



THE COLLECTION OF EXCISE TAX ON SPA
BUSINESS IN THAILAND

BY
MS. PANTIYA PATTARATARATHIP


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 2009

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The logo of Assumption University of Thailand is a circular emblem. It features a central shield divided into four quadrants: top-left (blue with a white lily), top-right (white with a blue cross), bottom-left (white with a blue star), and bottom-right (red with a white cross). The shield is flanked by golden laurel branches. Above the shield is a golden crown. Below the shield is a banner with the text "LABOR OMNIA VINCIT". The outer ring of the emblem contains the text "ASSUMPTION UNIVERSITY OF THAILAND" at the top and "BROTHERS of S1 GABRIEL" at the bottom.

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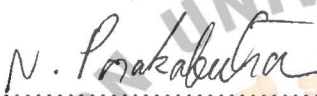
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Major : Master of Laws (Taxation Law)

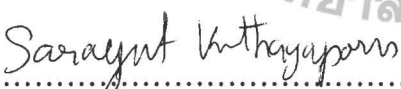
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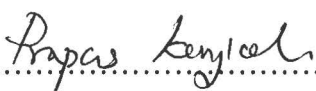
Faculty of Law, Assumption University approves this Independent Study Paper as the partial fulfillment of the requirement for the Degree of Master of Laws.


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

Committee:


..... Chairman
(Assoc.Prof. Nattapong Posakabutra)


..... Committee
(Mr.Sarayut Wuttayaporn)


..... Advisor and Committee
(Mr.Prapas Kong-ied)

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ABSTRACT

The objective of this study paper is to study the application of excise tax law to the spa business in Thailand, as well as to make recommendations for revising laws concerning the spa business. The study methodology is based upon the comparative study by collecting literature on excise tax theories under Thai, Turkish, South Korean, and the European Union laws.

It is found that at present, spa business is very popular in Thailand and the government promotes spa as one of main sectors to stimulate the Thai economy. While spa business expands quickly, the Excise Tariff Act B.E. 2527 becomes out of date, especially the definition provided under this Act which is unclear and unfair. This causes problems in interpretation and excise tax collection on spa business. It is essential to enact and amend the law to solve these problems. The law applied to the spa business should be prudent in order to fix the new problems and keep up with changing situations.

It is recommended that a more appropriate definition of the word “spa” is required. Additionally, the comparative analysis of Thai and foreign excise tax laws shows clearly that the Indian CENVAT is a good tax scheme which could be applied to the case of Thailand. It is considered to be one of effective double taxation elimination measures. Moreover, the analysis of this study also provides suggestions and possible resolutions to remedy these problems, that is, the amendment of Excise Tariff Act B.E. 2527 to collect excise tax properly and fairly.

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Pantiya Pattaratarathip

* มหาวิทยาลัยอัสสัมชัญ *
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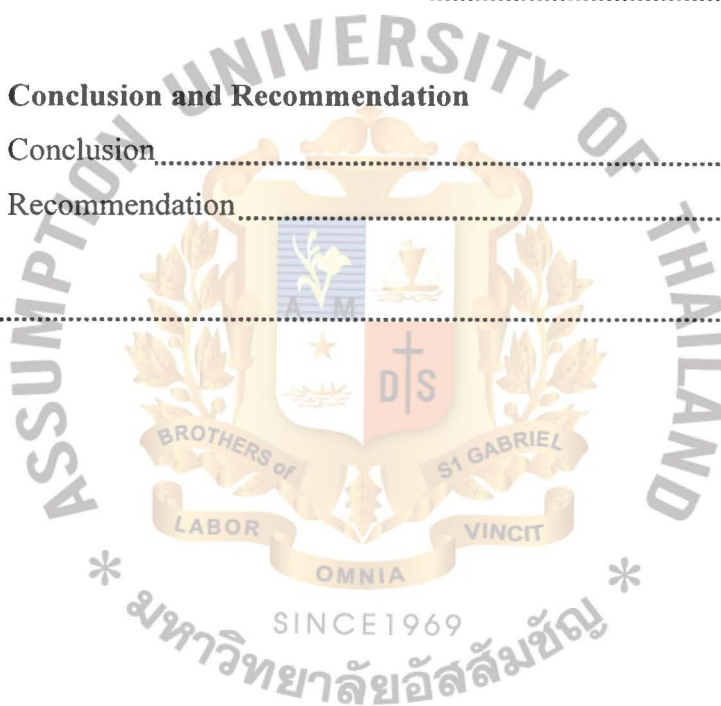
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Chapter 1

Introduction

1.1 Background and General Statement of the Problems

At present, a spa business is popular over the world because many people are interested in taking care of their health and beauty. Especially, Thailand's spa industry has been growing rapidly since B.E. 2545. To date, the sector has brought revenue to the Royal Thai government more than 3,600 million baht per year.

The problem of excise tax law application to the spa business prevails under existing Excise Tax Act B.E.2527 (2546) and Excise Tariff Act B.E.2527 (No.4) 2546 part IX Entertainment type 09.02 imposing excise tax on Turkish bath or sauna and massages at the rate of 20 per cent. Further, the Royal Thai Ministry of Finance issues Ministerial Announcement Title reduces and exempts excise tax (No.64) which helps reduce the ceiling of tax rates of Turkish bath or sauna and massage by service provider to ten per cent with exemptions for health massage and beauty massage. Tax bases are calculated from revenue of Turkish bath or sauna and massages by service provider (food and beverage providers excluded).

The Royal Thai Ministry of Public Health's Ministerial Announcement divides for operating health or beauty massage into three categories: health spa; health massage; and beauty massage. These business owners have to comply with the set standards of places, operators, services, therapists and safety according to the Ministerial Announcement. The Department of Health Service Support (Royal Thai Ministry of public Health) is responsible for monitoring and controlling/evaluating performance and quality of certified health service centers to protect consumers.

According to Excise Tariff Act B.E. 2527, an interpretation of the definition of health spa is categorized the same as Turkish bath. This is not suitable due to the fact that spa business and Turkish bath are obviously set up for different purposes. The main purpose of Turkish bath is to provide prostitution. Unlike Turkish bath, health spa is a service business aiming to improve health as well as relieve stress and pain.

The interpretation of Excise Department under this Act becomes one of the conflicts with the certifications issued/guaranteed by the Department of Health Service Support, Royal Thai Ministry of Public Health. This controversy may confuse spa business owners, excise officers, and The Ministry of Public Health officers. Therefore, the definition of “Health Spa” under the Excise tariff Act B.E.2527 may require a revision since health spa is not a kind of Turkish bath businesses. Otherwise, many business owners may exploit some loopholes in a form of tax avoidance.

Thai spa is well-known and reaches the top ten in the “premium” world class. The Thai government also supports Thai spa to become one of leading sectors in Asia-Pacific. However, inappropriate/unclear definition and tax evasion issues could cause poor perception of Thai spa as untrustworthy and disreputable among spa lovers all over the world.

1.2 Hypothesis of the Study

Current excise tax law has many loopholes. excise tax law on spa business has unclear definition and unfairness for spa entrepreneur. It is very essential to amend Excise Tariff Act B.E.2527 with regard to spa business in order to collect taxes properly by distinguishing spa business from Turkish bath. This results in double taxation issues which can be solved by applying foreign excise tax law to eliminate excise double taxation. Furthermore, Excise Department should be improved in efficiently to control the excise tax evasion on spa business in Thailand. It is crucial that the law applied to these problems should be prudent, fair and equal.

1.3 Objectives of the Study

1. To study Excise Tax Act B.E.2527 (2546) and Excise Tariff Act B.E.2527 (No.4) 2546
2. To study general principle of Excise Tax law and theory and Practice of excise taxation.
3. To study foreign excise tax laws under India, South Korea, Turkey, and the European Union.

4. To analyze the problem of the application of excise tax law to spa businesses in Thailand and compare that with Indian law and experiences. To revise and improve Thai laws concerning spa businesses

1.4 Study Methodology

The method of this research is a documentary research. The primary data sources are General principle of Excise Tax law and theory and practice of excise taxation and rule and regulations of Indian luxury tax law of Delhi tax on luxuries Act 1996. Relevant Thai Excise Tax law will be studied, analyzed and presented. In addition, related books, articles in law journals, the announcement of excise department notification of exemption on health spa (no.27), and information obtained from various websites on the internet will be reviewed and discussed.

1.5 Scope of the Study

This research paper focuses on the problem of the collection of excise taxes from spa businesses in Thailand, especially with regard to excise double taxation and excise tax evasion. It analyses whether “Health Spa” under amended Excise Tariff Act B.E.2527 should be subject to taxes under this Act or not. This can be done by comparing characteristics of excise tax law in Thailand to those of foreign laws.

1.6 Expectation of the Study

1. To understand Excise Tax Act B.E.2527 (2546) and Excise Tariff Act B.E.2527 (No.4) 2546.
2. To understand General principle of Excise Tax Law by John F. Due and theory and practice of excise taxation by Sijbren Cnossen.
3. To study Foreign Excise Tax law under Indian law, Turkish law, South Korean law, and The European Union.

4. To realize the problems on the collection of excise tax on spa businesses in Thailand and compare with Indian, Turkish, and South Korean, and the European Union laws.
5. To collect excise taxes from spa businesses correctly.
6. To solve the problems with regard to the collection of excise tax on spa businesses in Thailand.



Chapter 2

The Collection of Excise Taxes Law on Spa Business in Thailand

2.1 The General Principal of Excise Tax

Excise taxes are considered an indirect form of taxation which levies on certain goods and services within countries. Excise taxes are different from customs duties because customs duties or “border tax” are taxes on imported goods, whereas excises are inland tax. The distinctive features of excise taxation are its selective coverage and discrimination between intents which determine the tax liabilities by some form of quantitative measurement. On the other hand, the general consumption taxes such as Value Added Tax (VAT) and Retail Sale Tax (RST) typically include all goods and services for sale in tax base other than those specially exempted.

Both VAT and RST are taxes/levies on raised revenue only. The liabilities of VAT or RST are generally verified through checks on books of accounts and other documentary evidence. On the contrary, excises are often justified by other grounds or viewed as serving a special purpose. Excise tax collection is usually linked to physical controls. Generally, excise systems comprise all selective taxes, related levies, and charges on tobacco, alcohol, gambling, pollution, driving and other specific goods, services and activities.

Moreover, Excise taxes are unlike most forms of taxation but delimited from other taxes¹. For example, the traditional British concept of an excise provides clear definition of an excise tax that this tax is a levy upon production rather than sale and is imposed only upon domestic activities, commodities and services with quantitative control. The modern concept of an excise tax is substantially broad. Its basic characteristic is applicable to specified commodities or groups of commodities. The tax may apply to either production or sale, to domestic outputs or to imports as well,

¹ John F. Due, A Product of the Public Economics Division, (Washington: Policy research Dissemination Center, 1994), p. 1.

Excise taxes were among the early forms of taxation, first developed on a significant scale in Holland, then introduced in Great Britain and other countries in with either specific or ad valorem rates with either physical control (common on alcoholic beverages and tobacco).

Excise taxes were among the early forms of taxation, first developed on a significant scale in Holland. It was introduced in Great Britain and other countries in the 16th and 17th centuries. However, excise taxes were introduced in developing countries by the policies of the colonial powers. They levied taxes on commodities that had been major sources of customs revenue such as; cigarettes and beer, and subsequently distilled spirits. The objectives of excise taxes were to protect major revenue sources which originated from domestic production.

2.1.1 The Principle of Good Taxation

Adam Smith, the father of economics gives us the idea of good taxation². His work on an Inquiry into the Nature and Causes of the Wealth of Nations (1776) is summarized as follows:

1. Equity and Fairness

Adam Smith believes that the wealthiest benefit most from government. They can afford to pay. “The rich should contribute to the public expenses not only in proportion to their revenue,” Smith believes, “but something more than in that proportion.” Equity, based on Smith’s theory, requires progressive taxation. This principle is firmly prescribed in the U.S. tax code today.

2. Certainty

According to Smith, tax rules should specify when the tax is paid, how it is paid, and how the amount to be paid is to be determined. A person's tax liability should be certain rather than ambiguous. A tax system’s rules must enable

² Legacy, “The Principle of Good Taxation of Adam Smith,” At <http://th.wikipedia.org/wiki/%E0%B9%81%E0%B8%AD%E0%B8%94%E0%B8%B1%E0%B8%A1%E0%B8%AA%E0%B8%A1%E0%B8%B4%E0%B8%98> (last visited 10 November 2009).

taxpayers to determine what is subject to tax (the tax base) and at what tax rate. Taxpayers should be able to determine their tax liabilities with reasonable certainty based on the nature of their transactions. Certainty is important to a tax system because it helps to improve compliance with the rules and to increase respect for the system.

3. Convenience

A tax should be due at a time or in a manner that is most likely to be convenient for the taxpayer. Convenience of payment is important in helping to ensure compliance with the tax system. It follows that simplified tax systems encourage people to pay taxes.

4. Economy

The costs to collect a tax should be kept to a minimum for both the government and taxpayers. These costs include the administrative cost to the government that is influenced by the number of revenue officers necessary to administer the tax. This principle is also closely related to the principle of simplicity. The more complex a tax is, the greater the administration costs for the government become. At the same time, taxpayers have to bear the greater costs of compliance which involves determining their tax liabilities and reporting them.

2.1.2 The Objective of Excise Tax Law

The objectives of excise tax law are as follows:³

1. To Raise Revenue for General Purposes

The main reason for enacting excise tax law is to raise government revenue. Excise taxes can be collected and administered easier than other taxes. For example; excises on tobacco, alcohol, petrol and motor vehicles are potential sources of revenue because the products can be easily identified. In addition, sales volume is high while there are few producers. These help simplify tax collection. Even though excise taxes

³ Sijbren Chossen, Theory and Practice of Excise Taxation, (New York: Oxford university, 2005,) p. 3.

induce price rises, the consumption remains high because the consumers would find it equally satisfactory.

Moreover, higher taxation on excisable products for revenue purposes also has an economic rationale. Addictive or indispensable products such as tobacco, alcohol, and energy are quite hard to find close substitutes for. This implies that the demand for them is inelastic. This means the potential for economic distortion caused by the imposition of excise taxes is relatively small.

2. To Reflect External Costs

Excise taxes are often rationalized as charges for external costs that consumers or producers of excisable products imposed on others. Although the principle of consumers' sovereignty implies that rational and fully informed persons who weight up all the costs and the benefits of their actions should be free to smoke, drink, gamble, pollute, and drive. If these result in physical, financial, and psychological costs imposed on others, the persons should be accounted for in a price. For example, taxation on pollution as well as smoking are the classic cases internalizing external costs through appropriately designed excise taxes imposed on carbon emission. Burning fossil fuels causes negative impacts on global climate by emitting carbon dioxide and other greenhouse gases which can be very litter or large amount (depending on the quantity of fuels used and their characteristics. This results in bad pollution, acid rain and other environmental problems. Hence, excise taxes cause the increased prices for polluting products or processes such as; fertilizers, pesticides, sculpture, disposal containers, basic chemical and batteries.

3. Equity Consideration

Tobacco taxes are more discriminatory and regressive than other taxes because of their proportions. Of course, the poor spend larger proportions of their income on cigarettes than the rich. Assuming that the prevalence of smoking is the same as a group, however; the poor smoke more than the rich. This tends to exacerbate the tax burden problem across income classes. In fact, smoking becomes increasingly prevalent in low income class, which can be defined by income, education, occupation, or social class. If the poor are the last to pick up smoking, they are also the last to quit.

Smoking causes many diseases such as lung cancer and other smoking related illnesses. The severity of illnesses depends largely on smoking behaviors and habits. Therefore, if the price elasticity of demand is high, it would tend to lower public health support and costs. It means that increased tobacco taxes would reduce smoking in lower socio-economic groups. At the same time, these would help minimize the health and morality inequities between the poor and the rich.

4. Revenue Aspect

When the government needs more revenue but does not want to distort its tax system, the consumption tax is chosen to achieve this objective. For example, tobacco tax rate should be increased as the overall level of taxation increases while imposing excise taxes on energy intends to reduce external effects from greenhouse gases.

Miranda and Hale's work is based on the U.S. experience. They produce the marginal social cost per ton of garbage. It impacts of both global and local pollutants on human and environmental health. Garbage causes negative health effect as it is a source of toxins which then seeps into groundwater. Additionally, methane gas is produced when the decomposition of organic materials in landfills proceeds before methane is collected and vented. This substance could accumulate underground and spread in neighborhoods waiting for possible explosion. Also, if the methane is vented and released into the atmosphere, it will generate the greenhouse effect contributing to global warming. Finally, the methane is flared up on new landfills. As a result, the negative greenhouse effect of the methane is reduced as emitted carbon dioxide is lower than before.

2.1.3 Types and Characteristics of Excise Law

There are three classes of Excise Taxes as follows:

The first is the traditional Levies.⁴ The most important characteristic of the traditional excises is the ability to provide substantial revenue for the government by imposing taxes on products, processes or activities which create negative externalities. The consumption of some commodities imposes costs on society which are not born by

⁴ Sijbren Chossen, Theory and Practice of Excise Taxation, (New York: Oxford university, 2005) p.27.

the purchasers of the commodities. For example, cigarettes not only cause lung cancer among smokers but also affect others who are non-smoking.

Moreover, the penalty of using these commodities seems appropriate since their uses contribute little to the welfare of society and their purchases take funds away from goods essential for better health and well being. In fact, this view of traditional excises reflects from the Victorian notion stating that uses of such commodities are sinful and antagonistic of Islamic countries.

The second is Motor Fuel and Motor Vehicle Levies.⁵ The main reason of excise taxes levied on motor fuel and motor vehicle is to collect taxes from road users in lieu of tolls. These taxes lead to optimal public expenditure on roads and optimal road use. In Western Europe, the excise tax is progressive and constituted an important element of the income tax system aiming to tax persons on the basis of ability to pay with incident gains of lessening road congestion.

The third is Luxury Excises.⁶ It is the third category of excises that consists of those designed to tax persons in a progressive fashion. It is an alternative to heavy reliance on income taxation. Thus, the equity can be attained with less reliance on income taxes which are not only difficult to enforce in developing country but may also have greater adverse effects upon incentives.

Since the earlier years of development most of these commodities and inputs are imported. The introduction of excises helps lessen imports of luxurious products. It also stimulate saving and reduce an outflow of foreign exchanges. In comparison to a sales tax, an excise system avoids burden on widely used commodities with a low income elasticity of demand. Excise tax is likely to be progressive whereas a sales tax rarely is.

The “luxury” excise system reflects inherent difficulties noted in previous sections, except items such as; motor vehicles. This is due to the fact that information on income elasticity alone is not adequate to select “luxurious” commodities. Therefore, the taxed items are selected on the basis of what the person considers as luxuries.

⁵ Ibid., p. 28.

⁶ Ibid., p. 29.

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There are different luxury tax rates, which are used with narrow differentials and defying logic, for example, the rates of 8, 9, 10, 11 and 12 per cent (with no rational explanation of the differences). Numerous interpretative questions are inevitable as well as discrimination among consumers (and producers) of closely related commodities. Finally, the selection of various goods for taxation purposes can be unfair to those people who have preferences for luxuries. They have to bear this excess burden. But when the majority of developing as well as industrialized countries introduce sales taxes which cover all commodities with few rates or a single return is required for all the commodities. This reduces number of interpretative questions with regard to taxable items.

In summary; the theory of John F. Due states that a tax structure can be made more progressive by including excises on a number of so-called luxury goods, just as there is no evidence that the use of multiple rates under a sales tax improves progressively. If a higher tax rate is desired on a few commodities, such as motor vehicle, it is like preferable from an operational standpoint, to reach them by a separate excise rather than by use of higher special rates in the sales tax.

In some countries, however, there is so little domestic manufacturing as to make a general sales tax scarcely worth the trouble. In others there are political obstacles to the indirect tax, beyond the traditional and motor fuel, excises is warranted. As a second best temporary solution, some form of consumption or purchase tax as used in the Caribbean countries, may be warranted. But experience in the Caribbean, Egypt and elsewhere suggests that such a levy must be designed with care, and even so is likely to be suitable only for a few years. Second best optimality requires that the group of reasonably homogenous commodities, as for example, consumer durables, be subject to a uniform rate, tax paid on the basis of a single return, rather than imposing a substantial number of separate levies on different commodities at different rates. Motor vehicles constitute such an important and clearly definable commodity class that different rates, based on value or other measures may be warranted, distinct from the general levy.

The excise tax has been collected for a long time and most in the developing countries. Many cases, newly introduced excise taxes replace the custom tax on products such as whiskies and cigarettes which are significant sources of income of customs departments in the early days. As a country possesses capacities

for producing these commodities by itself, tax revenue collected from imports has been decreased through time. This leads to an increasing role of the excise tax. Among others, India collects a considerable number of excise taxes approximately 127 types. India's criteria for excise tax collection are as follows:

- General speaking, spa is a very popular and booming business in Thailand. There are an increasing number of spa businesses over the past few years. In fact, spa is not a new type of service businesses in Thailand but the sector has recently received a great deal of attention from entrepreneurs. This may be because of high growth potentials of the sector.

In addition, the spa business is one type of service businesses that attract tourists to visit Thailand. It becomes a leading industry which the Thai government can promote to stimulate economic growth. As the spa business expands rapidly, more and more taxation problems can be found among spa owners. As a result, both spa entrepreneurs and members of Thai's spa association make a request to the Excise Department asking for an exemption of excise taxes on spa business sector. They claim that spa business is different from Turkish bath business.

Accordingly, these spa entrepreneurs then ask the Excise Department to review excise tax collection on spa business in order to guarantee fairness for the entrepreneurs as well as develop the Thai's spa business.

2.2 The Principles of Excise Tax Collection⁷

In Thailand, goods and services that subject to excise tax are categorized into four types.

The "Excise Tax" is the tax collected from products produced in a country and imported products. It is a kind of consumption tax which is an indirect tax. The payers (sellers) do not have to bear direct burdens but the tax burdens are pushed to the consumers. The excise is the tax collected especially from some types of products and services additional to taxes collected from sale of general products or services. In Thailand, the tax collected from general product sales is VAT. The excise collected

⁷ Ibid, p.5.

from some type of products and services, however, is the selective sale tax.⁸. The general principles for collection excise on goods and service are divided into four types as follows:

2.2.1 Sumptuary Excise

There are two reasons for sumptuary excise tax collection.

First, if there is a lot of consumption of products which will lead to bad health of consumers.

Second, the consumption of particular products leads to high social cost. For example, smoking too much will cause social several problems besides negatively affecting health. The state must provide treatments and also social service to the affected.

2.2.2 Luxury Excise

The first reason to collect tax from luxury products is to create fairness in the society. People with high incomes usually consume the luxury products or high quality products. Therefore, they shall pay more tax than people who has low income and use the products that are necessary for living.

Furthermore, luxury excise helps support economical behaviors. People who purchase luxury products shall accept higher tax burdens resulting in less consumption and possible higher saving.

Lastly, luxury tax also helps limit the consumption of luxury products by reducing the amount of production. The available production capacities can then be used for the production of other necessary products and services instead. The criteria for luxury tax collection shall have the following characteristics:

1. Being the products that high income people only can consume. However, this limitation is not always true. In certain cases, rich people may love to use general products while poor people use luxury products.
2. Being the products that have flexible demand which reflects that the product is not necessary for living. However, the flexibility/elasticity of demand is difficult to measure and has changed according to time.

⁸ Prapas Kong-ied, Excise Tax Law (Bangkok, Nititram, 2542), p. 2-3.

3. Being the products that help build good image of the consumers themselves. They can use these products for general purposes, at the same time, they gain happiness from showing off these special and expensive products to others. For example, we may use a small car to drive in Bangkok and nearby cities but in order to show off we may buy a very big car or the only one car sold in Thailand.

4. Being the products that can be left out or can live without. By doing so, there will cause no harm to health and moral of people. The definition in theory is defined as the products other than rice, food, clothes and medicine are the luxury products. Above all, it is up to the management and council to decide on which products are subject to taxation. However, the criteria shall be employed.

2.2.3 Benefit-Based Excise

Sometimes the state gives some groups of people benefits over the others. Therefore, excise taxed should be collected from people who receive such special incentives/benefits. For example, oil producers believe that when a state builds roads, people who use cars running on these roads should pay for the oil tax. One of the logic falls to the fact that the one who use the street is the same group of people who use a lot of oil. This make it easier for oil tax collection. Many countries in the world spend the revenue from oil tax on street construction, not on any other businesses.

2.2.4 Miscellaneous Excise

Sometimes, a government needs income or need to limit the production of goods for a temporary period. For example, during the period of World War II, the US government collected miscellaneous tax from woman tights as to reduce the usage of nylon and make good use of nylon for the production of parachutes. Another example, there are times when a government may really need to use money for poverty reduction reasons during a crisis, the government may introduce an excise tax on some types of products to satisfy those needs.

2.3 Excise Tax Law in Thailand

There are seven provisions⁹ that allow the relevant authority to collect the excise tax directly.

- Excise Tax Act B.E. 2527 is the act that sets the criteria and Method in the management of excise collection such as setting/identifying groups of people that have duty to pay for tax, the responsibility to pay tax base, discount rate and tax exceptions.
- Excise Tariff Act B.E. 2527 is the provision that set the characteristic of products and services as well as the rate of excise.
- Liquor Act B.E. 2493 is the law used to enforce the collection of excise tax on alcohols beverage products.
- Tobacco Act is the law used to enforce the collection of tax on tobacco products.
- Card Act is the law designed to manage and collect excise tax on card products.
- Allocation of Excise Tax is the law enforced to support the transportation of products produced in Thailand for selling in foreign countries. This is to increase competition opportunities of Thai's products in the world market. The government will pay for certain amount at the rates agreed by the product exporters.
- Allocation of Liquor Tax is the law enforced to increase tax imposed on liquor to generate more local government revenue.

2.3.1 Goods Subject to Excise Tax under Excise Tariff Act B.E.2527

Part I Petroleum& Petroleum products

Part II Beverage

⁹ Prapas Kong-ied, "Excise Tax Document for Master Degree ABAC Student", Lecture Note for Assumption University, n.d, p. 5-8. (unpublished manuscript).

Part III Electrical Appliances. For example; Air condition, composed of fan driven by motor and contained part for adjusting temperature whether there is moisture control or not, having cool coil not over 72,000 BTU/hour

Part IV Glasses and Glassware. For example; Chandelier for ceiling or wall excluding lamp for the public along road sides, outdoor and lead crystal and other crystal.

Part V Cars ex. Seat cars or Passenger cars with seats not exceeding 10 people.

Part VI Boats ex. Yacht and water vehicles used for entertainment

Part VII Fragrance Product and Cosmetic

Part VIII Other commodity ex. carpets and other textile for floor, motorcycles, marble and granite, batteries, liquor, tobacco and cards.¹⁰

2.3.2 Services Subject to Excise Tax

Part IX Entertainment ex. Nightclub, disco-theque and Turkish baht

Part X Taking chance business ex. Horse racing

Part XI Business that has the import on the environment ex. Golf court

Part XII Business permitted from the state or concession from the state ex. Telecommunication

Part XIII Other services specified in the Royal Decree¹¹

2.3.3 Excise Tax Law Relevant to Spa Business in Thailand

1. Excise Tariff Act B.E. 2527

According to Excise Tariff Act B.E. 2527 Part IX “Entertainment” means the service places generating commercial income through businesses such as theatre, cinema, nightclub, cabaret and discotheque

09.01 Nightclub and discotheque.

09.02 A Turkish Baht

09.03 Other as specified by the Direct-general in the government Gazette.

¹⁰ Ibid., p.7.

¹¹ Ibid., p.8.

The health spa is categorized in the type of 09.02, the bathing places or saunas and massage that the Excise Department is responsible for collect the excise tax since, January 28, B.E. 2546 in the percentage of 10 of the revenue of the bathing or sauna and massage and under section 4 of this Act that has provided the definition of the service and the service place as follows:

Service means the provision of business service at the service place

Service place means the place to deliver service as provided according to Excise Tariff Act. B.E.2527

Therefore, the service place provided under Excise Tariff Act B.E.2527 part XI must be subject to the definition in section 4. Consequently, health spa shall be deemed the place of service that has to pay excise tax under this Act.

Likewise the excise department has defined the definition of spa as the service that shall pay for excise tax as they provide the bathing service or sauna as well as massage by the service providers shall have the following characteristics:

- 1) Providing bathing service and massaging or,
- 2) Providing sauna and massaging¹²

Thus, it can be seen that if it is the service for bathing and sauna, it will not have to pay for the excise tax when the analysis is based on the definition that the Excise Department has provided. Accordingly, the excise tax will be collected only from the bathing and massaging services or massaging and sauna.

Tax Base will be collected at the rate of 10% from income of the bathing, sauna, and massaging services in the health spa¹³ according to the criteria and conditions provided by the director-general. (the announcement of the Excise Department notified that the exception on excise tax of the service place for bathing, sauna and massage in the beauty business or health business dated January 28, B.E. 2546) The conditions that the director-general has provided the criteria, if one of the items is according to the Places of Service Act (No.4) B.E.2546, the entrepreneur of the service place shall have liability to pay excise tax. And if those places of service

¹² Excise Department of Thailand, “Definition of goods and services” At <http://www.excise.go.th/index.php?id=210> (last visited 10 November 2009).

¹³ Excise Department of Thailand, “Tax Base,” At <http://www.excise.go.th/index.php?id=211>. (last visited 10 November 2009).

are the businesses that pose a danger to health and morality of the population, the law thus, shall control some types of place of service or the owner of place of service business to act according to the law. It can be said that under the acts of service place section 3 which defined as in this acts "Place of service" means the place set up to provide services for the commercial incentives as follows:

(1) the place for dancing, Thai standard dancing, Rongngang in general business type and no service partner.

(2) the place that provides food, alcohols beverage, soft drink or else for sale and service by having service staff to take care of customers.

(3) bathing place, massaging or sauna that have staff to take care of customers except

(a) The place that the service provider has registered and permitted to be the Medical registration on the branch of Thai medical, Thai massage according to the law of medical or received exceptions for registering and obtaining the permission of Medical registration on the branch of Thai medical, Thai massage according to the law or the clinic according to the law of clinic.

(b) The place for health and beauty parlor that the Ministry of Health announced by the agreeing of the Home Office Minister. The characteristic of the place of service or the service provider shall be according to the standards that the Ministry of Health announced by the agreeing of the Home Office Minister. The announcement will state the criteria and the investigation methods for the certification process to be according to the standard or;

(c) Other places as set in the rule of the Ministry

(4) The places that provide food, alcohols beverages or other beverages for sale or service by having one of these forms

(a) Music, concerts or other performance for the entertainment and agreement or let the singers or the performers sit with clients

(b) Setting the equipments for singing along with music for the customers by provided singing service along with the customer or allow the service provider/staff to sit with them

(c) Dancing or agreeing for dance or setting the dance show such as dancing on stage or in the table area

(d) The characteristics such as the places set for light and sound performance or other equipments according to the rule of Ministry

(5) The places provide food, alcohols beverage or other beverages for sale with the concert setting or else for entertainment which closed after 24.00.

(6) Other places as provided in the Ministerial regulation

Besides the law of place of services, there was the announcement of the Ministry of Health 5/2538 on the subject of the business that pose a danger to health under section 5 and section 31 of the acts of Ministry of health B.E. 2535. The minister of Ministry of health by the advising of the Ministry of health committee announced for the business of entertainment part XI that have the following characteristics as follow:

- (1) Turkish baht business
- (2) Business on bathing place, streaming sauna and herb sauna
- (3) Hotel business or other else in the same area
- (4) The business of dormitory, renting building, room for rent, room separated for rent or other activities in the same sense
- (5) The theater business
- (6) The concert, dancing, Thai standard dancing, Rongngang, Discotheque, Karaoke or else in the same sense
- (7) The business for pool or else in the same sense
- (8) The skate playing or light and sound with other plays or else in the same sense
- (9) The health beauty or salon except the business forced by the law of the medical occupation
- (10) The service for weight controlling by the nutrition control and food provision by the special aims to exercise the body or else except that those service provided in the clinics according to law of clinical.
- (11) The business in amusement or game boxes

(12) The business on the medical laboratories, health, science and environment

(13) The business on golf field or practice field.

Thus, it can be seen that the health spa is in the area of the place of service that is allowed for doing the Turkish bath business according to section 3(3) of the act of place of service B.E.2546 which provided that

1. Having basin or the place for bathing in the same room with the massage service or even having separated the section for the basin or the bathing place from the massage section by having the door or not

2. Setting for the place, pictures or media to select the service provider

According to place of service Act B.E.2546, the health spa shall be interpreted as the meaning of Turkish bath business that has the service provider for customers under this Act.

Health spa in Thailand involves bathing, herb sauna, streaming sauna, massage and other activities which aim to promote good health. Yet, health spa is still deemed to be the place of service causing harm to health according to the announcement of the Ministry of Health no. 5/2536 which monitor the cleanliness and sanitary according to the law of public health.

Therefore, health spa business is controlled and monitored by two main laws stated above. The collection of excise tax of the Excise Department then conformed to the laws. Even though the spa would be categorized in the same place of service as bathing or sauna and massage, the law of excise tax has an exception to collect the tax from some type of spa. But health spa should get the excise tax reduction. Health massage and health beauty should be exempted from excise taxation on revenue derived from bathing, sauna, and massage. The provision of Ministerial Notification of Ministry of Finance under this follows below.

2. Ministerial Notification of the Ministry of Finance Notification on Excise Tax Reduction and Exemption (68) Dated 28 January B.E. 2546 as follows:

1. In case of the income derived from bathing, sauna and massage service was charged at the Tax Rate of 20 per cent. At present, tax is reduced to the rate of 10 per cent of the tax base as the laws have stated

2. In case of income from bathing or sauna and massage service that shall be exempted from excise tax are those incomes from bathing or sauna and massage services in the educational institute or temple for the religion rituals or in the hospitals or clinics stated by the law of clinic according to the criteria according to the announcement of the Excise Department on the subject of criteria and conditions

With the exception of excise for the place of service type of bathing, sauna and massage in the health beauty or health massage dated January 28, B.E. 2546 must be in the scope of these following conditions

1) It must not be the place that is allowed to do the Turkish bath business according to section 3 (3) of the acts of entertainment spot B.E.2509 or

2) It must not have basins or bath taking places in the same room with the massage room no matter it will be separated in sections for the basins or bath taking places and the massage service section with the closed door or not

3) It must have no set of the place, picture or media for clients to select the service providers.

It can be seen that the excise tax collected tax on the bathing or sauna and massage which is the important composition of excise tax collection. But if the service place is an educational institute or temple or hospital including a health beauty or a health massage place will be exempted from this tax.

Presently, the Excise Department makes a new announcement to replace the existing announcement on exemption of excise tax on place of service for bathing or sauna and massage and massaging in beauty or health parlor dated 28 January B.E. 2546. Details of the new announcement are shown below.

3. The Announcement of Excise Department Notification on Exemption of Excise Tax on Place of Service for Bathing or Sauna and Massage in Beauty or Health Parlor (no.27) Dated 30 December B.E.2534 are as follows:

To follow in Ministerial Notification of the Ministry of Finance on excise tax reduction and exemption (no.27) dated 30 December B.E.2534 amended by Ministerial Notification of the Ministry of Finance Notification on excise tax reduction and exemption (no.68) dated 28 January B.E. 2546 part nine Entertainment type 09.02 bathing or sauna and massage notified excise tax from revenue of bathing

or sauna and massage in beauty or health parlor in accordance with general director notification as follows:

1) Replacing the announcement of excise department notification on exemption of excise tax on place of service for bathing or sauna and massage and massaging in beauty or health parlor dated 28 January B.E. 2546

2) Place of service for bathing or sauna and massage in beauty or health parlor certified by Ministry of Public health provides the standard of location service, service provider conditions and verification in accordance with the standard of service place for health or beauty according to Place of service Act B.E.2509 or under this announcement shall be deemed the standard and exemption from revenue of bathing or sauna and massage by service provider through the period of time provided/allowed according to the certification or shall be deemed the standard under this announcement

3) this announcement has been enforced since on the 20th of October B.E.2552

2.4 The Nature of Spa Business

There are a great number of spas in Thailand especially, in important tourist attractions. However, many people still do not know and cannot distinguish spas from places for Turkish bath according to Excise Tariff Act B.E. 2527.

This chapter explains five meanings of spa as follows:

Firstly, the word “spa” is derived from Latin origin, “Sanitus Per Aqua” or Salus Per Aquam which means “health through waters or to heal through water”.

Secondly, “spa” came from the name of a small town near Liege, the city in the south eastern of Belgium. It is the city that has the natural geyser. It is believed that in year 1326 the blacksmith of Collin le Loupe city heard the name of this geyser that it can heal illnesses. He then attempted to find it and hoped that geyser could heal him. After that the place became one of famous Health Resorts that were widely accepted as a place for boosting their health, getting treatments and curing illness symptoms. Most people know it as “Espa” which is the root word meaning fountain and the word is used in English as Spa.

The third meaning, spa is the name of a small village in Belgium where a natural source of mineral water or the geyser is found by ancient Roman. The Roman soldiers usually use this fountain to heal their wounds and pain from battles.

The fourth meaning of spa is “to treat and take care of overall health by the natural method with the use of water as the component in treatment along with other medical selection methods by using the science of 5 sensitivities body, taste, smell, sound and touch as the factors to create the balance of body, mind and emotion.”¹⁴

Finally, according to the meaning defined by the Medical registration Division, Department of health service Support, Ministry of Public Health, “spa” means the service station for health or clinic that provide services to general customers with the massage healing science and employed the oil massage as the main service to improve the balance of body and mind by advising services as the academic set.

In addition, this may include suggestions for health support/maintenance by exercises, nutrition and behavior adaptation according to the universal medical theories and health goals by the selective medical sciences. These have to comply with standards specified by the Ministry of Public Health’s announcement.

From all the meanings above, it can be summarized that spa is a treatment by water, overall health treatments and maintenance by healers, specialists or doctors as well as being the place for rest in order to gain good health.

2.4.1 The Definition of Spa According to the International Spa Association (ISPA)

The International Spa Association divides spa businesses into 7categories¹⁵ as follows:

¹⁴ Naiyana Apiwatporn et al. Entrepreneur for Doing Health Spa Business (Nonraburi: Department of Health Service Support, Ministry of Public Health ,2551), p.2.

¹⁵ Wonchalerm Jatrarakul, Spa&Aromatherapy (Bangkok: kunpor 2546), p.20-22.

1. Destination Spa

Destination spa is a service place that provides services on health care support by spa service providers. This type of spa provides rooms and other facilities for customers in full complex. After These customers checking in, they can then join activities that the service providers set such as relaxation programs, concentration programs and mind rejuvenation.

2. Resort/Hotel Spa

Resort/hotel spa is a service place in resorts or hotels located at various tourist attractions or relaxation places that have beautiful natural views such as beaches, mountains and geysers. This kind of spa is suitable for the tourists who want to relax and unwind themselves during their holidays. Spa service is additional to room services of those resorts or hotels.

3. Day Spa/City Spa

Day spa/City spa is the spa service that provides fast and convenient service, mainly beauty treatments and relaxation massages (by using aroma oil). The service process is not complex and can be delivered during the day. Locations for this kind of spa are in big cities and in central business areas where the customers can have access to the services easily. This kind of spa is popular among customers who have little time or work in the city.

4. Medical Spa

Medical spa is the service place that provides therapy along with medical treatments by using some medical tools. Provided services are delivered under special care of medical experts. This kind of spa usually can be found in hospitals or clinics.

5. Mineral Spring Spa

Mineral spring spa is the spa service in tourist attractions that has natural mineral wells or geysers.

6. Club Spa

Club spa is the service place that mixes spa with exercise to provide services to members only.

7. Cruise Ship Spa

Cruise ship spa is the service place on the cruise. Services include exercises as well as preparation and provision of healthy food. These make customers happy and relaxed through the travels.

2.4.2 The Definition of Spa under the Ministry of Public Health

Spa business in Thailand can be categorized into three types according to the definition of the Ministry of Public Health Announcement on the Place of Service Act with additional review (no. 4) B.E. 2546¹⁶ as follows:

1. Healthy Spa Business

Healthy spa business means that the business of which customers' health is taken care by main service and supporting services. The main service is defined as: health massage and water therapy and supporting services are other activities defined in the menu to attract customers and to create more varieties of spa services. These activities are for example:

- 1) Healthy exercise
- 2) Concentration and yoga
- 3) Healthy saunas
- 4) Optional medical treatments
- 5) Nutrition therapies and diet control.

2. Health Massage

Health massage means that massage businesses aim to relax muscles, exhaust and stress by pressing, rolling, squeezing, touching, cutting, fomenting or sauna or else according to the art and science of the health massage. Thus, it must not have the bathing place for customer.

¹⁶ Naiyana Apiwatporn et al. Entrepreneur for Doing Health Spa business , p. 9-10.

3. Beauty Massage Activities

Beauty massage activities mean the conduct of massage in particular place such as beauty salons or hair shops for the beauty purpose by pressing, rolling, squeezing, touching, cutting, fomenting or sauna or else for beauty. Thus, it must not have the bathing place for customer.

2.4.3 The History of Spa

The revolution of spa began since the beginning of 400 B.C. or during the age of ancient India. This is when the treatment system to body and mind was created by cleaning in the holy river as recommended by sanitarians.

In the age of ancient Egypt, the ancient Assyrian and Muslim used the mineral water to treat the sickness. They worshiped the water like the greatest of natural spirit power.

In the age of ancient Greek, warm bathing together with exercises were widely practiced.

In the age of Roman, spa or warm bathing were done to cure muscle pains for kings and soldiers as well as to relax bodies and cure wounds. It was also used to treat the sadness as there was a tale that Cleopatra had taken a milk bath for her soft skin. Therefore, the bath taking help cure illnesses, relax bodies and enhance beauty.

In addition, in Asia, there was a use of warm water to cure illnesses which is called "Ayuraeda" or in Finnish as "Sauna" and in Japanese called "Mushi buro".

In the last period of the Roman Empire, the popularity of Roman bathing decreased since sanitary standards decline. When there was an epidemic during the middle age of Europe, people became less interested in taking a bath in the public. Additionally, most of the Europeans were shy and thought that it was not normal to be naked and taking a bath with opposite sex. Between, Christian century of 15, 16 and 17, some of European doctors brought water into good use for healing purposes. After the 16th century spa was revitalized and became popular again. This attracted many people who are interested in curing their illnesses by this method.

In the nineteenth, spa was meticulously developed. People who provided the services have expertise required for maintaining high treatment standards. This contributes to success and advancement of the sector.¹⁷

Finally, there was a significant growth of spa business in restaurants, casinos and other entertainment venues such as concert or even racing fields. The luxurious attributes of spa services attracted even the royal family in Europe who decided to establish national welcoming parties or royal weddings in the spa to keep their high profile image.

As discussed above, the real goal of a spa being a place for health treatment was slowly replaced by an image of the place itself as a relaxation venue. Over the past ten years there was a growing popularity of spa caused by “Baby Boomers” who are health conscious. An in-depth study showed that “Baby Boomer” or “Generation B” is the adult population around the age of 45-63 years old, the group of people with experiences and high savings. If they are the private company employees, their positions may be at high executive levels. Obviously, they possess high purchasing power.

In Thailand, the first spa was established in B.E. 2536 at the Oriental hotel named Oriental spa. During that time spa had not received much attention. Since B.E.2543 there have been an increasing number of spa businesses.

Nowadays, the word “spa” becomes very well-known. Most of them emphasize on physical treatments or relating methods such as massage, water treatment and aromatherapy including beauty treatments. Therefore, it can be considered that spa is not a new innovation but it is actually a traditional services developed long time ago.

2.5 The Controlling of Turkish Bath and Massage in Thailand

2.5.1 Turkish Bath and Massage Business

It is the relaxation massage which is under Place of service (no.4) B.E.2546 and under the monitoring of Ministry of Interior as follows:

¹⁷ Ibid., p. 3-6.

1. Tax payer

The person who permits the establishment of any service place has the qualifications as follows:

- (1) The person who is more than 20 years old
- (2) The person who possesses no bad behaviors or wrong morality.
- (3) The person who possesses sound mind
- (4) The person who is free from infectious diseases to the society, alcoholism diseases or addicted drugs which are harmful to the society.
- (5) The person who has no offences relating to sexuality.

In case Of juristic entity who is the licensee, they would have the qualifications following paragraph 1 of this Act.

2. Tax Base

Excise tax on Turkish bath is collected based on income derived from bathing or sauna, and massaging by service provider according to Excise Tax Act B.E.2527 (2546) and Excise Tariff Act B.E.2527 (No.4) 2546 part IX entertainment type 09.02 imposed excise tax on Turkish bath business

3. Tax Rate

Under Excise Tariff Act B.E.2527 Part IX entertainment type 09.02 imposes excise tax on Turkish bath at the rate of 20 per cent and Ministry of Finance issues Ministerial Announcement Title reduces and exempts excise tax (No.64) to reduce ceiling tax rate of Turkish baht or sauna and massage by service provider at the rate of 10 per cent. Therefore, entrepreneurs of Turkish bath have liabilities to pay excise tax on bathing or sauna and massage at the rate of 10 per cent

4. The Organization of Controlling the Turkish Bath Business

Turkish bath and massage is controlled by place of service (no.4) Act B.E. 2546 and The Ministry of Interior which has the authority to define areas permitted for registering this type of place of service in Bangkok. However, the governor would have the authority for registering it elsewhere. The entrepreneurs of Turkish bath business has to ask for licenses from police officers within particular areas.

When the entrepreneur of Turkish bath and massage permitted to do Turkish bath business in Thailand, they have to get licenses by the competent officials. This is based on the record of working and unlawful action of people who grant the license for doing business by the principles and methods of licenses and permissions mentioned above. This also includes permit license renewal as notified in the Ministerial Regulations of the Ministry of Interior. Such ministry has a duty to registered service place under section 3 of place of service Act B.E. 2546

Besides providing approval of licenses for the entrepreneurs of Turkish bath business, the ministry also controls the date of reopening of the closed facilities. -if any entrepreneur do business without permission under this Act, they will be imprisoned not more than one years or fined not exceeding six thousand or both imprisonment and a limited fine. These are punishment measures. If any illegal Turkish bath and massage business evade taxation, they will get the penalty under this Act.

2.5.2 Health Massage

Health massage or traditional massage is deemed to be medical type. Entrepreneurs of health massage shall be registered under law of clinic and controlled by Ministry of Public health.

2.5.3 Health Spa

Health spa is controlled by Ministry of Pubic Health which provides the standards to spa business. It can be divided into 3 categories 1) Health spa 2) Health massage 3) Beauty massage.

In addition, the Ministry of Public Health also provides the place of service standards in five aspects, namely the location, operator, therapist, service providing, and safety. The spa business was certified by the Ministry of Public Health.

However, the Excise Department declares the Ministerial Notification of the Ministry of Finance on excise tax reduction and exemption (no.27) dated 30 December B.E.2534 that repel Ministerial Notification of the Ministry of Finance Notification on excise tax reduction and exemption (no.68) dated 28 January B.E. 2546. This is due to the fact that the entrepreneurs of heath spa are exempted from excise tax on revenue derived from bathing or sauna and massage if and only if these

spa businesses has to obtain certificates from the Ministry of public health as well as meet the specified standards. Chapter 4 will discuss these in details.



Chapter 3

Excise Tax Law under Foreign Laws

3.1 Indian Excise Tax

Excise tax, which is commonly known as Excise Duty, is one of the most well-known forms of taxation in India. Any manufacturer of excisable products is liable to pay tax and is levied on a wide variety of commodities manufactured in India.¹⁸ India Excise Tax is controlled by Department of Excise Entertainment & Luxury Tax Government of Delhi which is the second largest revenue earning department of the Government of Delhi and is one of the three constituents of a Commissionerate, along with Luxury Tax and Entertainment Tax.

The main objective of the Indian central government's Excise Tax is to achieve different socio-economic policies by making suitable adjustments regarding the scope, nature, and quantum of levy of the Central Excise Tax. Such schemes of the Excise Tax taken by the central government modifies and serves various purposes of price control, adequate supply of essential commodities, promotion of small scale industries and industrial growth. Moreover, Excise Duty is also the important source of revenue for the Indian Central Government. The Central Excise Act 1944 and the Central Excise Tariff Act 1985 were the main provision providing the authority with the power of collecting the excise tax.

3.1.1 Excise Tax on Goods

The goods Subject to excise tax India¹⁹

1. Silk
2. Wool

¹⁸ Businessmapsofindia.com, "Excise Tax", At <http://business.mapsofindia.com/india-tax/types/excise.html>. (last visited 6 November 2009).

¹⁹ Central Board of Excise and Customs, "Central Excise Act, 1944," At <http://www.cbec.gov.in/excise/cx-act/cx-acts.htm>. (last visited 6 November 2009).

3. Cotton Man-made filaments Man-made staple fibers, Terry toweling and similar woven terry fabrics, Tulles and other net fabrics, not including woven, knitted or crocheted fabrics; lace in the piece, in strips or in motifs, other than fabrics knitted or crocheted fabrics metallised yarn, embroidery in the piece, in strips or in motifs

4. Weight of fry arh or photogypsum

5. Mica

6. Solid or hollow building blocks, including aerated or cellular light weight concrete block and slabs, ceramic tiles, manufactured in a factory not using electricity for firing the kiln

7. Jewelry, LPG Gas stoves

8. Electronic milk fat tester and electronic solid non-fat, MP3/ MP4 or MPEG 4 players with or without radio/ video reception facility, recorded smart cards and recorded proximity cards and tags has been made optional., packaged software

9. Motor vehicles, petrol driven motor vehicles for transport of goods

10. Contact lenses, parts of drawing and mathematical instruments, specified medical devices namely, Patent Ductus Arteriosus/ Atrial Septal Defect occlusion device

11. Playing cards

12. All goods (except specified brooms), slide fasteners

13. Excise duty on pure terephthalic acid Excise duty on dimethyl terephthalate Excise duty on acrylonitrile

14. Ink

15. Polyester chips

16. Heat resistant latex rubber thread Heat resistant rubber tension tape

17. Raw, tanned and dressed fur skins

18. Sheets for veneering for plywood, similar laminated wood and other wood, of thickness not exceeding 6 mm, particle board, oriented strand board, Fiber board and similar board of wood or other ligneous materials) Plywood, veneered panels and similar laminated wood, Flush doors, articles of wood

19. File covers, manifold business forms & other articles of stationery, of paper or paperboard (except notebooks and exercise books), paper and paperboard labels, manmade filament yarn, manmade fibers (tow and staple fibers)

Besides Excise Tax on goods, service is also subject to excise tax in India divided into 2 types Entertainment tax is under Delhi entertainment and betting tax Act and Rules 1996.²⁰

3.1.2-Service Subject to Excise Tax

Delhi Entertainment and Betting Tax Act and Rules 1996 divides services which are subject to excise tax into 2 types;

1. Entertainment Tax

The entertainment tax department deals with the collection of entertainment tax levied on all entertainments. The definition of entertainment is any exhibition, performance, amusement place like cinema, theatre, ticketed sports events, cable TV, fun parks, betting, floorshows, game, sport or race, (including horse race) and cinematographic exhibitions. The main source of revenue from Entertainment Tax is cinemas and the rate of tax on entry tickets to cinematographic exhibitions is thirty percent. The liability for collecting entertainment tax from the patrons and to deposit the same with the government lies with the proprietors or organizers of entertainments.

Entertainment tax in India signifies the tax paid by the entertainment industry in India. The entertainment tax in India is usually applicable for large-scale entertainment shows, private festivals that are sponsored, movie tickets, video game arcades, and amusement parks among others. Entertainment activities include commercial movie/theater shows, games, amusement parks, exhibitions, celebrity stage shows, any kind of sports such as horse racing, and exhibitions.

The entertainment tax department looks after the tax payable for the entertainment activities being performed in various places across the country. It is located in Delhi and works under the stipulation of The Delhi Entertainment and Betting Tax Act, 1996. The organizers or proprietors of the entertainment shows are responsible for the entertainment tax in India.. The entertainment tax department collects the tax from the sponsors and deposit it to the Government of India. As mentioned above, one of the highest revenue earning sectors from tax in

²⁰ Section 2 Entertainment Tax, Delhi Entertainment and Betting Tax Act and Rules, 1996.

entertainment industry is cinema. With every ticket, a certain amount of tax is tagged and included in the price of the tickets. The entry tickets to any cinematographic exhibitions have the entertainment tax included in it, which is 25-30 percent.

The tax entertainment department is a major source of revenue for the Government of India. It also has a great contribution towards the publicity of Indian arts that portrays ancient culture and various sports by means of granting tax-free benefits. The organizers of any entertainment shows will have to seek the permission of the entertainment tax department before putting up any commercial shows. The entertainment tax in India is levied upon the organizers or proprietors depending on the kind of shows being organized. There are a range of tax schemes for various entertainment programs. These are as follows:

- Tax schemes designed for amusement parks
- Tax-paid programs
- Programs based on tax exempted sectors
- Tax programs on cable television networks
- Tax for various invitee programs
- Tax on entertainment betting
- Tax on video parlors

To alleviate the tax generating program, a series of technologies has been introduced in the entertainment tax department. For example, the computerized ticket booking system has been incorporated for booking movie tickets along with the online data transmission in the entertainment industry. The more advanced the entertainment industry is, the higher the proportional tax rate. Customers mostly look for convenience and less hazardous when going to any entertainment program and, so, faster access would definitely attract more customers.

2. Luxury Tax

As an attempt to mobilize a new source of revenue, the Government of Delhi decided to explore an untapped source of revenue namely the Hospitality Industry. The Luxury Tax was introduced since 1996 on various hotels, lodging houses, clubs etc under Delhi Tax on Luxuries Act 1996.

Luxury tax was introduced as a new tax in Delhi w.e.f. 1.11.1996. This tax is charged at the rate of 12.5% on actual room tariff per day on hotels. The term "hotel"

includes a residential accommodation, a lodging house, an inn, a club (both incorporated and unincorporated association of persons), a resort, a farmhouse, a public house or a building or part of a building, where a residential accommodation is provided by way of business.²¹

Section 2 of Luxury Act provides the definition of (b) “business” which includes the activity of providing residential accommodation and any other service in connection with or incidental or ancillary to, such activity of providing residential accommodation, by a hotelier for monetary consideration

The expression “business” is used in the same of an occupation or profession which occupies the time, attention and labor of a person, normally with the object of making profit. In addition, the term “business” has been defined to include the activity of providing residential accommodation along with any other service. The accommodation must be residential or capable of being used for residence. Any other services may include service of varied nature including service of watchman, attendant, sweeper, provision of various amenities in the accommodation such as; furniture, fixture, decorative geysers and other electrical appliances of normal domestic use, soap, towel, wardrobes, service of food and other drinks, etc. However, such other service must be connected with incidental or ancillary to, the activity of providing residential accommodation.

Connected with or Incidental or Ancillary to the words “in connection with” indicate that a service to be covered by the definition, should be intrinsically connected with the business. It should have a proximate and direct connection with the business.

According to chambers Twentieth Century dictionary, “ancillary” means subserving: “auxiliary” and incidental means “naturally attached: accompanying: concomitant: occasional, casual.” A thing is incidental to another if it merely appertains to something else as primary. Exactly, such work should not be extraneous or contrary to the purpose of the establishment but need not be integral to it either. A work is ancillary or incidental to a business when it is not necessary thereto or a primary part thereof.

²¹ Excise Department of India, Entertainment and Luxury Taxes, The Role of Excise Tax Department, At <http://excise.delhigovt.nic.in/> (last visited 6 November 2009).

(C) “club” includes both an incorporated and unincorporated association of persons. By whatever name called:

(d) “commissioner” means the person appointed to be the Commissioner of Luxury Tax for the purposed of this Act and includes an Additional Commissioner, if any, appointed under section 7:

(e) “concessional rate” in relation to a luxury provided in a hotel, mean a rate lower than the normal rate fixed for such luxury by the hotelier or lower than that fixed by any Government, authority, or under law for the time being in force:

(f) “hotel” includes a residential accommodation, a lodging house, an inn, a club, a resort, a farm house, a public house or a building or part of building, where a residential accommodation is provided by way of business:

(h) “hotelier” means the owner of the hotel and includes the person who for the time being is in charge of management of the hotel:

(i) “luxury provided in a hotel” means accommodation and other services provided in a hotel, the rate or charges for which including the charges for air-conditioning, telephone, radio, music, extra beds and the like, is five hundred rupees per room per day or more; but does not include the supply of food, drink other services which is separately charged for:

(j) “person” includes any company, club or association or body of individuals whether incorporated or not, and also a Hindu undivided family, a firm, a local authority, a state Government and the Central Government:

(k) “place of business” includes an office, or any other place which is used by a person for the purpose of his business or where he keeps his books of accounts:

(m) “receipt” means the amount of monetary consideration received or receivable by a hotelier or by his agent for any luxury provided in a hotel:

(n) “registered hotelier” means a hotelier registered under section 8 of this Act;

(p) “tax” means the tax levied on luxuries provided in a hotel payable under this Act and includes any penalty, interest, fine, composition money, sum forfeited or any other charge levied under this Act:

(q) “tariff” means the charges levied or leviable by a hotelier for a room provided in a hotel

Under Delhi Tax on Luxuries Act; 1996, Section 3 provided Incidence and levy of tax

(1) Subject to the provision of this Act and the rules made there under there shall be levied a tax on the turnover of receipts of a hotelier

(2) There shall be levied a tax on the turnover of receipts of hotelier at a rate not exceeding fifteen per cent notified by the Government from time to time and different rates may be notified for different classes of hotels as charges of luxury provided a hotel:

Moreover, under section 3 of this Act also provide that the charging section, it imposes the liability to pay Luxury Tax on every hotelier. The charging section is the very soul of a taxing statute. Unless charge is created by a specific provision of the statute the tax payer cannot be taxed on an ambiguous provision.

The components which enter into the concept of tax are; the first is the characters of the imposition known by its nature which prescribes the taxable event attracting the levy; The second is a clear indirection of the person on whom the levy is imposed and who is obliged to pay the tax, The third is the rate at which the tax is imposed and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is the difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme define any of those components of levy will be fatal to its validity.

The liability is imposed by the charging section and the provision as to assessment are only machinery provision by which the liability is sought to be quantified, The moment the taxable event occurs, the liability to pay tax arises. So the liability for payment of tax is independent of the assessment.

As per section 3(2) luxury tax shall be levied on the turnover of receipts of a hotelier at the notified rate not exceeding 15%. Government may notify different rates from time to time and different classes of hotels. The Government has notified that luxury tax shall be levied 12.5%.

Under section 4 of this Act provided that Liability to pay tax of hotelier

(1) Subject to the provisions of this Act and the rules made thereunder there shall be paid by every hotelier who is liable to pay tax under this Act, the tax or taxes pay tax leviable in accordance with the provisions of this Act

(2) If a person other than the business. Then such person and the owner (including part-owner) shall jointly and severally be liable to pay the tax.

In summary; Indian luxury tax is a tax on a residential accommodation, a lodging house, an inn, a club, a resort, a farm house, a public house or a building or part of a building, where a residential accommodation is provided by way of business. The rate or charges on the turnover of receipts of a hotelier including the charges of air conditioning, telephone, radio, music, extra beds at the notified rate not exceeding 15% but does not include the supply of food, drinks or other services which is separately charged. The Government of India has notified different rates from time to time and for the different classes of hotels. At present the rate of Luxury Tax is 12.5% and this is being levied since 2004 on declared tariff.

Regarding the liability, hotelier is not liable to pay tax under this Act, even if he shall conduct or cause to be conducted the activity of providing residential accommodation for monetary consideration unless he possesses a certificate of registration as provided by the Act. The hotelier who is liable to pay the tax may collect it from the customers at a rate admissible under the act of prevailing at that point of time.

Where a business is owned, managed or run by a firm, then the firm and each of the partners of the firm shall be jointly and severally liable for payment of tax. Every hotelier required to possess a certificate of registration shall apply in the prescribed form to the Commissioner within thirty days from the date on which the hotelier first becomes liable to pay the tax.

3.1.3 Indian Central Excise Act of 1994

Central Value Added Tax or called CENVAT's provisions are used in Central Excise Act, 1994 in order to implement concept of Value Added Tax (VAT) at manufacturing stage by giving credit of duty paid on inputs. CENVAT was known as Modified Value Added Tax (MODVAT).²²

MODVAT was introduced in order to avoid double taxation on inputs as well as on finished goods. It is a tax on the Value Addition. Value Addition means the value of the output as reduced by the total cost of bought out inputs. The MODVAT

²² Rajkumar S. Adukia "MODVAT: Modified Value Added Tax," At <http://tax.indiainfo.com/excise/>. (last visited 6 December 2009).

scheme at present allows a set off of the excise duties and additional duties of custom on inputs against the duty liability on final product and capital goods.

MODVAT credit (rule 57A) On Inputs: it is governed in terms of Rules 57A to 57J of Central Excise Rules. The manufacturer of the final products shall be allowed to take the credit of the specified duty paid on the goods, used in or in relation to the manufacture of the final products, whether directly or indirectly and whether contained in the product or not. Therefore, the inputs should be such that they participate in the process of manufacture without which the end product cannot be manufactured. Also it covers not only the goods which are used in the manufacture but which are also used in the stages once removed from the process.

1. MODVAT credit on consumable stores: in general, it is to be noted that the nature of consumables are eligible for MODVAT credits as their usage would qualify them as inputs, as per the broad definition of Rule 57A of the Central Excise Rules.

2. MODVAT credit on packing material: the credit is available on packing material used to pack finished products chargeable to specific rates of duty.

3. MODVAT credit on inputs used as fuels.

4. MODVAT credit on accessories if the cost of accessories is included in assessable value.

5. MODVAT credit on capital goods: new set of Rules 57Q to 57U have been inserted in Chapter V of the Central Excise Rules for granting MODVAT credit on capital goods. These provisions were inserted with effect from 1-3-1994.

Money credit scheme: this is a scheme which governs grant of credit of money in respect of specified raw materials used in manufacture of specified excisable goods. Here there is no credit of duties but credit of money. The provisions are contained in Rules 57K to 57T of the Central Excise Rules.

Subsequently, MODVAT scheme was restructured into CENVAT scheme. Under The CENVAT Credit Rules, 2004, a manufacturer of final product or provider of taxable service shall be allowed to take credit of duty of excise as well as of service tax paid on any input received in the factory or any input service received

by manufacturer of final product. In addition, according to r section 3 provided CENVAT credit.²³

(1) A manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of -

(i) the duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act;

(ii) the duty of excise specified in the Second Schedule to the Excise Tariff Act, leviable under the Excise Act;

(iii) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);

(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(v) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001);

(vi) the Education Cess on excisable goods leviable under section 91 read with section 93 of the Finance (No.2) Act, 2004 (23 of 2004);

(via) the Secondary and higher education cess on excisable goods leviable under section 136 read with section 138 of the Finance Act,

Provided that the CENVAT credit shall be allowed to be taken of the amount equal to central excise duty paid on the capital goods at the time of rebounding of the unit in terms of the paragraph 8 of notification No. 22/2003 Central Excise, published in Gazette of India, part II, section 3, sub-section (i) paid

(i) any input or capital goods received in the factory of manufacture of final product or premises of the provider of output service on or after the 10th day of September, 2004; and

(ii) any input service received by the manufacturer of final product or by the provider of output services on or after the 10th day of September, 2004, including the said duties, or tax, or cess paid on any input or input service, as the case may be, used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification of the Government of

India in the Ministry of Finance (Department of Revenue), No. 214/86- Central Excise, dated the 25th March, 1986, published in the Gazette of India vide number G.S.R. 547 (E), dated the 25th March, 1986, and received by the manufacturer for use in, or in relation to, the manufacture of final product, on or after the 10th day of September, 2004.

For the removal of doubts it is clarified that the manufacturer of the final products and the provider of output service shall be allowed CENVAT credit of additional duty leviable under section 3 of the Customs Tariff Act on goods falling under heading 9801 of the First Schedule to the Customs Tariff Act.

(2) Notwithstanding anything contained in sub-rule (1), the manufacturer or producer of final products shall be allowed to take CENVAT credit of the duty paid on inputs lying in stock or in process or inputs contained in the final products lying in stock on the date on which any goods manufactured by the said manufacturer or producer cease to be exempted goods or any goods become excisable.

(3) Notwithstanding anything contained in sub-rule (1), in relation to a service which ceases to be an exempted service, the provider of the output service shall be allowed to take CENVAT credit of the duty paid on the inputs received on and after the 10th day of September, 2004 and lying in stock on the date on which any service ceases to be an exempted service and used for providing such service.

(4) The CENVAT credit may be utilized for payment of any duty of excise on any final product; or

(a) amount equal to CENVAT credit taken on inputs if such inputs are removed as such or after being partially processed; or

(b) an amount equal to the CENVAT credit taken on capital goods if such capital goods are removed as such; or

(c) an amount under sub rule (2) of rule 16 of Central Excise Rules, 2002; or

(d) service tax on any output service:

Provided that while paying duty of excise or service tax, as the case may be, the CENVAT credit shall be utilized only to the extent such credit is available on the last day of the month or quarter, as the case may be, for payment of duty or tax relating to that month or the quarter, as the case may be:

Provided further that the CENVAT credit of the duty, or service tax, paid on the inputs, or input services, used in manufacture of final products cleared after availing of the exemption under the following notifications of Government of India in the Ministry of Finance.

- Provided also that the CENVAT credit of any duty mentioned in sub-rule (1), other than credit of additional duty of excise leviable under section 85 of Finance Act.

(5) When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9:

Provided that such payment shall not be required to be made where any inputs or capital goods are removed outside the premises of the provider of output service for providing the output service:

Provided also that if the capital goods, on which CENVAT Credit has been taken, are removed after being used, the manufacturer or provider of output service shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by 2.5 per cent for each quarter of a year or part thereof from the date of taking the CENVAT Credit;"

(5A) If the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value.

(5B). If the value of any,

(i) input, or

(ii) capital goods before being put to use,

on which CENVAT Credit has been taken is written off fully or where any provision to write off fully has been made in the books of account, then the manufacturer shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods:

Provided that if the said input or capital goods is subsequently used in the manufacture of final products, the manufacturer shall be entitled to take the credit of the amount equivalent to the CENVAT Credit paid earlier subject to the other provisions of these rules.

(5C).- Where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under rule 21 of the Central Excise Rules, 2002, the CENVAT credit taken on the inputs used in the manufacture or production of said goods shall be reversed.

(6) The amount paid under sub-rule (5) and sub-rule (5A) shall be eligible as CENVAT credit as if it was a duty paid by the person who removed such goods under sub-rule (5) and sub-rule (5A).

(7) Notwithstanding anything contained in sub-rule (1) and sub-rule (4),-

(a) CENVAT credit in respect of inputs or capital goods produced or manufactured, by a hundred per cent. export-oriented undertaking or by a unit in an Electronic Hardware Technology Park or in a Software Technology Park other than a unit which pays excise duty levied under section 3 of the Excise Act read with serial numbers 3,5, 6 and 7 of notification No. 23/2003-Central Excise, dated the 31st March, 2003, [G.S.R. 266(E), dated the 31st March, 2003] and used in the manufacture of the final products or in providing an output service, in any other place in India, in case the unit pays excise duty under section 3 of the Excise Act read with serial number 2 of the notification No. 23/2003-Central Excise, dated the 31st March, 2003, [G.S.R. 266(E), dated the 31st March, 2003], shall be admissible equivalent to the amount calculated in the following manner. The fifty percent of $[X \text{ multiplied by } \{(1+BCD/100) \text{ multiplied by } (CVD/100)\}]$, where BCD and CVD denote ad valorem rates, in per cent., of basic customs duty and additional duty of customs leviable on the inputs or the capital goods respectively and X denotes the assessable value. Condition for allowing CENVAT credit²⁴ are as follows;

(1) The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service:

Provided that in respect of final products, namely, articles of jewellery falling under heading 7113 of the First Schedule to the Excise Tariff Act, the CENVAT credit of duty paid on inputs may be taken immediately on receipt of such inputs in the registered premises of the person who get such final products

²⁴ Section 4 CENVAT Credit Rules 2004.

manufactured on his behalf, on job work basis, subject to the condition that the inputs are used in the manufacture of such final product by the job worker.

(2) (a) The CENVAT credit in respect of capital goods received in a factory or in the premises of the provider of output service at any point of time in a given financial year shall be taken only for an amount not exceeding fifty per cent. of the duty paid on such capital goods in the same financial year:

Provided that the CENVAT credit in respect of capital goods shall be allowed for the whole amount of the duty paid on such capital goods in the same financial year if such capital goods are cleared as such in the same financial year.

(b) The balance of CENVAT credit may be taken in any financial year subsequent to the financial year in which the capital goods were received in the factory of the manufacturer, or in the premises of the provider of output service, if the capital goods, other than components, spares and accessories, refractories and refractory materials, moulds and dies and goods falling under heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act, are in the possession of the manufacturer of final products, or provider of output service in such subsequent years. Illustration.- A manufacturer received machinery on the 16th day of April, 2002 in his factory. CENVAT of two lakh rupees is paid on this machinery. The manufacturer can take credit upto a maximum of one lakh rupees in the financial year 2002-2003, and the balance in subsequent years..

(3) The CENVAT credit in respect of the capital goods shall be allowed to a manufacturer, provider of output service even if the capital goods are acquired by him on lease, hire purchase or loan agreement, from a financing company.

(4) The CENVAT credit in respect of capital goods shall not be allowed in respect of that part of the value of capital goods which represents the amount of duty on such capital goods, which the manufacturer or provider of output service claims as depreciation under section 32 of the Income-tax Act, 1961(43 of 1961).

(5) (a) The CENVAT credit shall be allowed even if any inputs or capital goods as such or after being partially processed are sent to a job worker for further processing, testing, repair, re-conditioning, or for the manufacture of intermediate goods necessary for the manufacture of final products or any other

purpose, and it is established from the records, challans or memos or any other document produced by the manufacturer or provider of output service taking the CENVAT credit that the goods are received back in the factory within one hundred and eighty days of their being sent to a job worker and if the inputs or the capital goods are not received back within one hundred eighty days, the manufacturer or provider of output service shall pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods by debiting the CENVAT credit or otherwise, but the manufacturer or provider of output service can take the CENVAT credit again when the inputs or capital goods are received back in his factory or in the premises of the provider of output service

(b) The CENVAT credit shall also be allowed in respect of jigs, fixtures, moulds and dies sent by a manufacturer of final products to a job worker for the production of goods on his behalf and according to his specifications.

(6) The Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of the manufacturer of the final products who has sent the input or partially processed inputs outside his factory to a job-worker may, by an order, which shall be valid for a financial year, in respect of removal of such input or partially processed input, and subject to such conditions as he may impose in the interest of revenue including the manner in which duty, if leviable, is to be paid, allow final products to be cleared from the premises of the job-worker.

(7) The CENVAT credit in respect of input service shall be allowed, on or after the day which payment is made of the value of input service and the service tax paid or payable as is indicated in invoice, bill or, as the case may be, challan referred to in rule 9

Refund of CENVAT credit²⁵,

Where any input or input service is used in the manufacture of final product which is cleared for export under bond or letter of undertaking, as the case may be, or used in the intermediate product cleared for export, or used in providing output service which is exported, the CENVAT credit in respect of the

²⁵ Section 5 CENVAT Credit Rules 2004.

input or input service so used shall be allowed to be utilized by the manufacturer or provider of output service towards payment of,

(i) duty of excise on any final product cleared for home consumption or for export on payment of duty; or

(ii) service tax on output service, and where for any reason such adjustment is not possible, the manufacturer or the provider of output service shall be allowed refund of such amount subject to such safeguards, conditions and limitations, as maybe specified by the Central Government by notification;

Provided that no refund of credit shall be allowed if the manufacturer or provider of output service avails of drawback allowed under the Customs and Central Excise Duties Drawback Rules, 1995, or claims rebate of duty under the Central Excise Rules, 2002, in respect of such duty; or claims rebate of service tax under the Export of service Rules, 2005 in respect of such tax.

Provided further that no credit of the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act shall be utilized for payment of service tax on any output service.

For the purposes of this rule, the words 'output service which is exported' means the output service exported in accordance with the Export of services.

3.2 South Korean Excise Tax

South Korea is the one of Asia countries who has collected various types of excise tax. The Korean government collected excise tax from the end consumer for the purpose of raising tax revenue. In Korea excise tax is called special excise tax. The principle of collective special excise tax in Korea are as follows;

Taxpayer²⁶ falls under one of the categories below is liable to special excise tax.

a. A person who manufactures or imports taxable goods (for example, slot machines, luxury furniture/carpet, or oil products)

²⁶ International Business Publications, Korea South Tax Guide, (Washington Dc: International Business Publication, 2008), p.140-142.

b. A person who sells Class 3 taxable goods (e.g. jewelry, pearls, etc. and its products, excluding diamonds for industrial use)

c. Operators of such taxable places as horse race courses, bicycle race courses, slot machine clubs, golf courses, casinos, nightclubs, etc.

Tax Base

(1) In the case where taxable goods are manufactured, the price at which the goods are taken out of the place of manufacture

(2) In the case of importation, the price at the time of declaration (the sum of the customs value and the related customs duties)

(3) In the case of selling Class 4 taxable goods, the sales price amounts of special excise tax, education tax, and value-added tax are not included in the tax base.

3.2.1 Taxable Goods and Tax Rates

South Korean government divides taxable goods into six classes as follows;

Class 1 shall be levied on (a) slot machines, pin-ball machines, and other similar recreational and (b) hunting guns or rifles at the rate of 20% on each item

Class 2 shall be levied on (a) deer antlers, royal jellies; and (b) perfumes and colognes at the rate of 7% on each item

Class 3 shall be levied on the amount exceeding two million won of A (a) jewelry (excluding diamonds for industrial use, unprocessed original stones), pearl, tortoise-shell, coral, amber, ivory, and their products; and (b) precious metal products at the rate of 20%

Class 4 shall be levied on the amount exceeding two million won of (a) luxury camera and accessories; (b) luxury watches; (c) luxury fur skin and its products (excluding rabbit skin and raw fur skin); (d) luxury carpets; and (e) luxury furniture. (in case of luxury furniture, 5 million won) at the rate of 20%

Class 5 shall be levied on (a) Automobiles with an engine displacement in excess of 2,000 cc and cars for camping: 10% and (b) Automobiles with an engine displacement of 2,000 cc or less, and two-wheel motorcycles: 5% (excluding automobiles of engine displacement of 800cc or less):

Class 6 shall be levy on (a) Gasoline: 630 won/L ,(b) Diesel oil: 363won/L (c) Kerosene: 154 won/L, (d) Heavy fuel oil: 11 won/L, (e) Propane gas: 40 won/Kg (f) Butane gas: 382 won/Kg , (g) Natural gas (including liquefied form): 40 won/Kg

3.2.2 Taxable Places

South Korean government divides Taxable Places into 2 groups as follows

Group 1: The special excise tax rates on the following taxable places are:

- (a) Horse-race park: 500 won per person
- (b) Slot machine places: 10,000 won per person
- (c) Golf courses: 12,000 won per person
- (d) Casinos: 35,000 won per person (for foreigners: 2,000 won, none for foreigners-only casinos and abandoned casinos)
- (e) Bicycle race park: 200 won per person

Group 2: The Special Excise Tax rate imposed on entertainment taverns or saloons, etc. at a rate of 10%

3.3 Turkey Excise Tax²⁷

Turkish Tax System can be divided into 3 main categories:

- Income Taxes such as Individual Income Tax and Corporate Income Tax
- Taxes on Expenditure such as Value Added Tax or Banking and Insurance Transaction Tax or Stamp Tax or Special Consumption Tax
- Taxes on Wealth such as Property Tax or Inheritance and Gift Tax

In Turkey, Excise tax is called special consumption tax. It has been implemented since August 2002 by abolishing 16 different indirect taxes and funds in order to make the direct taxation system to be in line with the European Union directives. On the contrary, VAT, is applied on each delivery and is charged only once.

²⁷ Revenue Administration Department of Taxpayer Services. “Turkish Tax System, Excise Tax”, At <http://www.gib.gov.tr/index.php?id=469>. (last visited 24 November 2009).

3.3.1 Goods Which are Subjected to Excise Tax

There are mainly four different product groups that are subjected to tax at different tax rates. goods which are subjected to excise tax in Turkey country are as follows

1. Petroleum products, natural gas, lubricating oil, solvents and derivatives of solvents
2. Automobiles and other vehicles, motorcycles, planes, helicopters, yachts
3. Tobacco and tobacco products, alcoholic beverages
4. Luxury products

In Turkey, not only the physical goods which is subjected to excise tax but the services also subjected to excise tax under the Turkish laws.

3.3.2 Services Which are Subjected to Excise Tax

The services which are subjected to excise tax in Turkey country are as follows;

1. Banking and Insurance Transactions Tax (BITT):

The subject of the tax is transactions and services produced by banks, bankers and insurance companies. Taxpayers are banks, insurance companies, and bankers.

All transactions and services are produced by banks and insurance companies. There will be the tax upon the money, which they collect under the name of interest, commission and expenditure because the services they produced on behalf of them. Bankers' certain transactions and services produced and stated in Law are the subject of the tax. Other transactions of bankers are subject to VAT.

Banks and insurance companies are exempt from VAT, but subject to BITT at a rate of 5%, which is due on the gains of such companies from their transactions. The purchase of goods and services by banks and insurance companies is subject to VAT but considered expense or cost of recovery purposes. Foreign exchange transactions are subject to 0.1% BITT.

Taxation period in BITT is based on monthly basis. Taxpayers declare their taxable transactions up to the evening of the 15th day of the following month.

2. Gambling Tax

The subject of the tax is betting, lotteries and other forms of gambling. Taxpayers are engaged in gambling activities and Gambling Tax is calculated by on the basis of fixed or specific rate of tax. Taxation period in Gambling Tax is each month of the calendar year. Taxpayers declare their taxable transactions and pay the accrued tax up to the evening of the 20th day of the following month.

3. Communication Tax:

All types of installation transfer and telecommunication services given by mobile phone operators are subject to 25% Special Communication Tax. The tax base for Special Communication Tax is the same as the Value Added Tax. Mobile phone operators will declare the communication tax on the VAT returns and pay the accrued tax by the 15th day of the following month.

3.4 The European Union Excise Tax²⁸

The special tax on consumption is called excise duties. It taxes on the consumption of certain products, yielding substantial revenue to the States, and must be maintained alongside VAT. Excise duties make it possible to impose a much larger tax burden on a small number of products than that borne by the vast majority of goods that are only subject to VAT, which has very few, and fairly low, rates. If the various excise duties in the Community States were abolished, the resultant losses of revenue would have to be offset by increasing VAT rates, which would be certain to have an inflationary effect on their economies. Thus, for example, manufactured tobacco products and mineral oils bear, without major drawbacks, very high taxes, which on average yield more than 10% of the tax revenue of the EU States. Moreover,

²⁸ Europia. Moussis.Eu, "Excise duties in the EU" At http://europedia.moussis.eu/books/Book_2/5/14/02/03/index.tkl?all=1&pos=176. (last visited 6 December 2009).

within the overall context of a tax scheme, excise duties constitute flexible components, which can easily be maneuvered if further tax revenue is needed. As they are separate taxes, excise duties can easily be adapted to the various economic, social and structural requirements. Lastly, they can be levied specifically in order to reduce consumption of certain products, such as tobacco products and alcoholic drinks, for public health reasons, and petroleum products for reasons of environment linked energy savings and reduction of energy dependence.

But if some excise duties had to be maintained in the Community two conditions had to be met so as not to disturb the common market. Their structures had to be harmonized, so as to remove taxation indirectly protecting national production; and their rates had to be harmonized so as to eliminate, in trade between Member States, taxation and tax refunds as well as frontier controls, which disturbed the free movement of goods within the common market.

Taking account of these conditions, a Directive defines the general arrangements for the holding and movement of products subject to excise duty [Directive 92/12, repealed by Directive 2008/118]. In contrast to the harmonized VAT system, the general arrangements for excise duties are definitive. The taxable event takes place at the stage of manufacture in the Community or of import into the Community from a third country. The tax is payable when the product is put up for consumption and must be acquitted in the country of actual consumption. The Member States have the option of introducing or maintaining taxation on other products and services, provided however that this taxation does not give rise to border crossing formalities in trade between the Member States.

Council Directive 2008/118/EC of 16 December 2008 of 16 December 2008 concerning the general arrangement for excise duty and repelling Directive 92/12/EEC Article 1

1. This Directive lays down general arrangements in relation to excise duty which is levied directly or indirectly on the consumption of the following goods(hereinafter ‘excise goods’):

- (a) Energy products and electricity covered by Directive 2003/96/EC;
- (b) Alcohol and alcoholic beverages covered by Directives 92/83/EEC and 92/84/EEC;

(c) Manufactured tobacco covered by Directives 95/59/EC, 92/79/EEC and 92/80/EEC.

2. Member States may levy other in direct taxes on excise goods for specific purposes, provided that those taxes comply with the community tax rules applicable for excise duty or Value added tax as far as determination of the tax base, calculation of the tax, chargeability and monitoring of the tax are concerned, but not including the provisions on exemptions.



Chapter 4

Analysis of the Problem of Collection Excise Tax Law on Spa Business in Thailand

At present, spa is a very popular business in Thailand. The government promotes spa businesses to attract foreign visitors to travel to Thailand. Unlike those of other countries, Thai spa has a distinctive feature since it usually has the Thai massage as part of a service.

Thailand is one of many countries in the world where traditional massage is popular and well-accepted among foreigners. Besides having great service mind, Thai people usually smile and are friendly. In addition, Thailand also has more than hundred types of herbs that can be transformed into products used in spa. As a result, Thai spa becomes the unique spa business since it perfectly blends the Thai traditional with the Thai culture. As aforementioned business features, now, Thai spa is one of the top ten spa in the world. Furthermore, the government provides various supports to spa industry and promotes Thai's spa as seen in many released campaigns since this business can attract a large number of foreign tourists to visit Thailand.

Today, Thai spa becomes a symbolic and significant prima of the country to promote tourism. High expansion rates of spa businesses can be seen not only in the attractive areas as before but also in every regions of the country. While spa business has expanded very quickly, on the contrary, the Excise Tariff Act is rather old as it has been enacted since B.E. 2527. As a result, the definition under this Act has caused problems in terms of the interpretation of the word "health spa". This chapter will analyze problems of applying excise tax law to spa businesses into two important issues namely (1) the problem of collection excise tax law on spa businesses in Thailand and (2) the problem of double taxation in spa businesses.

4.1 The Problem of Collection Excise Tax on Spa Business in Thailand

Under the definition specified in the Excise Tariff Act B.E.2527, the word “spa” is interpreted as the service place the same type as the Turkish bath because under this Act part XI entertainment businesses includes the bathing or sauna and massage. This interpretation causes the spa entrepreneurs to be liable to excise tax at 10 per cent of the health spa’s revenue. This interpretation results in the most violent destroying of the country’s image and Thai’s spa as it would be say that spa is the symbol of Thai culture. Bad image could affect revenue that this sector can bring to the government.

In fact, the objectives of health spa business and Turkish bath are different and can clearly be separated. Health spa has several healing aspects. Firstly, water therapy includes whirl-pool, Jacuzzi, steam room and Sauna. Secondly, nutritious therapy covers healthy foods, Thirdly, movement therapy involves exercises. Lastly, touch therapy covers body massage and stimulation as well as skin care such as body scrub, body plaster etc. Hence, it can be concluded that the health spa business is the service providing body cleaning and promoting healthy skin through massage, treatment and therapy by various treatments through the five senses of the body (shape, taste, smell, sound and touch). Health spa aims to treat and relax customers in order to create the balance in body and mind which is different from the objective of Turkish bath business, since the latter is generally known as a business with hidden sexual service performed by prostitutes. Even though, health spa consists of massage, sauna and water services like the Turkish bath, it doesn’t mean that both businesses are similar when comparing their objectives and outcomes.

As a result, collecting excise tax on the ground that health spa business has the same meaning of entertainment type like the Turkish bath business is inappropriate. In addition, it greatly contradicts with the Ministry of Public Health’s definition. The Ministry of Public Health specified certification standards for health spa services to upgrade Thai spa emphasizing that spa is not a harmful business to people’s health. This is a different type of businesses from those Turkish bath as defined by Excise Tariff Act B.E. 2527 and the Place of service Act B.E.2509.

4.1.1 The Advantages of Excluding Spa Business out of Part 9 Entertainment Type Bathing or Sauna and Massage

Firstly, the separating health spa from part XI entertainment type bathing or sauna and massage would eliminate avoiding tax of some entrepreneurs of spa business because at this moment, some entrepreneurs of spa businesses find loopholes in the law of which they can take advantages. It causes problems in tax collection, controlling and investigation into this business. The exclusion of health spa from the entertainment part 9 under Excise Tariff Act B.E. 2527 would facilitate the tax administration and collection for excise officer.

In addition, Thailand has not classified the category of spa business commodity clearly unlike other countries where excise tax collection on goods and commodities are classified in one category and service commodities classified as another category. In India, excise taxes are categorized into 2 types: Luxury Tax and Entertainment Tax.

India is one of the countries collecting many types of excise taxes. Approximately 127 types of excise taxes are collected on manufacturing of excisable products. Manufacturers are liable to pay taxes which are levied on a wide variety of commodities under Central excise tax Act, 1994. Separately, the excisable services are controlled by the Excise Entertainment & Luxury Tax Government of Delhi.

Under excise tax law of India, entertainment businesses are taxed in a separate department and are controlled by The Entertainment Tax Department which deals with the collection of entertainment tax levied on all entertainments. For example; exhibition, performance, amusement centers such as cinema, theatre, ticketed sports events, Cable TV, Fun Parks, Betting, Floorshows, game, sport or race, (including horse racing) and cinematographic exhibitions.

Moreover, the luxury tax in India is levied on a residential accommodation, a lodging house, an inn, a club, a resort, a farm house, a public house or a building or part of a building, where a residential accommodation is provided by “way of business”. The word “way of business” includes activities of providing residential accommodation along with any other services. And the word “of any other service” includes services of varied nature including service of watchman, attendant, sweeper, provision of various amenities in the accommodation

such as; furniture, fixture, decorative geysers and other electrical appliances of normal domestic use, soap, towel, wardrobes, service of food and other drinks, etc.

Furthermore, Indian government levied excise tax on hotel characterized as a service business which supports convenient more than the life necessities. The hotel business covers accommodations and other services provided in a hotel, the rates or charges on the turnover of receipts of a hotelier including the charges of air conditioning, telephone, radio, music, extra beds on actual room tariff per day on hotels but not include the supply of food, drink other services which is separately charged.

By comparison, Thailand has not clearly classified the category of spa businesses. At the moment, spa and Turkish bath are in the same category. This causes complications and unfair excise tax collection since spa business owners have to pay taxes on the basis of sin tax. As a matter of fact, spa services do not cause any harm to people health. Hence, it may be more appropriate to tax spa businesses based on luxury tax law. This also prevails in the case of India collecting taxes from spa businesses on the basis of both sin tax and luxury tax principles. India has not collected the excise tax from spa business whereas Thailand has not collected the excise tax from hotel business. However, some hotels in India also provide the spa service inside the hotel and spa shall be deemed as “any other services” of the hotel that the hotelier has a liability to pay excise tax in a way.

Besides India, South Korea is another country that classifies taxable goods in one category. The excise tax in South Korea is levied on six classes of goods or services. On the other hand, the part of entertainment tax of South Korea is classified separately as another category called “Taxable Place” which is divided into two groups as followed;

Group 1: The special excise tax rate of 200 won per person is levied on the following taxable places: horse-race park, slot machine places, golf courses, casinos, and bicycle race park.

Group 2: The special excise tax rate at 10 per cent is imposed on entertainment taverns or saloons, etc.

It can be concluded that “Taxable Place” of South Korea collects excise tax on the basis of sin tax. This is similar to the theory of part XI

entertainment according to Excise Tariff Act B.E. 2527 of Thailand and Entertainment Tax of India.

In addition, the South Korean government collects excise tax on saloons at the rate of 10 percent since saloons are deemed to be the service business beyond the necessities of human's living. As a result, saloon businesses shall be collected excise tax on the basis of luxury tax.

Besides India and South Korea, Turkey is another country that collects excise tax on goods and services. Turkey separates service business for collecting excise tax. For example, Gambling Tax, which is the tax imposed on betting, lotteries and other forms of gambling. This type of service business collects tax on the basis of sin tax. It is similar to Entertainment tax of India, Taxable place in group 1 of South Korea and part XI entertainment of Thailand. Another example of service business tax collection is based on Turkey's experiences. The Turkish government collects excise tax on communication called "Communication Tax". Under this tax, all types of installation transfer and telecommunication services given by mobile phone operators are subject to special Communication Tax at 25 percent. This type of tax is collected on the basis of benefit-based excise.

As mentioned above, it can be concluded that entertainment businesses are taxed in India, South Korea, and Turkey. Those countries collect excise tax on the basis of sin tax by including spa business within part entertainment tax. However, this is different from Thailand's excise tax collection.

Under the Excise Tariff Act B.E. 2527, the entrepreneurs of spa business have liabilities to pay excise tax at the rate of 10 per cent on the basis of sin tax. But in fact, spa is not a sin business such that if people use spa service too much, it would create bad impact on health or society. On the contrary, the spa business is a service business for maintaining health and supporting beauty. As a result, the spa business shall be deemed a service business that provides extra convenience more than necessities of human's living. So, spa business shall be charged excise tax on the basis of luxury tax.

In comparison to Thailand and EU collected excise on only a few commodities under limited categories such as energy products, alcohol and alcoholic

beverages and manufactured tobacco. Therefore, excise tax of EU may not be applicable to the case of Thailand.

Secondly, the separating of spa business from the service place type Turkish bath would provide good image for Thai spa and upgrade the standard of Thai spa business in the eyes of foreigners.

Lastly, since almost every people consume this type of service coming from middle to high classes, excise tax on spa business would not impact people with low income. Likewise, there would be little impacts on people with middle to high income. So, the government can raise tax from spa service's revenue to finance country's development.

4.1.2 The Disadvantage of Excluding Spa Business out of Part 9 Entertainment Type Turkish bath Business and Massage

Because of the popularity of Thai spa, the government promotes spa business as one of the main attraction to lure foreign visitors to Thailand. As Thai spa is one of the top ten spas in the world. Therefore, the government provides various supports to the spa industry and promotes Thai's spa as can be seen in many released campaigns since this business can attract a great number of foreign tourists to visit Thailand and consequently bringing income to the country. So, the exemption of taxes on spa would help promote the Thai spa business to become the Wellness Hub of Asia.

Moreover, Excise department has notified in the announcement of Excise Department notification on exemption excise tax to place of service type bathing or sauna and massage in beauty or health parlor (no.27) dated 30th December B.E. 2534 which amended Ministerial Notification of the Ministry of Finance Notification on excise tax reduction and exemption (no.68) dated 28th January B.E. 2546. Therefore, the spa business will get the exemption on the revenue from bathing, sauna and massage under this announcement from 20th October B.E.2552 onward if any spa business is guaranteed by the certification and meets the standards of health spa of The Ministry of Public health.

Nevertheless, the researcher does not agree with this announcement of Excise Department. Even though the health spa is not the same type of service place

as the Turkish bath, it does not mean that health spa shall not be subject to excise tax. This is because most people using this type of service come from middle to high income classes. So if the spa business is subject to excise tax, it would not impact people with low income in the society. In addition, considering income rose from tourism, the foreigners are people with high income and purchasing power. It follows that they are able to pay excise tax.

On the other hand, if tax exemption on spa business aims to support Thai people's health, it would not have strong ground for exemption. This is because it would give supports to Thai people who usually use massage for health related purposes but in fact, there are many activities for health enhancement.

The next sub-section analyzes the problem of double taxation in spa businesses

4.2 The Problem of Double Taxation on Spa Business

When excluding spa from bathing or sauna and massage for entertainment purpose the same as Turkish bath business under Excise Tariff Act B.E. 2527. Spa business shall be subject to excise tax.

There are many kinds of taxation relates to spa businesses. For example, Mr. A does a spa business in Thailand. He would have a liability to pay Personal Income Tax, Value Added Tax, and Excise tax. Consequently, the spa entrepreneur has a heavy tax burden on this type of business.

Moreover, any product uses in spa business such as, fragrance, cosmetic, perfume, essence are also subject to excise tax when spa entrepreneurs buy and use them to provide spa related services. These products shall be collected excise tax again after the customer consumed spa services. This is called excise double taxation of spa business.

4.2.1 How to Eliminate Double Taxation on Excise Tax

India has a scheme to eliminate double taxation on excise tax called CENVAT. The origin of CENVAT comes from VAT, which is common in West European Countries.

MODVAT was introduced in India in 1986. Subsequently, MODVAT scheme was restructured into CENVAT scheme. The system was termed as MODVAT, as it was restricted up to manufacturing stage and credit of only excise duty paid on manufacturing products.

Under the CENVAT Scheme, a manufacturer of final product or provider of taxable service shall be allowed to take credit of duty of excise as well as of service tax paid on any input received in the factory or any input service received by manufacturer of final product.

This scheme is principally based on system of granting credit of duty paid on inputs. Under CENVAT, a manufacturer has to pay duty as per normal procedure on the basis of "Assessable Value" (which is mainly based on selling price). However, he gets credit of duty paid on inputs.

Thailand should apply CENVAT credit scheme like India to eliminate excise double taxation of spa business. Under the current law, the cosmetic which uses in spa business should be taxed both VAT and excise tax. When spa entrepreneurs use cosmetics in delivering spa services to their customers, it shall be collected excise tax on 10 per cent and Vat 7 per cent from spa business's revenue. This current situation creates the excise double taxation on spa business. Therefore, if Thailand applies CENVAT scheme of India with spa business, the spa entrepreneur shall be allowed to take credit of duty excise as well as of service tax paid on any input service received by manufacturer of final product.

4.2.2 How to Charge the Tax Rate

It would be great if spa businesses can collect excise from service charges of spa services meaning that spa customers would be charged excise tax on each service fee. For instance, Mr. A takes body massage 300 bath per hour while Mr. B takes body massage 900 bath per 3 hours. So, when Mr. B uses spa services more than Mr. A, he should have a liability to pay excise tax at a higher rate than Mr. A. Collecting excise on service charges is fairer than collecting excise tax on spa business' income.

4.3 The Problem of Excise Tax Evasion

According to general principal of Excise Tax in Thailand, “Excise Tax” is the tax collected from the goods and services produced in the country or import. These products that possess characteristics of over necessities of human livings or causing harm to the body have to bear additional tax burden so as to limit the consumption in reality. The goods or services not considered as necessary for living are the four factors of human basic needs. These are food, cloth, accommodation and medicine. All human beings need those four factors to live. If we lack them, we may have troubles in life. When the society has been changed and the world has been developed, human can invent many things to make their living easier.

Therefore, the human can invent and think new goods and services that they are over than necessary of human’s living but it can save human’s energy. Today, human can live their life easier. Many goods and services are beyond a basic necessity of life. As a result, the collection of excise tax on these products is created based on four main rationales as discussed in chapter 2.

In a short period of time, the spa business becomes an abundant business though out Thailand. It leads to problems of controlling and management because most of spa entrepreneurs are not subject to excise tax under Excise Tariff Act B.E. 2527. In addition, at the moment, where the spa business has high level of expansion in Thailand, the entrepreneurs try to evade taxes. There are many small spa businesses in Thailand which evaded tax.

Even though The Ministry of Public Health now, defines the meaning of spa business, guarantees the certification to spa entrepreneur, and provides the standards of spa business in five aspects, unauthorized spa businesses have occurred throughout Thailand. There is no appropriate controlling and investigating measures in place resulting in the government’s loss of tax income collected on spa businesses.

On the contrary, Turkish bath and massage business was strictly controlled by Place of service Act B.E. 2509 This make it more difficult for Turkish bath and massage business to evade excise tax according to Excise Tariff Act.B.E.2527. In addition, controlling of Turkish bath and massage businesses can be seen from the start of businesses.

When entrepreneurs of Turkish bath and massage are permitted to do Turkish bath business in Thailand, they have to get licensed by the competent official who shall grant the license based on record in working and unlawful action. Methods of licenses and permissions mentioned above including permit license renewal as notified in the Ministerial Regulations which is controlled by the Ministry of Interior. The ministry has a duty to register service place under section 3 of place of service Act B.E. 2546

Besides the provision of licenses to entrepreneurs doing Turkish bath business the Ministry of Interior also controls the date of opening of the closed facilities services and if any entrepreneur doing business without permission under this Act, they will be imprisoned not more than 1 years or a fine not exceeding six thousand or both imprisonment and fine. In addition, if any unauthorized Turkish bath business evades taxation, they will get the penalty under this Act.

Spa business is controlled and monitored by Ministry of Public health and the Ministry defines that spa is an aqua therapy aiming for taking care of overall health under the monitoring of therapists, specialists or doctors as well as being a place to relax for gaining a good health. The ministry also divides place for health or beauty into three categories as mentioned in Chapter 2.

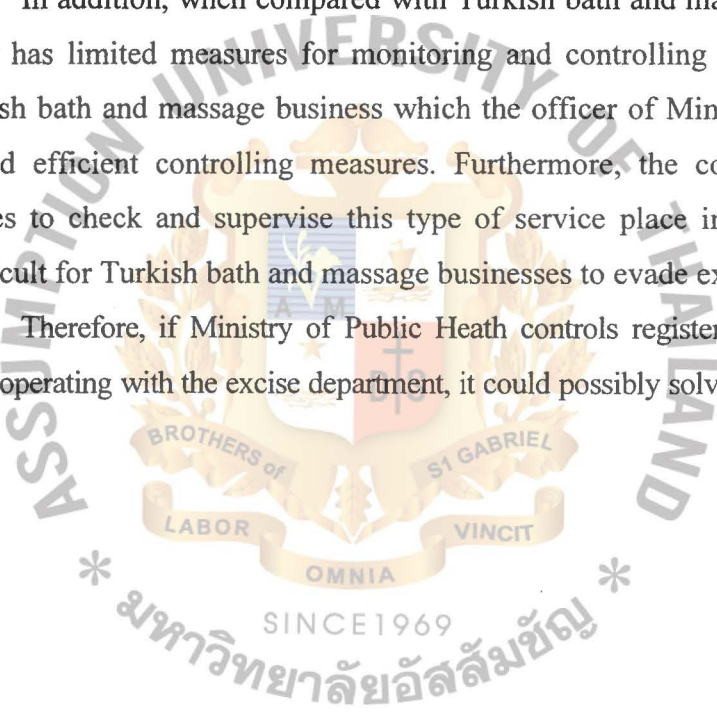
The Ministry of Public Health now, declares the measure for the health spa business as to monitor and control performance and quality of certified health service centers. The measure help protect consumers by categorizing the spa standards into three types as mentioned above and the Ministry of Public Health also complies with the five standards of place namely

1. Location means the establishment must be registered by the Ministry of Public Health to ensure that it is not an unauthorized spa business.
2. The operator means Spa managers who must be examined at Ministry of Public Health.
3. The therapist means massage staff shall pass the exam as well
4. Service providing means the standard for spa service shall use water as a component of massage, sauna and bathing
5. Safety means the fixing of opening and closing time.

Even though there is a law for operating and controlling type of spa businesses. For example; The Ministry of Public Health has the authority to define permission to register this spa business and guarantee the certification. Moreover, it also specifies the standards of spa businesses. The Ministry of Public health has a duty to launch the certification to the whole of entrepreneurs of health spa only but it is also lack of good controlling and good management. Nevertheless, the problem of tax evasion in spa businesses still persist especially in small spa businesses established throughout Thailand. This is a major problem which costs government tax income from this business

In addition, when compared with Turkish bath and massage business, the authority has limited measures for monitoring and controlling spa businesses. Unlike Turkish bath and massage business which the officer of Ministry of Interior has good and efficient controlling measures. Furthermore, the competent office usually comes to check and supervise this type of service place intensively. This makes it difficult for Turkish bath and massage businesses to evade excise tax.

Therefore, if Ministry of Public Health controls registered spa business closely by co-operating with the excise department, it could possibly solve the problem of tax evasion.



Chapter 5

Conclusion and Recommendation

5.1 Conclusion

Nowadays, spa is one of the lucrative businesses. It can be seen that there is a lot of spas in every region of Thailand because humans today live their life mostly at work and, so, have less time to rest. As a result, using spa service is counted as ways to rest and relax body and mind.

As spa businesses quickly gain popularity, the present laws that govern them became out of date and not suitable for fast growing spa business in Thailand. In addition, today, spa services are located in resort hotels or even in sport clubs. The definition of spa set in the Excise Tariff Act since B.E. 2527 became obsolete, unclear, uncovered, unfair and confusing to spa business entrepreneurs. On the other hand, it also creates loophole for spa business entrepreneurs to avoid tax.

The unclear definition and unfair treatment to spa business is the main problem. Interpretation of the law under the Excise Tariff Act states that a spa is considered a massage parlor if it has bathtub or restroom in the same room with the massage bed. In this case, it will be called to pay excise tax at 10 percent. To collect excise tax because of specific characteristics of spa services that provide bathing, sauna and massage like the massage parlor is unfair to spa business. Furthermore, the process of collecting excise tax from bathtub or restroom in the massage room as stated by the definition is not easy and, so, can create loophole for tax avoidance.

Moreover, collecting excise tax from spa that has bathtub in the same room with the massage room also contrasts to the nature of spa. Spa business has water as a main component to perform various services such as body plaster, body scrub or massage with essential oil. Consequently, spa's customers need to clean their body with water. As a result, for convenient and personal privacy, most spa service places have bathroom inside massage room. Then, requesting that any spa that has bathtub in the same room with massage room must pay excise tax is wrong.

Currently, the Excise Department has launched the Announcement of Excise Department Notification (No.27) to exempt health spa from excise tax. Under this

announcement, entrepreneurs of health spa are waived excise tax on health spa businesses.

Such announcement was launched to amend the unclear and unfair definition of health spa under the Excise Tariff Act B.E. 2527. As a result, there is no more interpretation problem for the word “health spa”. Moreover, another announcement which aims to encourage certification and provide standards for health spa was launched by the Ministry of Public health.

Nonetheless, another problem occurs that if the spa is not classified as the same type of entertainment as the Turkish bath, then spa business should not be defined in the part XI entertainment under this act. In such a case, on what basis should spa business be taxed?

Based on rational analyses in chapter 4, the unfair definition of spa that results in the suggestion to repeal excise tax from spa business as spa business shall not be taxed on the same ground with the massage parlor. Even though, at present, there is new announcement from the Excise Department which exempts excise tax on health spa, spa services can still be taxed based on its characteristics. Since the major characteristic of spa service has water as its main component such as in Jacuzzi whirl-pool, steam room, Sauna, body plaster and body scrub. Those are all luxurious services. In addition, spa service also emphasizes on health supplement rather than health itself. Furthermore, people who consume spa services must have moderate or high income. In other words, they mostly come from medium to high class income or foreigners.

Therefore, if the Excise Department collects excise tax on spa business based on the reason that it provides services that more than the necessary need of human livings in order to limit the consumption, it is an appropriate way to collect excise tax on spa business in Thailand.

5.2 Recommendation

1. The most important problem of spa business in Thailand is the problem of definition of spa business under the Excise Tariff Act B.E. 2527 that considered spa business as the same entertainment type as the Turkish bath. Under this definition,

spa business must pay excise tax at the rate of 10 percent of revenue earned from providing services of bathing or sauna and massage. Additionally, the Act also states that if any spa has bathtub or restroom in the same room with massage room, additional excise tax will be collected.

According to reasons analyzed in chapter 4, definition of health spa stated in Excise Tariff Act B.E.2527 is wrongly defined since it is not consistent with the real purpose of health spa business. In addition, health spa business is not like Turkish bath as their services are different and distinctive. Even though both businesses have similar processes of bathing and massage, it does not mean that the spa business is similar to the Turkish bath business. This interpretation also destroys the image of Thai spa in the eyes of foreigners especially when the governments try to promote this business to attracting foreign visitors to Thailand in order to stimulate the domestic economy. Furthermore, the Ministry of Public Health also has launched standard certification for Thai spa aiming to control and upgrade the standards of spa businesses in Thailand. Moreover, collecting excise tax on bathtub and bathing place not only creates loophole for taxpayer to avoid tax but also contrasts with the nature of spa business.

Therefore, the lawmakers should clearly define an appropriated definition of spa business such that it reflects real objectives and natures of the spa business. Specifically, the definition and interpretation of spa business should follow the announcement of the Ministry of Public Health no. 4 B.E. 2546 because this announcement has provided a clear definition of the characteristics of spa business that conforms to the natures and objectives of the spa service business. It divides spa businesses into 3 categories as follows: 1. Health spa 2. Health massages 3. Beauty massages.

In addition, by abandoning condition and criteria to collect excise tax on bathtub, it will close loophole for taxpayers to avoid tax and, hence, generate more income to the government. Nonetheless, health spa should be certified and up to the standard of health spa according to the above five aspects stated by Ministry of Public Health.

2. After redefining the definition of health spa clearly, the spa business should not be included in part XI entertainment 09.02 entertainment on bathing or

sauna and massage under the Excise Tariff Act B.E.2527 as analyzed in chapter 4. However, as spa is deemed to be a service business that provides extra convenient more than necessary of human living. As a result, the entrepreneur of spa business shall have a liability to pay excise tax. On the other hand, when considering that the spa service emphasizes on health as defined by Ministry of Public Health, spa business may not counted as providing too much convenient service. Nonetheless, on the ground that spa business provides services to supplement health rather than to enhance health itself, so spa business shall be collected excise tax. As a result, the lawmaker shall encourage a provision in the Royal Decree that defines spa business as a place of service which is subjected to part VIII other commodities according to Excise Tax tariff Act B.E. 2527. In this regard, the entrepreneur of health spa shall be collected excise tax under this Act.

3. Applying the CENVAT credit scheme similar to that of India to eliminate excise double taxation on spa business in Thailand. The spa entrepreneur shall be allowed to credit input VAT form the service tax paid on any input service received by manufacturer of final product. The recommendation of the researcher is that, Excise Tariff Act B.E. 2527 should amended a new provision of the Act as the current Excise Tariff Act B.E. 2527 has no provision to eliminate excise double taxation on services.

4. Spa business in Thailand should be collected excise tax on service charged by deducting in percentage of the amount of each service fee.

5. Repealing the exemption excise tax on health spa in new announcement which launched by the Ministry of Public health resulting in health spa being collected excise tax on the basis of luxury tax under part VIII other commodities of Excise Tariff Act B.E. 2527 (Repel the announcement of Excise Department notification on exemption excise tax to place of service type bathing or sauna and massage in beauty or health parlor (no.27) date 30 December B.E. 2534)

It must be summarized that the collection of excise tax on spa business should be fair and also able to close any loophole for taxpayers to avoid tax and, at the same time, easing administrative burden of the Excise Department's officers.

Bibliography

Books

- Chossen, Sijbren. Theory and Practice of Excise Taxation. New York: Oxford University Printing, 2005.
- Due, John F. A Product of the Public Economic Division. Washington DC: Policy Research Dissemination Center, 1994.
- International Business Publications. Korea South Tax Guide. Washington DC: International Business Publication, 2008.
- Naiyana Apiwatporn. et al. Entrepreneur for Doing Health Spa Business. Nonthaburi: Department of Health Service Support, Ministry of Public Health, 2551.
- Prapas Kong-ied. Excise Tax Law. Bangkok: Nititham Printing, 2542.
- Wonchalerm Jatrarakul. Spa&Aromatheraphy. Bangkok: Kunpor Printing, 2546.

Unpublished Manuscript

- Prapas Kong-ied. "Excise Tax Law". Lecture note for Master Degree Program, Assumption University, 2551. (unpublished manuscript).

Internet

- Businessmapsofindia. Excise Tax. At <http://business.mapsofindia.com/india-tax/types/excise.html>. (last visited 6 November 2009).
- Europedia. Excise duties in the EU. At http://europedia.moussis.eu/books/Book_2/5/14/02/03/index.tkl?all=1&pos=176. (last visited 6 December 2009).
- Excise Department of India. The Role of Excise Tax Department. At <http://excise.delhigovt.nic.in>. (last visited 6 November 2009).
- Excise Department of Thailand. Definition of Goods and Services. At <http://www.excise.go.th/index.php?id=210>. (last visited 10 November 2009).
- Excise Department of Thailand. Tax Base. At <http://www.excise.go.th/index.php?id=211>. (last visited 10 November 2009).
- Rajkumar S. Adukia. Modify Valued Added Tax. At [http:// tax.indiainfo.com/excise/](http://tax.indiainfo.com/excise/) (last visited 6 December 2009).

Revenue Administration Department of Taxpayer Services. Turkish Tax System. At <http://www.gib.gov.tr/index.php?id=469> (last visited 24 November 2009).

Subhajit Basu. Global Perspectives on E- commerce Taxation Law. At <http://works.bepress.com/subhajitbasu/13/>. (last visited 11 November 2009).

Laws

Council Directive 2008/118/EC of 16 December 2008.

Delhi Tax on Luxuries Act and Rules, 1996.

Entertainment tax, Delhi entertainment and Betting Tax Act and Rules, 1996.

Excise Tariff Act B.E. 2527.

Place of Service Act (no.4) B.E. 2546.

The Announcement of Excise Department of Excise Department on Exemption
Excise tax to Place of Service Type Bathing or Sauna and Massage in
Beauty and Heath Parlor (no.27) date December 30, B.E. 2534.

The Announcement of the Ministry of Public Health 5/2538.

The Central Excise Act, 1994.

The Cenvat Rules, 2004.

The Ministerial Notification of Ministry of Finance Notified on Excise Tax Reduction
and Exemption (no.68) date January 28, B.E. 2546.

