method of calculation, therefore Revenue Department interpretation is deprived investor’s right and the investors gained more tax burden. To solve the problems the authorities should correction the interpretation to benefit investors and adopt foreign law to amend Section 31 of Investment Promotion Act B.E.2520.in order to give tax incentives to taxpayers according to the intention of the law.

1.3 Objective of the Study

The purpose of case study on corporate income tax collection is in the following:
1.3.1 To review the Corporate Income Tax collection methods
1.3.2 To study problems of the calculation under Investment Promotion Act and the Revenue Code
1.3.3 To study the intention, rules and regulations of Revenue Department toward investment promotion particularly Article 65 and 65 bis(12) of Revenue Code as well as others declarations of Revenue Department regarding investment promotion
1.3.4 To study problem of corporate income tax collection under the promoted entrepreneur for 2 projects or more as well as the solution approach

1.3.5 To compare investment promotion in Thailand and other ASEAN countries in order to improve and develop efficiently after entering to AEC

1.4 Methodology of the Study

This independent study is Documentary Research which studies problem and intention of Board of Investment, Revenue Department and court judgment concerning investors privileges, tax exemption of profit obtained from the promoted projects particularly studying in case of the company which has investment promotion more than 1 project by studying judgment of Central Tax Court, rulings, rules and regulations of Revenue Department and Board of Investment’s in order to find connection of corporate income tax collection which is beneficial for the country and it is not affected to investors’ benefits either as well as compliance with good principle of tax collection and studying judgments, rules and regulations and related laws both nationally and internationally.

1.5 Scope of the Study

Scope of this independent study emphasizes on dispute between Board of Investment and Revenue Department concerning concepts and intention of providing privileges to investors due to Investment Promotion Act particularly the calculation specified in Article 31 which is calculation of special law and general calculation due to Revenue Code as defined by Article 65 and Article 65 bis (12). As the study of the settlement of such dispute must be in the direction which is most beneficial for the country and it must not affect to investors’ rights, moreover, it is emphasized on studying international laws such Vietnam which her economic features are close to Thailand and Singapore as Singapore is the significant finance country and being deemed as the financial center of the region as well as studying pro and con of investment promotion law of such countries in order to improve and develop investment promotion law in Thailand to be more clarification and efficiency to support investment.
1.6 **Expectation of the Study**

1.6.1 To understand principle of good tax collection under international concepts and principles

1.6.2 To understand measures, rules principle and regulation in providing privileges to investors who make investment in Thailand particularly in term of tax calculation and tax exemption of the promoted projects which gain profit as specified in Article 31 of Investment Promotion Act

1.6.3 To understand intention and principle as well as rules and regulations of Revenue Department in term of investment promotion

1.6.4 To acknowledge and understand problem and solution of conflicts arisen from concepts and intention of corporate income tax collection of the promoted business particularly corporate income tax of the promoted business of 2 projects or more

1.6.5 To acknowledge and understand investment promotion law of other countries in ASEAN region as well as their problems and solutions in order to improve and develop investment promotion law in Thailand to be more clarification and efficiency to support the investment

1.6.6 To utilize as guidelines of conflict solution in the future such as central organization shall be established to settle dispute arisen from intention in court between Board of Investment and Revenue Department etc.
Chapter 2
Principle and Theory Reference to International Tax Incentives and Thailand Tax Incentives

2.1 Tax Incentives

Tax incentives are a prominent feature of many tax codes in both developed and developing countries. Developed countries tend to use a combination of targeted and more general incentives, which may be embodied in the income tax law, the investment and other laws, or simply government decrees. Although several countries have expanded their use of tax incentives, this experience is not uniform, with some countries cutting back on such incentives, and some reintroducing them, after a period of reduced use.

2.1.1 Introduction of Tax Incentive

Tax incentives are widespread use even though the available empirical evidence on cost-effectiveness of such incentives in stimulating investment is highly inconclusive. An important contributing factor to this development is undoubtedly the heightened need perceived by many countries, especially in a regional context, to compete for investment in a world of broadening trade liberalization and high capital mobility. To these countries, tax incentives are often a visible and flexible handle for attracting investment. Equally important in fueling the spread of tax incentives could have been the impressive economic successes of a number of Asian countries that also happened to make heavy use of such incentives, although the extent of the incentives to the growth performance of these countries is unclear.

There are several potentially serious adverse consequences from the widespread use of tax incentives. First and foremost, they erode the tax base, either because many investments would have taken place even without them, or because they are given to investments not eligible to receive them through abuse of provisions in the relevant laws and regulations by either officials or investors, or both. Second, tax incentives distort resource allocation, as some activities are encouraged over others not

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because they are necessarily more economically productive, but because they have been given a tax advantage. Finally, the granting of tax incentives creates opportunities for occupation and socially unproductive rent-seeking activities.

Due to the possible negative consequences of spreading tax incentives, many economists argued that countries should rather implement effective financial policies in order to attract investments, to ensure macroeconomic stability, and should adopt fiscal and other structural reforms to enhance productivity and allow the market to allocate capital in an efficient way. Nonetheless, there is so far comparatively less focus on making the legal, regulatory and administrative system clear, and on providing tax benefits if these are to be given. Furthermore, tax incentives advice should consider pressures arising out of national or global tax competition for foreign direct investment (FDI).

The pragmatic approach recognizes that tax incentives are not, despite their drawbacks, likely to be discarded as policy instruments for promoting a number of national goals, especially for attracting and competing for FDI and encouraging general investment rates, in most developing countries in particular. This is why it focuses not on removing tax incentives entirely, but on how their adverse effects can be reduced.

In order to underscore its operational orientation and enhance its usefulness as a driving force for policy makers in developing countries, the paper does not address a number of related, conceptually important but theoretically unresolved issues of taxation, such as whether capital income should be taxed at all, whether piecemeal advice on tax incentives in the presence of other distortions is necessarily needed. These questions what pose a range of interesting issues which still concern economists but, up to now, literature has provided findings that are generally model-dependent. The paper does not also provide new empirical data on tax incentives performance. The empirical literature on this topic is comprehensive and the proof is, as mentioned above, unfinished.

1. Definition of Tax Incentives

A tax incentive can be defined either in statutory or in effective terms. In statutory terms, it would be a special tax provision granted to qualified investment projects that represent a statutorily favorable deviation from a corresponding provision applicable to investment projects in general (i.e. projects that receive no special tax provision). An implication of this definition is that any tax provision that is applicable to

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all investment projects does not constitute a tax incentive. For example, a tax provision
that allows the profits of a foreign-fund investment project to be taxed at half the regular
CIT rate is a tax incentive; but a general reduction in the CIT rate by half, even if it is
intended for a limited duration is not.

In effective terms, a tax incentive would be a special tax provision
granted to qualified investment projects that have the effect of lowering the effective tax
burden measured in some way on those projects, relative to the effective tax burden that
would be borne by the investors in the absence of the special tax provision. Under this
definition, all tax incentives are, therefore, necessarily effective.

The concept of tax incentives in legislative terms emphasizes the policy
makers' purpose in providing the incentives, while simply describing them focuses one's
attention on the consequences of the incentives so offered. The distinction between the
two underlines the crucial point of not always agreeing with the goals and impacts of tax
incentives. For example, if it has no taxable income (which is normal at the beginning of
a project's life), lowering the applicable CIT rate on an investment project does not yield
any gain on the project. In such situations, a reduction in the CIT rate may also be a
disincentive if the project already receives certain favorable tax treatments, e.g.
accelerated depreciation, in which case the decreased CIT rate would decrease the
implied value of such treatments to the project.

As tax incentives can take several forms, the legal definition can be
useful for classifying various incentives within a cross-country context under the standard
classification scheme, even though the legislative tax schemes themselves vary heavily
between countries. In comparison, the successful definition would be useful to compare
the different incentive mechanisms for their effects on the tax burden of an investment
project under a single legislative taxation framework in a given country. The two ways to
describe tax benefits therefore serve two different purposes. The legislative definition is
used to define tax incentives, and the effective definition is used to determine the
comparative value of different tax incentives as one of a number of factors.

2. Tax Incentives: Issues and Trends

In the last two decades, most governments have aggressively promoted
their countries as investment destinations to draw scarce private capital and associated

4 United Nations Conference on Trade and Development, Tax Incentives and
Foreign Direct Investment (Geneva: July 2000), pp.11-12.
technology and managerial skills to help achieve their development goals. Measures to promote the entry of foreign direct investment (FDI) have been gradually adopted. Examples of these steps include the liberalization of the laws and regulations governing the entry and establishment of foreign investment projects; the provision of guarantees for repatriation of investment and profits; and the creation of mechanisms for the resolution of investment disputes. Tax rewards are also part of these marketing activities.

Several studies have covered the role of incentives in promoting FDI, but their relative benefits and drawbacks have never been clearly demonstrated. As facilitators of FDI, there have been some spectacular successes and notable failures in their position. Incentives are secondary to fundamental determinants such as the size of the market, access to raw materials and accessibility of qualified employees as a factor in attracting FDI. Investors prefer to follow a two-stage method when countries are assessed as investment sites. In the first level, countries are screened based on their main determinants. Only those countries which pass those requirements go to the next stage of assessment where tax rates, subsidies and other incentives may become important. Investment opportunities are thus widely recognized to be of moderate importance in attracting FDI.

However, in some situations and with certain forms of investment, their effect may be more pronounced. Tax incentives may be a major factor in their investment decision for some international investors such as footloose, export-oriented investors. Also, the value of tax incentives may be more pronounced among countries with similarly attractive features. Furthermore, policymakers can adjust the nature and scope of the tax benefits they give quickly and easily. However, it can be challenging and time-consuming to alter certain factors that influence the foreign investment decision, or even entirely beyond government control. For these reasons, investment experts, in particular from investment promotion organizations, consider incentives as an important policy element in their economic development strategy to attract FDIs.

FDI incentives can, in essence, be characterized in order to promote them in a certain way as any tangible gain given to a particular undertaking or class of undertakings by a (or at the head of) a government. They involve different steps aimed at increasing or reducing (or redistributing) the rates of return of a particular FDI business. Which are not wider non-discriminatory measures such as infrastructure, the FDI general law scheme, the general regulatory and fiscal framework for business activities, free income repatriation or domestic care. While these policies have an impact on the TNC
location decision, they are not FDI incentives per se.

Regardless of their development level, most countries use a wide variety of opportunities to achieve their investment goals. However, more commonly, developed countries are implementing financial incentives, such as scholarships, scholarships or loan guarantees. It is widely accepted that the government budget is being influenced by financial incentives, and that as such developed countries do not usually offer foreign investors. Rather, these countries prefer to use tax incentives which do not require government funds from the outset.

In order to encourage businesses to invest in particular projects or sectors, any incentives that reduce the fiscal burden can be identified as tax incentives under this survey. These are exceptions to the tax scheme in general. Tax benefits would, for instance, include lower tax rates on earnings, tax holidays, accounting rules allowing accelerated depreciation and losses to go ahead on tax purposes, and lower tariffs on imported machinery, raw materials and components or higher domestic market tariffs for import-related investment ventures.

As tax incentives are intended to promote investments in certain industries or geographical areas, these incentives are seldom given without conditions. Quite frequently, countries create special reward programs that define both the tax benefits and the main restrictions. For example, these schemes that require a facility to be built in a certain region(s), to have a certain turnover, to require technology transfer from abroad or to employ a certain number of individuals. For example, China gives foreign-invested companies a 40% tax refund on profits that are reinvested to raise the firm's capital or to start another company. The gains have to be reinvested for at least five years. If the reinvested sums are removed within five years, the company must pay the taxes. Similarly, India provides a tax exemption on the income of companies engaged in tourism or travel, provided that their earnings are earned in convertible foreign currency.

The most commonly used fiscal benefits are cuts in the regular levels of corporate income tax and tax vacations. These are supplemented by exemptions from import duties for capital equipment, raw materials and semi-finished products, customs drawbacks, accelerated depreciation, common gross income tax deductions, savings and reinvestment benefits, and social security contributions deductions.
2.1.2 Objectives of Tax Incentives\textsuperscript{5}

Countries use tax incentives to accomplish a number of goals, not all of which are equally convincing for philosophical purposes. The primary reason for awarding tax incentives is generally to encourage investment in general and in most developed countries that draw FDI in particular. Certain goals widely referred to include raising unemployment, encouraging particular economic sectors or forms of activity in terms of economic or social policies or reacting to regional development needs. Countries also seek several targets with tax incentives for lapping. Examine the conceptual validity of the different goals of tax incentives; group in four separate categories I tax related considerations; (ii) nontax economic considerations; (iii) no economic considerations; and (iv) social policy considerations) all factors that could influence the decision of domestic or foreign investors to undertake an inventory in any region.

(i) Tax-related considerations refer to features in the tax system as a whole which have an impact on the effective tax burden on investment projects. When there are shortcomings in these features that impede investment, the first best approach is to address the shortcomings explicitly with an effective tax reform, rather than to compensate for them by the implementation of tax incentives. When, for example, depreciation allowances are too stringent or if the CIT rate is too high in comparison to international standards, reducing depreciation allowances or decreasing the CIT rate to reasonable rates will be much more desirable than implementing tax incentives to restore a favorable investment environment.

(ii) Economic factors not related to tax apply to those that impact, or both, the general macroeconomic or microeconomic / structural climate. In these settings, where there are shortcomings that hinder investment, the first best approach is to introduce sound macroeconomic policies and/or pursue the necessary structural reforms, rather than to restore tax incentives that do not fix the roots of the shortcomings. For example, broad fiscal imbalances could pose concerns about the sustainability of current tax levels and high rates of inflation might generate significant uncertainty about potential macroeconomic developments. Strict labor markets can also raise labor costs above the competitive level at the international level, and inadequate communications and transport infrastructure can dramatically increase business costs. In the case of these macro-economic imbalances and/or systemic failures, tax incentives alone do not

\textsuperscript{5} Howell H. Zee, Janet G. Stotsky and Eduaro Ley, Ibid., pp.1499-1501.
adequately reinforce investor trust if, in reality, investors perceive them as moves in the wrong direction to resolve the challenges.

(iii) Non-economic considerations apply to those relevant to the legal, regulatory and political economy climate. Such considerations are just as critical as tax and other economic considerations in promoting an investment-friendly climate. For example, investors are also concerned about the consistency of the law regulating the investment scheme and the fairness with which the laws (laws and procedures) relating to investment law are implemented. Where there are deficiencies in this area that impede investment, the first best approach is to take corrective measures to fix the deficiencies. Investor worries about insufficient legislation and burdensome regulations, as well as perceptions of wrongdoing on the part of officials responsible for authorizing investment projects, can seldom be resolved by the availability of even generous tax incentives.

(iv) The principles of social policy are those arising from inequality issues. Producers in some sectors (e.g. agriculture) may be viewed as economically vulnerable relative to other more developed sectors (e.g. industry) and the provision of tax benefits to former industries can be seen as a way to advance the goals of equity. These priorities can, however, be more efficiently met by a well-designed spending strategy that targets individuals on the basis of their income rates, rather than by tax incentives that target economic activities at sector level.

Tax incentives are often not the first best policy instrument for achieving the sort of goals for which they were commonly used. In fact, because fiscal incentives, if effective, would, by definition, distort the economy between favorite investment projects and regular investment projects, the correction of market failures is an economically compelled justification for their use. There are certain types of investments that generate positive externalities (benefits that the market does not internalize) for the entire economy. As the amount of such investments would be socially in optimal if left to the market forces entirely, tax incentives could play a legitimate role to encourage them. Tax incentives justified on this basis would typically include those given to projects located in a country's least developed regions, (either to reduce congestion and / or pollution in the less developed regions or to reduce the income distribution disparity that could be seen as having some characteristics of the public good); Under all these situations, the usage of tax benefits as a punitive policy tool may be a convincing economic argument, in the conventional Pigouvian sense.

The popular argument that in small and open economies with moving capital, the effect of any tax on equity income would be transferred to less mobile factors
such as labor in which case it would be easier for the letter factors to be taxed directly rather than indirectly through the imposition of capital income may be another reasonable reason for tax benefits. Even in such economies, however, having some form of CIT could be essential as a backstop to labor taxes in order to prevent the artificial shift in income from labor to corporation (e.g., business owners could incorporate, convert their wage income into corporate retained earnings, and receive returns in the form of capital gains from the sale of their shares). Under these circumstances, the optimal form of the CIT would be the tax on cash flow.

As soon as one departs from the view that no tax incentives should ever be provided and acknowledges the possibility that the use of such incentives can be justified in some conditions, in particular those connected with the existence of positive externalities, concerns regarding targeting and calculation may eventually arise. These issues do not have simple straightforward solutions, but like any other policy issues involving tough decisions; they still need to be addressed, preferably through a fair and impartial decision-making process that is mindful of all relevant facts and constraints.

Their cost-effectiveness will be a primary factor for the decision to award tax incentives. This means that the mere recognition of the presence of positive externalities associated with such types of investment ventures is not, in itself, sufficient to justify the use of these opportunities in all cases. Rather, their application would be focused on the assumption that the benefits to the economy that can be anticipated from an increase in incentive-favored activities will significantly surpass the overall cost of the tax incentives given.

2.1.3 Cost-Effectiveness, Transparency, Comparative Merits of Alternative Forms of Tax Incentives

It can be describes difference ways that tax incentive can be define, the factors the bear the cost-effectiveness, and emphasized the importance of transparency for granting incentive laws. Therefore, there are a comparative of the forms of tax incentives.

1. Cost-Effectiveness

Granting tax incentives entails four types of costs: (i) distortions between investments granted incentives and those without incentives; (ii) forgone

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revenue (on the assumption that the government operates under a revenue constraint, so that the lost revenue would have to be compensated from alternative distortive taxes); (iii) administrative resources required to administer them; and (iv) the social costs of corruption or rent-seeking activities connected with abuse of tax incentive provisions. Although these costs may be important, the economic gains that could be attributed exclusively to tax incentives are less evident and not easily quantifiable. The cost-effectiveness of the tax benefits is also unclear.

The cost of distortion of the tax incentives may occur even though these incentives are used to correct externalities, because the sum of the incentives given might not be precisely within the reach of the externalities involved due to the inherent difficulties in calculating the message. Through definition, these costs may also occur when tax benefits are unfairly given to investment projects with no beneficial externalities, as may happen (e.g.) through misuse and program leakage.

The amount of income from tax benefits has two separate dimensions. In the first place, construction programs may have been pursued even though there had been no tax incentives. For such ventures, which usually include those with the highest viability and thus have the greatest economic benefits, the availability with tax incentives will essentially constitute a free gift from the government either to developers or, if they are of international origin, to the treasury of their home countries. The result of the letter would come if any income distributed from taxation by the host country is taxed by the home countries of the investors, as would be the case if those countries had tax structures based on the concept of residence.

Countries with residence-based tax systems usually trigger double tax relief by offering credits against domestic tax liabilities for taxes paid in foreign countries (generally referred to as international tax credits). Thus, tax benefits that minimize investor tax liabilities in developing countries will also minimize their available international tax credits in their home countries, unless a 'cash-saving' provision is included in the bilateral cash treaties between developing countries and home countries. Having said that, it should nevertheless be noted that, due to the numerous limitations that countries usually place on the degree to which foreign tax credits are issued, investors may benefit from tax incentives if these limitations are binding (i.e. if they have otherwise unusable excess foreign tax credits). In certain developing countries where a minimum (usually asset-based) tax exists, investors can also benefit from tax benefits if they are exempted from paying the required minimum tax, as sometimes the minimum tax is not considered a creditable tax in the home countries of investors.
The second aspect of the revenue expense of the tax incentives is that, even if the tax incentives are unsuccessful in attracting additional investment, perhaps because of their inability to resolve the other investment obstacles discussed above, they can still contribute to a loss of revenue because their mere existence opens the door to future violations by investors who are not qualified to receive them.

In addition, abuse and leakage are perennial problems with tax incentives, and their effective prevention can often absorb a significant amount of quality administrative resources, a scarce commodity in most developing countries. The scarcer the resources allocated to the management of tax incentives, the more important administrative tasks would be impaired, thus endangering the collection of taxes as a whole.

Although administrative costs will obviously increase the reach and complexity of the tax incentives given, if the goal is to properly implement them, a much more important issue with incentive laws also has to do with either tacit condoning or even promoting the misuse of these laws by officials in charge of enforcing them. Tax incentives also inevitably lead to socially unproductive rent-seeking behavior. Once the incentive system is in place, those who are lucky enough to have earned rents will have an inherent interest in maintaining the status quo. This explains, quite apart from economic reasons, why it is so difficult in reality to end or even phase out tax incentives once they are granted, even if they are formally time-bound. The most effective way to overcome these problems of tax incentives in the political economy is to ensure that the incentive-granting process is transparent and accountable.

2. Transparency of Tax Incentives

Transparency in the provision of tax benefits has three dimensions. First, there is the legal and legislative dimension; all tax incentives should have a statutory basis in the applicable tax legislation, and modifications to those incentives will include amendments to such laws. This means that incentive clauses should not be inserted into non-tax legislation in order to prevent potential contradictions, discrepancies and overlaps between different laws; they should especially not be inserted into statutes that have a lesser degree of legal force than legislation, such as rules, decrees or directives that may be issued by various government agencies or officials on an ad hoc basis. Different rationale would also suggest that no government agency or official discretionary incentive-granting powers should be given statutory provisions in the applicable tax legislation, without exception, on the basis of explicitly defined qualifying criteria.
The second aspect is fiscal, which includes making explicit the reason for offering certain tax incentives on the basis of well-considered economic arguments; calculating the economic effect and revenue costs of providing incentives on the basis of clearly defined assumptions and methodologies; and subjecting the estimated revenue costs to public review as tax expenditure in the budgetary process. Explicit acknowledgment of tax expenditure is a practice that can be seen in many developed countries and a growing number of developing countries and can significantly encourage analysis by policy makers on a continuous basis on the cost-effectiveness of offering tax incentives to achieve specific policy objectives.

Additionally, there is the administrative aspect of accountability, which includes the development of eligibility requirements for tax incentives that are clear, precise and objective to eliminate the need for subjective interpretation and implementation by the management of the incentive program, as well as to promote monitoring and compliance on the part of tax administrators. Such considerations strongly indicate that the trigger mechanism for awarding tax incentives should be made as automatic as possible, i.e. one that enables an investment project to automatically obtain incentives if it meets the stipulated qualifying requirements, such as the minimum amount of investment in certain sectors of the economy. In awarding tax benefits, the competent authorities will only attempt to ensure that the required requirements are met. All other aspects of the investment are not important.

In comparison, a discretionary trigger mechanism requires the acceptance or rejection of a tax incentive application on the basis of the subjective assessment of merit, after taking into account a range of factors, regardless of any explicitly defined conditions for eligibility. If such requirements exist, they shall be specified either as minimum conditions or in very general terms, requiring a subjective interpretation. In a recent report, Goudie and Stasavage (1997) described the discretionary application of tax incentives as one of the most significant factors leading to corruption in many countries.

3. **Comparative Merits of Alternative Forms of Tax Incentives**

Tax incentives can be given in a number of ways, not all of which are equally cost-effective in achieving their intended objectives. This section offers an evaluation of the comparative merits of alternative types of tax severity on both policy and administrative grounds.
One of the determinants of the value of a tax incentive is its success in stimulating investment. Theoretically, this efficiency can be calculated by its effect on the investment METR. Conceptually, the effective tax burden on an investment project is essentially the difference between the actual pre-tax rate of return (p) and the actual post-tax rate of return (s) to the investor in that project. In the case of a marginal project, this gap would reflect a marginal effective tax burden from which the METR could be measured as (p-s)/p. As a result, the greater the incentive capacity to lower the METR, the more efficient it is to encourage investment. Although the METR measure is commonly used in analytical studies of the tax effect on investment, it is by no means the only measure available, or always the correct measure to be used. In such circumstances, the measure relating to the AETR, usually defined as the ratio of the actual tax imposed on a properly defined underlying tax base, may be more acceptable. Nonetheless, a variety of analytical studies have used AETR to calculate the degree to which the tax benefits have reduced the foundation.

The practical problem with the classification of tax benefits on the basis of their effect on the METR is that the estimation of METRs is data-intensive: the assessment of p and s involves estimates of the interactions between a number of economic variables and aspects of the tax code structure (e.g. interest rate, inflation rate, economic depreciation rate, permissible tax depreciation rate, CIT rate, personal income rate, etc.). The volume and quality of the data needed to accurately measure METRs in many developed countries is often not readily accessible.

Compounding the above-mentioned statistical challenge is that, given that tax structures and the economic climate vary from country to country, a given tax incentive may have very different impacts on METRs in different countries, making any generalization of investment-stimulating effects of various types of tax incentives challenging, if not impossible, in a cross-country context. Moreover, the overall benefits of alternative tax incentives relied not just on their effect on the METR but also on their costs of taxation and administrative consequences. For these reasons, the comparative evaluation in this section is not limited to the METR effects of tax incentives. Rather, it takes a wider viewpoint, taking into account the main related economic and administrative aspects in a balanced manner.

In order to better coordinate the calculation, it is important to find direct tax incentives separately from indirect tax incentives. The former are mainly related to the CIT, while the latter are usually, but not exclusively, related to specific duties (tariffs, excise duties and value added tax (VAT)/sale tax) on inputs used in direct production exports.
(a) Direct tax incentives

Direct tax incentives under CIT can be generally categorized in two categories: those which provide lower nominal corporate income than the normal CIT rate and which provide more favorable conditions for the recovery of investment cost than those laid down in traditional CIT provisions. Although the intended purpose of any reward in both categories is the same: to reduce the effective burden of CIT on business expenditure.

(b) Indirect tax incentives

Indirect tax incentive typically take the form of partial or full exemption from import tariffs, excise duties and/or sales tax on (in the case of VAT, zero-rating) products purchased by eligible enterprises. Such incentives are generally granted to export-oriented industries, but many countries do offer incentives for non-export-related targeted industries. In general, indirect tax incentives are very likely to be misused because eligible transactions can be easily redirected to non-inciting purchasers. These are very often difficult for political purposes to explain. For example, zero inputs under VAT will make no difference to the purchasing company, because the VAT on these transactions is valid. If the purpose of these incentives is simply to relieve the company from its VAT cash flow burden, then a better alternative would obviously lie elsewhere, especially if excess VAT credit is repaid in due time. Therefore, indirect tax benefits should be avoided, even in cases involving exports.

2.1.4 Classification of Tax Incentives

To give tax incentive can be classify into different ways which is depend on the rules and regulations of each country, which ways could attract the investors to invest in the country the most.

1. Reduced Corporate Income Tax Rate

Governments can set a lower rate of corporate income tax as an exception to the general tax regime in order to attract FDI to particular sectors or regions. Hong Kong (China), Indonesia, Ireland, the Democratic People's Republic of Lao, Cambodia and Estonia are some of the countries that use this form of opportunity. It may be aimed at the income of foreign investors who meet defined requirements, or it may be

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used to draw additional FDI. Malaysia did so in the mid-1980s, when investment inflows were below expectations.

2. Loss Carry Forwards

Governments using a low corporate income tax rate also use two other strategies to reduce the effective tax rate. One such option is to allow creditors to bring losses forward (or backward) for a defined number of years (usually three to five years) for tax purposes. Usually, only a set loss ratio with an upper limit is allowed to be pushed forward (or backward). This measure is highly valued by investors whose ventures are likely to result in losses in the first few years as they attempt to increase production and enter markets. Accelerated depreciation (discussed below) often enables investors to minimize their tax burdens in the years immediately following investment, when cash flow is critical for debt relief. Taken together, a low tax rate, combined with losses carried forward for tax purposes and accelerated depreciation, is considered to be a key factor in an efficient tax system that is highly attractive to international investors.

3. Tax holidays

Tax holidays are a common type of tax incentives used by developing countries and countries with transition economies to attract FDI. Under a tax holiday, eligible newly incorporated businesses are excluded for a defined time (e.g. five years) from paying corporate revenue tax. The rules can also exclude businesses from other tax obligations. Tax holidays exclude net income tax from investment programs during the holiday season, which, in accordance with the case considered, helps to promote investment. At the same time, tax holidays deny businesses all holiday deductions of taxes (e.g. depreciation costs and interest expenses) and at least partially mitigate any hypothetical impact.

Tax holidays shall be treated as a clear reward with a comparatively low burden of compliance (e.g. no requirement for holiday income tax calculation). This aspect makes this opportunity appealing, particularly in countries which are still setting up a corporate tax system. Such tax obligation requirements can be enforced (e.g. withholding personal wage tax or filing income tax returns). To order to comply with the tax system following a tax holiday, creditors are also forced to maintain records of capital spending and other items before and in holiday times for long-term investment ventures.
4. **Investment Allowances**

Investment allowances are taxable income deductions dependent on a new investment level (depreciation). They continue to reduce the successful capital acquisition price. As a common percentage of qualified investment expenses are granted both investment deductions and investment tax credits. Nevertheless, because the deduction is taken from the tax base, their value to a business owner depends, among other factors—the higher (lower) the tax rate, the higher (lower) is the amount of the tax relief received for a particular amount of the investment allowance. Variations in corporate tax rates do not, however, impact the value of investment tax credits. Within the expenditure subsidy, businesses are entitled to quicker or more generous capital cost write-offs. There can be contrasted between two forms of investment allowances. With accelerated depreciation, businesses are allowed to depreciate capital costs for a shorter duration than is calculated by the usable economic life of capital, which is usually the basis of an accounting depreciation of capital costs. While this approach does not adjust the overall sum of capital expenditures to be depreciated, it raises the real value of the statements by getting them back to the date of the expenditure. Obviously, the present value of claims is the highest because the entire cost of the capital asset is excluded in the year in which payments are made. An increased deduction enables companies to assert deductions that are multiple of the actual cost of qualified capital (i.e. 1 1/2 times or twice the price).

The amount of the investment funds for a business can vary based on whether they have to be received in the year they have been obtained or not. Unused depreciable capital expenditures in most countries will, in some cases indefinitely, be carried forward in order to account for potential tax liabilities. Where deductions have to be claimed in the year won, the tax treatment of losses is important. As is often the case during the early stages of a high investment project, deductions only gain from payments of potential tax liabilities.

5. **Investment Tax Credits**

Investment tax credits may be either flat or incremental. A flat investment tax credit shall be earned as a fixed percentage of investment expenditure incurred in respect of a qualifying (targeted) capital year. In contrast, an incremental investment tax credit is earned as a fixed percentage of eligible investment expenditure in a year that exceeds a base that is typically a moving-average basis (e.g. the average investment expenditure of the taxpayer over the previous three years). The aim of the
incremental tax credit is to improve the targeting of the relief for incremental expenditure that would not have occurred in the absence of a tax relief.

Some countries, investment tax credit can be claimed only in the year in which it is obtained. Usually, however, unused credits may be carried forward for a limited number of years to offset future tax liabilities. As in the case of investment allowances, they are only meaningful to firms if they can be carried forward or backward. Another option is to make unused credits refundable (i.e. to allow their value to be claimed in cash in the year they are earned). This may significantly increase the attractiveness of the incentive. However, this entails a significantly higher cost of revenue for the Government and a risk of abuse.

Investment tax credits may interact with the system of depreciation. In many countries, the depreciable capital base of the investment must be reduced in relation to investment tax credits and other forms of government assistance related to that investment. This practice recognizes that the cost of capital acquisition to the firm is reduced by such relief and is adopted in order to avoid unintended overlap of investment subsidies.

6. Reduced Taxes on Dividends and Interest Paid Abroad

Governments typically charge tax on dividends paid overseas by international investors. These taxes can be reduced in order to attract foreign investment. Usually, these taxes are about 10%. Aside from the revenue-shifting trend discussed in Section E below, the lower the revenue on dividends, the higher the tax opportunity. On the other hand, the lower the tax on income, the lower the penalty for paying dividends, and the greater the incentive to reinvest money.

7. Preferential Treatment of Long-term Capital Gains

Many countries offer preferential tax treatment for capital appreciation (assets) held by companies where capital (or assets) is retained for a fixed period of time (usually six months to one year). Long-term capital gains (capital retained longer than the minimum period) are typically taxed at half the rate of short-term capital gains (capital retained for less than the minimum period). Short-term capital gains are normally treated as ordinary income. Preferential tax treatment of long-term capital gains is intended to enable investors to retain assets for longer periods of time.
8. Deductions for Qualifying Expenses

Some countries aim to foster those forms of investment activity through the tax system. We require more than maximum deduction of qualifying expenditures for tax purposes. For example, they can allow for a double deduction of preparation, R&D or export marketing expenses. As alluded to in section A, this form of opportunity can be seen in combination with initiatives to promote technology transfer.

9. Zero or Reduced Tariffs

Governments can provide two types of tariff incentives. They may, on the one hand, reduce or eliminate tariffs on imported capital equipment and spare parts for eligible investment projects. This has the effect of reducing the investment costs. On the other hand, they may increase the tariffs on the investor's final products in order to protect the domestic market from competition from imports.

Tariff protection has been a very common form of investment incentive in many countries. However, its use has decreased over the decades as developing countries have lowered their tariffs following WTO agreements and various regional trade arrangements. Moreover, many developing countries have come to the conclusion that investment stimulated by tariff protection often leads to an inefficient, high-cost, distorted industrial structure.

10. Employment-based Deductions

For many countries, government-mandated social security contributions can be a burden on companies, particularly new ones. To encourage investment in specific sectors or geographic areas, governments may reduce social security contributions or provide tax credits or allowances on the basis of the number of employees employed. Bulgaria, on the other hand, offers tax incentives to further its social objective of providing employment for persons with disabilities.

11. Tax Credits for Value Addition

In order to promote domestic capacity building and discourage the export of raw materials, governments may grant tax credits or allowances for value added in processing or for the net local production content (defined as the value of sales less depreciation of capital equipment and the value of imported raw materials and supplies).
12. Tax Reductions/Credits for Foreign Hard Currency Earnings

One of the reasons that many developed countries promote exports is to make a much-needed foreign hard currency. Not only export production, but also many services sectors (e.g. tourism and hotels) are subject to tax cuts or incentives on the basis of foreign currency earnings.

2.1.5 Issues relating to tax incentives

The opportunities offered can be justified on the basis of positive externalities or investment spillovers, such as the diffusion of new technologies, the development of workforce skills and investments in R&D. In these situations, the investor does not achieve the full value of the investment for the economy. For example, an investor may train staff or impart managerial or marketing skills where the benefit to society is much greater than the benefit to the investor. Employees receiving these training could leave the project and work elsewhere in the country. Without public corrective intervention, these practices will work below their optimum level. On this basis, some experts argued that tax incentives for investment in infrastructure, which they considered to have significant growth effects, should be permitted. In addition, individual investments can lead to additional investment by the same investor or associated investment.

1. Institutional issues

The emphasizing principle for providing the FDI with benefits is that foreign investment gives host countries more interest than foreign investors. More than capital flows is involved in FDI. This also involves the internal use of intangible assets such as technologies and management experience unique to a particular organization. The transfer of technology, management experience, skills and other intangible assets from country to country may therefore be a major impact of FDI. When these intangibles are completely internalized, the return rate will adequately reflect an investment's net profit and incentives are not justified. In as far as such intangibles generate essential advantages for other host economic sectors not internalized by the transnational, opportunities can be justified. Initiatives can be justified. This hypothesis raises an important problem for designing a program of incentives: how is foreign investment sensitive to incentives? A simplistic case is considered in which tax revenues produced by the government are the

only benefit for the host country of an investment project. To favor the host country through a tax incentive, the reduction in government income generated by the incentive will have to be more than offset by the increase in tax revenues produced by increasing external investment flows.

Governments often use opportunities on a particular basis: structural failure. When structural failure occurs, the interest of the investor's project (return to the investor) varies from its economic value. Many causes of systemic failure, some of them "natural" and others may be caused by government policies. Externalities, such as technology (whereby the return to the investor is lower than the return on the market), the pollution and the congestion caused by the project (where cost to the economy is higher than that of the investor), and social costs and benefits, where the returns to the investor are different to the cost of the investment, are among the natural causes;

In dealing with institutional failure, the government's 'first best' solution is to eliminate the failure. If the government, for example, sets the minimum wage above the consumer wage (and the resulting unemployment), for the employer, the cost of human capital is higher than for the economy. Investments in labor-intensive infrastructure would therefore remain below their optimum level. The "first choice" option is to slash the minimum wage. However, that might not be theoretically feasible. The "second best" approach is to reduce labor costs for investors by direct labor incentives or enabling investors to deduct labor costs for fiscal purposes. This can place governments in developed countries, however, in the unusual position of subsidizing labor in low-wage countries. The most common response by developed countries is to offer tax holidays to investors in work-intensive ventures (i.e. they subsidize capital in an effort to increase the absorption of labor).

In the same way, tariffs and non-tariffs trade barriers are a cost to the investor, but not to the economy, (by raising the costs of capital equipment and inputs). It increases production costs and inhibits export-oriented production. The "first best" solution would be to remove these barriers to trade. This would, however, in general terms eliminate domestic (local and foreign) producers' protection and reduce government revenues. Governments may also employ tariff reduction incentives for export-oriented producers selectively.

When the value of the investor's tax incentives exceeds that of the economic benefits, they are a windfall for the investor. However, it is not simple and straightforward to calculate how far investors should be compensated. This uncertainty
could lead a government to give excessive incentives to attract high-tech projects, particularly in "Hot" industries like computers, biotechnology, and telecommunications.

2.1.6 Thailand’s Board of Investment

In 1997, the Thai Government set up the Board of Investment (BOI) as an opportunity for foreign and local businessmen who are interested in investing in the activities supported by the organization. To this end, investment promotion policies have been adjusted to attract more businessmen; to decentralize Thailand's industrial base and to respond to future economic situations. Thailand BOI has formulated criteria for incentive and privilege applications for projects. They depend on the location of the activities promoted and whether or not they are priorities.

1. The Investment Promotion Act and the BOI

The Investment Promotion Act, B.E. 2520 (1977) establishes the legal basis for the BOI's investment opportunities. The BOI encourages international and domestic investment. It has wide flexibility to promote investment in areas that are deemed most beneficial to the economic and social growth of Thailand. BOI benefits include (i) tax advantages, such as corporate income tax and machinery import duties exemption, and (ii) non-tax advantages such as land ownership and the right to include external specialists. BOI benefits may include Among the BOI leaders are the Prime Minister (as President), the Minister of Industry (as Vice President), and other ministers or high government officials appointed to the office of the Prime Minister.

In August 2000, the BOI published no. 1/2543 withdrawing its announcement in April 1993 and modifying substantially a variety of investment promotion policies. Announcement No. 1/2543 allows the funded projects to report their operating results on an annual basis for review before applying for tax and duty privileges for that year. All projects with an investment capital of 10 million Baht or more (excluding land and working capital costs) are expected to receive ISO 9000 or equivalent international certification. The Announcement also revoked previous

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provisions for exports and the use of local products, in order to match promotion requirements with Thailand’s obligations under international trade and investment agreements, such as those of the World Trade Organization (WTO) and the Association of Southeast Asian Nations (ASEAN). Projects located in low-income areas or areas where investment facilities are insufficient are eligible for special promotion and full tax and duty privileges. In order to help small and medium-sized enterprises, the announcement lowers the minimum necessary amount of investment capital to one million Baht, excluding the expense of land and working capital.

2. Criteria for Project Approval

The Investment Board sets out the following project approval criteria:

1) Development of competitiveness in the agricultural, industrial and services sectors

The project’s added value can be not less than 20% of revenues, other than projects relating to forestry, industrial, computer goods and parts and spools which must all have an added value of at least 10% of revenues. It is important to use modern production methods, new machinery.

For imported used equipment, the following conditions are:

1. In the case of the machinery used at least five years of age, the machinery can be included in the project and counted as investment capital for the calculation of the limit on exemption from corporate income tax, from the manufacturing year to the importing year. A performance, environmental impact and energy use certificate issued by a reputable organization shall be received, along with their fair value.

2. For maritime and air transport operations and molds and dies, used machinery over the age of 10 years, from the year of manufacture to the year of import, may be used in the project as it considers necessary, counted as investment capital for the calculation of the corporate income tax exemption limit and granted import duty exemption for machinery. Criteria as defined by the Office of the Investment Board

3. The investment capital projects of 10 million or more baht (except land and working capital costs) must receive ISO 9000 or ISO 14000 certification, or similar international standard certification, within two years from the complete startup date, otherwise the corporate income tax exemption is reduced by 1 year.

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4. For the concession project and the sale of a state-owned enterprise project, the conditions of the Board shall be based on the decisions of the Cabinet of 25 May 1998 and 30 November 2004 as follows:

1) The State Enterprise Corporation Law of 1999 does not allow for investment promotion programs of a state-owned enterprise.

2) The state agency which owns the project shall forward its project to the Board for consideration before an invitation for bids and, before bidding, the bidders shall be told of any promotional privilege given to them. The Board does not, in principle, endorse a project in which the private sector pays the state for a concession, unless the concession is fair relative to the State's investments in that project;

3) The Board shall use standard criteria for investment promotion for Build-Own-Operate projects, including those leased or operated by private sectors that pay rent in return for the state.

4) For privatization of state enterprises under the 1999 State Enterprise Corporation Act only expansion expenditure is eligible for promotion when expanding after privatization. Incentives are given in compliance with standard investment promotion requirements.

2) Environmental protection

Reasonable and effective recommendations and measures need to be formulated with a view to protecting environmental quality and reducing environmental impacts. The Board takes a project that has possible environmental impacts on its position and on the handling of emissions into account. Environmental impact assessment reports are necessary for projects or activities with types and sizes to comply with the relevant environmental legislation and regulations or Cabinet resolutions. Projects located in Rayong shall be in compliance with the Investment Board Office No. 1/2554 dated 2 May 2011 on Rayong Region Industrial Development Policy.

3) Minimum capital investment and project feasibility

The minimum investment requirement for each project shall be 1 million baht (excluding land and work capital costs), unless otherwise stated in the list of investment promotion qualifying activities attached to this publication. With respect to knowledge-related services, the minimum investment capital requirement is based on the total annual compensation cost listed in the list of investment promotion activities attached to this announcement. The debt-to-equity ratio for newly built ventures must not be greater than 3 to 1. Expansion programs are handled on a case-by-case basis.
study for projects with an investment value of over 750 million baht (excluding land and working capital costs) shall be submitted with detail as defined by the Board.

4) Criteria for Foreign Shareholding

The Board sets out the criteria for international involvement in investment promotion projects; for ventures under list One annexed to the International Business Act, B.E. 2542, Thai nationals will hold shares totaling not less than 51% of registered shares. For List 2 and List 3 companies added to the International Business Act, B.E. 2542, there are no caps on foreign investors' equity, except as otherwise provided for in other laws. The Board can, as appropriate, set foreign shareholding limits for certain activities eligible for investment promotion.

5) Criteria for Granting Incentives

The Board stipulates 2 types of incentives as follows:

(1) Activity-based incentives

The Board classifies 2 groups of incentives based on the importance of activities as follows:

- Group A includes the incentives for corporate profits, incentive for import duties and other non-tax incentives for machinery and raw materials. The following groups can be divided into four subgroups:
  - Some benefits shall be given for Group A1. Exemption from corporate tax for 8 years without the exemption of corporate income tax. Machinery exemption from import duty. 1 year exemption from duty to import raw or critically necessary materials in the manufacture of export goods that may be expanded by the Board and other non-tax benefits as applicable.
  - Group A2 shall obtain incentives: 8-year deduction for corporate income tax, 100% of investment (except land and working capital costs). Investments shall be subject to Group A2. Machinery exemption from import duty. Exemption of import duty for 1 year for raw or necessary materials which can be expanded by board, as deemed appropriate, for the purpose of manufacturing export goods. Additional non-tax stimulus

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There are some incentives obtained in group3 that are a 5-year exemption from corporate income tax, accounting for 100 per cent of investment (excluding land and working capital costs) unless stated in the list of activities eligible for investment promotion that the operation is exempted from corporate income tax without being subject to a cap exemption from corporate income tax. Exemption from import duty on machinery. Exemption from import duty on raw or necessary materials used in the manufacture of export goods for a period of 1 year, which may be extended as deemed acceptable by the Board. Many non-tax reward initiatives

In group A4 shall obtain these incentives: a three-year exemption from taxation on corporate income, which constitutes the full 100 percent of investment. Machinery exemption from import duty. Exemption from the import duty on raw or necessary materials used in producing export goods for a duration of one year, which may be extended by the Board as it considers reasonable. Additional non-tax stimulus.

Group B includes operations that can only earn import duty incentives for equipment and raw materials and other non-tax incentives. This group can be split into two subgroups:

The following benefits shall be given to Group B1: Importation duty relief on computers. Exemption from import duties for 1 year on raw or necessary materials used in the manufacture of export goods which may be expanded as the Board considers reasonable. Other non-tax incentives.

Group B2 shall obtain the following benefits: exemption for 1 year from import duties on raw or necessary materials used in the manufacture of export goods, which may be extended as the Board considers reasonable, and other non-tax incentives.

(2) Merit-based incentives

The Board sets out additional benefits based on the merits of ventures in order to attract and encourage further investments or expenditures on activities that support the country or industry as a follow;

1. Merit on competitiveness enhancement

In case the projects have the following investments or expenditures:

Technology and innovation research and development, including in-house R&D, R&D outsourcing in Thailand or joint R&D with overseas institutions. Funding to Technology and Human Resources Development Projects,
training school, specialist training center, research institutes or government agencies, as authorized by the Board in the field of science and technology in Thailand. IP acquisition / licensing fees established in Thailand for the commercialization of technologies. Advanced research in technology. Creation of local providers with a minimum of 51 percent Thai shareholder in advanced technology and technical support or, in-house or outsourcing goods and packaging design, in Thailand as approved by the Management Board. The details shall be in accordance with the criteria laid down by the Investment Board Office.

Additional incentives shall be granted as follows:

An additional year of exemption from corporate income tax will be granted if qualified investment or expenditure is not less than 1% of the total revenue of the project for the first 3 years combined or not less than 200 million baht, whichever is less. However, the cumulative period of exemption from corporate income tax cannot exceed 8 years.

Two additional years will be given if the required investment or expenditure is not less than 2% of the overall project revenue for the first 3 years in combination, or not less than 400 million baht, whichever is less. However, the cumulative period of exemption from corporate income tax shall not exceed 8 years.

Three additional years of corporate earnings tax exemption would be given if the eligible contributions or expenses amount to not less than 3% or less than 600 million baht of total project income from the first three years combined. The overall period of exemption from corporate income tax shall not, however, exceed 8 years.

2. Merit on Decentralization

Additional incentives shall be given to projects located in investment promotion areas are in the following:

Three more years of exemption from corporate income tax are given. The overall period of exemption from corporate income tax shall not, however, exceed 8 years. Projects of category A1 or A2, already granted 8-year corporate income tax exemption, instead, shall be subject to 5 years following the expiry of the corporate income tax exemption period with a 50% decrease in corporate income tax on net profit resulting from promoted operations.

There shall be a double deduction in respect of storage, power and water costs for 10 years from the date of initial revenues resulting from the promoted project.
In addition to usual depreciation, a deduction from the net income of 25% of the construction or building costs for the project would be provided. Such a deduction can expire within 10 years from the net income of one or more years.

There shall be a double deduction in respect of storage, power and water costs for 10 years from the date of initial revenues resulting from the promoted project.

Deduction in addition to usual depreciation shall be given from a net income of 25 percent of the network installation or construction costs of the project. This deduction may occur within 10 years from the date of the first revenue from the promoted operation from the net income of one or more years.

3. Merit on industrial area development

Projects situated in industrial property or industrial areas supported are to be given an additional year of exemption from corporate income tax. The overall period of exemption from corporate income tax shall not, however, exceed 8 years. This merit-based incentive is not given to activities subject to criteria stipulating that projects should be located in industrial estates or in industrial areas promoted. The date of first income obtained from the operation promoted.

4. Projects Eligible for merit-based incentives application

Projects with activities in Group A can apply for merit-based incentives at the time of applying for investment promotion or after being promoted. If the application is submitted after it has been promoted, the promoted projects that qualify for merit-based incentives, whether or not the revenue has already been extracted from the projects. The remaining corporate income tax exemptions incentives under Section 31 of the Investment Promotion Act must be given for projects on the date of a merit-based incentive both for terms of duration and for exemption sum from corporate income tax.

Projects involving Group B activities can apply for merit incentives No.9.2.1 merit in terms of improving competitiveness and 9.2.2 merit in terms of de-centralization, and must apply for merit incentives at the time that they only apply for investment promotion. This excludes activities for which the list of activities eligible for investment promotion specifies that they are not eligible for merit-based incentives.
2.2 Method of Computation of Corporate Income Tax

Juristic corporations and partnerships, including private and public limited companies; licensed and licensed common companies, joint ventures, companies and associations shall be subject to corporate income tax and shall be subject to corporate income taxes for firms or firms receiving revenues of foreign or foreign government-owned businesses and other organizations.

2.2.1 The Method of Computation under Revenue Code

The method of computation the net income and net loss of the company must be enforced by the rules and the method of measurement in compliance with the IFRS (International Financial Reporting Standard) tax payers must consider the correct method for their business. For tax accounting the form of computation is provided for in the Thailand Revenue Code Section 65 Taxable income in this portion is a net profit which, in accordance with the conditions set out in Sections 65 bis and 65 Ter, is determined by the deduction of revenue from business or income resulting from business carried on over an accounting period with charges. The accounting period shall be 12 months, except where it may be less than 12 months, in subsequent cases.

The income and expenses calculation shall be based on accrual basis and cash basis. Benefit resulting in the accounting period, but not yet earned in that accounting period, shall be counted as income for that accounting period. All expenses relating to such wages, even if they have not yet been paid, shall be counted as expenses for that accounting period. The computation of net profit and net loss under this part must follow the condition that provided under Section 65 bis of The Revenue Code. In Section 65 Ter specifies items that cannot be deducted as expenses in the estimation of net profits, such as, for example, Section 65 Ter(9) Expenditures that have not been incurred or expenditures that may have been deductible during a further accounting period except in situations where such expenses would not have been included in any accounting period. Section65 Ter (12) Harm, rather than a net loss carried on for five years up to the current accounting period from an insurance or other security arrangement or loss from previous accounting periods.
2.2.2 The Method of Computation under Investment Promotion Act, B.E. 2520

The method of computing corporate income tax generally follows the procedure set out in Sections 65 Bis and 65 Ter, but if the business has a project sponsored by the Board of Investment (BOI) it must comply with the rules set out in the Investment Promotion Act, B.E. 2520.

Activities eligible for investment promotion by the Board are those that are important and beneficial to the economic and social development and security of the country, activities involving export production, activities with a high level of capital, labor or service, or activities using agricultural or natural resources as raw materials. The Board shall make a notice specifying the types and sizes of investment activities eligible for promotion and may stipulate the conditions under which the promotion is to be granted and may amend or abolish those conditions at any time. Otherwise any activity that has been declared as qualifying for the promotion as mentioned before no longer needs to be promoted, it may declare that promotion may be canceled temporarily or permanently for that activity which are subjected in Section 16.

By Section 19 in this Investment Promotion Act, The Board shall provide promotion to the investment project, which includes suitable measures for the prevention and regulation of adverse environmental effects, for the benefit of the common good of the public's general lives, and for the perpetuation of humanity and nature.

According to Section 31, Promoted Person shall be granted exemption from income tax on the net profit derived from the Promoted Activity, as prescribed by the Board of Directors, from which the proportion of the investment capital excluding the cost of land and working capital shall be taken into account by the Board for a period not exceeding eight years from the date on which the income is first derived from the Promoted Person's income.

If activities are of particular significance and are advantageous to the country as stipulated by the Board's annexation, for a period specified by the Board but not more than eight years after a date of first revenue obtained, the promoted person shall be granted exemption from taxes of the legal individual on the net income extracted from the promoted activity. The income from computation of the net profit that derived from the activity that mention are included the income from selling as the Board deems necessary, of such by-products and semi-manufactured goods. If the loss has been incurred during the exemption period, the Board might grant a permission to those promoted person to deduct the annual loss from the net profits accrued after the
expiration of the period of exemption of juristic person income tax for a period of not more than five years from the expiry date of such period. The promoted person can choose to deduct those losses from the net profit of any one year or several years.

In addition, the dividends that derived from promoted activity granted an exemption of juristic person income tax will be exempted from computation of taxable income throughout the period that the promoted person receives the exemption of juristic person income tax which is subjected in Section 34 of Investment Promotion Act.

2.3 Concept of Interpretation Regarding to the Problem of Collecting Corporate Income Tax during Investment Promotion

In Thailand, there are some organizations that have power to set up the regulations or to interpret the laws or the regulations. Each organization has own goals and methods of interpretation.

2.3.1 Concept by Central Tax Court

Central Tax Court has considered Article 16 and Article 19 together with Article 31, paragraph 1 of Investment Promotion Act B.E. 2520, it is decided that the intention of the low allows to calculate net profit of the promoted entrepreneur separately by business or by project because privilege of each project is different in term of criteria, condition and duration of investment promotion as specified in each BOI certificate, if it is allowed all businesses in all projects of each BOI certificate to calculate profit-loss collectively, the promoted entrepreneur shall not be treated completely and correctly in accordance with the expected privileges. After the Court has considered Article 31 of Investment Promotion Act B.E. 2520 accompanied by Article 65, paragraph 1 of Revenue Code, it is decided that the Investment Promotion Act has intention in profit-loss calculation of the promoted entrepreneur differently from the interpretation of general profit calculation as defined in Revenue Code. Although the administrative law and tax collection law are Public Laws, the interpretation of public law, in some cases, requires some consistent private law for collaborative interpretation too and the interpretation must be strictly interpret and not cause more responsible to taxpayers. Therefore, the profit-loss calculation to exercise the right as specified in Article 31 shall be made

15 Chaivasit Trachootham, Interpretation of Taxation Law, 9th ed. (Bangkok: Thai Bar Association, 2013), pp. 64.
separately by each project by taking all loss arisen from the privileged period as specify in Article 31 to subtract from net profit obtained after the privileged period which is not exceeded 5 years after the expiration of such period by selecting to subtract from net profit of any year or many years which is the most appropriate.

For example, Business 1 gains profit while Business 2 has a loss, if they offset against each other and profit amount is more than loss and the remained net profit is exempted from tax but net profit amount of Business 1 which deducted by loss of Business 2 shall prevent the promoted entrepreneur from exercising tax exemption due to net profit of the promoted business which is not appropriate as it is specified in Article 31, paragraph 1 of Investment Promotion Act. In contrast, in case of such offset, if loss amount is more than profit, the loss amount of Business 2 which is subtracted by profit amount of Business 1 shall not allow the promoted entrepreneur to subtract such amount from net profit obtained after the promotion period is terminated which is not exceeded 5 years from its expiry. The promoted entrepreneur may lose such privilege which is not appropriate as it is specified in Article 31, paragraph 4 of Investment Promotion Act.

1. **Principal of Good Taxation**
   In general tax and tax exemptions provided for in the non-taxation legislation, such as the Investment Promotion Act, this does not comply with the rule that any tax benefit should be stated explicitly in fiscal legislation. By the way, there are good tax principal.

2. **Adam Smith’s Cannon of taxation**
   The contribution of Adam Smith to this aspect of economic thought remains classical. His declaration of the tax canons was scarcely overcome in consistency and simplicity. His four well-known canons of tax are the following:
   1) Canon of Equality;
      Equality here does not mean that all tax payers should pay the same amount. Equality means equality or fairness here. This ensures that the largest will carry the heaviest load.
   2) Canon of Certainty;

   

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The person should know what, when and how to pay a tax. It causes needless pain, otherwise. Similarly, the State should know how much tax it is going to receive.

3) Canon of Convenience;

Clearly see that, there is no point in setting a time and payment method which are not suitable. Taxes should be levied and collected that provides the most convenience for both taxpayer and government.

4) Canon of Economy;

That means the collection of costs should be as low as possible. It is not a wise tax if the amount of the tax is used for collecting it, it will empty much of the people's wallets, but it will add little to the state.

3. Other Canons of Taxation17:

Since Adam Smith's time, economics has advanced significantly. There are some more additional of tax cannons.

4. The Additional Cannons Are:

1) Canon of Productivity:

This canon underlines the need for a tax to bring a substantial amount of money to the state. The taxing authority's main objective is, after all, to raise funds. A tax not producing equal income therefore makes no use of it. Instead of multiple taxes, it is much easier to have a few taxes that yield good revenue.

2) Canon of Elasticity:

This canon points out that, as the population or income of the country rises, a tax will necessarily raise more revenue. There should be an automatic linkage between the State's needs and the people's capital. If a rise in the tax rate results in increased revenue in an emergency, the tax is elastic.

3) Canon of Simplicity:

The tax system should be simple, it argues; otherwise there would be confusion and, worse still, corruption. Throughout the war and afterward, some taxes, 

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e.g. on the selling of vital supplies of cloth and lather in India, resulted in corruption primarily due to lack of simplicity.

4) Canon of Variety:

   It is also important to diversify the tax system outside the region. Only depending on a few taxes is risky. The revenue won't be enough, nor will it be fair, because it won't reach a large number of people. A tax system must be broad-based, in order to be equitable. It must be diversified in order to be sufficient, providing a broad coverage of goods and individuals.

5) Canon of Flexibility:

   'Tax versatility,' as mentioned above as a canon, is different from that of 'elasticity.' The lack of rigidity in the tax system refers to versatility. A flexible tax adapts quickly to the new circumstances, but on the other hand it can lead to a rise in revenue. Durability is a prerequisite for durability elasticity. A State can have financial difficulties due to the lack of tax flexibility.

### 2.3.2 Concept by the Board of Investment (BOI)

Investment Promotion Act provided tax exemption to the projects that have been promoted that is the privilege that investors should be received. If the projects have been promoted, the method of computation must separate the income and expenses from the projects that haven’t been promoted. In order to reduces net profit to eliminate tax liability. If not separated it cannot calculate net profit to be exempted the tax liability. After calculated the projects that have been promoted had the net loss, if the company did not want to separate the calculation of net profits they can calculate for the total both the project promoted by investment promotion and the project that have not been promoted. It is because the separation of calculate is not absolutely enforcement but it is the right of the promoted company. If did not allow to bring net loss deductible with net profit of the project that have not been promoted the promoted company bare more tax burden than the company have not been promoted. It is not the purpose of investment promotion which intended to provide the incentive to the promoted company more than the company that have not been promoted.

### 2.3.3 Concept by Revenue Department

Revenue Department disagrees with the calculation based on Article 31 of Investment Promotion Act as Article 65 of Revenue Code should be considered likewise which means income arisen from the accounting period deducted by expenses must be
considered an Article 65 must be used to consider income-expenditure of all promoted businesses as they are deemed as one person or one tax unit, if the business gains profit, the privileges as defined in Article 31, paragraph 1 shall be provide but the privileges as specified in paragraph 4 is not allowable because the business is not loss. The consideration of profit or loss of business must consider based on provisions of Revenue Code and all promoted businesses in all project shall be considered likewise, the consideration by each separated project is not appropriate as it is specified in Article 65 of Revenue Code.

Moreover, there is Board of Taxation Rulings in case of the company operates both the promoted business and normal business and the promoted businesses which receive privilege of corporate income tax exemption more than one project. In this case of the promoted company which has the investment promotion in business of each type of business more than one project, due to Article 31 of Investment Promotion Act B.E. 2520 amended by Investment Promotion Act (No. 3) B.E. 2544 which is the provision imposed on net profit or loss calculation of the promoted business in all cases which means income and expenditure of all types of promoted businesses in the same accounting period must be calculated as defined by provisions of Revenue Code. Therefore, any promoted company which receives investment promotion in many projects, income and expenditure of all promoted projects in the same accounting period must be calculated in order to finalize net profit or net loss amount of the promoted businesses, if there is net loss, it shall be deemed as annual loss of the promoted company and the company may take such annual loss arisen from corporate income tax exemption period deducted from net profit of the promoted business that obtained after corporate income tax exemption period which is defined as 5 years after its expiry by choosing to subtract from any year or many years as specified in Article 31, paragraph 4.

After the company calculates net profit from the promoted businesses in respect of the above mention principle and it is found that the company has annual loss, later the corporate income tax exemption period of any promoted business is expired, the company still receive the corporate income tax deduction for net profit obtained from the investment 50% of normal rate in the period which is not exceeded 5 years after the expiry of corporate income tax exemption period as defined by Article 35(1) of Investment Promotion Act B.E. 2520. The company may have both promoted business with privilege of corporate income tax deduction and normal business which has no corporate income tax exemption privilege, therefore, the company is eligible to take the whole of annual loss arisen from all promoted businesses to subtract from net profit of the
promoted business with privilege of corporate income tax deduction in 50% of normal rate as defined by Article 31, paragraph 4 prior, if the annual loss of the promoted businesses is still remained, the company is eligible to take such annual loss to subtract from net profit of the normal business which pays corporate income tax in normal rate as specified in Article 62 bis (12).
Chapter 3
Law and Regulations of Tax Incentive under the Law of Vietnam and Singapore

The nature of investment in Thailand Singapore and Vietnam are similar, which is the Capital Import Neutrality (CIN) countries that have to find the measure to attract the investors, which is providing tax holiday incentives. This chapter will illustrate the information of the regulation of tax incentives in Vietnam and Singapore and the method of computation during exemption period for person who granted tax exemption in these selected.

3.1 Vietnam

In general, Vietnam is considered to be a politically and socially stable country. Vietnam is rarely confronted with religious issues and race conflicts in comparison with other ASEAN countries, such as Indonesia, the Philippines and China. Vietnam has achieved a high GDP growth rate and has maintained political and macro-economic stability through renovation policies. The effective governance of the Communist Party of Vietnam over decades has been widely recognized. Renewal policies have earned tremendous support and the transition to a market economy is still ongoing. In the light of recent terrorist-related incidents, Vietnam is perceived to be a secure investment destination.

The Vietnamese government has recently made great efforts to grow private companies and speed up state-owned enterprise equalization. The private sector has been regarded as relevant and perceived to be the driving force of the economy. The private sector has achieved a high growth rate, with a increasing share of the contribution to the state budget in the Five-Year Plan. Statistics have shown that the non-state sector (including the private sector) enjoys the fastest growth rate despite being the smallest sector. The programs of international integration have been greatly increased. Vietnam's steady success in international integration includes widening markets, building trade ties with almost every country in the world, becoming an important ASEAN member,

participating in AFTA and APEC, signing bilateral and multilateral agreements and finally becoming an official WTO member in 2007. The market climate has been significantly changed in order to be more open, and barriers to trade have been eliminated in order to leverage internal and external capital effectively.

Vietnam has seen positive change to the legal environment in recent years, which has facilitated business operations and reduced the gap between Vietnam and other leading Asian Pacific economies to unify the investment legal system, prevented discrimination between investors, simplified investment procedures and provided more opportunities to make best use of investment resources, and Vietnam's The Investment Law of 2005, which replaces the International Investment Law and the Domestic Investment Prorogation Law, seeks to unify all legal documents relating to investment, eliminate disparity between domestic and foreign investors, simplify investment procedures and establish favorable conditions for the attracting and productive use of capital. This latest legislation centers on decentralization of the awarding of investment licenses to local citizens for processes and more efficient management. Vietnam also assists businesses in securing investment finance by increasing mortgage asset forms. The 2005 Statutory Law and 163/2006 Secured Lending Judgment requires undertakings to use existing and future, tangible and intangible moveable assets as mortgages for loans. The Securities Act also controls capital exchange and stock market activities. In fact, consumers are further covered by the issue of a new Corporate Regulation that allows consumers to share in a company's core operations and the public disclosure of details in relevant transactions. Besides, many efforts have been made to improve the administrative procedures such as enterprises establishment, investment license granting, tax registration and settlement, legal dispute settlement, employment, etc. in order to facilitate investment countries.

3.1.1 Vietnam Tax Incentives

Tax incentives are given for new construction projects based on governed promoted markets, encouraged locations and project size. CIT incentives are also available for market development services that follow these requirements. New

investment and development projects shall not include initiatives created as a result of these acquisitions or reorganizations as following:

1. The Vietnamese government's promoting sectors include education, public health, sports / culture, high technology, protection of the environment, scientific research, infrastructure development, production of software and renewable energy.

2. The places that are promoted include eligible economic and high-tech districts, other industrial zones and challenging socio-economic areas.

3. Large development projects with an investment capital of VND6,000 billion or more, disbursed within 3 years of being approved (excluding those related to the manufacture of goods subject to special sales tax or those exploiting mineral resources) can also qualify for CIT incentives if the projects meet any of the minimum revenue of VND10,000 billion/annum at least 3 years after the first year of operations; or headcount of more than 3,000 at least 3 years after the first year of operations.

From 2015, large production projects are specified to include projects with a high investment cost, disbursed within 5 years of being approved (excluding those related to the manufacture of goods subject to special sales tax or extraction of mineral resources) and the use of technology assessed in compliance with the relevant legislation.

In addition, new investment projects involving the manufacture of industrial goods prioritized for growth would be eligible for CIT incentives if they meet one of these criteria. The products either support the high-tech sector or the products support apparel, textiles and footwear, IT, car assembly and the mechanical industry which are not manufactured domestically as at 1 January 2015 or which comply with EU requirements for quality or equivalents in domestic manufacturing.

For 15 years and 10 years, the two common preferential rates of 10 per cent and 20 per cent start at the start of operations, respectively. The 15% preference limit shall apply in certain cases from 1 January 2015. For certain situations it would be possible to prolong the length of the preferential tax rate. As of 1 January 2016, businesses that have 20% preferential CIT ventures would now benefit from a 17% discount. The CIT rate returns to the normal rate when the preferential rate ends. Throughout the duration of the initiative, all socialized sectors (e.g. education, health) enjoy a 10% quota.

For tax holidays and discounts, taxpayers can be liable. For a period of time immediately after the company first makes money, the holidays take the form of a full exemption from CIT followed by a tax period of 50 percent of the relevant amount. However, if the company has not derived profit within 3 years of start of operation, the
reduction in tax holidays / tax will begin in the fourth year of operation. The CIT Regulations set out eligibility requirements for these vacations and discounts. For businesses involved in manufacturing, building and transport operations employing many female workers and hiring ethnic minorities there could be additional tax cuts.

**Form of Investment**

Direct Investment

Establishment of economic organizations in the form of 100% domestic or 100% foreign owned. The Investment under contractual forms of BCC, BOT or BT contracts, the investment for business development like the expansion of production capacity or for technology renovation. Purchase of shares or allocate money in order to engage in the management of investment activities. Investment in the merger and acquisition of an enterprise and some others direct investments. Limited liability corporations with many members, limited liability undertakings with a single owner, shareholders, private companies, cooperative companies or joint business partnership may be organized into business corporations.

There some projects will be considered for approval and granted with investment certificates by the Prime Minister as follows;

1. Investment projects irrespective of capital sources, investment scale in the following areas: airport construction and operation, air transport, construction and operation of national ports, exploration, exploitation and processing of oil and natural resources, broadcasting and television, casino, tobacco production, establishment of tertiary education institutions (university)

2. Investment projects that are not mention in Category 1 without reference to capital resources and which have an investment scale of more than 1.500 billion Dong belong to the following sectors: electricity businesses, natural resources and metallurgy processing, the construction of basic railway infrastructures, roads, national transport routes, alcohol and beer production and businesses.

3. Foreign-capital investment projects: shipping sector, mail, courier, telecoms and internet network installation and delivery; construction of broadcast and telecommunication networks; printing, publishing and news, establishment of independent scientific institutes of science.

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The provincial People's Committee shall issue investment certificates to investment projects located outside manufacturing, processing, hi-tech and economic regions, including under the approval of the Prime Minister for their investment path or to investment projects in manufacturing, processing, high-tech infrastructure in areas where the Management Board has Investment Certificates.

In addition, Industrial, processing, super-tech and economic Management Board shall award investment certificates to investment projects in industrial, processing, high-tech and economic zones, including investments approved by the Prime Minister in the areas of investment management, including investment projects in agricultural, manufacturing and hi-tech infrastructure growth.

**Indirect Investment**

The indirect investments are included by the purchase of shareholding, shares, and bonds and other valuable papers, way of securities investment funds and other intermediary financial institutions.

Responsible organizations, including foreign capital firms, regardless of registered locations for their headquarters, and persons, irrespective of nationality and residency, are entitled to share capital or to buy unrestricted shares from enterprises as provided for in the Enterprise Law, except in the following cases:

1. A maximum share in 49% in the total listing shares, registered transactions of an insured bourse company, registered transaction at a stock exchange center or a maximum of 49% in the total listed fund at a certificate, a registered transaction of a securities investment funds would constitute the shareholders' interest in the stock market of Vietnam under securities law. The total number of inventories included in the listing organization shall be the sum of the stocks released by public authorities with the approval of the competent government office and shall be the registered transaction of the foreign investment companies transferred to shareholding companies.

2. In exceptional situations, the proportion of the foreign party shall obey investment law laws, international conventions, legal documents and customs of foreign investment and other legislative documents in the sectors involved.

3. Proportion of the foreign party in enterprises with 100% of state-owned capital which have been equitized or transferred to other forms following law on equalization and law on enterprise transfer of the 100% state owned capital.
4. Foreign party proportions in service companies according to Vietnam's trade and services commitment index (Protocol Annex to Vietnam Joining WTO). Proportion of the service companies in the banking areas, for instance, the current service commitment stipulates, that in Vietnam Joint Share Commercial Banks, the total shares owned by foreign parties (whether by an organization or by individual) cannot exceed 30 per cent of the total registered capital of the banks or telecoms areas.

Individuals, who purchase or sell bonds of the listed company, or registered organizations at the stock exchange center, shall not be limited to the proportion of owning bonds by international organizations. In the case of foreign investors holding transferable bonds of an issue organization, the issuing organizations must ensure that after converting bonds into their shareholdings the shareholding share of a foreign party does not exceed 49% of the total shareholdings of that organization, listed or registered. Through buying fund certificates from the investment manager, investors carry out their investment through the securities manager. The certificate of a fund is a registered document for ownership or benefit for the equity or capital proportion reported on the stock markets. The investment fund is set up by fund managers, who have the right to create multiple investment funds in various sectors with different scales and targets.

3.1.2 The Method of Tax Computation during Exemption Period

Investors with projects under the categories set out in the legal documents shall be entitled to preferential tax rates, the duration of entitlement to these rates and the length of the exemption from and reduction of tax in compliance with the tax legislation. Those investors shall be entitled to tax benefits on that portion of the income from their capital investment or from the purchase of shareholdings in an economic enterprise in compliance with the tax law until that entity has paid full corporate income tax.

For the implementation of investments in Vietnam, investors are exempted from payment of import duty in compliance with law on exports and imported taxes for machinery, products, means of transport and other goods. The income from technology transfer activities relating to investment incentive programs shall be excluded from income tax in compliance with the tax legislation. If, after the tax finalization is done, the taxpayer suffers losses, the tax office is entitled to carry forward his losses to the next year and is required to pay off these losses against taxable income for federal income tax.

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purposes in compliance with the corporate tax legislation. This term shall not exceed five years for the carry forward of losses.

Investment projects in investment incentive sectors and geographical areas and business projects with high economic efficiency shall be subject to accelerated depreciation of fixed assets; the maximum rate of depreciation shall not be more than twice the level of depreciation as stipulated by regulations on depreciation of fixed assets. Investment projects for investment opportunities, regional and economically competitive sectors shall be subject to a speedy depreciation of fixed assets; the overall rate of depreciation shall not exceed twice the depreciation amount provided for in the Fixed Assets depreciation Regulations.

Vietnam focuses on foreign investment to developing countries by beginning to reform the laws used for nearly a century and new economic laws that are more modern and conducive to foreign investment; either the exemption from tax on corporate income tax (tax holiday) or the exemption from taxes and investment allowance are to be applied. However, Vietnam's tax incentives provided that only one promoted business activity for one legal entity.

3.2 Singapore

Singapore's economic growth has been focused on a pragmatic policy to bring FDI to trade with transparency. Singapore is the most business-friendly country according to the World Bank: favorable lenders, clear regulatory regimes, tax incentives, high-quality industrial property sites, political stability, and absence of corruption make Singapore an attractive investment destination. Singapore is the 5th largest FDI beneficiary worldwide and ranked 3rd largest in East and South-East Asia, according to the 2014 United Nations Global Investment Survey. In 2014, FDI flows into Singapore increased to USD 81 billion by 27% from 2013. The key creditors are the US, the Netherlands, the UK, and Japan.

According to the World Bank report, Singapore is the easiest country to do business. Singapore has excellent infrastructure for telecommunications, finance and

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transportation, and is strategically located at the intersection of marine routes and near to major markets. As part of investment opportunities, the nation provides tax cuts and simple loan conditions. Singapore is open to foreign investment and, after registration with the Economic Development Board, provides tax incentives to businesses. However, in some industries (financial services, medical services, media and telecommunications), the country tends to retain monopolies. Throughout the domestic economy, government-related companies play a dominant position and primarily throughout investment.

3.2.1 Singapore Tax Incentives

Singapore provided various kinds of tax incentives which are applicable to companies registered in Singapore. Which are set out in the Income Tax Act and the Economic Growth Opportunities (EEIA) and are governed by different legislative bodies. The EEIA concerns opportunities for the development of new industries and for economic growth in general. Incentives are given for concessionary tax rates, ranging from 0 per cent to 15 per cent, with the concessionary tax rate usually depending on the economic footprint or contribution in Singapore, e.g. the number of additional jobs that will be generated, local business expenditure, headcount, and new activities implemented in Singapore, etc. Singapore's corporate income tax rate became lowered to 17% in 2009, but either corporate income tax exemption (tax holiday) tax exemption or investment allowance incentives continue to be used to draw investors. However, Singapore's tax incentives given that one legal individual can apply only for 1 promoted activity and conditions may differ depending on the type of activity that can be categorized by focusing on tax incentives as 2-type pioneering status and growth and expansion incentive.

There are various types of tax incentives as follows;

1. **International / Regional Headquarters Award (IHQ / RHQ)**

   The National Headquarters Award and the IHA Award include a reduced corporate tax rate on cumulative profits arising from eligible activities. Applicants must apply plans for Singapore's concrete regional or global headquarters operations, which include planned commitments to incremental business investment and skilled job development.

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2. **Land Intensification Allowance (LIA)**

   Initial tax allowance of 25% and regular tax allowances of 5% for qualified capital expenses incurred in the construction or renovation/expansion of a qualified building or structure are provided by the Land Intensification Allowance.

3. **Integrated Investment Allowance (IIA)**

   The Integrated Investment Allowance includes a percentage allowance based on approved fixed capital expenditure for manufacturing equipment that is situated outside Singapore for an approved project. This allowance shall be granted in addition to the normal allowance for capital.

4. **Mergers & Acquisitions (M&A) Scheme**

   The Mergers and Acquisitions Scheme provides a 25 percent grant for every year of the appraisal, up to a cap of $5 million. This also includes tax deductibility and stamp exemption. The EDB will give its consent to waive the obligation to incorporate the Group's final holding company and fiscal resident in Singapore.

5. **Pioneer Incentive**

   A corporate tax exemption on income from eligible operations is offered by the Pioneer Incentive. Applicants must apply plans for substantial new economic investments, covering large incremental capital spending and business investment, as well as expertise and professional employment in Singapore, as well as anchoring the most advanced technology, expertise and activities in Singapore. Factors to be considered are also the importance of planned investment in business development in Singapore, contributions to research and technology growth and innovation capacities, and future spin-offs to the rest of the economy.

6. **Development and Expansion Incentive (DEI)**

   Rising profits from qualified activities is a lower corporate tax rate. The Growth and expansion incense. Applicants are expected to apply proposals for substantial manufacturing investments, or to extend leading-edge activities or capabilities in Singapore. Factors of consideration also include the importance of the proposed investment to the industrial development in Singapore, contributions to the growth of capacity for research and development and innovation, as well as possible spin-offs to the rest of the economy.
7. **Finance & Treasury Centre (FTC) Tax Incentive**

The Tax Advantage of the Finance and Treasury Center provides a reduced corporate tax rate on taxes, interest, dividends and profits from qualified services and activities. It also offers a withholding tax exemption for interest on bank loans and licensed FTC network companies.

8. **Aircraft Leasing Scheme (ALS)**

The Aircraft Leasing Scheme offers a reduced corporate tax rate on the income obtained or generated by the leases of aircraft or aircraft engines and approved activities in Singapore. The Automatic withholding tax exemption also provides for the allowable payment of qualifying foreign loans for the purchase of aircraft or aircraft motors.

3.2.2 The Method of Tax Computation during Exemption Period

The pioneer company shall be granted full tax exemption, reflecting the Economic Growth Incentive Act (Relief from Income Tax) which may be called an investment promotion act of Singapore. Any loss or benefit from Singapore's pioneering business shall be borne in mind by the tax estimate provided in Singapore Investment Promotion Act. If the pioneer company has to meet the restrictions set out in Section 8 of the Economic Expansion Incentives (Relief from Income Tax) Act in respect of any trade or business other than the trade or business related to the applicable pioneer product as follows:

1. Particular accounts for the particular trade or company shall be maintained

2. In the event of any separate trade incurring losses in any accounting period, those losses shall be included in the estimation of the revenue of the pioneering undertaking unless the Comptroller is assured that the loss is not sustained for the purpose of obtaining a tax advantage

3. In cases of such separate profits for the selling of goods or the provision of service, the statutory revenue from such company is deemed to be 5% of the total amount so receivable from the selling or provision of the service and the income of a pioneer enterprise are reduced accordingly.

4. If, in the opinion of the Comptroller, the success of such separate trade is subordinate and incidental to the operation of the trade or company related to its
commodity, the profit or loss resulting from such activities shall be considered part of the pioneer enterprise's profit or loss.

Singapore provides a range of opportunities to invest, including tax holidays and discount plans for accelerated depreciation, favorable loan terms, equity ownership and high-quality industrial estates. Since Singapore is effectively a free port, businesses cannot expect industrial companies to be covered by tariffs or quotas. In the administration of incentives, the government needs to remain flexible, so there is not always a complete publication of available incentives. However, the authorities allowed one legal entity doing one only business activity.
Chapter 4
The problems of Interpretation between Thailand’s Board of Investment and Revenue Department Concerning Tax Exemption and Tax Computation under Investment Promotion

4.1 Problem of Interpretation of the Provision of Law

Each authority has their own interpretations that lead to the conflict of interpretation. It can be said that the problem of the interpretation occurred because of the goals of the authorities are different.

4.1.1 The Interpretation by Revenue Department

To collecting taxation is the main duty of Revenue Department, so to impose tax as much as possible in each year is the main target of Revenue Department. The government will spend that revenue to develop the country in various fields; also the government will spend to allocate the welfare and giving the better living to the citizen. So that, the way of Revenue Department’s interpretation must be benefit to the country than to benefit the investors. The Revenue Department imposes taxation under the Revenue code Section 65 par 1 is a general rule which applies to all companies and partnerships that any net profit which is calculated by deducting income from business or income arising from business carried on from an accounting period with expenses in accordance with conditions prescribed in Sections 65 Bis and 65 Ter. Income from business, income arising from business carried on or deducted expenses from income mean all income and expense items related to the companies or partnerships operations regardless company will undertake various types in a single project or multiple projects because profit and loss will be combined into one to calculate companies or partnerships income tax. Such case is all companies or partnerships operations in accounting period measurement so companies or partnerships could not calculate taxable income or loss separately from each project. Calculating taxable income or loss separately from each project is only companies or partnerships operations measurement for advantage companies or partnerships operations. It is not operations measurement according to Revenue Department’s aim.
However, Revenue Code Section 65 paragraph one, stating the obligation of a company to combine all net profit and loss of all activities, is for a general situation, where there are no laws providing specific rules. If there is providing specific rules to except Section 65 par 1 of Revenue Code, calculating must comply with that specific law. Therefore, the Revenue Department adopt the Revenue Department 5 February 1987 announcement to calculate net profits and net loss in the promoted company or partnership only rules on the calculation of net profits and net loss for promoted activities to pay corporate income tax, exempt corporate income tax and non-exempt from corporate income tax. But according to this announcement there is only one project has been exempted corporate income, the problems cannot be answered by this announcement, as well. Therefore, Revenue Department asked taxation committee to issue taxation order No 38/2552 to identify after the B.E. 2548 method should be applied by offsetting total net profit and net loss in promoted project and un-promoted project in the same annual account; if promoted project has net profit, it will be exempted tax from corporate income tax but if promoted project has net loss, net loss will be deducted from net profit in un-promoted project and then if such project still has net loss that net loss is deemed as annual loss of promoted project, in this case, business is granted to deduct such annual loss from the net profits accrued after the expiration of the period of exemption of juristic person income tax for a period of not more than five years from the expiry date of such promoted period. The promoted person may choose to deduct such loss from the net profit of any one year or several years’ accordance with The Section 31 of Investment Promotion Act B.E. (NO. 3) 2544. Meanwhile BOI required calculating by each project separately, it makes promoted people confusing in calculating method.

4.1.2 The Interpretation by Board of Investment

According to the target of Board of Investment, the Board of Investment is responsible for giving benefit of the investment to the investor accordance Investment Promotion Act that main goal is expanding domestic investment to let economic growth by using tax and non-tax incentives to motivate investors therefore, reducing the burden to investors whether tax and non-tax incentives are used to archive those goals. Section 31 of Investment Promotion Act provided a specific rule in profit and loss calculation which is different from the rules that set up in the Revenue Code, Section 65 paragraph one. In addition, the Investment Promotion Act was drafted with the aim of meeting Thailand’s specific requirements, such as investment stimulation, increased employment, increased income and more even income distribution, through the offer of incentives to
specific investments that government wishes to promote, including Section 31 of
Investment Promotion Act, a promoted person shall be granted exemption of corporate
income tax on the net profit derived from the promoted activity as prescribed by an
announcement of the Board. If any business is important and beneficial for the country
specifically as specified by the Commission to be promoted in the context of such
activities the exemption from corporate income tax on the net profits derived from
transactions Promotion with the time stipulated by the Committee but not to exceed eight
years from the date of the first Income from that business. The income that must be used
to calculate the net profit derived from the business operation under this section must be
include the income from the sale of products and revenue from selling semi-finished
products as the Board deems appropriate.

In the case that the business is operating during a tax exemption period that
mention before the committee may allow the person who receiving the promotion to Take
the annual loss incurred during that time to deduct it from the net profit later. The
corporate income tax exemption is scheduled for no more than five years from the date of
expiration. Then can choose to deduct from the net profit of any year or many years.
Therefore, the method of computation of the investment capital must be accordance with
the rules and procedures that prescribed by the Board.

The reason of Section 31 is to improving tax incentives, increasing
efficiency and value of tax incentives. Even Investment Promotion Act did not prescribe
company can calculate separately from each project to exempt net profit tax or take net
loss to deduct after the expiration of the period of exemption, interpretation about such
calculation should not affect the promoted person rights or conflict with spirit of
Investment Promotion Act. Also, the dividends that arise from the promoted operation
given an exemption from income tax by a legal person shall be exempted from the
computation of taxable income for the remainder of the term in which the beneficiary is
exempted from income tax by a legal person as provided for in Section 34 of the
Investment Promotion Act.

However, the promoted person can use the privileges under Section 31 or
not must be allowed by the Revenue Department. Can be said that, the Board of
Investment is responsible for only considered the privileges and the benefits of the
applicant. But the tax privileges which the promoted person has approved will have legal
effect because of the Revenue Department’s approval. It is seen that there is a dispute
between organizations that have the power to collect taxes. However, those promoted
person who receive investment promotion must comply with the Revenue Code and any others rules and regulations.

4.1.3 The Interpretation by Central Tax Court

The Central Tax Court has opinion on the interpretation that Taxation law is a public law, so that the interpretation must be strictly interpreted. And this must not affect the rights of taxpayers, in other words, the taxpayer should be entitled to the benefits and not to increase tax burden to the tax payers.

The Central Tax Court considered Articles 16 and Article 19, together with Article 31(1) of the Investment Promotion Act B.E.2520, could is agreed that the purpose of the law is to measure the net profit of the promoted entrepreneur separately by company or by project, since the privilege of each project is different in terms of the conditions, condition and length of the investment promotion as defined in each BOI certificate, if it is required to measure the profit-loss collective in all projects of each BOI certificate. After Article 31 of the Investment Promotion Act B.E.2520 is considered by the Court, followed by Article 65, paragraph 1 of the Revenue Code, it is agreed that the Investment Promotion Act intends to measure the income loss of the promoted entrepreneur differently from that specified in the Revenue Code. Although the administrative law and tax collection law are Public Laws, the interpretation of public law, in some cases, requires some consistent private law for collaborative interpretation too. Therefore, the profit and loss calculated for the exercise of the right as set out in Article 31 shall be rendered separately for each project by taking all losses resulting from the privileged period as set out in Article 31 to deduct from the net income received after the privileged period not exceeding 5 years after the expiration of that period by choosing to deduct from the net profit of any year or several years. So it is clearly seen that the principal of Tax Law shall be strictly interpret because this will be affected to the rights and the benefits of the tax payers. Therefore, it should be interpreted to benefit for the tax payers.

Clearly see that, there are conflicts between taxation organizations. And no organization can provide definite regulations these things are against the principles of good taxation of Adam Smith as we know as “4 Cannons”, it is including

- Cannon of Equity
- Cannon of Certainty
- Cannon of convenience
- Cannon of Efficiency
The conflict of the interpretation of the authorities is not in accordance with the above principles especially the cannon of certainty, which is the taxation that collect by the government should be clear and certain both in tax rate, tax assessment, and tax imposition. This certainty it depends on reasonable, it did not depend on the willingness of the tax payer. It means the government should provide or to legislate the clearly measure about taxation such as tax rate, the method calculation, power of tax authorities and tax imposition in clearly way. Moreover, it should be specifying clearly about the interpretation of taxation law and which department has the real power to enforce the law.

Therefore, when considering the interpretation of each organization is of the opinion that it should be interpreted in a manner that is beneficial to taxpayers or investors in accordance with the provisions of Investment Promotion Act Section 31. That is to say, when there is a special law, it must take this special law into consideration and use to enforce, also and to comply with the spirit of the law as well. And the interpretation must be strictly interpreted and must not increase responsibility for investors. This is for the benefit of the country. Which will make both domestic investors and foreign investors interested and choose Thailand to be the destination of investment.

4.2 Analysis the Problem of Deficiencies of the Law

To obtain investment promotion in Thailand, the Board of Investment will approve entrepreneur obtaining investment promotion project-by-project by considering any business meet the criteria prescribed by law that business is able to apply for investment promotion to the Board of Investment. That leads to the problem of calculating net profits and net loss of business entrepreneur who obtaining more than one investment promoted project because there are many entrepreneurs obtaining promoted investment more than one project. The answer to this question would have to consider and interpret provisions of the related law and criteria.

The Section 31 of Investment Promotion Act B.E. (NO. 3) 2544 is only prescribed A promoted person shall be granted exemption of juristic person income tax on the net profit derived from the promoted activity for a promoted period, but in the case where a loss has been incurred during the period of receiving exemption of juristic person income tax, promoted person is granted to deduct such annual loss from the net profits accrued after the expiration of the period of exemption of juristic person income tax for a period of not more than five years from the expiry date of such promoted period. The
promoted person may choose to deduct such loss from the net profit of any one year or several years. However Investment Promotion Act B.E. (NO. 3) did not mention the criteria to calculate net profits and net loss in getting more than one investment promoted project business entrepreneur whether how to calculate juristic person income tax in the case where a loss has been incurred in at least 1 project of promoted projects. While the Revenue Department 5 February 1987 announcement the calculating of net profits and net loss in the promoted company or partnership only rules on the calculation of net profits and net loss for promoted activities to pay corporate income tax, exempt corporate income tax and non-exempt from corporate income tax. But according to this announcement there is only one project has been exempted corporate income, the problems cannot be answered by this announcement, as well.

From this problem many entrepreneurs have been the impact on calculating net profits and net loss in obtaining more than one investment promoted project business entrepreneur, for example N M B-Mine Bea Thai Co Ltd is the manufacturer receiving more than two investment support projects and in compliance with the purpose of the Investment Planning Act B.E.2520, the Central Tax Court took the final decision on the guidance on the estimation of income loss. Although the precise calculation method is not specified in Article 31 this Act, if each business or project is measured separately for the exercise of a right to tax exemption for net profit or net loss to deduct from net income obtained during the promotion.

According to the decision of Central Tax court of undecided case no.177/2552 that have been judge to decided case no.190/2553 between NMB-Minebea Ltd. and Revenue Department can be conclude that during the accounting period October 1, 2529 to September 30, 2530 until the accounting period April 1, 2541 to March 31, 2542 the company carry the business promoted under investment promotion act 44 projects by the company fill the tax return Porngordor 50 1st revisions compile the loss of each project which promoted under investment promotion to adjust for filling new tax return by calculate net loss and net profit according to section 31 paragraph 4 of investment promotion act which is it should bring net loss of the project promoted under investment promotion act deduct with net profit of other promoted project. Otherwise, Revenue Department regarded that the company should bring net profit and net loss of all the promoted business activities to calculate for the net loss which is bring to deductible with profit of un-promoted activities.

The Central Tax Court passed judgment on the issue of whether the profit and loss in more than one promoted projects has to be offset against the profits of other BOI-
promoted business activities. The calculation profit and loss in promoted projects accordance with Section 31 of Investment Promotion Act differ from Revenue Department calculation in more than one promoted projects. Nevertheless, the Revenue Department does not agree with the calculation based on Article 31 of the Investment Promotion Act, since Article 65 of the Revenue Code should also be regarded as implying that the income generated from the accounting period deducted from the expenditure must be taken into account and Article 65 must be used to classify the income-expenditure of all promoted enterprises as being regarded to be one individual or one tax agency, if The assessment of profit or loss of company must be regarded on the basis of the provisions of the Revenue Code and all promoted companies in all projects shall be treated equally, the assessment of each separate project is not sufficient as provided for in Article 65 of the Revenue Code (Declaration of Revenue Department on Net Profit and Loss Calculation of Promoted Companies or Registered Ordinaries).

In addition, there is a Board of Taxation Rulings where the company operates the business promoted and normal business as well as the business promoted which receives privilege of exemption from corporate income tax for more than one project. In this case, the sponsored company which, pursuant to Article 31 of the Investment Promotion Act B.E., 2520 promotes investment in the business of each type of business has more than one project as amended by the Investment Promotion Act (No. 3) B.E. 2544 which is the provision imposed on the net profit or loss calculation of the promoted undertaking in all cases, i.e. income and expenditure of all types of promoted enterprises in the same accounting period, must be calculated in accordance with the provisions of the Revenue Code. Therefore, any promoted company which receives investment promotion in many projects, income and expenditure of all promoted projects in the same accounting period shall be calculated in order to finalize the net profit or net loss amount of the promoted company, where there is a net loss, shall be considered to be the annual loss of the promoted company and the company may receive such annual loss from the corporation. After the company calculates net profit from the promoted businesses in respect of the above mention principle and it is found that the company has annual loss, later the corporate income tax exemption period of any promoted business is expired, the company still receive the corporate income tax deduction for net profit obtained from the investment 50% of normal rate in the period which is not exceeded 5 years after the expiry of corporate income tax exemption period as defined by Article 35(1) of Investment Promotion Act B.E. 2520. The company may have both promoted business with privilege of corporate income tax deduction and normal business which has no
corporate income tax exemption privilege, therefore, the company is eligible to take the whole of annual loss arisen from all promoted businesses to subtract from net profit of the promoted business with privilege of corporate income tax deduction in 50% of normal rate as defined by Article 31, paragraph 4 prior, if the annual loss of the promoted businesses is still remained, the company is eligible to take such annual loss to subtract from net profit of the normal business which pays corporate income tax in normal rate as specified in Article 62 bis (12).

To complying with Investment Promotion Act B.E. (NO. 3) 2544 cannot bring tax incentives to investors because authority who is responsible for enforcing the tax laws is Revenue Department by abiding the Revenue Code and other related laws which is to combine all net profit and net loss of all activities, if remain profit, it would be exempt, if loss occurs it will be loss carry forward. Vagueness of practice of Revenue Department and changing orders under the same circumstances makes investors confused. After inquired Board of Investment who is authority is responsible for giving benefit to investors about the correct criteria, it is found that Board of Investment cannot answer it clearly.

According to this case, it is clearly see that no laws clearly identify the method of calculating net profit and net loss in the company that has been promoting several projects that makes conflict between Revenue Department calculation method and Board of Investment method, the court has the opinion that the interpretation must be strictly interpreted.

It can be seen that this problem does not occur in 2 countries that are Vietnam and Singapore. Thailand, Vietnam and Singapore are countries in the same region. Having similar overall factors Fundamental concepts, aims and principles regarding investment promotion those are consistent and similar. But those countries have clearly regulations and the method of calculating the corporate income tax of the promoted company clearly which is both Vietnam and Singapore tax incentive provided that only one juristic person can only apply for one activity, also they have departments that have the power and duty to interpret and enforce this law clearly as well. So, Thailand can apply those rules in our investment promotion laws. Set the rules Regulations and assigning one organization to be responsible and enforcing this law to prevent conflicts and the legal defected. And amend the laws in Investment Promotion Act to legislate the method of calculate profit and loss of the companies that have both promoted and non-promoted business activities, also should provide only one business activity for one juristic person as well.
Chapter 5
Conclusion and Recommendations

5.1 Conclusion

Tax measures are widely used in the developed countries and developing countries as a tool to promote investments and attracting investors to invest in those countries. Government provides tax incentives to reduce entrepreneurs’ business costs and increase profit. The study found that each tax measures affect the economy differently; government will use any tax measures based on government focus on domestic economy direction. Thailand, there are using several tax measures prescribed on Investment Promotion Act to promote investment; amending and modifying the law subject to different each circumstances. Nowadays there is Investment Promotion Act B.E. (NO. 3) 2544 has been enforcing. This Act provides criteria for project approval and investment incentives to promoted person but there are problem of enforcement, one of problems is calculating net profits and net loss in obtaining more than one Investment Promoted project business entrepreneurs that lead to dispute between NMB Minebea Thai Ltd v the Thai Revenue Department.

On 13 October 2010 the Central Tax Court passed judgment, Black: Number Case No. 177/2552, Red- Number Case No. 190/2553 between MB-Mine Bea Thai Co Ltd (plaintiff or company) and Revenue Department (defendant), due to related agencies interpreted calculating net profits and net loss in obtaining more than one Investment Promoted project differently between Investment Promotion Act as specific law and Section 65 of Revenue Code as a general law. Board of Investment thinks calculating net loss in promoted business accordance with Investment Promotion Act which is a special law and not subject to Section 65 of Revenue Code which considers one taxpayer as one tax unit that requires deducting total net profit and net loss in every promoted projects and non-promoted projects in the same annual account called vertical calculation.; on the other hand Board of Investment considers each promoted business can calculate net profit and net loss separately accordance with Section 31 of Investment Promotion Act called horizontal calculation. That difference lead to question which calculation method is correct.

After the court has considered Section 31 of Investment Promotion Act and Section 65 par 1 of Revenue Code found that Section 31 of the Investment Promotion Act
B.E. (NO. 3) 2544 is not clear about the direction and method of calculating net profits and net loss in obtaining more than one Investment Promoted project. The Central Tax Court in this case adopted the concept of ‘intention of legislature’, which conveys the concept of purpose and or spirit of Investment Promotion Act. This identifies calculation method to increase efficient and value tax incentives to investors and allow Board of Investment can consider tax incentives under its own criteria; this is different from general rule that was prescribed in Revenue Code which is public law which regulates the relationships between individuals and the government and its organs, under some circumstances the principle and provision of private law must be used in order to interpret specific cases. Consequently, the court in this case held the application of Section 11 of the Civil and Commercial Code that prescribed “In case of doubt, the interpretation shall be in favor of the party who incurs the obligation.” This case is related to Section 65 of Revenue Code, Section 31 of Investment Promotion Act- in order to rule that the interpretation should be made in favor of plaintiff – the party that would be liable to the penalty because, if plaintiff has to calculate net profit and net loss according to Section 65 par 1 of Revenue Code, plaintiff will be deprived of the right of Section 31 of Investment Promotion Act that allows promoted person to calculate net profit and net loss in each activity separately and the right to deduct an annual loss, provided that it had been incurred during the period of promotion (for valid activities), against net profits accrued for no more than five years after the end of tax exemption. The promoted person may choose to deduct such loss from the net profit of any one year or several years.

Investment Promotion Act B.E. (NO. 3) 2544 defined the criteria on approving project that apply for promoting investment without restrictions approved project; the Board of Investment will approve only one project on one juristic person. Thus there are many promoted juristic persons who obtain more than one investment promoted project and operate other non-promoted projects at the same time, problem of calculating net profits and net loss happens constantly. Investment Promotion Act B.E. (NO. 3) 2544 defined giving the benefits to promoted person- exemption of juristic person income tax for a period of not more than eight years- but did not define right of more than one promoted project entrepreneurs to take net loss in promoted project to non-promoted project in the same account period. These lead to problem of law interpretation that is particularly important in enforcing the law, when misinterpretation has occurred or interpretation did not meet spirit of the law, enforcement may cause to opposite effect.

From the above it can be seen that the interpretation of the law of the Revenue Department, Board of Investment, and Central Tax Court are conflicts. The Revenue
Department imposes taxation under the Revenue code Section 65 par 1 is a general rule which applies to all companies both promoted and non-promoted business. While the Board of Investment use Investment Promotion Act B.E.2520 to enforce. Section 31 of Investment Promotion Act provided a specific rule in profit and loss calculation which is different from the rules that set up in the Revenue Code, Section 65 to grant tax exemption of juristic person income tax on the net profit derived from the promoted business activity as prescribed by an announcement of the Board. However there’s no law about the method of calculation state in Section 31 of Investment Promotion Act B.E.2520. While The Central Tax Court has opinion on the interpretation that Taxation law is a public law, so that hat interpretation must be strictly interpreted. And this must not affect the rights of taxpayers. So that, the authorities should focus on the correcting of the interpretation to benefit to the investors and tax payers. Also, the authorities could adopt Vietnam Law and Singapore which is to provide only one business activity for one juristic person law to amend Section 31 on Investment Promotion Act B.E.2520.

5.2 Recommendations

The sustainable solutions are not only interpretation law to comply with spirit of the law but authorities also should find policy solutions, as well if incentives and exemption impact on the taxation systems make the government collect tax less unnecessarily; government has not enough money to develop of the country. Therefore, the authorities should modify tax incentives and exemption criteria by maintaining stimulating new investment purpose that is less impact on the taxation systems. These include the following:

1. The authorities should adopt foreign laws, which are Vietnam tax incentive law and Singapore tax incentive law, by giving tax incentives to only one juristic person on one project. This is different from present criteria Board of Investment will approve entrepreneur obtaining investment promotion project-by-project by considering any business meet the criteria prescribed by law and regardless that person has been promoted or not in order to minimize the revenue loss from collecting corporate income tax. Therefore, the authorities should amend the Investment Promotion Act B.E.2520 Section 31 to legislate the method of calculation on the net profit and net loss for the promoted business activities who obtains the promoted project in paragraph 2 of this section.
2. In case, authority allows promoted person who obtain more than one promoted projects to take net loss in promoted activities to deduct net profit in non-promoted activities. This measure, promoted person can be exempted full amount of corporate income tax. But we cannot deny that such measures could cause to tax avoidance- entrepreneurs can transfer profits between promoted activities and non-promoted activities to make non-promoted activities have right to exempt tax and have less tax burden.

3. In case, net taxable profit or loss derived by one taxpayer from every promoted activities must be combined first, if promoted activities have net profit; such profit will be exempted corporate income tax. As mentioned before this measure makes promoted activities will not receive any benefit for exempt corporate income tax and is conflict with Section 31 par 4 of Investment Promotion Act B.E. (NO. 3) 2544 defined that promoted activities where a loss has been incurred during the period of receiving exemption of juristic person income tax promoted person is granted to deduct such loss from the net profits accrued after the expiration of the period of exemption of juristic person income tax. The government should give priority to such conflicts by correct the interpretation to benefit the promoted person.

Whether government uses which criteria, the most importance for sustainable economic development is finding other non-tax measures to support entrepreneurs to reduce production costs such, development of transport services up to international standards, reduction unnecessary process or defining clear law and criteria to reduce illegal power of officer, etc.
Bibliography

Books

Periodical Materials and Journal

Law, Regulation and State
Supreme Court Judgment No.3545/2528, No. 4174/2528.

Internet
overseas/singapore/foreign-investment?&actualiser_id_banque=oui&id_banque=0&
memoriser_choix=. (last visited 16 August 2015).


Thailand Board of Investment. Criteria for Granting Incentives. At http://www.boi.go.th/

Thailand Board of Investment. Criteria for Project Approval. At http://www.boi.go.th/

Tushar Seth. Other Cannons of Taxation. At http://www.economicsdiscussion.net/taxes/
canons-of-taxation-enunciated-by-adam-smith-discussed/1948. (last visited 17
July 2015).