THE LIMITATION OF USING THE NET WORTH METHOD TO SUPPRESS CORRUPTION

BY
MR. KASIDET PHORNWILATSIRI

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

GRADUATE SCHOOL OF LAW ASSUMPTION UNIVERSITY

DECEMBER 2010
THE LIMITATION OF USING THE NET WORTH METHOD TO SUPPRESS CORRUPTION

BY

MR. KASIDET PHORNWILATSIRI

AN INDEPENDENT STUDY PAPER SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENT FOR THE DEGREE OF MASTER OF LAWS (TAXATION LAW)

GRADUATE SCHOOL OF LAW
ASSUMPTION UNIVERSITY

DECEMBER 2010
Independent Study Paper Title: The Limitation of Using Net Worth Method to Suppress Corruption

Author: Mr. Kasidet Phornwilatsiri
Major: Master of Laws (Taxation Law)
Advisor: Ms. Chindawan Sangkanjanavanich

Faculty of Law, Assumption University approves this Independent Study Paper as the partial fulfillment of the requirement for the Degree of Master of Laws.

Director of the Graduate School of Law
(Assoc.Prof. Nattapong Posakabutra)

Committee:

Chairman
(Mr. Prapas Kong-ied)

Committee
(Dr. Panit Dhirapharbwongse)

Advisor and Committee
(Ms. Chindawan Sangkanjanavanich)
ABSTRACT

Currently, corruption is widely found and practiced in numerous ways using complex and elaborate methods. The law sometimes lacks the ability to be strictly enforced especially when it comes to establishing prove of a person’s individual wealth. Application of appropriate tax methods can be an effective alternative and be used for tax assessment and to appraise the amount of tax and a person’s wealth, all which are theoretical possibilities. According to the “Net Worth Increasing Method” which the Thai tax system applies under the provision of section 49 of the Thai Revenue Code, this special method of assessment can be used effectively in order to assess the increase of wealth in the taxable year and applies it directly with a tax rate. However, the Revenue Code of Thailand defines the special process to be applied following a general method. It generates a loophole in case of limited time available to issue summons which is a precondition for making a tax assessment. Moreover, as the purpose of Net Worth Method is to suppress corruption, the size of general tax prescription is rather short.

It is found that the special method of assessment under Section 49 requires an approval of the Director-General when applied following the general method. This application generates both advantages and disadvantages for effective law enforcement. The disadvantages being that in the provision of the period of time to issue summons for making assessment and prescription directly creates an obstacle to the enforcement of the Net Worth Method. In contrast to this and from the study about tax assessment of the US, by Net Worth Method, such is much more effective. In the US, there is no separation between special methods and general methods of proving the net income of a taxpayer. Moreover, the Internal Revenue Services (IRS)
officer can apply the Net Worth Method to determine the net income of taxpayer at anytime. The Net Worth Method requires an approval of the Group Manager in the case that there is a reasonable doubt of tax evasion. The limited time is not in a specific period time of 3 years unlike other methods of proving. The Net Worth Method has more special characteristics in order to suppress corruption. For comparison, the effective way to suppress corruption by using Net Worth Method in Thailand should not relate to period of time and prescription of issuing summons in order to increase an opportunity for the tax official to assess the tax taxpayers for their wealth. Nevertheless, the issuing of summons should still be used in order to protect the taxpayer’s right.

The author’s recommendations are going to offer the prescription equal to the criminal law prescription for making assessment using special methods, the Net Worth Method. This is because the Net Worth Method aims to suppress corruption and corruption directly relates to criminal law offences. Also to eliminate the limitation of time to issue summons, which is the starting point and important condition and distinction whether the tax assessment official has the power of assessment or not. Most importantly, all recommendations are made with the taxpayer’s rights in mind.
ACKNOWLEDGEMENT

I would like to express my profound gratitude to the Honorable Judge Chindawan Sangkanjanavanich, my advisor, for her valuable support, encouragement, supervision and extremely useful suggestions throughout the time of writing this independent research paper.

Thanks are due to Judge Prapas Kong-ied, the Chairman of the Independent Study of Oral Defense, for all his kind recommendations and helpful suggestions. I also thank Dr. Panit Dhirapharbwongse, the Committee member of the Independent Study Oral Defense team for all his kind support.

I am equally thankful to Associate Professor Nattapong Posakabutra, the Director of Master of Laws Program for his valuable suggestions throughout the taxation course program. His moral support and continuous guidance enabled me to complete my study successfully.

Furthermore, I would like to offer my appreciation and thanks to all professors and lecturers at the Assumption University Master of Laws Program who encouraged me to further and complete my law education.

I am evermore especially indebted to my parents for their love, encouragement and support given to me.

Last but not least, many thanks are due to my LL.M. friends and colleagues for their sincerity, watchfulness and for sharing their precious time and experience with me.

Kasidet Phornwilatsiri
# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Abstract</strong></td>
<td>iii</td>
</tr>
<tr>
<td><strong>Acknowledgement</strong></td>
<td>v</td>
</tr>
<tr>
<td><strong>Chapter 1  Introduction</strong></td>
<td></td>
</tr>
<tr>
<td>1.1 Background and General Statement of the Problems</td>
<td>1</td>
</tr>
<tr>
<td>1.2 Hypothesis of the Study</td>
<td>2</td>
</tr>
<tr>
<td>1.3 Objectives of the Study</td>
<td>2</td>
</tr>
<tr>
<td>1.4 Study Methodology</td>
<td>3</td>
</tr>
<tr>
<td>1.5 Scope of the Study</td>
<td>3</td>
</tr>
<tr>
<td>1.6 Expectation of the Study</td>
<td>3</td>
</tr>
<tr>
<td><strong>Chapter 2  Assessment Methods under Thai Revenue Code</strong></td>
<td></td>
</tr>
<tr>
<td>2.1 The General Method of Making Assessment</td>
<td>5</td>
</tr>
<tr>
<td>2.1.1 Tax payer filed tax return under Section 19</td>
<td>5</td>
</tr>
<tr>
<td>2.1.2 Taxpayer failed to file tax return under Section 23</td>
<td>11</td>
</tr>
<tr>
<td>2.1.3 Period of Time for Making an Assessment</td>
<td>13</td>
</tr>
<tr>
<td>2.1.4 Tax Assessable Notification</td>
<td>14</td>
</tr>
<tr>
<td>2.2 The Special Method of Making Assessment: The Net Worth Method</td>
<td></td>
</tr>
<tr>
<td>2.2.1 The provision of Section 49</td>
<td>17</td>
</tr>
<tr>
<td>2.2.2 The Cause of Using Section 49</td>
<td>17</td>
</tr>
<tr>
<td>2.2.3 Section 49 Applies with the Period of Time in Section 19</td>
<td>18</td>
</tr>
<tr>
<td>2.2.4 Section 49 Applies with Prescription in Section 23</td>
<td>18</td>
</tr>
<tr>
<td>2.2.5 Factors, used to determine the amount of net income</td>
<td>18</td>
</tr>
<tr>
<td>2.2.6 Efficiency and Equity of Net Worth Method</td>
<td>20</td>
</tr>
<tr>
<td>2.2.7 The Net Worth Method and Anti-Money Laundering Law</td>
<td>20</td>
</tr>
<tr>
<td>2.2.8 Right to Appeal tax Assessment</td>
<td>23</td>
</tr>
<tr>
<td>Chapter</td>
<td>Title</td>
</tr>
<tr>
<td>-----------</td>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>Chapter 3</td>
<td>The Use of Net Worth Method for Assessment under the US Tax Law</td>
</tr>
<tr>
<td>3.1</td>
<td>The Definition of Net Worth Method</td>
</tr>
<tr>
<td>3.1.1</td>
<td>Net Worth Method of Proof</td>
</tr>
<tr>
<td>3.1.2</td>
<td>Evidence utilized by the IRS</td>
</tr>
<tr>
<td>3.1.3</td>
<td>Tax return, the starting point of assessment</td>
</tr>
<tr>
<td>3.2</td>
<td>Presumptive Taxation</td>
</tr>
<tr>
<td>3.3</td>
<td>Cases, Used Net Worth Method</td>
</tr>
<tr>
<td>3.4</td>
<td>Overview of the Net Worth Method of Proof Formula</td>
</tr>
<tr>
<td>3.5</td>
<td>Methods, support the Net Worth Method</td>
</tr>
<tr>
<td>3.5.1</td>
<td>Bank deposit cash expenditure method</td>
</tr>
<tr>
<td>3.5.2</td>
<td>Source and Application of Funds Method</td>
</tr>
<tr>
<td>3.5.3</td>
<td>Net worth and Cash expenditure Method of proof</td>
</tr>
<tr>
<td>Chapter 4</td>
<td>Analysis of the Problem of Using Net Worth Method to Suppress Corruption</td>
</tr>
<tr>
<td>4.1</td>
<td>The Problem of Special Method Applies with General Method under Thai Revenue Code</td>
</tr>
<tr>
<td>4.1.1</td>
<td>Analysis of Power of Assessment by Net Worth Method under Thai Tax Law and the US Tax Law</td>
</tr>
<tr>
<td>4.1.2</td>
<td>Analysis of the Limitation of Time to Use the Power of Assessment</td>
</tr>
<tr>
<td>4.2</td>
<td>The Problem of Net Worth Method to Suppress Corruption</td>
</tr>
<tr>
<td>Chapter 5</td>
<td>Conclusion and Recommendations</td>
</tr>
<tr>
<td>5.1</td>
<td>Conclusion</td>
</tr>
<tr>
<td>5.2</td>
<td>Recommendations</td>
</tr>
<tr>
<td>Bibliography</td>
<td></td>
</tr>
</tbody>
</table>
Chapter 1
Introduction

1.1 Background and General Statement of the Problems

The general characteristic of Section 49 of the Thai Revenue Code specifies the assessment of personal income tax by using the increasing worth (Net Worth Increasing Method) for the taxable year. It covers all kinds of personal income tax and can be used effectively because of its simplicity in application. In the Thai Revenue Code, there is no specific wording given for the “Net Worth Method” but the Thai Revenue Department applies such method to the provision Section 49 as a special method to prove an increase in taxpayer’s wealth for the taxable year when the tax assessment official cannot identify taxable income of such a person by using other general methods of assessment given under Section 19 through Section 26. The Net Worth increasing method aims at suppressing corruption in particular. However, the provision of the special method must concern with the general methods creating both positive and negative aspects. This research is going to analyze its limitations created by Section 19 and Section 23. Also the limit of issuing a summons within a period of time as prescribed under Section 19 and Section 23 – it is an important condition for the assessment official either to have the power of assessment or not. It really generates disadvantages to enforce Section 49 effectively. According to Section 19, for example, it determines that there must be an issue of summons within a period of 5 years (2 years without conditions and an added 3 years with the approval of the Director-General of the Revenue Department), In practice, taxpayers can apply the provision of Section 19 as a loophole and to terminate the power of assessment if the time for issuance of summons exceeds more than 5 years. It directly limits the powers of assessment of the tax officer, especially in regard to illegal income including income from corruptions. While the Net worth Method with its total purpose to suppress corruption. In addition, in cases in which prescription of tax case apply to the Thai Civil and Commercial Code Section 193/31, such also limits the power of assessment instead of setting no limit for the time to assess such illegal incomes. This research paper is going to offer a way to solve the problem with
loopholes by analyzing the real, practical facts and by finding ways to enforce tax payment from the taxation law perspective which does not interfere with taxpayer’s rights under the taxpayer’s right principle. Additionally, from the study of tax assessment under the US Tax Law, the power of assessment of the IRS (the Internal Revenue Service) is not in a specific time limited unlike other methods of assessment. The use of Net Worth Method of the US Tax Law requires only an approval of the Group Manager as a condition. Finally, the author is going to offer the power of assessment to be no time limit of issuing summons as a condition specially for using Net Worth Method to make more effective enforcement to suppress corruption.

1.2 Hypothesis of the Study

The Net Worth Increasing Method particularly aims to suppress corruption. To assess tax under Net Worth Method effectively, the power of assessment under Section 49 of the Thai Revenue Code should not apply with the limit of time for issuing summons under Section 19 and also Section 23, issuing summons and making tax assessment within ten years of general tax prescription. Tax prescription is not enough for corruption cases. Corrupted income should be assessed at anytime within the prescription which should be extended according to corruption cases. Corruption is the Criminal case, most of corruption cases can be proceeded within twenty years, the maximum prescription under the Thai Criminal Code. In addition the issuing of summons should still be used for this case in order to protect taxpayer’s right.

1.3 Objective of the Study

1. To study the limitation of the Net Worth Method applies with the general method of assessment which terminates the power of tax assessment official.

2. To study the use of Net Worth Method of the IRS (Internal Revenue Service) of the US.
3. To analyze and compare the power of assessment by Net Worth Method under the Thai Revenue Code and the US Internal Revenue Code.

4. To analyze the problems of limitation which generate loopholes.

5. To find the solutions to terminate the limitation of using the Net Worth Method and it also concerns with taxpayer’s rights.

1.4 Study Methodology.

This research paper will be analyzed by utilizing documentary research i.e. the Revenue Code of Thailand, the Internal Revenue Code (IRC) of the US, including text books, journals, applicable thesis, articles, documents and electronic information. Also, website of the Thai Revenue Department and the Supreme Court judgment will be used to understand the methodology and requirements.

1.5 Scope of the Study

To use Net Worth Method to suppress corruption as a purpose, this research paper encompasses the general method of assessment under Section 18 through Section 26 and the special method under Section 49 of the Thai Revenue Code for analyzing the weaknesses when using these provisions in practice and comparing the Thai system with the US system in the power of assessment.

1.6 Expectation of the Study

1. To know the limitations of the Net worth Method when applied with the general method of assessment which terminates the powers of the tax assessment official.

2. To know the use of Net Worth Method of the IRS (Internal Revenue Services) of the US and take advantages to apply with the using Net Worth Method in Thailand.

3. To know the power of assessment by Net Worth Method under Thai Tax Law and the US Tax Law.
4. To find the solutions to terminate the limitations on the use of the Net Worth Method and it also concern with taxpayer’s rights.
Chapter 2

2.1 The General Method of Making Assessment

2.1.1 The Issuing of a Summon Provision under the Thai Revenue Code

1) Tax payer filed tax return

The provision Section 18 defines an assessment from facts filed, a process following the general method for personal income tax assessment. After tax filer files a tax return, the tax assessment official will assess the amount of tax and inform about amount to the taxpayer. The provision under section 19 defines the issuance of summons in the case where files where applied wrongly, false or tax was incompletely returned. Whereupon he tax assessment official has the power to issue summons to call such taxpayer for interrogation within a period of 2 years except there is evidence or reasonable doubt that taxpayer had the intention to hide or evade taxation. The Director-General may extend the period of time for issuing summons in excess of 2 years but not exceeding 5 years from the date of tax return being filed.

\[1\] The Thai Revenue Code, section 18 Particulars filed for tax purposes shall be assessed by Amphur or assessment official as prescribed in a particular Chapter. Once the tax is assessed, he shall inform the amount of assessed tax to the taxpayer. In this case, it may be appeal.

In the case where a taxpayer dies before being informed of the amount of assessed tax, Amphur or assessment official shall inform the amount of assessed tax to an estate administrator, an heir or possessor of the estate, as the case may be.

If after an assessment, there is no tax collectible or refundable, the amount of tax shall not be notified but Amphur or an assessment official may proceed in accordance with Sections 19, 20 and 21.

The Thai Revenue Code, Section 27 shall apply to the assessment under paragraphs 1 and 2 mutatis mutandis.

\[2\] The Thai Revenue Code, section 19 Unless stated otherwise, in the case where an assessment official has a reasonable cause to believe that any person has filed a false
The summons is important in order to investigate and assess tax. It is the starting point of an assessment. Taxpayers who have received the summons must follow them strictly. If taxpayers ignore the summons without reasonable cause, there must be negative aspects for the taxpayer.

When the assessment official instigates the aforementioned process, the assessment official shall have the power to adjust the amount of assessed tax based on believable and reasonably distinctive evidence and inform the taxpayer. At the same time, taxpayers shall have the power to appeal the assessment under Section 20.

Section 20 defines an assessing tax in the case where filed a false or incomplete tax return.

Summons as a Condition

Due to the fact that a summons is quite important for tax assessment, an investigation cannot be accomplished without issuing summons. The summons is a or incomplete tax return, the assessment official shall have the power to issue a summons call upon that tax return filer for interrogation and issue a summons call upon a witness and order that tax return filer or witness to show accounts, documents or any other evidence but he shall give at least 7 days in advance from the date of delivery of summons. Nevertheless, the summons must be issued within 2 years from the date of tax return filing whether or not the filing was done within the time limit prescribed by law or the time extended by the Minister or Director-General, which ever is the later date. Except there is evidence or reasonable doubt that a tax return filer has intention to evade tax or in the case necessary for the purpose of tax refund, a Director-General may extend the time for the issuance of such summons in excess of 2 years but not exceeding 5 years from the date of tax return filing. However, the extension of time limit for the purpose of tax refund shall not exceed the time limit for refund.

3 The Thai Revenue Code section 8.

4 After proceeding with Section 19, an assessment official shall have the power to adjust an amount of assessed tax or an amount calculated in the tax return base on evidence and shall notify the amount of tax payable to the person liable to tax. In this case, after such person has been notified, the assessment may be appealed.
notice to inform taxpayer for interrogation. To order the tax return filer to show accounts, documents or any other evidence. According to taxpayer’s right principle, summons is a part of protection of taxpayer’s right. Issuing of summons is the way to notify a taxpayer to prepare himself for interrogation in order to be assessed tax.

The period of time in issuing the summons in the case that taxpayer filed tax return under Section 19

The issuing of summons must be done within a period of 2 years from the date of tax return filing whether or not the filing was done within the time limit prescribed by law or the time extended by the Minister or Director-General, which ever is the later date. Except there is evidence or reasonable doubt that a tax return filer has intention to evade tax or in the case necessary for the purpose of tax refund, a Director-General may extend the time for the issuance of such summons in excess of 2 years but not exceeding 5 years from the date of tax return filing. However, the extension of time limit for the purpose of tax refund shall not exceed the time limit for refund.

The period of time in issuing the summons is 2 years in general case or it can be extended more than 2 years by the approval of the Director-General of the Revenue Department but cannot be exceeded than 5 years from the date of tax return filing. These aforementioned are not the prescription; it is the time limit of the power of tax assessment official to issue the summons to call taxpayer for interrogation when there is an evidence or reasonable doubt that a tax return filer has intention to evade tax or in the case necessary for the purpose of tax refund. If the issuing of summons is done exceed than those periods of time, the result is the tax assessment official will be terminated the power of issuing summons to call such tax return filer for interrogation particularly. It does not terminate the prescription in order to sue taxpayer to pay such tax because the prescription to sue tax debt is 10 years under the Thai Civil and Commercial Code Section 193/31

---

5 The Thai Civil and Commercial Code section 193/31 “The period of prescription for claims of the Government for taxes and rates is ten years. As to other claims of the Government relating to obligations, the provisions of this title shall apply”.
The Duplicable Issuing of Summon

The period of 5 years extended time requires evidence or reasonable doubt that a tax return filer has intention to evade tax. The Director-General shall have power to approve when the tax assessment official reports that offering and the approval of the Director-General must be attached, therefore, the tax assessment official can issue the summons. In contrast, if the summons lacks of evidence or reasonable doubt enough that a tax return filer has intention to evade tax or declare income lower than it should be, the summons will be unaccepted. However, the tax assessment official still has power to issue summons again with the approval within a period of time with evidence or reasonable doubt, it’s not duplicable and not against by law. The importance is it must be done within the period of 5 years.

The Re-Issuing of Summons

In some cases, the assessment official is has to issue summons again in order to make a new assessment in any reason. Importantly, it requires reasonable doubt. For example, the mistake assessment issuing process by some level of the official when the higher level of the official finds that there is a mistake in assessment process. In this case, the higher level of the official shall make a new issuing of summons for adjust the previous assessment to be completed and corrected, under the provision Section 19 and Section 20. In addition, when the tax assessment official finds new reasonable evidence, indicate that there is a mistake in a previous assessment.

Even though the provision empower the tax assessment official in the duplicable issuing of summons and the re-issuing of summons to correct and complete assessment, but there need to be distinct reasonable cause to show that what’s mistake of the previous summons. Legally, the new summons is therefore accepted.

---

6 Supreme Court Judgment No.4775/2529.

The Counting of Period of Time in Issuing Summon

When is the starting date of counting in issuing the summons? The period 2 years to issue summons will be considered by the date of issuing, not the date of delivery the summons. However, it will not concern when the taxpayer receives that summons.

In the case that the issuing of summons is out of date, Section 19 is the provision that empowers the assessment official to issue summons, call a tax return filer for interrogation and issue summons to call a witness and order that tax return filer of witness to show accounts, documents or any other evidence when the assessment official has a reasonable cause to believe that any person has filed a false or incomplete tax return. The issuing of summons must be done within a period of 2 years from the date of tax return filing. Then, in the case that the Director-General has approved to extend the period to be 5 years from the date of tax return filing. As a result, if the assessment official calls the tax return filer for interrogation during such period of 2 years or extend it to be 5 years with an approval by the Director-General, all these depend and vary on the individual court case. The issuing of summons will be illegal under Section 19. The power of assessment will be terminated.

If the tax return filing has done more than one time, the first time that tax return is filed will be the starting date of counting.\(^8\)

The date that tax return filer filed tax return and the date that tax assessment official issued summons exceeded more than 5 years. The issuing of summons against Section 19. The court has the right to withdraw that assessment. When the issuing of summons is illegal, the tax assessment official has no power to assess in that taxable year. Moreover, if that case is appealed to the Appeal Committee, the order of appeal committee will also be illegal.

However, when the time of issuing summons is over, the result is the tax assessment official will has no power to issue summons to call the tax return filer for interrogation, has no power to call other witnesses and order that tax return filer or witness to show an account, documents or any evidence only. It’s not the provision of prescription of asking for tax payment. It’s still 10 years from the date

\(^8\) Supreme Court Judgment No. 4612/2534.
of tax return filing. Therefore, although the period of time 2 or 5 years is over, but
the Revenue Department still has the power to ask tax payer to pay tax in the amount
that taxpayer (tax filer) filed under Section 18 previously.

The issuing of summons must be done for the tax return filer
individually. For the spouse, the issuance of summons to call one person cannot be
considered for both spouses. There are two Sections\(^9\) determine that there must be
the summons to call a person who is assessed individually. Then, Section 57 Ter is
the provision determines the assessable income of husband and wife if their marital
status exists through out the proceeding tax year.\(^10\)

For example, the tax assessment official issues summons to call
husband for interrogation only, did not issue both spouse for interrogation.\(^11\) It just
affects one spouse, only the husband. The tax assessment official cannot assume that
issuing of summons also belongs to wife because Section 19 and Section 23
determine distinctly that summons call upon tax return filer. Although Section 57Ter
paragraph 1 determines that husband and wife, if their marital status exists through

\(^9\) The Thai Revenue Code, section 20 After proceeding with Section 19, an
assessment official shall have the power to adjust an amount of assessed tax or an
amount calculated in the tax return base on evidence and shall notify the amount of
tax payable to the person liable to tax. In this case, after such person has been
notified, the assessment may be appealed.

The Thai Revenue Code, section 24 After proceeding with Section 23,
Amphur or an assessment official shall have the power to assess tax and notify the
amount of tax payable to the person liable to tax. In this case, after such person has
been notified, the assessment may be appealed.

\(^10\) The Thai Revenue Code, section 57 ter For the purpose of income tax
collection from husband and wife, if their marital status exists throughout the
preceding tax year, the assessable income of the wife shall be treated as income of
the husband, and the husband shall be liable to file a tax return and pay tax.
However, in case of tax arrears, if the wife has received an advance notice of not less
than 7 days, she shall also be jointly liable to pay the arrears.

\(^11\) Sanchai Aonthongsuk, op. cit. p. 45.
out the proceeding tax year, the assessable income of the wife shall be treated as income of the husband and the husband shall be liable to file a tax return and pay tax.

Thus, the liability to tax of the spouse in identifying who liable to tax is different from the assessable case. It's individual duty to explain about his or her own income. Importantly, an assessment can occur when the issuing of summons to call tax return filer is already done only.

2) Taxpayer Failed to File Tax Return under Section 23

In the case that taxpayer failed to file tax return under Section 23, the time limited for issuing of summons to call taxpayer for interrogation is under general provision of the right to claim for tax debt. The Thai Civil and Commercial Code Section 193/31 defines the prescription.\(^\text{12}\)

From the provision of the Thai Civil and Commercial Code Section 193/31, the tax assessment official shall have power to issue the summons to call taxpayer who did not file a tax return for interrogation within the period of 10 years, the summons must be issued within 10 years from the date that taxable debt is due. If the issuing of summons exceeds more than 10 years, the tax assessment official will has no power to issue summons at all because such tax debt is over according to the prescription to claim for tax debt.

Tax obligation is the same kind as the general obligation. The prosecution is also the same. In addition, the Thai Revenue Code Section 12 defines about the tax arrear.\(^\text{13}\) Section 12 is the general principle method which covers both Section 19 and Section 23

---

\(^{12}\) The Thai Civil and Commercial Code section 193/31 “The period of prescription for claims of the Government for taxes and rates is ten years. As to other claims of the Government relating to obligations, the provisions of this title shall apply”.

\(^{13}\) The Thai Revenue Code, section 12 Tax payable or remittable under this Title, when it is due but not paid or remitted shall be deemed as tax arrears.

In any other province apart from Bangkok, the Provincial governor or Chief of Amphur shall have the power of the Director-General under paragraph 2 within
In order to recover tax arrears, the Director-General shall have the power to seize or attach and sale by auction assets of a person liable to pay or remit tax throughout Thailand without the Court summons or order. The Director-General may delegate such power to a Deputy Director-General or Chief of Regional Revenue Office.

Tax arrear occurs when taxpayer doesn’t pay tax within the period of time. As a result, the tax official shall have power to seize or attach and sale by auction assets of such person liable to pay or remit tax throughout Thailand without the court summons or order.\footnote{\textit{Supreme Court Judgment No. 1281/2525.}}

Due to the fact that the characteristic of tax assessment is the same kind of the prosecution of general obligation, the right of prosecution is also 10 years from the due date of taxpayer must find tax return and pay tax. So, the issuing of summons to call taxpayer who didn’t file tax return for interrogation must be within 10 years from the due date that tax payer must file tax return. The issuing of summons under Section 23 is quite the condition of the assessment under Section 24.

The provision Section 24 defines the condition that there must be issuing of summons to call tax payer who didn’t file tax return for interrogation firstly. Then, the tax assessment official shall have power to assess tax under Section 24.

For these mentioned 2 cases of the issuing of summons to call taxpayer for interrogation, the difference is tax payer file tax return or not. If taxpayer filed tax

the province or region. However, for Chief of Amphur, he shall have the power to order sale by auction upon a permission from the Provincial governor.

The procedure for seizure and sale by auction shall be in accordance with the Civil Procedures Code mutatis mutandis. For an attachment, the regulation prescribed by the Director-General with an approval from the Minister shall be followed.

Money received from sale by auction shall be deducted fees, expenses incurred from seizure and sale by auction, and tax arrears. The remaining shall be returned to the owner of the assets.

A person liable to pay tax under paragraph 2 shall include a partner with unlimited liability in a juristic partnership.

\footnote{\textit{Supreme Court Judgment No. 1281/2525.}}
return (tax return filer in the previous mentioned) under Section 19, the result is in Section 20. The period of 2 years in issuing summons for general case and 5 years with approval of the Director-General when there is evidence or reasonable doubt that a tax return filer has intention to evade tax. Section 20 determines the power after proceeding Section 19 that an assessment official shall have the power to adjust an amount of assessed tax or an amount calculated in the tax return base on evidence and shall notify the amount of tax payable to the person liable to tax and give notice to the taxpayer (tax return filer). These Section 19 and Section 20 must be applied together.

Additionally, these mentioned Section 23 and Section 24 are also applied together for another case that taxpayer didn’t file tax return. It’s treated under the prescription under 10 years in Section 193/31 of the Thai Civil and Commercial Code. After the process of issuing summon Section 23 has been done, the power of assessment in Section 24 can be created automatically. However, if the process doesn’t follow Section 23, the power of assessment in Section 24 will not occur. They must go along. Please note that Section 23 and Section 24 don’t concern with the period of time under Section 19 at any reasons. In the case that taxpayer failed to file tax return, the issuing of summons by the tax assessment official to call taxpayer for interrogation must not be done within a period of 5 years because it’s not in the provision of Section 19.

In the case that taxpayer failed to file tax return, the tax assessment official shall has power to issue the summons to call such taxpayer for interrogation to give evidence and to call for witness and order taxpayer or witness to bring an account or evidence within 10 years from the due date that the taxpayer (non filer) must file tax return. Although it has been done over 5 years, the issuing of summons is accomplished under Section 23.

3) Period of Time for Making an Assessment

In the case that the tax assessment official issued summons under Section 19 within a period of 2 or 5 years depends on each case. The assessment of

\[15\] Supreme Court Judgment No. 1882/2518.
tax must be done within ten years from the due date of submitting tax return. Otherwise, the prescription to claim for tax debt is over.

In the case that taxpayer failed to file tax return under Section 23 is also the same. The assessment for correcting of tax must be done within 10 years from the due date that taxpayer must submit the tax return. Otherwise, the prescription to claim for tax debt is over.

Both 2 cases both follow the prescription 10 years under the Thai Civil and Commercial Code Section 193/31 the right of the government to claim for tax debt must be done in the prescription of ten years.

4) Tax Assessable Notification

When tax assessment official issued summons under Section 19 or Section 23, depends on each case, then, tax assessment official investigate whether there is amount of tax. Tax official will notify that amount of tax to the taxpayer in form of written notification which is the Administrative order. The Administrative order is the order that effect on taxpayer’s right. The notification process is, therefore, important in this case. If the Administrative order doesn’t follow the regulation, that Administrative order will be illegal. The Administrative order must follow Section 37 of the Administrative Procedure Act B.E.2539.

The Process of Tax Assessment Notification The summons which is the most important in the process must follow Section 8 of the Thai Revenue Code

---

16 The Thai Revenue Code, section 8 A summons, a notification to pay tax or any other letter issued to any person in accordance with this Title shall be sent by registered mail or delivered by a revenue official at a place of domicile or residence or office of such person during the sunrise and sunset or during office hours of such person. If a recipient cannot be found at a place of domicile or residence or office of the recipient, it shall be delivered to any person sui juris who resides or works in such house or office.

In the case where it cannot be delivered under the provisions of paragraph 1 or that person has left Thailand, it shall be posted at a prominent place of his residence, office or house where his name is currently in the record under the law
There are 4 methods of sending the summons or the notification to pay tax under Section 8

(1) Sending by registered mail
(2) Delivered by a revenue official at a place of domicile or residence or office of such person.
(3) Posted at a prominent place of his residence, office or house where his name is currently in the record under the law regarding house registration.
(4) Published a brief description in a newspaper

The notification to pay tax must be arranged in order from the first step to the fourth step.

When the processes of tax assessment notification has been done correctly, the duty to pay tax of the taxpayer will be created and the counting of period of time to pay tax of the taxpayer will be created and the counting of period of time to pay tax for liability will also be started. Please note that the law does not concern whether taxpayer receive or acknowledge the content in that summons or not.

The right and duty of taxpayer will be created. The taxpayer must pay tax within 30 days from the date of notification, except in the cases that the law doesn’t give the right to oppose under Section 21 or Section 25.

In the case that tax payer doesn’t pay tax within the period of time without reason or tax postponement, there shall be a result under Section 12. It can cause fine and surcharge.

2.2 The Special Method of Making Assessment: The Net Worth Method

The Net Worth Method is indirectly a way to calculate net income of a taxpayer, but used only for personal income tax. In the case which is difficult in regarding house registration or published a brief description in a newspaper regularly sold in that area.

If the above said procedure is followed, it shall be deemed to be received.
calculating taxpayer's net income by the general method. The Net Worth Method is efficiency and quite simplicity especially for the rich people and in the case that there is doubt in filing tax return.\footnote{The Lectric Law Library's Lexicon, Net Worth Method of Proving Unreported Income, at http://www.lectlaw.com/def2/n012.html, (last visited 19 October 2010).} A person's "Net Worth" at any given date is the difference between his total assets and his total liabilities on that date. It is the difference between what he owns and what he owes (measuring the value of what he owns by its cost rather than unrealized increases in market value).

If the evidence establishes beyond a reasonable doubt that the person's net worth increased during a taxable year, then the person had receipts of money or property during that year; and if the evidence also establishes that those receipts cannot be accounted for by non-taxable sources, then those receipts were taxable income to the person.

In addition to the matter of the person's net worth, if the evidence establishes beyond a reasonable doubt that the person spent money during the year on living expenses, taxes and other expenditures, which did not add to his net worth at the end of the year, then those expenditures also came from funds received during the year; and, again, if the evidence establishes that those receipts cannot be accounted for by non-taxable sources, then those funds were also taxable income to the person (provided, of course, the expenditures were not for items which would be deductible on the person's tax return).

Because the "Net Worth Method" of proving unreported income involves a comparison of the person's net worth at the beginning of the year and his net worth at the end of the year, the result cannot be accepted as correct unless the starting net worth is reasonably accurate. In that regard the proof need not show the exact value of all the assets owned by the person at the starting point so long as it is established that the assets owned by the person at that time were insufficient by themselves to account for the subsequent increases in his net worth. The Net Worth Method is more efficient in collecting Government Revenue. There is not yet a provision, specifically in the Thai Revenue Code, but the Thai Revenue Department applies Section 49 as Net Worth Method effectively.
2.2.1 The provision of Section 49

Section 49 is the special method in tax assessment in the case that taxpayer deriving income does not file a tax return, or the assessment official considers that he underreports the amount of his taxable income determining the amount of net income by tax assessment official by an approval of the Director-General of the Revenue Department. For this case, the provision under Section 18 through Section 26 shall apply mutatis mutandis.

2.2.2 The Cause of Using Section 49

Under Section 49 with the Approval of the Director-General of the Revenue Department has important causes that need the special assessment Section 49 when taxpayer doesn’t file a tax return or the assessment official considers that the underreports or the amount of his taxable income is not suitable.

The process under Section 49 is the tax assessment official under the approval can determine the amount of his net income on the basis of the money or property, owned or possessed by such taxpayer, his expenditure or standard of living or his behavior, or the income statistic either of the taxpayer or of other persons carrying on a similar business. The official can make assessment accordingly and give taxpayer a notice of the amount of tax payable. However, the provision of law defines Section 49 to apply with Section 19 through Section 26 mutatis mutandis. There are two sections define an important condition of Section 49.

---

18 The Thai Revenue Code, section 49 In the case where a taxpayer deriving income does not file a tax return, or the assessment official considers that he underreports the amount of his taxable income, the assessment official with the approval of the Director-General shall have the power to determine the amount of his net income on the basis of the money or property owned or possessed by such taxpayer, his expenditure or standard of living or his behavior, or the income statistics either of the taxpayer or of other persons carrying on a similar business. The official shall make an assessment accordingly and give the taxpayer a notice of the amount of tax payable. In this respect, the provisions of Sections 19 through 26 shall apply mutatis mutandis.
2.2.3 **Section 49 must be applied together under Section 19**

The period of time to issue a summons;
- 2 years in general without condition

When the taxpayer filed tax return, the law required the issuing of summon within 2 years from the date that tax return filer filed tax return
- 5 years with approval of the Director-General when there is reasonable cause to extend time limit to be 5 years. 5 years from the date that tax return filer filed tax return.

These periods of time under Section 19 must be followed firstly. Therefore, the tax assessment official has the power under Section 49 in order to assess taxpayers by using Net Worth Method.

2.2.4 **Section 49 must be applied together under Section 23**

In the case that a taxpayer fail to file a tax return, Section 23 has no period of time like Section 19, but its provision is treated under prescription of 10 years under the Thai Civil and Commercial Code Section 193/31

Therefore, in the case that taxpayer failed to file tax return, the issuing of summons within 10 years from the due date that tax payer must file tax return must be done firstly. Then, the power of assessment by use of Net Worth Method under Section 49 can be occurred.

Thus, the issuing of summons is the important condition that Section 49 requires. If tax assessment official didn’t issue summons or issuing of summons didn’t follow the provision Section 19 and Section 23, although the assessment occur later. That assessment would be illegal because it didn’t follow condition.

The issuing of summons that tax assessment official issued after 5 years in the case of tax payer filed tax return under Section 19, although it was in the prescription 10 years, but it against Section 19. The power to determine the amount of net income would not be occurred. This assessment is illegal.

2.2.5 **Factors Used to Determine the Amount of Net Income**

There are many factors used to determine the amount of net income as follows:
Money or property, owned or possessed of such taxpayer can indicate his wealth very well.
- Expenditure
- Status, Behavior, Standard of living
- Income statistic.

Please note that Section 49 additionally requires the approval of the Director-General because such effects on taxpayer’s rights. According to the principle of the Constitution of Thailand, it defines that whatever effects on the rights of people, such needs to have laws to empower them.

2.2.6 Efficiency and Equity of Net Worth Method

The special Method of assessment, Net Worth Method, requires the general method firstly. It’s very helpful in the case of the general method cannot determine net income of such taxpayer. For any cases that there is no document, evidence enough to identify the real net income of such taxpayer. Moreover, the special method, Net Worth Method can be used efficiently with the tax assessment of a taxpayer who has intention to evade tax by fail to file tax return or file unreal tax return and useful with the taxpayer who has income from illegal business which is difficult to assess them by using the general method.

The Thai Tax Law aims at using the Net Worth Method to suppress corruption cases and because of its efficiency to determine taxable income based on the increase in wealth of a taxpayer. Corrupted income is also indicated as increasing wealth of such taxpayer. However, the provision under Section 49, applies with Section 19 and Section 23 which is an important condition in the provision of issuing the summons within the period of time, it directly generate the weakness. The provision of the period of time under Section 19 and prescription Section 23 limit the enforcement of Section 49 to be effective. It creates the loophole that taxpayer can use to terminate the power of assessment.

The purpose of this Independent Study is to analyze the weakness of using the provision Section 49 applies with Section 19 and Section 23. There will be analysis in Chapter 4.
2.2.7 The Net Worth Method and Anti Money Laundering Law

'Money Laundering' is to disguise money or property generated from the nefarious criminal offence underlying the laundering activity which we call the 'Predicate Offence'. The main predicate criminal offence is the illegal narcotic drug trade. Other predicate offences are different from country to country mostly are extortion, bribes, protection rackets, terrorism and smuggling of goods, etc. With international pressure, Thailand enacted the legislation to cope with the nefarious transnational crime on narcotic drug trafficking being the common threat for our world. The 'Anti-Money Laundering Act' was enacted in 1999 after debate in parliament that this legislation may deprive the fundamental right and liberty of people under the constitution.

The Thai Anti-Money Laundering Act B.E. 1999, specifies in Section 5.- that the offence of money laundering will cover whoever:-

1) Transfers, receives or converts the form of properties related to a predicate offence to conceal or cover up the source of these ill-gotten properties

2) Takes any actions to cover up or disguise the true nature of these ill-gotten properties

A person found guilty of money laundering will be punishable with imprisonment of one to ten years and a fine of twenty thousand to two hundred thousand baht.

Section 3. - of the Thai Anti-Money Laundering Act B.E. 1999 specifies eight predicate criminal offences which are:-

1) Illegal Narcotic Drug Trading and Trafficking
2) Sexual Procurement and Operation of Prostitution
3) Public Fraud and Fraudulent Loan
4) Misappropriation and Fraud of Funds by Director and Managers of Banks, Financial Institution, Trusts, Credit Financiers and Stock Exchange
5) Malfeasance and Corruption of Government Officers
6) Extortion by Organized Crime and Criminal Association
7) Evasion of Customs Law
8) Terrorism
The Thai Anti-Money Laundering Act B.E.1999 is implemented by the ‘Anti-Money Laundering Office’ (AMLO) which is attached to the Prime Minister Office.

Like many other countries in the Inter-Pacific region, Thailand faces the daunting task of combating widespread Criminal activities. Many illicit operations, such as the rampant drug trade, prostitution and corruption, generate huge sums of each. Those engaged in these crimes frequently need to find a way to process this cash into legitimate funds they can use for other purposes. Laws that criminalize this laundering of illicit funds into legitimate assets and allow authorities to seize funds and property suspected of being related to criminal offenses, are seen as an effective weapon for suppressing the narcotics trade and certain other crimes that are difficult to control. Earlier this year, the Thai Parliament enacted the money laundering law targeting the transfer of money and property derived from illegal activities such as narcotics trafficking, prostitution, fraud and corruption. The law, “The Money Laundering Prevention and Suppression Act B.E. 2542”, came into effect in August and is similar to money laundering laws in other countries. Proponent considers the Money Laundering Prevention and Suppression Act as a potentially useful tool in combating criminal activities.

Under the Money Laundering law, it is a crime to transfer, convert, or receive the transfer of funds or property arising from certain criminal acts for the purpose of hiding or concealing the source of the funds. Offenders are punished by imprisonment of 1 to 10 years plus a fine of up to 200,000 Thai Baht (about US$5,000). For example, an individual who secretly used money from a drug sale to purchase shares of traded in the Stock Exchange of Thailand could be prosecuted under the law, or a corrupted official who used illness gains to purchase land runs the risk of being exposed and having the land confiscated through new reporting requirements at the local land office recording the sales transaction.

A key provision of the Anti Money Laundering law requires banks and financial institutions to report all cash transactions over 2 million Thai Baht (about US$50,000). Property transactions involving cash in excess of 5 million Baht (about US$125,000) must also be reported. The reporting institutions must require their customers to provide a record of the details of the transaction. Violation of the
reporting requirement is punishable by a fine of up to 300,000 Thai Baht (about US$7,500).

In Thailand, for a variety of reasons, large-scale cash transactions are quite common. A bank executive has estimated that there are some 300,000 deposits and withdrawals every day in excess of 2 million Baht statutory reporting level.

Seizure of Assets after Proven Guilty

The strength of the money laundering law lies in the provision allowing government seizure of money or property reasonably suspected of being involved in one of the targeted 7 illegal activities. Unlike the usual “innocent until proven guilty” of principle of right under the Criminal law and also in the Constitution of Thailand, the burden is on the person claiming back the seized property to prove the property did not come from the suspected illegal activity. The Anti Money Laundering Law covers the transfer or conversion of the funds or property from seven types of crimes:

1. Enforcement of the Law

The Office of the Prime Minister will administer the Anti-Money Laundering Act. A new organization, the Money Laundering Prevention and Suppression, has been established to enforce the law.

Money laundering cases concerned directly with tax cases for the reason of earning income by the taxpayer. Money Laundering is one of the ways to earn income, which means there will be the increasing of taxpayer’s wealth. The Net Worth Method is directly useful for the Money Laundering offense. Firstly there will

---

19 Seven types of Crimes under Anti Money Laundering Act
- Narcotics trafficking
- Prostitution and other sexual offenses
- Fraud against the public
- Fraud involving financial institutions
- Abuse of position by government officials
- Extortion
- Trade in contraband
be the income which exists on such taxpayer before the other liabilities such as under criminal law or under the Anti-Money Laundering Act etc. The Net Worth Method is the best way to tax the person on his or her increasing worth. The process must follow the provision of Section 49 which need the approval by the Director-General of the Revenue Department. The enforcement must follow the condition under Section 19 or Section 23 in issuing summons to call such person for interrogation. Certainly, the limitation in the case of period of time of issuing summons under Section 19 and the prescription under Section 23 will be limit the time of running the process. During the Money Laundering Law process is enforced, the Net Worth Method can be used to assess tax on the increase in wealth.

2.2.8 Right to Appeal tax Assessment

In the case where a taxpayer disagrees with the decision made by the assessment official, he has the right to appeal to the Commission of Appeals within 30 days starting from the date when an assessment notification has been received under Section 30, except for assessment under Section 21 and Section 25 which

20 The Thai Revenue Code, section 30 In appealing against tax assessment which Amphur does not have duty to assess, it shall be appealed within 30 days from the date of receiving the assessment. The appeal shall be in accordance with the following rule and procedure;

(1) subject to Sections 21 or 25;

(a) if an assessment official whose office is in the Bangkok or Thonburi province region, it shall be appealed to the Commission of Appeal which comprises the Director-General or his representative, a representative from Office of the Attorney General and a representative from Ministry of Interior.

(b) if an assessment official whose office is in other provinces, it shall be appealed to the Commission of Appeal which comprises the Provincial Governor or his representative, Chief of Regional Revenue Office or his representative and Provincial Attorney General or his representative;

(2) subject to Section 33, it shall be appealed against the decision of the Commission of Appeal to Court within 30 days from the date of receiving the appeal decision.

Commission of Appeal under (a) may have several commissions.
shall not be appealed. Should a taxpayer disagree with the ruling of the Commission of Appeals, he has the right to appeal within 30 days starting from the day the ruling of the Commission of Appeals has been received. Should taxpayer fail to appeal within 30 days. He no longer has the right to appeal and must pay the whole amount of tax, fine and surcharge. The right to appeal is not a deferral of tax payment. A taxpayer who receives a tax assessment notice must pay tax on time as stated in the assessment notice. However, should taxpayer wish to wait for the hearing or decision of the Commission of Appeals, taxpayer has the right to defer tax payment by providing various securities as collateral in accordance with the rules and regulations of the Revenue Department. Taxpayer has the right to wait until getting the result of appeal but remember that if the result is not what taxpayer wants, such taxpayer has to pay surcharge of 1.5%\textsuperscript{21} per month for the delay of payment on tax and penalty.

1. **Application for Exemption or Reduction of Fine and Surcharge**

Taxpayer has the duty to file his tax return and pay the proper tax on time. Should taxpayer fail to do so, such taxpayer will be subject to a fine and surcharge on top of the tax due. However, on some special grounds, taxpayer may request for an exemption or reduction of fine. A tax officer doesn’t have the power under any law to exempt or reduce surcharge. Only in the case where the Director-General grants an extension of the time period of tax payment or remittance and such to has been paid or remitted within the extended time period, then the surcharge may be reduced to 50% thereof. Generally, the district tax office can give up to 50% reduction for the fine but taxpayer has to request the reduction in written. Within the request letter there are certain specific sentences that are required in order to get a reduction, as follows that taxpayer’s purpose is comply to the laws, that the mistake taxpayer has made is not intentional but due to lack of understanding of the laws, that taxpayer has provided good cooperation and assisted the tax officers in acquiring additional document or information during the audit period.

\textsuperscript{21} Thai Revenue Code Section 27
2. Assess to Document

A taxpayer has the right to make a copy of his documents relevant to his past tax payment record (tax return and receipt). This means, taxpayer can go the tax office in such area to ask for a certified copy of the tax return that taxpayer has filed in the past, for which taxpayer may be charged a small fee.

The next Chapter will be the provision of the US Tax Law. The US Tax Law defines the tax assessment as several methods. The Net Worth Method of the US Tax Law is defined as a special method of proof the taxable increasing worth. The taxpayer’s worth in taxable year will be applied with the tax rate to be amount of tax. The effectiveness of using the US Net Worth Method includes factors that support the Net Worth Method to suppress Corruption.
3.1 Definition of Net Worth Method

Net Worth Method is the presumptive method to determine a taxpayer's income. To detect and calculate tax evasion in which the change in a taxpayer's net worth is compared to reported taxable income taking into account, living expense, allowance, deductions, exemption, and non taxable income. Because of several kinds of tax evasion, the Net Worth Method can be enforced as a special method.

1. The US Internal Revenue Code\textsuperscript{22} defines two types of tax evasion:
   1) Evasion of Assessment
      The evasion of assessment is the taxpayer's attention to prevent the Internal Revenue Service from knowing the amount of unpaid tax. For example, taxpayer files a false tax return being filed or making a false statement to the IRS to prevent the IRS from determining tax liability.
   2) Evasion of Payment.
      Taxpayer takes affirmative steps to prevent the IRS from Collecting an Assessed liability. For example, taxpayer moves money to offshore.

\textsuperscript{22} The US Internal Revenue Code, Sec. 7201. Attempt to evade or defeat tax

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000 ($500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.
3.1.1 The Net Worth Method of Proof

An investigation utilizing the Net Worth Method of proof differs from a specific item method in that direct comparisons of income, expenses, and credits can not be made. There need to be approval by the Group Manager\(^ {23} \) as an important condition before use of Net Worth Method. The net worth method of proof utilizes evidence of income applications such as asset accumulation, liability reduction, expenditures, and other financial data to indirectly establish correct taxable income. An accounting is made showing how funds generated from income were applied by identifying increases to net assets and various expenditures. After making adjustments for exemptions, itemized deductions, nontaxable income, and nondeductible losses, the courts permit the IRS to infer, indirectly, that the remainder is taxable income. By comparing this to taxable income reported on the subject’s return, if a return was actually filed an understate of taxable income can be determined. The Net Worth Method is a very effective way of proving taxable income in criminal income tax investigations. The formula for calculating the subject’s correct taxable income can be divided into four steps:

1. The special agent must first calculate the change in a subject’s net worth (assets less liabilities). This is done by determining the subject’s net worth at the beginning and end of a period of time (a taxable year or years) and then subtracting the beginning period’s net worth figure from the ending period’s net worth figure. This computation will yield a change in net worth (either an increase or decrease in net worth).

\(^ {23} \) Managers are responsible for ensuring that all employees within their jurisdiction:

- Understand the law pertaining to statutes — commensurate with the employees' assigned responsibilities.
- Maintain required statute controls.
- Make timely assessments of tax and penalties. In area office examination groups, the group manager is responsible for:
  - Maintaining continuous statute controls on cases in the work group.
  - Reconciling data in the group's ERCS, EPIC and EOIC Pending Statute Report, monthly, with data in AIMS.
2. The amount of this change in net worth is then adjusted for personal living expenses, nondeductible losses, and nontaxable items to arrive at a corrected adjusted gross income figure.

3. The corrected adjusted gross income figure is then adjusted for itemized deductions or the standard deduction amount, and then for exemptions, to arrive at a corrected taxable income figure.

4. Finally, by comparing the corrected taxable income figure with the taxable income reported on the tax return, the special agent can determine whether the subject failed to report any taxable income.24

If a business owner is not reporting the company’s total revenue, the result could be an increase in his or her personal net worth (i.e., improvements in the home, vehicles, second home, gifts, jewelry, etc.). The Net Worth Method holds any increase in net worth from the beginning of a period to the end of a period, adjusted for nondeductible expenditures and nontaxable receipts, as income. Following the computation of net worth, an inference for the source of income must also be established. For example, the IRS can establish a likely source of income which, for a business owner, can be through the skimming of receipts from the business. In Holland, the IRS showed the taxpayer’s hotel business increased during the years in question, whereas the books and tax returns showed revenues decreased and profits fell to one-quarter of the amount declared by the previous management in a comparable period. The bottom line is, even though books are consistent with tax returns, both must be consistent with standard of living.25

3.1.2 Evidence Utilized by the IRS

The IRS may use a number of sources to prove the Net Worth Method or cash expenditure method. The investigation is thorough and may include a review of the following sources: public records and filings, bank records, real estate records,


litigation documents (such as divorce filings), IRS records (even third party records), prior net worth statements submitted to the government or financial institutions, witness testimony and stock brokerage and investment records.

The IRS will also examine defenses of the taxpayer for nontaxable income sources, such as loans, gifts and inheritances allegedly received by the taxpayer; this is accomplished via interviews and confirmations through loan documents, probate records and gift and estate tax returns. According to the Internal Revenue Manual, when the taxpayer claims a family member or close friend provided loans enabling his or her spending, the IRS will often prove friend or family member was "financially unable to lend the amount claimed." It should also be noted that loans from a closely held company to the taxpayer run the risk of being reclassified as income when not executed and maintained at arms length with formalities such as an agreement and fair interest paid on a timely basis.

3.1.3 Tax Return, the Starting Point of Assessment

Individual must file income tax return in each year. Their income exceeds the standard deduction plus one personal exemption, or if any tax is due. Taxpayer must file income tax return each year. This return may be filed electronically. Generally, an individual's tax return covers the calendar year.

Taxpayers are allowed tax credit for foreign taxes and for a percentage of certain types of business expenses. Each individual is also allowed tax credit related to education expenses, retirement savings, child care expenses, and a credit for each child. Each of the tax credit is subject to specific rules and limitations. Some tax credits are treated as refundable payments.

Taxpayer must pay income tax due without waiting for an assessment. Taxpayer is subject to withholding taxes when they receive income. To the extent withholding taxes do not cover all taxes due; taxpayers must make estimated tax payments.

Failing to make payments on time, or failing to file tax return, can result in substantial penalties. Tax returns may be examined and adjusted by tax authorities. Taxpayers have rights to appeal any change to tax, and these rights vary by jurisdiction. Taxpayers may also go to court to contest tax changes. Tax authorities may not make changes after a certain period of time (generally 3 years).

3.2 Presumptive Taxation

Presumptive taxation or method of proving income is the indirect method for investigating income of taxpayer in the case that tax officer finds suspiciousness of tax return in any reasons. Taxpayer has power to identify taxpayer's income from Methods of Proving Income. The proving of income must depend on evidence to investigate how much taxpayer is liable to tax.

Taxpayer generally wants to pay tax in the lowest amount in any cases they are rich or poor. There must be an investigation to empower the IRS official to access and identify taxable income to prohibit tax evasion and tax avoidance. The scope of methods of Proving Income under the provision of Section 7602 (e) defines that the officer shall prove only an evidence which is reported except for the case that they find suspicious. The suspicious must be reasonable and can indicate that taxpayer has intention to conceal the fact. The investigation shall be looking for the accounting record and other financial document of the taxpayer. Taxpayer’s expense must relate to his financial status. Taxpayer’s standard of living is also used to identify his taxable income which is closest to the fact. The Internal Revenue Code Section 7602 defines an examination of books and witnesses. The IRC Section 7602 authorizes the Service to obtain any information that may be relevant to the determination and collection of a tax liability.

(a) Authority to summons, etc.

For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any

---

internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized -

(1) To examine any books, papers, records, or other data this may be relevant or material to such inquiry;

(2) To summons the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

(b) Purpose may include inquiry into offense the purposes for which the Secretary may take any action described in paragraph (1), (2), or (3) of subsection (a) include the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws.

(c) Notice of contact of third parties

(1) General notice

An officer or employee of the Internal Revenue Service may not contact any person other than the taxpayer with respect to the determination or collection of the tax liability of such taxpayer without providing reasonable notice in advance to the taxpayer that contact with persons other than the taxpayer may be made.

(2) Notice of specific contacts

The Secretary shall periodically provide to a taxpayer a record of persons contacted during such period by the Secretary with respect to the determination or collection of the tax liability of such taxpayer. Such record shall also be provided upon request of the taxpayer.

(3) Exceptions

This subsection shall not apply —
(a) To any contact which the taxpayer has authorized;
(b) if the Secretary determines for good cause shown that such notice would jeopardize collection of any tax or such notice may involve reprisal against any person; or
(c) With respect to any pending criminal investigation.
(d) No administrative summons when there is Justice Department referral

(1) Limitation of authority

No summons may be issued under this title, and the Secretary may not begin any action under Section 7604 to enforce any summons, with respect to any person if

A Justice Department referral is in effect with respect to such person.

(2) Justice Department referral in effect

For purposes of this subsection –

(a) In general, A Justice Department referral is in effect with respect to any person if

(i) the Secretary has recommended to the Attorney General a grand jury investigation of, or the criminal prosecution of, such person for any offense connected with the administration or enforcement of the internal revenue laws, or

(ii) Any request is made under Section 6103(h) (3) (B) for the disclosure of any return or return information (within the meaning of Section 6103(b)) relating to such person.

(b) Termination

A Justice Department referral shall cease to be in effect with respect to a person when

(i) The Attorney General notifies the Secretary, in writing, that –

(I) he will not prosecute such person for any offense connected with the administration or enforcement of the internal revenue laws,

(II) He will not authorize a grand jury investigation of such person with respect to such an offense, or
(III) He will discontinue such a grand jury investigation,

(ii) A final disposition has been made of any criminal
proceeding pertaining to the enforcement of the internal revenue laws which was
instituted by the Attorney General against such person, or

(iii) The Attorney General notifies the Secretary, in writing,
that he will not prosecute such person for any offense connected with the
administration or enforcement of the internal revenue laws relating to the request
described in subparagraph (A) (ii).

(3) Taxable years, etc., treated separately.

For purposes of this subsection, each taxable period (or, if there is
no taxable period, each taxable event) and each tax imposed by a separate chapter of
this title shall be treated separately.

(e) Limitation on examination on unreported income.

The Secretary shall not use financial status or economic reality
examination techniques to determine the existence of unreported income of any
taxpayer unless the Secretary has a reasonable indication that there is a likelihood of
such unreported income.

The provision of the law must emphasize on taxpayer’s right. Section
7602 of the IRC requires an examination of books and witnesses of such taxpayer to
be investigated. The examiners have the responsibility to ensure that all taxpayer’s
right are protected and observed during the examination. Therefore the provision of
IRC Section 7602(c) requires the IRS to notify the taxpayer before contraction third
parties in the case that the Secretary has reasonable indication that there is
unreported income.

3.3 Cases, Using the Net Worth Method

In the United States, not only the IRS who uses the Net Worth Method. The
Net Worth Method can also used by the United States Department of Justice Tax
Division and the Association of Certified Fraud Examiners. The United States
emphasizes on the personal income tax very much. The personal income tax is the
largest amount of tax imposed to the nation. The federal government doesn’t impose
tax on consumption. The Net Worth Method is used to identify or presume taxable liability when the tax return filing or account or any document cannot indicate the real net income (taxable income) and there is reasonable doubt that taxpayer has intention to conceal the fact. The IRS tax assessment official must prove the case that there might be the tax evasion, illegal income of tax fraud of taxpayer because the Net Worth Method much effect taxpayer’s right. The power of assessment of the US tax assessment official in using of Net Worth Method is not limited under specific period of 3 years as the general case. Due to the US tax assessment has several methods of proof, but Net Worth Method is special because it effects to the taxpayer’s right more than other methods. The Use of Net Worth Method need to access deep information of taxpayer for example, accessing to the bank account of such taxpayer. Almost all financial transactions will be reported to the IRS. There are more than 600 forms of reporting for example, the Suspicious Activities Report, the Report of Foreign Bank and Financial Accounts, the Commercial Transaction over 10,000$, the Report of International Transportation of Currency and Monetary Instruments. The IRS will keep such report for the benefit of tax investigation. There must be approval of the Group Manager of tax assessment department. Net Worth Method of the US tax assessment system is not separated into the general method and the special method but there are several methods of proof. Because of the effective of using, at the same time there is well co-operation between government agency and financial institution. The Net Worth Method is used popularly to identify net income and applies with tax rate. The important condition is the tax assessment official of the IRS must prove that such tax payer has intention to evade tax (tax fraud). The tax assessment official can have the power to assess taxpayer at anytime. There are many factors that need Net Worth Method, the method to prove for example, the net worth method of proof is most often used when one or more of the following conditions exist:28

1. the subject maintains no books and records
2. books and records are not available
3. books and records are inadequate

A. subject withholds books and records

Although often used to reveal and prove illegal activity (the proceeds of which are often invested in visible assets), the Net Worth Method can also be used in more general cases, particularly when there is a significant change in net worth and other methods of proof are insufficient. The IRS can also use net worth to corroborate or confirm other methods of proving income. The IRS does not have to rely on the taxpayer’s books and records, even if they are adequate and accurate. Sometimes the government views these records as “self serving” and may use any evidence to confirm or contradict the taxpayer’s records.

Typically, the IRS will look at all available records, the taxpayer’s inventories, physical assets, financial statements to other creditors or other government agencies, bank records, securities, personal inventories, and any other statements of assets.

The Net Worth Method is premised on the following reasoning: When a taxpayer accumulates wealth during a tax year, he invests it (in assets) or spends it. Increases in the taxpayer’s net worth throughout the year presumptively represent taxable income. Nondeductible expenditures are then added to these increases in net worth. However, deductible expenditures are not added to net worth, since tax-deductible expenditures are already taken into account in the net worth formula. Thus, the basic net worth formula is as follows:

- Net worth end of year – net worth beginning of year = increase in net worth;
- Increase in net worth + nondeductible expenditures – nontaxable income = adjusted gross income; and
- Adjusted gross income – adjusted gross income per return = understatement of adjusted gross income.

The steps necessary to establish income when applying the Net Worth Method of proof:

The government established its case through the "Net Worth" approach, a method of circumstantial proof which basically consists of five steps:

1) Calculation of net worth at the end of a taxable year.
2) Subtraction of net worth at the beginning of the same taxable year.
3) Addition of non-deductible expenditures for personal, including living, expenditures.

4) Subtraction of receipts from income sources which are non-taxable.

5) Comparison of the resultant figure with the amount of taxable income reported by the taxpayer to determine the amount, if any, of underreporting.

3.4 Overview of the Net Worth Method of Proof Formula\(^{29}\)

The method used by the Internal Revenue Service to detect and calculate tax evasion in which the change in a taxpayer's net worth is compared to reported taxable income taking into account living expenses, allowable deductions and exemptions, and nontaxable income. In business, net assets are the total assets minus total liabilities of an individual or a company. For a company, this is called shareholders' equity and may be referred to as book value. Net worth is stated for a particular point in time.

In personal finance, net worth is also used to refer to an individual's net financial position; similarly, it also uses the value of all assets minus the value of all liabilities (debt). The higher net worth such taxpayer has, the wealthier he is.

3.4.1 Computing net worth

Net Worth = sum of all assets (-) sum of all liabilities. Firstly, to use this formula, one should know what assets and liabilities are.

1. The net worth formula expanded:

   **Assets:**
   - Cash on hand
   - Cash in accounts
   - Checking
   - Savings
   - Brokerage
   - Securities

---

Vehicles (motor homes, airplanes, motorcycles, etc.)
Business equipment
Real estate investments
Personal items
Negotiable instruments

**Subtract: Liabilities and Accumulated Depreciation**
Loans
Notes
Accounts payable
Credit card balances
Mortgages
Accumulated depreciation

**Equals: Net Worth**

**Subtract: Prior Year’s Net Worth**

**Equals: Increase (Decrease) in Net Worth**

Add: Adjustments for Personal Expenditures and Nondeductible Losses

*Note:* Personal living expenses (including payments that may later be allowed as itemized deductions or adjustments to arrive at adjusted gross income)
Federal income taxes paid
Life insurance premiums
Nondeductible portion of capital losses
Gifts of property made by subject
Losses on the sale of personal assets

**Subtract: Adjustments for Nontaxable Items**
Federal tax refunds
Gifts and inheritances received by subject
Veteran ’s benefits
Nontaxable portion of pensions and annuities
Tax-exempt interest
Capital loss carryover
Net operating loss carryover
Honest mathematical and bookkeeping errors
IRA and Keogh Plan payments
Other nontaxable income

**Equals: Corrected Adjusted Gross Income**

Subtract: Allowable Itemized Deductions or Standard Deductions
Personal exemptions

**Equals: Corrected Taxable Income**

Subtract: Reported Taxable Income

**Equals: Unrepeatable Taxable Income**

The Corrected Taxable Income is the exact income which must be taxed. However, in the tax return taxpayer files as the Reported Taxable Income can be compared with the Corrected Taxable Income to calculate the Unreported Taxable Income.

2. In determining the value of assets, all assets in the computation are entered at cost or other tax basis. Fluctuations in fair market value are of no consequence in determining taxable income. Paper gains or losses resulting from changes in fair market value of assets are not taxable or deductible until said gain or loss is realized.

3.4.2 Establishing the Starting Point

The key to a successful net worth investigation is establishing a reliable beginning net worth (opening net worth) which includes all of the assets and liabilities on hand. It is the starting point from which all future increases or decreases will be calculated. This starting point is normally referred to as the base year. In a net worth computation, it is extremely important to firmly establish a beginning net worth (starting point or base year) with the best evidence available.

Net worth increases are determined by establishing a taxpayer's net worth (assets minus liabilities) at the beginning of a given year and then comparing...

---

this beginning net worth with the taxpayer's net worth at the end of the year. December 31 of the year preceding the first prosecution year (the opening net worth) is the point from which net worth increases are measured. For example, if the first prosecution year, or the year to be measured, is 1993, then the defendant's net worth as of December 31, 1992, would be the opening net worth from which to determine whether the defendant's net worth increased or decreased in 1993. The defendant's 1993 ending net worth would in turn become the opening net worth for 1994, and so on.31

3.5 Methods Support the Net Worth Method

The IRS must affirmatively prove an initial amount available to the taxpayer, with evidence that excludes the possibility that the taxpayer relied on previously accumulated assets rather than unreported taxable income without refuting all possible speculation as to sources of funds. The IRS must conduct a meticulous investigation, and the investigation techniques and figures are subject to close scrutiny. The investigation consumes approximately 20 agents canvassed public records to determine the extent of taxpayer's holdings. Then, banks were contacted, and banks provide documents or witnesses. The potential witnesses are interviewed, many of them several times. IRS agents identified in excess of assets purchased and sold and question third parties involved in these transactions. Additionally, every expenditure was traced including all cashier's checks traced back to their sources to determine how they were purchased. When using the Net Worth Method, the scope of the investigation and the evidence developed must be carefully examined with the goal of ascertaining whether the evidence establishes to a reasonable certainty all of the taxpayer's assets and liabilities. If the investigation failed to establish an opening net worth with reasonable certainty, the investigation must be continued until sufficient additional evidence has been developed. The IRS has power to access financial institutions for taxpayer's statement. Net worth statements submitted by the taxpayer either to the financial institutions can be particularly helpful in establishing an opening net worth, On the other hand, the IRS must introduce evidence which

demonstrates more than the fact that the taxpayer was poor at an early point. The evidence must trace the defendant's financial history up to the starting point.

The IRS is not limited to a single method of proof and may use the Net Worth Method in conjunction with other methods of proof. The IRS may choose to proceed under any single theory of proof or a combination method, including a combination of circumstantial and direct proofs. When the IRS chooses to proceed against a taxpayer using the net worth method of proof, "the Government assumes a special responsibility of thoroughness and particularity in its investigation and presentation. In the United States, the use of Net Worth Method is efficient because of well cooperation between the government and financial institutions that support the investigation of tax assessment official of the IRS. For example, the accessing into the accounts of the suspect who may has intention to evade tax or conceal the real information. The Bank Deposits and Cash Expenditures Method is used to investigate the expense and also Source and Application of Funds Method\[32\]

**3.5.1 Bank Deposit and Cash Expenditure Method**

Under the principle of income equals the sum of expense and saving, the bank deposit cash expenditure method identifies tax evasion through review of the taxpayer's bank deposits. This method of investigation primarily focuses on whether the taxpayer's total bank deposits throughout the year are equal to the taxpayer's reported income. This method is most appropriate when the majority of the taxpayer's income is deposited in the bank and most expenses are paid by check. This method is most commonly used for surveillance of tipped employees and is combined with statistical analysis to determine what a tipped employees actual wages are. Information gathered through this method is most successful when the credibility of tipped employees can be destroyed. This method is used less frequently now for tipped employees because the IRS negotiates with hotels or casinos, the largest employers of tipped employees, to identify a tip estimate. If the tipped employee reports the minimal amount agreed upon, he is not questioned by the IRS.

---

3.5.2 Source and Application of Funds Method

The source and application of funds method is a variation of the Net Worth Method and is simply the comparison of all known expenditures with all known receipts. Excess of expenditures, when reported adjusted gross income or net income is included among the sources, represents understated income. In this method enter only increases and decreases in assets and liabilities along with other non-deductible and non-taxable receipts.

3.5.3 Net Worth and Cash Expenditure Methods of Proof

Under the Net Worth and cash expenditure methods of proof, the IRS performs year-by-year comparisons of net worth and cash expenditures to identify under reporting of net worth. While the Net Worth Method and the cash expenditure method may be used separately, they are often used in conjunction with one another. Under the Net Worth Method, the IRS chooses a year to determine the taxpayer's opening net worth at year's end. This provides a snapshot of the taxpayer's net worth at a particular point in time. The snapshot includes the taxpayer's cash on hand, bank accounts, brokerage (stocks and bonds), house, cars, beach house, jewelry, furs and other similar items. Generally the IRS learns about these items through very thorough and in-depth investigations, sometimes casing the suspected fraudulent taxpayer. In addition, the IRS also assesses the taxpayer's liabilities. Liabilities include expenses such as the taxpayer's mortgage, car loans, credit card debts, student loans, and personal loans. The opening net worth is the most critical point at which the IRS must assess the taxpayer's assets and liabilities. Otherwise, the net worth comparison will be inaccurate.

The IRS then evaluates new debts and liabilities accumulated in the next year, and assess the taxpayer's new net worth at the next year's end. In addition, the IRS reviews the taxpayer's cash expenditures throughout the tax year. The IRS then compares the increase in net worth and the cash expenditures with the reported taxable income over time in order to determine the legitimacy of the taxpayer's reported income. Not every business owner skimming receipts off the top may be increasing personal net worth. Some may also be spending the excess on a lifestyle
filled with expensive meals, vacations and gifts. The motive for this spending may even be genuine, such as paying for a child’s lavish wedding, private or secondary education. If expenditures exceed the amount the taxpayer reports as income, assuming the net worth remains consistent, the conclusion is the tax return shows less than what was actually received. The IRS may necessitate use of the cash expenditure method as opposed to the Net Worth Method if the business owner purchases durable goods instead of tangible property. For example, the business owner’s net worth would not change if the business owner was spending his or her income on vacations, food, travel, gifts, alcohol, gambling (losses) or drugs.

The next Chapter will be the comparison of power of assessment by Net Worth Method between the IRS official and the Thai Revenue Department official. The enforcement of Net Worth Method and other factors will be analyzed.
Chapter 4
Analysis of the Problems of Using the Net worth Method To Suppress Corruption

4.1 The Problem of Special Methods Apply using the General Method given under the Thai Revenue Code

The problems of using special method of assessment, related to general methods of assessment under Section 49 apply with Section 18 through Section 26 of the Thai Revenue Code.

The issuance of summons is an important condition of the power of assessment of the tax assessment official.

The general provision of the Thai Revenue Code is divided into two sections. For the first section, it states that if a taxpayer files a tax return under Section 19 and Section 20 whereas the second section stipulates that if a taxpayer fails to file a tax return under Section 23 and Section 24. These two cases create different results during the time of issuing summons. Section 19 in the case of a taxpayer filed a tax return where the effect is in Section 20 which the power of assessment occurs. Under Section 19, tax assessment official has just two years period of time to issue summons. But it can be extended to be five years when tax assessment official finds a reasonable doubt and evidence that taxpayer has intention to evade tax.

In the case that a taxpayer fails to file a tax return, Section 23 uses the general prescription ten years under the Thai Civil and Commercial Code Section 193/31. Section 193/31 defines the right of the government to claim for tax debt is under prescription of ten years.

33 The Thai Civil and Commercial Code section 193/31 “The period of prescription for claims of the Government for taxes and rates is ten years. As to other claims of the Government relating to obligations, the provisions of this title shall apply”.
The different of a taxpayer files tax return or failed to file a tax return is the result that tax assessment official has different period of time to issue summons. In the case that a taxpayer filed a tax return under Section 19, it will be easier to make an investigation by tax assessment official. The information of the tax return will be in the hands of tax assessment official. However, the provision of law gives longer time to issue summons in case that a tax payer failed to file a tax return under Section 23. Tax assessment official may need more time to make the investigation to find evidences, documents, and other witnesses, used in order to identify taxable income. The issuing of summons under Section 23 follows the provision under Section 193/31 of the Civil and Commercial Code which defines the prescription of ten years that the government shall have the right to claim for tax debt. The issuing of summons under Section 23 creates the power of assessment under Section 24. Section 23 and Section 24 must be applied together.

The Thai Revenue Code applies Net Worth Method to the special method of assessment Section 49 for the reason of they are the determination of net income from the increasing wealth in a taxable year. The tax assessment official can identify taxable income when the assessment official cannot use the general method. Importantly, Section 49 applies with the general method under Section 18 through Section 26 which has both advantages and disadvantages as follows:

The advantages are the general provisions make tight to the special method. An assessment from particulars filed starts from the tax return. Tax assessment official shall assess amount of tax and inform to such taxpayer.\(^{34}\) The time limit that tax assessment official must inform taxpayer to pay tax within 7 days from the date of receiving the assessment\(^{35}\) and time limit to pay tax and also fine and surcharge if taxpayer against Section 18Bis.\(^{36}\) In the case that tax assessment official find the reasonable doubt in tax return, tax assessment officer shall have power to assess tax\(^{37}\) after issuing summon.\(^{38}\) The power of issuing summons to call taxpayer for

\(^{34}\) The Thai Revenue Code section 18.

\(^{35}\) The Thai Revenue Code section 18Bis.

\(^{36}\) The Thai Revenue Code section 18Ter.

\(^{37}\) The Thai Revenue Code section 20.

\(^{38}\) The Thai Revenue Code section 19.
interrogation in the case that taxpayer fail to file tax return\textsuperscript{39} generates power of assessment\textsuperscript{40} In addition, in the case that taxpayer received summons but did not comply, the tax assessment official shall have power to assess amount of tax for the best of his knowledge and notify the amount of tax to the taxpayer\textsuperscript{41} including fine.\textsuperscript{42}

However, there are also factors which make weakness to the special method in the limited time to issue the summons under Section 19 and general tax prescription of ten years which Section 23 applies with Section 193/31 of the Civil and Commercial Code.

As one of purposes of this research, to analyze the weaknesses which make the special method under Section 49 (= the Net Worth Method) to be limited. As aforementioned, summons is the important condition whether the power of assessment will occur. The limit of time in such Sections, then, becomes the important condition of the power of assessment. If these conditions have not been followed, the power of assessment under the special method cannot occur at any reasons. The Net Worth Method aims at the enforcement and prevention of corrupted income and illegal income directly. When the general method cannot enforce such income, the special method will be helpful. When it's limited in time period, certainly, many cases that tax assessment official will miss to issue summons in such time period, such income has not been assessed. The result is it must be back to the provision of Section 18 to tax them on tax return that they filed

Applying of Section 49 with Section 18 through Section 26 has much positive aspects. Especially issuing of summons is the way to protect taxpayer's right. The summons is the notification, issued in order to inform taxpayer to show accounts, documents, evidences and other witnesses for investigation. Taxpayer also has the right to appeal against the assessment.\textsuperscript{43} Although the author try to offer that the special method under Section 49 should not concern with the period of time in issuing summons but summons is still important as well. For fine and surcharge as

\textsuperscript{39} The Thai Revenue Code section 23.
\textsuperscript{40} The Thai Revenue Code section 24.
\textsuperscript{41} The Thai Revenue Code section 25.
\textsuperscript{42} The Thai Revenue Code section 26.
\textsuperscript{43} The Thai Revenue Code section 18, 20, 24.
liabilities of tax filer is also making tight to the assessment in order to enforce taxpayer who does not comply with the summons or order of an assessment official. The analysis in this 4.1 directly generates the result which will be examined in 4.1.1

**4.1.1 Analysis of Power of Assessment by Net Worth Method between the Thai Revenue Code and the US Internal Revenue Code.**

According to the analysis of the separation between the general method under Section 18 through Section 26 of the Thai Revenue Code and Net Worth Method which Thai tax law applies with the special method under Section 49, generate both positive and negative aspects. From the study of the US tax assessment by Net Worth Method, importantly, there is no separation between the general method and the special method unlike the tax assessment in Thailand. The US tax assessment system requires just the approval of the Group Manager only in the case of use Net Worth Method. The assessment official must prove the case that there might be tax evasion or illegal income of taxpayer because the using of Net Worth Method directly much effect the taxpayer’s right. Additionally, the US tax system empowers tax official to assess the bank account of the taxpayer in order to prove and investigate deeply. The IRS has power to access financial institutions for taxpayer’s statement. Net worth statements submitted by the taxpayer either to the

---

44 Managers are responsible for ensuring that all employees within their jurisdiction:

- Understand the law pertaining to statutes — commensurate with the employees' assigned responsibilities.
- Maintain required statute controls.
- Make timely assessments of tax and penalties.

In area office examination groups, the group manager is responsible for:

- Maintaining continuous statute controls on cases in the work group.
- Reconciling data in the group's ERCS, EPIC and EOIC Pending Statute Report, monthly, with data in AIMS Table 4.1 or Table 4.0, Returns with Statute Date Pending.
financial institutions can be particularly helpful in establishing Net Worth.\textsuperscript{45} The co-operation between the IRS which is the governmental agency and the financial institutions such as the bank is efficiency. It makes the process shortly and accurately. In the United States, the use of Net Worth Method is efficient because of well co-operation between IRS and financial institutions that supports the investigation of tax assessment official of the IRS, for example, over 600 forms of report which the bank or the financial institution must report almost all financial transactions to the IRS. The Bank Deposits and Cash Expenditures Method are used to investigate the expenditure on the basis of income equals the sum of saving and expenditure, and also Source and Application of Funds Method to investigate the capital expenditure. As aforementioned in Chapter 3, "The IRS is not limited to use a single method of proof and may use the Net Worth Method in conjunction with other methods of proof. The IRS may choose to proceed under any single theory of proof or a combination of methods."

In the other hands, the use of Net Worth Method in Thailand which is the special method must apply with the general method. There will be more steps. Additionally, the corruption is widespread in Thailand. Powerful persons are not enforced by laws as much as it should be. Several steps of method must consume longer time for processing. Bribery is one of the clearest examples. In some cases, a taxpayer makes a compromise with the tax official for tax avoidance.

\subsection*{4.1.2 Analysis of the Limitation of Time to Use the Power of Assessment}

The power of assessment of the US tax assessment official in the use of Net Worth Method is not limited under the specific period of 3 years of the tax period\textsuperscript{46} as the general case. The important condition is the tax assessment official of the IRS must prove that such tax payer has intention to evade tax (tax fraud). The tax


\textsuperscript{46} The words "tax period" can be used interchangeably for references in this Section to "tax return." Also, references to the "normal" statute of limitations are meant to refer to the three-year period of time after a return is filed or due, whichever is later, for assessment of tax.
assessment official has the power to assess taxpayer at anytime. As above 4.1.1 mentioned, the co-operation of the IRS and financial institutions in the US in order to access the information for investigation is very well. It makes efficiency in the process to be short. In addition, no limit time for the Net Worth Method unlike other methods. It makes more effective. However, for the use of Net Worth Method in Thailand, related to the provision of Section 49 of the Thai Revenue Code, in the case of issuing summons within periods of time under Section 19 limits the power of assessment of the tax assessment official. In the case that taxpayer has intention to evade tax. Taxpayer earns income from illegal business, for example. A corrupted income concern directly with tax case for the reason of it's the increasing wealth of the taxpayer. Corruption is one of the ways to earn income, which means there will be the increasing of such person’s wealth. The Net Worth Method will be directly applied. Firstly there will be the increasing income which exists which belongs to such taxpayer. Tax liability on such income occurs prior to the other liabilities such as under Criminal law. Due to the fact that Criminal liability occurs when there is the final decision. The Net Worth Method is the best way to tax such taxpayer on his increasing worth. The process must follow the provision of Section 49 which need to have the approval from the Director-General of the Thai Revenue Department. There must be following the condition under Section 19 or Section 23 depends on each case in issuing summons to call such person for interrogation. Certainly, the limitation in the case of period of time of issuing summons under Section 19 and the prescription under Section 23 will limit the time of running the process.

The Power of Assessment and the Taxpayer’s Right

“Whatever that may effect right of people must be done under the empowering of the law.” is defined in the Thai Constitution. The right protection is the same as in the United States Bill of Rights. For this case, the use of Net worth Method of both Thai Tax Law and the US Tax Law has distinct provision to empower tax assessment official to make the assessment. The power of assessment of the US Tax Law requires the approval of the Group Manager. The power of assessment of Thai Tax Law requires the approval of the Director-General of the Thai Revenue Department. The US tax assessment by Net worth Method has no limit

47 Ninth Amendment of the United States Constitution.
period of time like other methods which must be done within specific period of 3 years. Therefore, when the law empowers tax assessment official distinctly to do so, it will not against taxpayer’s right at any reasons. Also in Thailand, whatever effects on people’s rights must be empowered by the law. The issuing of summons under the provision of Section 19 and Section 23 is quite the important reason to create the power of assessment of the tax assessment official, to notify tax payer to prepare himself for interrogation. Taxpayer also has an opportunity to show a witness, account, document and other evidence etc. Thus, both condition of assessment under the US and the Thai tax assessment provisions do not against taxpayer’s right.

The use of Net Worth Method of Thai Tax Law has more complex in applying with the general principle. Thai tax law separates an assessment into the general method and the special method. The special method shall apply with the general method firstly. The general method under Section 19 and Section 23 which are the limitation of the use of special method in the case of period of time to issue summons to call a taxpayer for interrogation make more trouble in following those conditions. This condition generates a loophole which makes several taxpayers to get away from assessment by tax planning. For example, a taxpayer may file a tax return follows Section 19. As a result, the tax assessment official shall have the power to issue the summons within 2 years to assess tax. That tax return filing can terminate the power of assessment of the tax official within 2 years. This case is different from taxpayer failed to file tax return under Section 23 which the power of assessment of tax officer will be 10 years. The taxpayer has an opportunity to be assessed tax within 10 years. Therefore, these 2 cases that taxpayer file tax return or not have different result. Section 19 limits the period of 2 years without condition in issuing summons to call tax filer for interrogation and defines 5 years with the condition of approval of the Director-General of the Thai Revenue Department in the case that there is reasonable doubt that such tax filer has intention to evade tax or conceal the fact. These limited period of time 2 or 5 years are quite short in order to run processes of investigation. Additionally the Thai Revenue Department has cases of tax which need to be investigated. Certainly, a person who has intention to evade tax by any reasons or who has illegal income such as corrupted income for example, taxpayer who has an intention to evade tax has quite well preparation and planning.
The limited period of time of issuing summons under Section 19 is certainly supporting them in order to terminate the power of assessment of the tax assessment official. When the power of assessment is terminated, such taxpayer will not be assessed by the tax officer. If such taxpayer plan to terminate period of time that he may be assessed, he may file a tax return under Section 19 first. Then the period of time that he may assessed if he is issued summons will be remaining just 2 years. Although these 2 years can be extended to be 5 years, but if his process to evade tax is no suspicious because of well planning, he may get away from tax assessment after two years. On the other hands, in the case that a taxpayer failed to file a tax return under Section 23, there is prescription of ten years for issuing summons to call them to investigate.

The Co-operation between Government and Financial Institutions is the important factor which directly causes the problem to tax assessment in limited time. As above 4.1.1 mentioned, the co-operation between the IRS and financial institutions of the US is quite well in order to access taxpayer information deeply. More than 600 forms of financial reports which the bank or financial institutions must report financial transaction to the IRS. The corruption in the US is quite less than in Thailand. These two factors support the use of Net Worth method very well. However, in Thailand, the co-operation between the Thai Revenue Department and the financial institutions is less than in the US. In addition, corruption and bribery in Thailand is widespread. They are the obstacle to the enforcement of tax law. There are also the provisions which limit the power of tax assessment official. In the case of time limited to issue summons to assess tax under the Net Worth Method Section 49 of the Thai Revenue Code. Sometimes, when the tax assessment official finds the suspiciousness of tax return, nevertheless, it is over the period of time to issuing the summons. The power of assessment of the tax assessment official will be terminated.

4.2 The Problems of the Net Worth Method Used to Suppress Corruption

In the US, the use of the Net Worth Method preventing corruption is effective because of its simplicity in order to determine the amount of taxable income during
criminal tax cases. Net Worth Method is based on the concept that if a taxpayer shows an increase in wealth at the end of taxable year compared to that at the beginning of the year. The Net Worth Method of Proof is useful in determining taxable income when it would be difficult or impossible to establish the taxable income by direct evidences. The Net Worth covers unreported income, illegal income as well as corrupted income that a taxpayer has the intention to conceal. Every increasing worth will be determined as taxable income under the Net Worth Method. Additionally, in the US, those aforementioned factors especially in the case of no limit of time to make assessment unlike 3 years of tax period, all supports the Net Worth Method to suppress corruption efficiently. However, the using if Net Worth Method in Thailand applies with Section 49 of the Thai Revenue Code is limited by periods of time of issuing summons. Section 49 applies to Section 19 and Section 23 mutatis mutandis in the provision of periods of time and general prescription to claim for tax debt directly causes the obstacle of the Net Worth Method enforcement. Corrupted income and other illegal income are mostly unreported. The general method is unable to tax them. The Net Worth Method is therefore useful to tax them because the Net Worth Method under Section 49 focuses on the increasing wealth. Then, the Net Worth Method treats an increasing wealth as a taxable income and applies it with a tax rate to be an amount of tax. The Net Worth Method aims to suppress corruption as its main purpose. However, tax prescription is not enough for corruption cases. Corrupted income should be assessed at anytime within the prescription which should be extended relates to corruption cases. Corruption is the Criminal case, most of corruption cases can be processed within 20 years maximum prescription under the Thai Criminal Code.

To conclude the problem of using the Net Worth Method to suppress corruption in Thailand, the Net Worth Method enforces under the condition that there must be issuing summons within the periods of time first. The period of time to issue summon in Section 19 defines 2 years which is quite short time. Although it can be extended to 5 years by the approval of the Director-General of the Thai Revenue Department, but in corruption cases is quite complex and has well planning. The issuing summon should not be done under such limited time.
Chapter 5
Conclusion and Recommendations

5.1 Conclusion

From the study of the US tax assessment means; there is no separation between the general method and the special method used, unlike the Thai tax assessment. The US tax assessment method just requires the approval of the Group Manager only in cases when using the Net Worth Method. The Net Worth Method of the US Internal Revenue Code is one kind of a method within several kinds. According to this assessment method, officials must prove their case i.e. that there may have been an attempt to evade tax or to gain illegal income of a taxpayer. This is because when applying the Net Worth Method directly much causes an impact on the taxpayer’s rights. Additionally, the US tax law empowers tax officials to access the information of taxpayers in order to prove a case and to investigate thoroughly. Moreover, almost all of the monetary transactions in the US will be reported to the IRS using several formats, in all more than 600 types of forms. The co-operation between the IRS and financial institutions is close and efficient. It renders the entire process short and accurate. The power of assessment by the US tax assessment officials in the use of the Net Worth Method is not limited under the specified period of 3 years, as limited as the other assessment methods used. The important condition is that the tax assessment official of the IRS must prove that such taxpayer had the intention to evade tax (tax fraud). The tax assessment official has the power and right to assess any taxpayer at any given time. Nevertheless, the use of the Net Worth Method in Thailand creates more complexity in applying it with the general principle. Thai tax law separates an assessment method into either the general method or the special method. The special method will be called upon only after the conditions of general method had been followed firstly. The general method stipulated under Section 19 and Section 23 provides the limitation of the use of special method in case that the time period for issuing summons to call the taxpayer for interrogation creates more difficulties by following those conditions. Those conditions generate loopholes which facilitate taxpayers to avoid an assessment.
Section 19 defines a period of 2 years without condition for issuing summons to call the tax return filer for interrogation. Such period can be extended up to 5 years with the condition of approval of the Director-General of the Revenue Department. Such might be the case if there is reasonable doubt that a tax filer has the intention to evade tax or conceal facts. The limited period of time from 2 to 5 years for issuing a summons are quite short in order to properly run the process of investigation. Additionally, the Thai Revenue Department has accumulated other tax cases which need to be investigated. Certainly, a person who has the intention to evade tax by whatever reasons or who derives illegal income such as corrupted income for example, all these persons may have had adequate time to well prepare and plan their case. The limited period of time under Section 19 certainly seems to support them in order to terminate the powers of assessment of the tax assessment official. When the power of assessment is terminated, such taxpayer will not be assessed by a tax assessment official. Furthermore, if such taxpayer plans to terminate the period of time that he can be assessed, he may file a tax return under Section 19 firstly. Then the period of time that he can be assessed if he is issued a summon will remain in force just for 2 years. Although this period of 2 years can be extended to be 5 years, but if his process to evade tax is no suspicious because of well planning, he may get away from tax assessment after 2 years. In the case that taxpayer failed to file tax return under Section 23, there is prescription of ten years of the right of government to claim for tax debt under the Thai Civil and Commercial Code Section 193/31. Summons to call them to investigate must be issued within such prescription.

If the process of Net Worth Method under Section 49 does not follow Section 19 or Section 23 depends on each case, the tax assessment official has no power to assess such taxpayer at all. In some cases which are complex because taxpayer conceals his income. The investigation has to be done in a longer time. It may be finished over such period of times.

In the United States, the use of Net Worth Method is efficient because of well co-operation between the IRS and financial institutions that support the investigation of tax assessment official of the IRS. For example, the accessing into the bank account of the suspect who may has intention to evade tax or conceal the real
information. There is no separation between the general the method and special method.

5.2 Recommendations

1. Recommendation Relates to Comparison between Thai Taxe Laws with the US Tax Law

In the United States, the use of the Net Worth Method is efficient in its application because of the close co-operation between the IRS and financial institutions that support the investigation of the tax assessment officials of the IRS. To make the process of proving illegal income -including income derived from corruption- to be more efficient, the tax assessment official should have more powers to access the data and details held by banks in regard to bank accounts of any suspicious person, following and with the approval of the Director-General. Such order would have effects on taxpayer’s rights because personal data is considered an individual’s secret. There needs to be sufficient evidence collaborated by witnesses to proof that the suspicious person may indeed be guilty before starting the accessing process.

The Net Worth Method that Thai tax law applies with Section 49 of the Thai Revenue Code can be enforced effectively on the increasing wealth of such taxpayer. The tax assessment official is able to calculate the increase of worth of such a taxpayer in the taxable year, then, such increasing wealth can be applied with the taxable rate easily. The increasing wealth of such taxpayer, in the taxable year, from every source will be treated as taxable income.

However, the provision under Section 49, must apply with Section 19 and Section 23 which is an important condition in case of issuing a summon within the limit period of time, and it directly generates a weakness. The provision of the period of time under Section 19 and in the case that a taxpayer failed to file a tax return under Section 23, there is prescription of ten years of the right of government to claim tax debts under the Thai Civil and Commercial Code Section 193/31. Summons to call them to investigate must be issued within such prescription limits
the enforcement of Section 49 to be more effective. It creates a loophole that a taxpayer could use to terminate the power of assessment.

It is the author's opinion that the provision Section 49 should not apply to the provision in Section 19 and Section 23 similarly to the US law which uses the Net Worth Method not under the tax period of 3 years, unlike other methods. Nevertheless, the issuing of summons is still important because the issuing of summons is an important condition of assessment process. To protect taxpayer’s rights, a summon is the notification to warn taxpayers to prepare themselves for the interrogation to follow and gather other evidences, witnesses, and documents. There must be a legislation of issuing summons, attached to the Ministry Regulation to preserve the issuing summons in order to protect the taxpayer’s right. In addition, the others provisions under general method that make more effective (mentioned in 4.1) should still be used. Issuing summons is the way to notify taxpayer to prepare himself for interrogation. The use of Net Worth Method should be used for the taxpayer at anytime within prescription whether his income is from illegal business or not. The Net Worth Method should be able to apply with every case of increasing wealth of taxpayer when the assessment official with the approval of the Director-General of the Revenue Department consider that taxpayer underreport his taxable income. Net Worth Method aims to enforce punishment for corrupted income or illegal income, as its main purpose. Certainly, a person who has these kinds of income has planned very well. It’s quite difficult to investigate the truth within the limit period of time. If the provision of Section 49 can be enforced without limited time of issuing summons, there will be more opportunity to tax such person.

2. **Recommendation relates to the Criminal law prescription**

The Thai Criminal law defines the maximum prescription of twenty years for the violent penalties under Section 95(1)48 of the Thai Criminal Code. Corruption

---

48 The Criminal Code, section 95 "In a criminal case, if the offender is not prosecuted and brought to the Court within the following specified periods of time as from the date of the commission of the offense, the prosecution shall be precluded by prescription:"
offense is included in the provision of prescription of twenty years under Section 147 through Section 151⁴⁹. Corrupted offense causes imprisonment 5 years through 20

(1) Twenty years in case of offences punishable with death, imprisonment for like or imprisonment of twenty years;
(2) Fifteen years in case of offences punishable with imprisonment of over seven years but not up to twenty years;
(3) Ten years in case of offences punishable with imprisonment of over one year up to seven years;
(4) Five years in case of offences punishable with imprisonment of over one month up to one year;
(5) One year in the case of offences punishable with imprisonment of one month downwards or other punishment”.

If the offender has been prosecuted and brought to the Court, but the offender escapes, or is insane, and the Court gives order suspending the trial till the specified period has expired reckoning from the date of escape, or the date of giving order suspending the trial, it shall be deemed that prosecution be like wise precluded by prescription.

⁴⁹ The Thai Criminal Code, section 147 “Whoever, being an official having the duty of purchasing, manufacturing, managing or keeping any thing, dishonestly misappropriates the same for his own or the other person, or dishonestly allows the other person to misappropriate the same, shall be punished with imprisonment of five to twenty years or imprisonment for life, and fine of two thousand to forty thousand Baht.”

The Thai Criminal Code, section 148 “states that whoever is the official, by a wrongful exercise of one’s functions, to coerce or to induce any person to deliver or to procure the property or any other benefit for oneself or other person, shall be imprisoned as from five years to twenty years or to live imprisonment, and fined as from two thousand Baht to forty thousand Baht, or both”.

The Thai Criminal Code, section 149 “Whoever, being an official, member of the State legislative Assembly, member of the Changwat Assembly or member of the Municipal Assembly, wrongfully demands, accepts or agrees to accept for himself or the other person a property or any other benefit for exercising or not exercising any of his functions, whether such exercise or non-exercise of his
years, the maximum prison term and execution. Mostly, in regard to corruption cases of politicians, including government officials, which are considered an offense to the nation, such are treated as violating penalties. There is now a Supreme Court’s Criminal Division for Persons Holding Political Positions in Thailand specifically assigned for corruption case offences by politicians. Therefore, the law emphasizes and concentrates on corruption offences of politicians that cause immense damages to the nation. The maximum criminal prescription of a twenty years penalty should be enforced strictly in such criminal cases. This research offers that criminal prescription of twenty years sentences to be applied in tax cases in parallel or together with the criminal court cases for corruption offenses by the person who is holding both political positions and by government officials. This would allow cover all government positions that are susceptible to corruption. In addition, the prescribed penalty of 20 years shall cover even longer periods of time, including even the period of time after such a person resigns from a power position. In corruption cases, there usually exists corrupted income, earnings which such person receives. Tax liability occurs automatically. According to the Net Worth Method which aims at suppressing corruption, it needs to be determined whether such person is liable in criminal cases too. Tax liability under the Net Worth Method occurs when functions is wrongful or not, shall be punished with imprisonment of five to twenty years or imprisonment for life, and fined of two thousand to forty thousand Baht, or death.

The Thai Criminal Code, section 150 “Whoever, to be the official performing or not performing any act in one’s own function in consideration of the property or any other benefit demanded, accepted or agreed to accept by oneself before to be appointed as official as official in that post, shall be imprisoned as from five years to twenty years or life imprisonment, and fined as from two thousand Baht to forty thousand Baht.

The Thai Criminal Code, section 151 “Whoever, to be the official to have the duty in the purchase, execution, management or maintenance of anything by a wrongful exercise of one’s functions damaging the State, the Municipality, the Sanitation or the owner of such property, shall be imprisoned as from five years to twenty year or life imprisonment and fined as from two thousand Baht to forty thousand Baht”.
there is a considerable increase in wealth of such a person. That increase in wealth must be treated to the persons Net Worth subject to taxation. Corruption, which is widespread in Thailand, directly concerns with and relates to the Thai Criminal Law. Therefore, there is a huge amount of income generated from corruption cases of certain groups of people from that source. The author recommends that for corruption cases, which consist of tax case and criminal cases, such should not be stated under the provision with a limited period of time for issuing summon under Section 19 of the Thai Revenue Code. In addition, in the case of a taxpayer failing to file a tax return form under Section 23, the prescription of the use of Net Worth Method to suppress corruption should be extended to be of equal duration as by the criminal law prescription. The criminal law prescribes a twenty years penalty which is quite a long period of time. Such would then increase the opportunity for a better and more efficient investigation. As is the main purpose of the Net Worth Method, it aims at suppressing corruption. The use of the Net Worth Method needs to be based on reasonable cause and evidence that such a person may indeed be corrupt. The income derived from corruption directly concerns and relates to criminal court cases. Income or other wealth derived from corruption is also an absolutely illegal income that such taxpayer must be taxed for irrespective whether there is already a final decision of the criminal court or not.

In the case that there is a final decision in the criminal court case, any illegal income derived will be seized and the defendant may be put in jail after proven guilty. The problem whether the seized income and other wealth after being proven guilty should be treated as taxable income or not. According to the author's opinion and for the purpose of this research, and to use tax method to suppress corruption accordingly, all of the defendants illegal income that is already proven illegal must be seized and be assessed as taxable income. It must be treated as income during taxable year. In this case, the penalty will be doubled. The first penalty, which is stipulated under the criminal law and the second penalty, which is stipulated under the tax law. It's not important which one materialized earlier but both penalties must

---

be enforced strictly without relief because they are instigated and stem from different provisions. Additionally, such is an appropriate way to ensure effective punishment.

The prescription of the Thai Criminal law is a twenty years fine for corruption charges while the prescription of tax law stipulates just a ten years sentence. Additionally, from this research it analyzes the period of time under Section 19 in issuing summons to call tax return filers for investigation which is the important condition to of the power of tax assessment. It’s not suitable in the case that taxpayers have illegal income or corrupted income which concerns directly with the Criminal law. For example, a politician who is wealthy from corruption - especially in some cases of corruption, they look legally viable. Such person may experience an enormous increase in the amount of wealth; in which case, at least, the tax method by the Net Worth Method should be enforced. Although according the Thai Criminal law it cannot consider such person as guilty but at least the person must be taxed for his or her wealth derived from corruption. The ceiling of personal income tax rate under the Thai Revenue Code is 37%. The net Worth Method can be used to increase revenue if it is enforced absolutely.

Respectively, the author would like to suggest a draft of prescription enforcement related to the Thai Criminal law and to make use of the Net Worth Method more effective as follows:

The author suggests using the maximum prescription of twenty years for rendering a tax assessment in corruption case, starting from the date the Criminal offence has been committed to prevent conflict with the starting of tax prescription. Tax prescription generally starts from the date taxpayer summits a tax return.

The issuing of summons for making assessment should be enacted as a Ministry Regulation as additional with Section 49 to terminate periods of time of issuing summons both 2 years and 5 years. Then to make a new provision as the Ministry Regulation additional to Section 49 for the issuing of summons. A Summons is still an important condition in order to protect taxpayer's rights.

1) The Prescription will be different in cases as follows:

(1) Tax case which concerns with Criminal case

   During the Criminal procedure runs, Criminal prescription has already started.
When the Criminal court makes the final judgment, there will be
2 ways:

a. The taxpayer has been proven guilty.

The tax assessment prescription is still ongoing, while the
Criminal prescription has been terminated by the final judgment.

Please note that in this case, the author suggests that the tax
prescription becomes 20 years specially to run parallel with the criminal prescription.

b. Taxpayer is not guilty

The Criminal liability doesn’t occur. The running of such offered
tax prescription of a 20 years penalty should be reduced to 10 years to protect
taxpayer’s rights because the taxpayer is not guilty under the Criminal law.

(2) In General cases

The general provision under Section 18 through Section 26 are applied
Please note that the result of 1.2 and 2 are the same because they
do not concern with Criminal liability. However, for some cases that tax assessment
official considers that taxpayer underreport the exact amount of his taxable income
needs to be under the provision Section 49. The Net Worth Method under Section 49
can enforce them under the tax prescription of a 10 years sentence.

It is the author’s recommendation that the enforcement of the Net
Worth Method under Section 49 can be divided into 2 levels. The first level is for the
enforcement of tax cases which tax assessment official consider that taxpayer
underreport his taxable income and cannot be enforced by the general method under
Section 18 through Section 26. This level does not concern with the Criminal law at
any reason the prescription for this case should be under general tax prescription of
10 years. The second level is for cases of corrupted income or other illegal income
which concern about Criminal case should be under the prescription equal to the
Criminal law 20 years for the corruption cases. When the tax assessment official has
reasonable doubt and gives consideration for using the Net Worth Method with the
purpose to suppress corruption and for better effectiveness and to increase the
opportunity to bring a guilty criminal to justice. As aforementioned, if the Thai
Criminal law cannot convict a criminal as guilty, at least the tax method would be
able to impose taxes on his wealth.
Bibliography

Books
Nattapong Posakabutra. Tax Law. Bangkok: Faculty of Law, Assumption University, n.d.

Periodical Materials and Journal

Lecture Note and Seminar or Working Material

Internet
Bibliography

Books
Nattapong Posakabutra. Tax Law. Bangkok: Faculty of Law, Assumption University, n.d.

Periodical Materials and Journal

Lecture Note and Seminar or Working Material

Internet


**Law, Regulation and Statute**

The Thai Revenue Code.
The Thai Civil and Commercial Code.
The Thai Criminal Code.
The US Internal Revenue Code (IRC).
The United States Constitution.
The United States Taxpayer Bill of Rights.