



THE PROBLEM OF EXEMPTION OF EXCISE TAX
ON THE YACHT

BY
MS. AMPIKA JAROENCHAI

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

NOVEMBER 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 sailboat), bottom-left (white with a blue star), and bottom-right (red with a white cross and the letters 'DS'). The shield is flanked by golden laurel branches. Above the shield is a golden crown. Below the shield is a banner with the text 'BROTHERS of' on the left and 'S1 GABRIEL' on the right. The entire emblem is set against a background of a large, faint watermark of the university's name and logo.

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Independent Study Paper Title : The Problem of Exemption of Excise Tax on the Yacht

Author : Ms.Ampika Jaroenchai

Major : Master of Laws (Taxation Law)


Advisor : Assoc.Prof. Nattapong Posakabutra


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


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ABSTRACT

At presently, the Yacht is a popularity business in Thailand and the number of Yachts coming to the territory of Thailand is increasing. Thailand has to lose more revenue from the announcement of the Ministry of Finance number 70 issued on 19 February B.E. 2547. The objective of this study is aimed at analyzing the problem of the Exemption Tax on a Yacht in Thailand, in order to discover the proper method to revise and make proper laws concerning the yacht business. At this moment, the yacht business does not a duty to pay excise tax. It is pay only the customs tariff tax which the rate is very low.

It is found that the definition provided under the excise tax law is unclear and unfair and it has caused a problem in interpreting the law and collecting excise tax on the yacht business. It is essential to enact and revise the law to solve these problems. Therefore, the law should adopt the approach to collect excise tax on the yacht by dividing the types and sizes of the yachts in different rates. The method that was used in the research is the comparison between the principle of collecting excise tax and luxury tax theory, under Thai law, the announcement of the ministerial regulation of the Ministry of Finance and the provisions of laws in foreign countries such as the general principle of collecting excise tax in India and Greece.

The recommendations are to define the term “Yacht” in Excise Tariff Act B.E. 2527 and to amend the same definition in Custom Tariff Act B.E. 2527. In addition, the ministerial regulation of the Ministry of Finance No. 65 should be brought back and applied in case of imposing tax on yacht.

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Chapter 1

Introduction

1.1 Background and General Statement of the Problem

Excise tax is an indirect tax applied on selective goods and services and has to levy a burden of tax more than other goods and services. There are important reasons to consider as follow:

1. Sumptuary Excise - Collect tax from consumer commodities and services which will be harmful to health and against morals.
2. Luxury Excise - Collect tax from goods and services which are luxuries such as beverages, motor vehicles, vessels and others.
3. Benefit-based Excise - Collect tax from the person who consumes goods and services to get more benefit than others.
4. Miscellaneous Excise - Goods and services that the Government can declare to impose a tax.¹

Excise tax is an important source of income for the Government. In the year 2551 the Excise Department can collect tax of 278,312.46 million baht.² There are twenty categories of commodities and services which have to pay tax when consumed. However, some of them are reduced or exempted by the Ministry of Finance notification and one thing is the yacht even though it is a real luxury. At the present, the importation of a yacht can be done by;

1. The industrial operator or the importer who brings the yacht into the country for sale.
2. The tourist who sails the yacht from overseas to Thailand.

¹ Prapas Kong-ied, "Excise Tax," Paper Presented at the Consumption Tax Class, Assumption University, Bangkok, Thailand, January 2009, p.3.

² Excise Department in Thailand, The Revenue Annual Report of Excise Department in the Year 2008, At http://www.excise.go.th/stat2b5/all_september_50-51.html.(last visited 25 November 2009).

Otherwise, they do not have to pay tax on the yacht but they will have to pay just only the import duty tax according to the Customs Tariff Act B.E. 2527 Part IV. But for the Excise Tax, the yacht gets the privilege to be exempted.

According to category number 06.01 of the schedule annexed under the Excise Tariff Tax Act B.E. 2527, it is limits the higher ceiling of excise tax at 50 percent of a price of goods. However, in section 103 it is prescribed that for the benefit of the economy of the Kingdom or the happiness of the public, the minister of the Ministry of Finance by the approval of the Cabinet shall have the authority to announce a reduction or exemption of tax for any commodities or services³, in this, principles and conditions may be specified. As a result, the excise tax collection on the yacht in Thailand has been changed for four times:

1. The announcement of the Ministry of Finance number 27 enforcement on 1 January, 2535 issued on reduction and exemption of excise tax, reduces the ad valorem rate on a yacht from 50 percent to 5 percent.

2. The announcement of the Ministry of Finance number 36 enforcement on 26 July, 2539 issued a repeal of the announcement of the Ministry of Finance number 27, so the ad valorem rate on a yacht returned to the rate of 50 percent.

3. The announcement of the Ministry of Finance number 65 enforcement on 1 December, 2544 issued on the reduction of the excise tax, reduces the ad valorem rate on a yacht from 50 percent to 5 percent.

4. The announcement of the Ministry of Finance number 70 enforcement on 14 February, 2547 issued on the exemption of the excise tax, exemption to collection tax on a yacht.

Regarding this predicament, the writer researched and analyzed the problems of the exemptions from collecting the excise tax on the yacht which is unfair taxation.

³ The Excise Tariff Tax Act B.E. 2527, section 103 “For the benefit of the economy of the Kingdom or for the happiness of the public, the minister by the approval of the Cabinet shall have authority to announce a reduction or exemption of tax for any commodities or services, In this, principles and conditions may be specified.”

1.2 Hypothesis of the Study

At the present, the industrial operator, importers and the tourists do not have a duty to pay excise tax on a yacht. The owners of the yacht pay only the customs duty which the rate is very low. Moreover, the method of calculation of the excise tax is difficult because, usually, the tax base of the yacht (VAT) will be calculated from the price of good, customs duty and excise tax. The problem is the excise tax is exempted, the tax base of VAT will be distorted. So, the present laws on excise tax and customs duty should be amended to deal with the problem.

1.3 Objectives of the Study

1. To study the General Principles of Excise Tax and Excise Tariff Tax in Thailand.
2. To study the General Principle of Excise Tax and Excise Tariff Tax in Foreign Countries.
3. To analyze the legal problems in term of collecting Excise Tax on a yacht.
4. To find a solution and recommend options for tax collection on a yacht in Thailand.

1.4 Study Methodology

This research paper will be analyzed and researched by utilizing documentary research i.e. Excise Tax Act B.E. 2527, Excise Tariff Tax Act B.E. 2527, Customs Tax Act B.E. 2527, and Customs Tariff Tax Act B.E. 2527, the announcement of the Ministry of Finance including text books, applicable thesis, documents and electronic information regarding vessels commodities relating to the above documents.

1.5 Scope of the Study

This research paper encompasses the study of the Customs duty and Excise tax collection on a yacht and water vehicles used for entertainment according to Excise Tariff Tax B.E. 2527. By analyzing and comparing that tax collection on a yacht and water vehicles used for entertainment between Thailand and foreign laws.

1.6 Expectation of the Study

1. To know the tax collection of Excise Administrative Authorities on excise tax, to know the characteristics of how the systems operates.
2. To know the significance of “Yacht” as enacted in Excise Tax Act B.E. 2527 including tax reduction and tax exemption on a yacht.
3. To know the legal opinion and interpretation of different laws including foreign legislation.
4. To find a solution to the problems that exists in tax collection of excise tax.

Chapter 2

Principle of Excise Tax Collection on the Yacht

2.1 Development of Excise Tax

Excise Tax is the tax collected from goods and services which are considered rational to bear the tax at a higher rate such as the consumption which may cause disadvantages to the health and morals or extravagant products or the goods and services receiving special interest from public affair etc.

Excise tax collection in Thailand is assumed to have started in the Sukhotai capital era but with no evidence. The evidence was found in the early Ayutthaya capital in Prasatthong era (BE 2178) when Juridical Procedures Law specified the liquor tax but did not mention on how and at what rate to collect the tax. The clear evidence was found in King Narai. For the Thailand excise tax, it can be said that the originated from two types of goods which were opium and liquor which were responsible by the separate departments, the Opium and the Liquor Department.

In BE 2474 the Liquor Department was assigned to control and collect the tax from the matches made domestically and other types of businesses might also be added. Therefore the name “Liquor Department” was inappropriate with the affairs at that time. The royal command dated 17 February BE 2474, changed the department name to “Excise Department” and the following day which was 18 February BE 2474 the King was kindly appointed Mom Chao Jitpoktavee Kasemsri Damrong to be the first person in charge of the excise department.

In BE 2467 the royal decree set the rules of the departments in the ministry of finance to separate the excise and opium affairs from the customs department and established “The Excise and Opium Department”. In that same year, The Act Amending Ministry, Sub-Ministry and Department BE 2476 required that the name “Excise and Opium Department” was to be changed to “Excise Department”⁴.

⁴ Excise Department, History of Excise Tax Department, At <http://www.excise.go.th/index.php?id=427>.(last visited 25 November 2009).

Initially the Excise Tariff Tax issued the highest tax rate on a yacht at fifty percent of the value of the Yacht. But In B.E. 2535 the first announcement of the Ministry of Finance number 27 reduced tax rates to five percent. Secondly, in B.E. 2539 the second announcement of the tax rate on a yacht increased to fifty percent of the product's value as a higher limit of rate. Thirdly, in B.E. 2544 the announcement of the Ministry of Finance number 65 reduced the rate back to five percent. Finally, in B.E.2547 the yacht got a privilege tax rate from the announcement of the Ministry of Finance number 70 to an exemption from excise tax.

2.2 Concept of Collecting Excise Tax

Unlike most forms of taxation, excise taxes in their modern form, are not clearly delimited from other taxes. Excise taxes are selective taxes on the sale or use of specific goods and services, such as alcohol and gasoline. It is clearly defined: an excise tax is a levy upon production rather than sale, imposed only upon domestic activities and only to commodities, not services, at specific rates, with quantitative control.

Excise taxes have existed for centuries and are widely used by governments today. The twentieth century spread of income taxation and value-added taxation reduced the significance of excise taxation as a source of government revenue, but most governments still collect sizable taxes on petroleum, tobacco, and alcohol products. Excise taxes take the form either of specific taxes or of ad valorem taxes. A specific tax (or unit tax) is defined per unit of the taxed good or service, where as an ad valorem tax is defined per sale's value.

The wide-ranging mission statement can perhaps be best understood by reviewing the objectives that can be identified in relation to the use of excise taxes. Excise taxes are levied for the following reasons:

1. To raise revenue for general purposes. In practice, most excises have probably been enacted for revenue purposes, the main consideration being that they could be administered more easily than other taxes. Excises on tobacco, alcohol, petrol and motor vehicles are good potential sources of revenue, because the products are easy to identify, the volume of sales is high, and the fact that there are

few producers simplifies collection. Also, there are few substitutes that consumers would find equally satisfactory, so that consumption remains high despite excise-induced price rises.

2. To reflect external costs caused by consumption or production but not accounted for in price. Furthermore, excises are often rationalized as charges for the external cost that consumers or producers of excisable products impose on others. Although the principle of consumer sovereignty implies that rational, fully informed persons who weigh up all the costs and benefits of their actions should be free to smoke, drink, gamble, pollute and drive – physical, financial, and psychological costs imposed on others should be accounted for in price if they cannot be charged directly or indirectly (for example, through higher insurance premiums) to the perpetrators. Thus, the existence of external costs could establish a case for government intervention, among others through excise taxation.

3. To discourage consumption that is deemed undesirable. Information failures are other instances that justify government intervention, even in the absence of explicit external costs. Thus, research has indicated that the price elasticity of demand for cigarettes and alcoholic beverages among the young is, on average, twice the price elasticity among adults. In the event, excise-induced price rises would have a powerful effect in deterring the young from smoking and drinking. More generally, public health objectives –paternalistic or not – can be furthered through the imposition of excises which restrain the consumption of products regarded as unhealthy. Although experts on excise taxation have little to say on the objectives as such, they can analyze the efficacy of one instrument over another in achieving the objectives. In the example, this would be the choice between an increase in the tobacco and alcohol excises, or, perhaps more appropriately, better dissemination of information on the health hazards of smoking and drinking, coupled with legislation restricting supply or places of consumption.

4. To charge road users for government-provided services. Excise taxation can also play an important role in regulating various external (including environmental) and other costs associated with road transport. Road (and similar transport) services resemble goods produced in the private sector that are used optimally when their price, commonly referred to as the economic user charge,

equals the total social costs of operating the road network. Accordingly, road user charges should contain charges for efficient road use and for damage, as well as charges for externalities, such as congestion, pollution, noise and accidents. Motor fuel and motor vehicle taxes, licenses and regulations can be used to promote these objectives.⁵

2.2.1 Pay as You Spend

Excise tax is collected on the goods or commodities with the follow objectives;

1. To a State Income

Excise tax is easy to collect because it is collected from a producer and importer which control the collection from the original place. It can count the number of operators and quantity of goods that must pay tax. Therefore, it has become an important source of income of the State because it can expand a tax base and tax rate easily when it has a necessary situation. Moreover, it is assured from the various countries that the excise tax is an important tax that can create more income to the country for spending as the long period.

2. To Control Consumption

In this case, the nature of tax is like a tool for the state to control people's consumption behavior and also control of the business operation. Excise tax is a great tool to reduce consumption quantity that may be harm to health and good morality of consumers and increase the social cost such as alcohol, tobacco, playing cards, and race courses. These are costs that the states have to lose from the budget to treat alcoholics and tobacco addicted persons by increasing hospital's and doctor's costs. And also, have a family problem which causes accidents and crimes to increase. Excise tax is a tool to restrict the personal behavior in society and promote economy to achieve the objectives of the State. And if considered on the State duty,

⁵ Sijbren Cnossen, Why this Excise Tax Bulletin? (Washington DC: International Tax and Investment Center, 2007), pp. 2-3.

it is fair for the State to issue the tax law to protect and promote various businesses following government policies as well.⁶

2.2.2 Tax on Goods and Services

The excise tax is an indirect taxation that is collected from the consumer base as same as general sales tax. Excise tax is collected from domestic and import goods, both of the goods and services collection are from specific type. It is similar to a selective sales tax. It is why the product should be higher than normal tax burden. Tax rate will be different depending on the suitability of the goods and the services, and it is addition taxation from a general tax. Therefore, the definition of goods and services that has to pay tax is very important because it has an effect of the decision of the people to spend money. The notion in many countries have influenced by ideas of major economists.

JOHN F DUE is an economist and a tax professional who has a notion to restrict the classification of goods and services which should pay excise tax as;

1. In Terms of Progressivity

The basic rule is that taxes should be applied to commodities with high income elasticity of demand; that is, as income rises, consumption rises by a greater percentage. A five percent increase in the family income, for example, will lead to a ten or fifteen percent increase in consumption of the commodities. If this rule could be used, personal views of those developing the legislation about what constitutes "luxury" spending would be avoided.

2. The Tax should be Applied to Commodities with Low Price Elasticity

That is, relatively inelastic demands. Otherwise, persons will shift from taxed to untaxed substitutes and little revenue will be obtained, with potential excess burden. This in turn requires the taxation of a relatively broad category of goods, since the broader the category, the less is the chance of shifting to substitutes.

⁶ Thapanee Tinnatorn, Notion, Theory and Important of Excise Tax (Nonthaburi: Sukhothai Thammathirat Publishing, 2541), p.49.

3. Expenditures on the Commodities Constitute Substantial Segments of Consumption in the Higher Income Groups, and Little in the Patterns of the Lower Income Groups.

Unless the taxed goods are consumed in substantial amounts, the revenue potential will not be great enough to warrant taxation. Many excise systems single out minor items for taxation that constitute such a small element in total spending that taxation under an excise is useless. Cigarette lighters are an example.

4. The Possibility of Disaggregating the Broad Categories of Commodities in such a Way that Differential Rates can be Applied According to the Concentration of Consumer Purchases by Income Groups.

Segregation may be possible by prices charged as with motor vehicles or by precise nature of product (octane level of gasoline, for example). Examples of these are numerous, even with traditional excises. A good example is the much lower rate applied to hand clove cigarettes in Indonesia, used primarily in the lower income groups, compared to rates on manufactured cigarettes. The use of a much lower rate on unstable beer in Zambia, the type purchased mainly in beer halls by the lower and lower middle urban income groups, relative to that on standard beer, is another. The very high rates on wine in Commonwealth Caribbean countries, compared to that on beer, is mainly designed to reach the higher income groups, including tourists, since beer is the standard drink in the lower income groups. Application of much higher rates to alcoholic beverages of types not produced in country and used almost solely by the higher income groups is common, even though uniform rates apply to domestic and imported products. This type of differentiation, with the traditional excises applying at the manufacturing level, is administratively feasible.

5. There is Strong Justification for the Use of Ad Valorem Rates

As the amount of tax per physical unit, it will be greater on the more expensive varieties than on the cheaper ones.⁷

⁷ John F. Due, Excise Taxes (Washington DC: The World Bank Policy Research Department, Public Economics Division, 1994), pp.15-17.

2.2.3 Principle of Considering What Kinds of Goods and Services to Tax.

1. Sumptuary Excise

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These sales taxes are regulatory in nature. Sumptuary shares the same root as the word "sumptuous," which means rich and luxurious. Thus, a sumptuary tax is a levy on items of luxury, frequently the object of an addiction. Because sumptuary taxes have focused on products considered vices, such as alcohol and tobacco have been justified as deterring people from consuming these commodities, the more colloquial term "sin tax" has evolved for these taxes. The demand for these products is relatively inelastic, casting doubt on whether taxes discourage usage. These items tend to be relatively demand inelastic in large part because they are addictive in nature. Therefore, a smoker is unlikely to stop smoking, or even cut back, because of higher taxes on a pack of cigarettes.

Sumptuary taxes are often political and funding expedients. When funds are needed for a particular project, or for a general budget shortfall, a raise in sumptuary taxes is usually the least objectionable to the majority of voters. After all, they can avoid the tax by not buying or using the products. A classic use of the sumptuary tax as a fundraiser is the case of municipal sports stadiums. Rather than raise property taxes in the area, a highly unpopular proposition for a politician, an increase in the tax on beer purchased is more likely to target the users of the stadium and be more acceptable. Similarly, taxes on tobacco are used to fund anti-tobacco public service initiatives.

While taxes on real luxuries, like expensive jewelry and yachts, are truly progressive, meaning they have a higher impact on the wealthy than the poor, sumptuary taxes are regressive, meaning they are felt more severely by lower and middle income individuals. Furthermore, the sumptuary tax is not levied in relation to the final cost of the product, with the result being that tax on high-end alcohol and tobacco products is a smaller overall percentage of the consumer's cost.

The commonly stated justifications of sumptuary taxes are that they discourage the use of dangerous products and they offset the cost burden that the users of alcohol and tobacco put on the healthcare system. In fact, however, there is

little evidence that taxes alone cause people to reduce their use of "vice" products, and many claim that the personal use of such products should not be regulated by government in any case.

2. Luxury Excise

These excise taxes are levied on items that are "uniquely or predominantly consumed by the rich" meaning that the act of purchasing the goods itself is considered to be evidence of an extraordinary ability to pay taxes. Excise taxes were levied on a wide range of luxury goods, such as jewelry, yachts, and expensive automobiles. The logic of these taxes rests on the assumption that the purchase of such goods is *prima facie* evidence that the consumer can afford the tax. The overall effect of these taxes, then, is to make the tax system more progressive.

Imposing tax on the luxuries is a necessity in a developing country because if the all citizens consume most of the luxury products, the country will lack assets for development.

There are some problems created by luxury excises. One problem is that the definition of what is a "luxury" is in no way fixed. That is, a watch is not a luxury, but an "expensive watch" may be. A car is not a luxury, but an "expensive car" may be. The problem, of course, is that there is no standard definition for "expensive" so any definition used is by necessity somewhat arbitrary. Some families may have a need to purchase a more expensive car in order to accommodate their family. For a single person, the purchase of such a vehicle may be a luxury. Thus, the definition of a luxury item is clearly open to debate and interpretation.

Another issue with luxury excise is that they can create distortions between taxed and untaxed goods. The luxury tax itself changes the relative price of the luxury item compared to items that are not subject to the tax. This means that the tax policy is discriminatory against these luxury items relative to other goods that may be purchased. This has the effect of discouraging, at the margin, purchase of these items, which has the related effect of disadvantaging retailer and producers of luxury goods, perhaps to the point of driving them out of business.⁸

⁸ Robert D. Lee et al., Public Budgeting Systems (Washington D.C.: The George Washington University, 2008), pp.111-112.

3. Benefit-Based Excise

Benefit-based taxes which attempt to attach the responsibility for paying for certain public goods, to the appropriate users. An excellent example of a commodity that can be subjected to a benefit-based tax is petrol. The type of tax levied on petrol is a benefit-based tax and is referred to as the fuel levy. The tax on fuel is levied on all purchasers of petrol who use roads (and put the most amount of wear and tear on these roads), and that non-users (for example, bicyclists and pedestrians) can somehow be spared from paying for something they do not use “to the same extent”.⁹

According to the rule, some countries will not impose a tax on gasoline that will not be used for a high way vehicle and some countries try to research about which group will get the benefits from road construction. For example, when there is a road, it will have three beneficiaries, the car user, a landlord who owns property the road cuts through and the real estate price will go up and pedestrians. Suppose that, in building a road the government pays the construction cost around 1,000 million baht, and from a study, the car user gains an advantage of seventy five percent, a landlord receives fifteen percent advantages and pedestrian receive ten percent. Therefore, it will be imposing tax from gasoline tax 750 million baht, the real estate's vat 150 million baht, and other public tax 100 million baht.¹⁰

4. Miscellaneous Excise

Occasionally, the government will need more revenue increase or want to limit some goods temporarily. As a result, the government requires collecting a selective sale tax such as,

1) During the war, the government has to accelerate production of goods for the soldier's requirements more than goods for the demand of the civil side and try to divide the raw material from the civil side production to the soldier side of production.

⁹ Kabelo Moeti et al., Public Finance Fundamentals (South Africa: Juta and Co.Ltd Reprinted, 2008), p.36.

¹⁰ Prapas Kong-ied, Excise Tax Law (Bangkok: Nititum Publication, 1999), p.8.

2) When the government has a serious case to use an amount of money, such as for the rescue of a sufferer or other public benefits.¹¹

2.3 Principle of Excise Tax

2.3.1 Tax Payer¹²

Under section 7 of the Excise Tax Act, the industrial operator or service operator or the importer of commodities or other persons specified under this Act as the person having responsibility to pay tax shall be responsible for paying tax according to the ad valorem or specifics of commodities, at the rate prescribed in the law relating to excise tax as applied during the time of liability to pay tax¹³

From the above it separates the persons who are liable to excise tax under section 7 of Excise Tax Act in 4 types and section 4 has given the definitions as follow:

1. Industrial operator means the owner or manager or the person responsible for the operation of the industrial plant.
2. Service operator means the owner or manager or the person responsible for the operation of the service place.
3. Importer means the person who brings in commodities under the law on customs.
4. Other persons specified under this Act.

2.3.2 Tax Base

Tax base can separate in two types as follow:

1. Based on value (AD VALOREM) section 8

1) In the case of commodities produced in the country, the value shall be based upon the ex-factory price including the excise due to be paid.

¹¹ Prapas Kong-ied, Excise Tax Law, pp.8-9.

¹² The Excise Tax Act B.E. 2527 section 7.

¹³ Prapas Kong-ied, "Excise Tax," pp.43-45.

2) In the case of services, the value shall be based upon the income received or deemed to be received for the operation of service including the excise tax due to be paid.

3) In the case of imported commodities, the value shall be based upon the CIF price plus import duty, fees under law on investment promotion and tax and other fees specified in the Royal Decree excluding value added tax specified in chapter 4 title 2 of the Revenue Code including the excise tax due to be paid.

Excise Tax calculation¹⁴

Excise Tax = value x tax rate

Or formula excise tax = (ex-factory price + excise tax
+Ministry of Interior tax) x tax rate

2. Based on Quantity (Specific) Section 9

The commodities which are based on quantity shall be upon weight or quantity except:

1) In the case of food, if it uses liquid for a benefit to food preservation, it shall be based on the weight including liquid to calculate tax.

2) In case of containers and seals for sale, if it shows the quantity of goods, the director of excise department considers on that quantity.

Excise Tax calculation

Excise Tax = quantity x tax rate

2.3.3 Tax Rate¹⁵

Excise tax rate is defined in the Excise Tariff Act which is separated in thirteen parts as follow:

1. Petroleum and petroleum products
2. Beverage
3. Electronic appliances

¹⁴ Prapas Kong-ied, "Excise Tax," pp.43-45.

¹⁵ Excise Department, The Knowledge Specific in Product, At <https://www.excise.go.th/index.php?id=80&L=1%2520and%25201%253D0%2520union%2520select%2520%2A%252F>. (last visited 25 November 2009).

4. Adelaide glass crystal and other glass crystal
 5. Car
 6. Yacht
 7. Fragrances products and cosmetics
 8. Others commodities
 - 1) Carpets and other textiles for the floor which are made from fur
 - 2) Motorcycles
 - 3) Marble and granite
 - 4) Battery
 - 5) Goods that have impact on the atmosphere
 9. Entertainment and leisure activities
 - 1) Nightclubs and discotheques
 - 2) Turkish baths
 10. Gambling businesses
 - 1) Racecourses
 - 2) Revenue of lottery
 11. Businesses that have an effect on the environment: Golf courses
 12. Businesses that get permission or concessions from the government: Telecommunication businesses
 13. Other service as determined by Royal Decree *
- It also has other acts to collect excise tax, they are the Liquor Act, Tobacco Act and Cards Act.

2.3.4 Tax Exemption, Deduction and Refund Tax

Tax exemption, deduction and refund can be separated into eight categories as follow¹⁶:

1. Imported Commodities

Imported commodities classified as commodities exempted from customs duty in Part 4 of Customs Tariff Act shall also be exempted from excise tax

¹⁶ Prapas Kong-ied, "Excise Tax," pp.43-45.

by basing upon the same principles and conditions as prescribed under the law on customs tariff under section 99.¹⁷

2. Exemption or Refunds for Exported Commodities

Exemption or refunds for exported commodities comply with principles, procedures and conditions as specified under the Ministerial Regulations, the export includes taking commodities into duty free zone or places.

3. The Industrial Operators

The industrial operators have the right to receive tax refunds or exemptions from the Excise Department under section 102¹⁸ if their conditions are as follow:

¹⁷ The Excise Tax Act B.E. 2527 section 99.

The imported commodities classified as commodities exempted from customs Tariff are also exempt in this Act by base same as law on custom tariff.

¹⁸ The Excise Tax Act B.E. 2527 section 102

The industrial operator shall be entitled to receive a tax refund or exemption under the following cases:

1. Commodities specified under the Ministerial Regulation, which has been donated to the public as charities through the authority in the central, provincial or local authority or through the public organization which the Minister has specified by publishing in the Government Gazette.

2. The commodities specified in the Ministerial Regulation which have been donated as a public benefit to the authorities in the central, provincial or local authority or to the public organization specified by the Minister by publishing in the Government Gazette.

3. The commodities which have been sold to a person who has privileges according to the obligation which Thailand has with the United Nations or according to the international law or according to the international or diplomatic convention under the basis of return of favor.

1) The commodities which have been donated to the public as charity means you return the benefit to the society so this activity will get the right to exemptions or a refund of excise tax from the Excise Department.

2) The commodities which have been donated as a public benefit to support a state agency so it can help the state agency have more efficiency to protect serve and give more confidence to the public.

3) The commodities which have been sold to the United Nations or diplomatic conventions are also exempted or refundable as this has the objective to make a good relationship with the other country.

4) Fuel or fuel products filled in an aircraft or vessel of a capacity of more than five hundred ton gross upwards and customs official has released for travel abroad.

4. Based on Section 102bis

Section 102bis¹⁹ the service operator shall be exempted from excise tax for revenue derived from services specified in the Ministerial Regulation that is donated to government organization both in federal and local governments or donated to a charitable organization.

4. Fuel and fuel products filled in the aircraft or vessel of capacity from five hundred ton gross upwards which the customs official has released for travel abroad

¹⁹ The Excise Tax Act, B.E. section 102bis

The service operator shall have the right to exemption in the case as follow:

1. Services specified in the Ministerial Regulation that is donated revenue to people for charitable organizations.

2. Services specified in the Ministerial Regulations that is donated revenue to government organizations both in federal and local.

5. For the Benefit of the Economy of the Kingdom

For the benefit of the economy of the Kingdom or for the happiness of the public, the minister by the approval of the cabinet shall have authority to announce a reduction or exemption of tax for any commodities or services.²⁰

6. The Industrial Operator

The industrial operator shall be entitled to receive a tax refund on the tax paid for the commodities specified in the Ministerial Regulation, if it can be proved that such commodities have been damaged or deteriorated so that they cannot be used, such as a battery and beverages.²¹

7. The Commodities

The commodities which have been imported and tax has been paid if exported, the tax shall be refunded to the importer according to the principles, procedures and conditions at the same ratio for the refund of the import duty under the law on customs.²²

8. Industrial Operator

Any industrial operator who shall wish to receive a tax allowance for commodities specified under the Ministerial Regulation by taking the amount of tax under this Act already paid for the commodities used as raw material or part of the commodities in the production and deduct from the amount of tax to be paid for those commodities by submitting the application and complying with the principles, procedures and conditions as specified²³

²⁰ The Excise Tax Act B.E. 2527 section 103.

²¹ The Excise Tax Act B.E. 2527 section 104.

²² The Excise Tax Act B.E. 2527 section 105.

²³ The Excise Tax Act B.E. 2527 section 101.

2.4 Principle of Good Taxation

Tax is important revenue of the government. Therefore, before issuing tax law, the government should consider about economic, society and policy appropriately. Collecting of tax has affects to economic structure and social living of the citizen. The good taxation should not affect population expensing because the investment, production and employment will reduce.²⁴

The character of good tax, according to the economist opinion must compose good with four characters.

2.4.1 Productivity

The costs to collect a tax should be kept to a minimum for both the government and taxpayers. The costs to collect a tax should be kept to a minimum. These costs include the administrative cost to the government that is influenced by the number of revenue officers necessary to administer the tax. There are also compliance costs incurred by taxpayers to consider. This principle is also closely related to the principle of simplicity. The more complex a tax, the greater the costs for the government to administer it and the greater the compliance costs for taxpayers to determine their tax liability and report it.

A tax should be structured to minimize noncompliance. The tax gap is the difference between taxes that are owed and taxes that are voluntarily paid. A tax gap exists with any tax for a variety of reasons, such as intentional errors (non-filing, underreporting of income, overstating of deductions, and omission of transactions) and unintentional errors (math mistakes and lack of understanding of the rules). A number of tax provisions may encourage noncompliance because the provision is too complex to understand or to comply with. Procedural rules are generally required for all tax systems in order to encourage compliance. Rules to encourage compliance might include mandatory withholding of taxes at the source and penalties for noncompliance. Generally, compliance measures need to strike a balance between

²⁴ Nattapong Posakabutra, Tax Law (Bangkok: Assumption University, n.d.), p.11.

the desired level of compliance against the costs of enforcement and the level of intrusiveness of the tax system.

The tax rules should specify when the tax is to be paid, how it is to be paid, and how the amount to be paid is to be determined. A person's tax liability should be certain rather than ambiguous. The tax rules should specify when the tax is to be paid, how it is to be paid, and the amount to be paid. A tax system's rules must enable taxpayers to determine what is subject to tax (the tax base) and at what tax rate(s). Taxpayers should be able to determine their tax liabilities with reasonable certainty based on the nature of their transactions. If the transactions subject to tax are easy to identify and value, the principle of certainty is more likely to be attained. On the other hand, if the tax base is dependent on subjective valuations or transactions that are difficult to categorize, the principle of certainty might not be attained. In addition, how the taxes are paid and when the taxes are due should be spelled out in the applicable laws, as well as in the tax forms and instructions. Certainty is important to a tax system because it helps to improve compliance with the rules and to increase respect for the system. Certainty generally comes from clear statutes as well as timely and understandable administrative guidance that are readily available to taxpayers. The principle of certainty is closely related to the principle of simplicity.

2.4.2 Equity and Fairness

Similarly situated taxpayers should be taxed similarly. The principle of taxing similar taxpayers similarly is typically described in terms of equity. The concept of horizontal equity provides that two taxpayers with equal abilities to pay should pay the same amount of tax. If a taxpayer has a greater ability to pay than another taxpayer, the concept of vertical equity comes into play, which means that the person with the greater ability to pay should pay more tax. Of course, how much more tax should be paid has been a topic of debate under our current income tax system and, over the decades, has resulted in a variety of ranges of graduated tax rates and exemption amounts leading to varying levels of progressivity of the system.

The principle of equity is often viewed as a fairness principle. That is, many people view a tax as fair if taxpayers with the greatest ability to pay have the

highest tax burdens. Nevertheless, the term fair tends to have different meanings to different people. For example, with respect to an income tax, an income tax system might be considered fair if:

1. All taxpayers are taxed at the same tax rate (a flat tax) because those with higher incomes will pay more than taxpayers with lower incomes.
2. Taxpayers with higher incomes pay tax at higher rates than lower income taxpayers (a progressive tax).
3. Many different types of income are taxed the same (meaning, for instance, that few or no types of income are excluded from taxation).
4. It combines the elements of items 1 and 3 above.
5. It combines the elements of items 2 and 3 above.

Therefore, use of the word fair in describing a tax might be better used in the context of whether a tax system is perceived as fair. This approach acknowledges some of the subjectiveness of the term fair.

Generally, in evaluating the principle of equity, consideration should be given to the entire range of taxes a taxpayer is subject to, rather than to just one type of tax.

2.4.3 Efficiency

A tax should be due at a time or in a manner that is most likely to be convenient for the taxpayer. A tax should be due at a time or in a manner that is most likely to be convenient for the taxpayer. A tax should be payable when it is most likely to be convenient for the taxpayer. For example, a tax upon the purchase of goods should be assessed at the time of purchase when the person still has the choice as to whether or not to buy the goods and pay the tax. Convenience of payment is important in helping to ensure compliance with the tax system. The more difficult a tax is to pay the more likely that it will not be paid. Typical payment mechanisms include withholding (such as the withholding of income taxes from employee paychecks) and periodic payments of estimated tax liability. The appropriate payment mechanism should depend on the amount of the liability and ease of collection.

The tax law should be simple so that taxpayers understand the rules and can comply with them correctly and in a cost-efficient manner. Simplicity in the tax system is important both to taxpayers and to those who administer the various taxes. Complex rules lead to errors and disrespect for the system that can reduce compliance. Simplicity is important both to improve the compliance process and to enable taxpayers to better understand the tax consequences of transactions in which they engage in or plan to engage.

Taxpayers should know that a tax exists and how and when it is imposed upon them and others.

Visibility enables individuals and businesses to know the true cost of transactions. It also enables them to see what their total tax liability is and to which level of government it is being paid. When a tax is not visible, it can be easily retained or raised with little, if any, awareness among taxpayers about how the tax affects them.

The tax system should enable the government to determine how much tax revenue will likely be collected and when. Tax systems should have some level of predictability and reliability to enable the government to determine how much tax revenue is likely be collected and when. This is particularly important to state governments, most of which operate under a balanced budget requirement. Typically, a mix of taxes provides a more stable tax base because different types of taxes are affected differently by changes in the economy.

2.4.4 Economic Neutrality

The tax system should not impede or reduce the productive capacity of the economy. The tax system should neither discourage nor hinder national economic goals, such as economic growth, capital formation, and international competitiveness. The principle of economic growth and efficiency is achieved by a tax system that is aligned with the economic principles and goals of the jurisdiction imposing the tax. For example, Thai tax rules should not pose competitive disadvantages for Thai firms relative to foreign firms. Economic growth and efficiency is impeded by tax rules that favor a particular industry or investment thereby causing capital and labor to flow to such areas for reasons not supported by

economic factors which can potentially harm other industries and investments, as well as the economy as a whole. The principle of economic growth and efficiency is related to the principle of neutrality in that tax rules that distort taxpayer behavior may hinder economic efficiency.

The effect of the tax law on a taxpayer's decisions as to how to carry out a particular transaction or whether to engage in a transaction should be kept to a minimum. The effect of the tax law on business and personal decisions should be kept to a minimum. That is, taxpayers should not be unduly encouraged or discouraged from engaging in certain activities or taking certain courses of action primarily due to the effect of the tax law on the activity or action. The primary purpose of a tax is to raise revenue for governmental activities, rather than to influence business and personal decisions.²⁵

2.5 Collecting Excise Tax on the Yacht

2.5.1 Definition and Classification of the Yacht

A Yacht is a recreational boat. It designates two rather different classes of watercraft, sailing and power yachts. Yachts are differentiated from working ships mainly by their leisure purpose. It was not until the rise of the steamboat and other types of powerboats that sailing vessels in general came to be perceived as luxury items. However, since the level of luxury on larger yachts has seen an increasing trend, the use of the word yacht to mean any sailing vessel has been diminishing and is more and more limited to racing yachts or cruising yachts.

Yacht lengths generally range from 20 feet (6 m) up to hundreds of feet. Luxury crafts smaller than 40 feet are more commonly called "cabin cruisers" or simply "cruisers." A mega yacht generally refers to any yacht (sail or power) above 100 ft (34 m) and a super yacht generally refers to any yacht over 200 ft (70 m). This size is small in relation to typical cruise liners and oil tankers.

²⁵ The Tax Division, The American Institute of Certified Public Accountants, Guiding Principles of Good Tax Policy (New York: American Institute of Certified Public Accountants Inc., 2001), pp.11-14.

1. Sailing Yachts

Sailing yachts can range in overall length (Length Over All—LOA, in yachting parlance) from about 20 ft (6 m) to well over 100 ft (30 m), where the distinction between a yacht and a ship becomes blurred. Most privately owned yachts fall in the range of about 25–45 ft (7–14 m); the cost of building and keeping a yacht rises quickly as length increases. In the U.S., sailors tend to refer to smaller yachts as sailboats, while referring to the general sport of sailing as yachting. Within the limited context of sailboat racing, a yacht is any sailing vessel taking part in a race, regardless of size.

Modern yachts have efficient sail-plans, most notably the Bermuda rig, that allows them to sail towards the wind. This capability is the result of a sail-plan and hull design, typically a sloop rig that utilizes Bernoulli's principle to generate lift.

2. Day Sailing Yachts

Day sailing yachts are usually small, at less than 20 ft (6 m) in length. Sometimes called dinghies, they often have a retractable keel, centerboard, or dagger board. Most days sailing yachts do not have a cabin, as they are designed for hourly or daily use and not for overnight journeys. At best they may have a 'cubby', where the front part of the hull has a raised solid roof to provide a place to store equipment or to offer basic shelter from wind or spray.

3. Weekender Yachts

Weekender yachts are slightly larger, at less than 30 ft (9.5 m) in length. They often have twin keels or lifting keels such as in trailer sailers. This allows them to operate in shallow waters, and if needed "dry out"—become beached as the tide falls. The hull shape (or twin-keel layout) allows the boat to sit upright when there is no water. Such boats are designed to undertake short journeys, rarely lasting more than 2 or 3 days (hence their name). In coastal areas, long trips may be undertaken in a series of short hops. Weekenders usually have only a simple cabin, often consisting of a single "saloon" with bed space for two to three people. Clever use of ergonomics allows space in the saloon for a galley (kitchen), seating, and navigation equipment. There is limited space for stores of water and food. Most are

single-master "Bermuda sloops" (not to be confused with the type of traditional Bermudian ship known as a Bermuda sloop), with a single foresail of the jib or Genoa type and a single mainsail (one variation of the aforementioned Bermuda rig). Some are gaff rigged. The smallest of this type, generally called pocket yachts or pocket cruisers, and trailer sailers can be transported on special trailers.

4. Cruising Yachts

Cruising yachts are by the far the most common yacht in private use, making up most of the 25 to 45 ft (7 to 14 m) range. These vessels can be quite complex in design, as they need a balance between docile handling qualities, interior space, good light-wind performance and on-board comfort. The huge range of such craft, from dozens of builders worldwide, makes it hard to give a single illustrative description. However, most favor a teardrop-platform hull, with a wide, flat bottom and deep single-fin keel to give good stability. Most are single-master Bermuda rigged sloops, with a single fore-sail of the jib or Genoa type and a single mainsail. Spinnaker sails, in various sizes, are often supplied for down-wind use. These types are often chosen as family vessels, especially those in the 26 to 40-foot (8 to 12 m) range. Such a vessel will usually have many cabins below deck. Typically there will be three double-berth cabins; a single large saloon with galley, seating and navigation equipment; and a "head" consisting of a toilet and shower-room.

Most large yachts, 50 ft (15 m) and up, are also cruisers, but their design varies greatly as they are often "one off" designs tailored to the specific needs of the buyer. The interior is often finished in wood paneling, with plenty of storage space. Cruisers are quite capable of taking on long-range passages of many thousands of miles. Such boats have a cruising speed upwards of 6 knots. This basic design is typical of the standard types produced by the major yacht-builders.

5. Luxury Sailing Yachts

These yachts are generally 82 ft or longer. In recent years, these yachts have evolved from fairly simple vessels with basic accommodation into sophisticated and luxurious boats. This is largely due to reduced hull-building costs

brought about by the introduction of fiberglass hulls, and increased automation and "production line" techniques for yacht building, especially in Europe.

On the biggest, 130-foot-plus (40 m) luxury yachts, every modern convenience, from air conditioning to television, is found. Sailing yachts of this size are often highly automated with, for example, computer-controlled electric winches controlling the sails. Such complexity requires dedicated power-generation systems. In recent years the amount of electric equipment used on yachts has increased greatly. Even 20 years ago, it was not common for a 25-foot (7 m) yacht to have electric lighting. Now all but the smallest, most basic yachts have electric lighting, radio, and navigation aids such as Global Positioning Systems. Yachts around 33 ft (10 m) bring in comforts such as hot water, pressurized water systems, and refrigerators. Aids such as radar, echo-sounding and autopilot are common. This means that the auxiliary engine now also performs the vital function of powering an alternator to provide electrical power and to recharge the yacht's batteries. For yachts engaged on long-range cruising, wind-, water- and solar-powered generators can perform the same function.

6. Racing Yachts

Racing yachts try to reduce the wetted surface area, which creates drag, by keeping the hull light whilst having a deep and heavy bulb keel, allowing them to support a tall mast with a great sail area. Modern designs tend to have a very wide beam and a flat bottom, to provide buoyancy preventing an excessive heel angle. Speeds of up to 35 knots can be attained in extreme conditions. Dedicated offshore racing yachts sacrifice crew comfort for speed, having basic accommodation to reduce weight. Depending on the type of race, such a yacht may have a crew of 15 or more. Very large inshore racing yachts may have a crew of 30. At the other extreme are "single handed" races, where one person alone must control the yacht.

Yacht races may be over a simple course of only a few miles, as in the harbor racing of the International One Design; long-distance, open-ocean races, like the Bermuda Race; or epic trans-global contests such as the Global Challenge, Volvo Ocean Race, and Clipper Round the World Race.

The motive force being the wind, sailing is more economical and environmentally friendly than any other means of propulsion. A hybrid type of vessel is a motor sailing yacht that can use either sail or propulsion (or both) as conditions dictate.

Many "pure" sailing yachts are also equipped with a low-power internal-combustion engine for use in conditions of calm and when entering or leaving difficult anchorages. Vessels less than 25 ft (7 m) in length generally carry a petrol outboard-motor of between 5 and 40 horsepower (3.5 and 30 kW). Larger vessels have in-board diesel engines of between 20 and 100 horsepower (15 and 75 kW) depending on size. In the common 25 to 45-foot (7 to 14 m) class, engines of 20 to 40 horsepower are the most common.

Multihull yachts are typically fitted with a fixed keel or a centerboard (adjustable keel) below the waterline to counterbalance the overturning force of wind on the vessel's sails. Multihull yachts use two hulls (catamarans) or three (trimarans) widely separated from each other to provide a stable base that resists overturning and allows for sailing in shallower waters than most keeled monohulls.

Motor yachts generally fit into the following categories:

- 1) Day cruiser yacht (no cabin, sparse amenities such as refrigerator and plumbing)
- 2) Weekender yacht (one or two basic cabins, basic galley appliances and plumbing)
- 3) Cruising yacht (sufficient amenities to allow for living aboard for extended periods)
- 4) Sport fishing yacht (yacht with living amenities and sporting fishing equipment)
- 5) Luxury yacht (similar to the last three types of yachts, with more luxurious finishing/amenities)

Motor yachts typically have one or two internal combustion engines that burn diesel fuel. Biodiesel for marine propulsion is in the experimental stage. Depending on engine size, fuel costs may make motor yachts more expensive to operate than sailing yachts. However, for smaller engine sizes, operating costs are

comparable to sailing vessels, due to the high cost of sailing, which require regular replacement.

The shape of a motor yacht's hull may be based on displacement, planning, or in between. Although multihull have long been the standard in motor yachts, multihull are gaining in popularity.²⁶

2.5.2 The Meaning of “Yacht” in Excise Tariff Act

Excise Tariff Tax Act B.E. 2527 gives a definition of a boat as:

“Boats” mean all types of water vehicles.

It can be seen that all types of water vehicles are a boat according to excise tax tariff but must be a vehicle for water transportation only will deem to boat at law. General vehicle mean a vehicle that can used for transportation, for example, a rubber boat is a water vehicle that can used for transportation but if a rubber hoop is not a water vehicle but it is swim training equipment or safety equipment. It is not a boat according to law. However, excise tax must be collected on boats that issue in the excise tariff tax.

1. Tariff Number 06.01

Yacht and water vehicles used for entertainment. This tariff can be divided into two types.

Yacht – normally, it is a boat of the millionaire person uses for pleasure and entertains such as for travelling in the sea or a vehicle for angling. The body of the boat will be made from iron, fiberglass or wood depending on the type and form of the owner’s wish. For the motor, gasoline or diesel, it will be put at the tail of the boat or inside the boat. Moreover, it has a motor and sailing yacht for driving. The size of the boat has a small size that long 20-40 feet; middle is 40-90 feet and large is 90 feet up. Therefore, a yacht will have a higher price because it will have luxury facilities in a boat.

Water vehicles used for entertainment – means a boat that is used not for entertainment according to law. If it normally is not used for pleasure and to

²⁶ Wikipedia the Free Encyclopedia, Yacht, At <http://en.wikipedia.org/wiki/Yacht>. (last visited 6 September 2009).

entertain, it is not subject to excise tariff tax law. The important problem is the method to consider what a pleasure boat is. The writer claims that should be consider about a design and form of boat that use for a pleasure. Otherwise, do not use only the owner consider because they will claim it cannot collect excise tax. Therefore, if the boat's design is use for pleasure even if the owner claims it is not to be tax but it must be tax by law. In contrast, if a boat did not design for a pleasure boat but the purchaser uses it for pleasure, it is not subject to tax. Same as a car, it is designed as a car; it is subject to tax even though the owner claims that it is used for a truck. To conclude, which is a pleasure boat or not, you have to consider the design of the boat is important. Well known water vehicles are the scooter, Jet Ski and water bicycle.

2. Tariff Number 06.90

Others as specified by the Director General in the Government Gazette.

According to the tariff number 06.90 the law issued for the Director General authorized in the Government Gazette can declare which yachts and water vehicles do not have to pay tax for a reason of administrating and imposing tax. In the practice, for clearly impose tax the Director of the Excise Tax Department has a judge that yacht and water vehicle according to tariff tax number 06.01 not include passenger liner, packet boat, tugboat or passenger boat.²⁷

2.5.3 Standards, Procedures and Conditions of Yacht Taxation

The yacht products are under the authority and control of the Excise Department. The person who is responsible to pay tax is the industrial operator or importer and pays tax upon ad valorem or specific²⁸

1. Liability to Tax

1) Liability to tax in a time of imported products from industrial plants or bonded warehouse.

²⁷ Prapas Kong-ied, Excise Tax Law, pp. 75-78.

²⁸ The Excise Tax Act B.E. 2527 section 7.

2) Liability to pay excise tax in a place with liability to pay VAT if the VAT liability, whether in whole or in part before the product comes from industrial plants.

2. Importer Duty

Occur at the same time of a liability in the tariff (except if goods are stored in the bonded warehouse, the law on customs regard to liability incurred when importing from the Bonded Warehouse.)

3. Price Notifications at Industrial Plants

Operators must inform the industry price at the industrial plant before the sale starts or before the date change in price not less than 7 days.

4. Schedule to File and Pay Taxes

Submit the form when tax liability occurs or pay tax within 15 days after taking products out from industrial plants or bonded warehouse and have a warranty.

When the liability to pay excise tax is incurred at the same time of VAT, have to submit the form within 15 days after taking products out from industrial plants or bonded warehouse and have a warranty²⁹.

5. Submit a Tax Payment Schedule

Importer must submit a tax with a tax payment in time to Billed issued by Customs under the law.

6. Place to Submit

Submit a list of importers and the Customs Department tax or customs.

²⁹ Samutsakorn Excise Office, Yacht and Water Vessel, At <http://www.samutsakorn.excise.go.th/produce/boat.php>. (last visited 7 September 2009).

7. Tax Credit

Industry operators have eligible to tax credit for the production that already to pay tax and cannot to tax credit for products used as raw materials or components of products to the amount of tax deducted from the taxable for the product is to apply and follow the rules, procedures and conditions set by General Director.

8. Exemption and Tax Returns

- 1) Goods exported outside the Kingdom.
- 2) Goods are sold to the right commitment or by catching in international law.
- 3) Taxpayers with no tax obligation it should be eligible for a tax refund under section 107

2.5.4 Yacht Tax Rate

The Notice of the Ministry of Finance number 70 enforcement on 14 February, 2547 issues on exemption of excise tax, exemption to collected tax from Yacht.

1. Examples of Tax Calculations

If goods produced in the country, the price of a yacht at the industrial plants including excise tax and surtax to the Ministry of Interior worth 2,000,000 baht excise tax rates by 50 per cent value.

Method of calculation³⁰

Calculation Formula (Locally-produced Commodities)

$$\text{Excise Tax} = \{\text{Ex factory Price} + \text{Excise} + \text{Local Tax}\} \times \text{Tax Rate}$$

$$\text{(T)} \qquad \text{(P)} \qquad \text{(T)} \qquad \frac{10 \text{ T}}{100} \qquad \text{(R)}$$

$$T = \frac{[P + T + 10T]}{100} \times R$$

$$T = [P + T + 0.1T] \times R$$

$$T = [P + 1.1T] \times R$$

$$T = PR + 1.1 TR$$

$$T - 1.1 TR = PR$$

$$T(1-1.1R) = PR$$

$$T = \frac{PR}{1 - 1.1R}$$

Therefore; the formula is

$$\text{Excise Tax} = \frac{\text{Ex factory Price} \times \text{Tax Rate}}{1 - (1.1 \times \text{Tax Rate})}$$

$$\begin{aligned} \text{Excise tax} &= \text{value} \times \text{tax rate} \\ &= (1 \times 2,000,000) \times 50/100 \\ &= 1,000,000 \text{ Baht Must pay excise tax} \\ &= 1,000,000 \text{ Baht} \end{aligned}$$

Plus the tax collected to the Ministry of Interior 10% of net tax = 100,000 baht

Total tax paid= 1,100,000 baht

³⁰ Prapas Kong-ied, "Excise Tax," pp. 62-63.

2. Calculation of Tax / Tax Base

Importer is responsible for tax on the tax book value appendix. To hold the value of goods CIF price plus import duty fees, special laws on investment promotion. And other fees as are determined by a royal decree. But not including VAT as follows.

$$\text{Excise tax} = \frac{(\text{CIF} + \text{import duty} + \text{other fees, excluding VAT tax}) \times \text{tax rate}}{1 - (1.1 \times \text{tax rate})}$$

Examples of tax calculations, If imported products (Sun Company) to import a rubber boat. F 145,474.30 U.S. price (i.e. price + shipping + insurance) import duty 43,642.00 THB 4,364.00 U.S. special duties and excise tax rate of 50 percent by value.

How to calculate tax

Formula

$$\text{Excise tax} = \frac{(\text{CIF} + \text{import duty} + \text{other taxes, excluding VAT}) \times \text{excise tax rate}}{1 - (1.1 \times \text{rate of excise tax})}$$

Substitute in formula.

$$\begin{aligned} \text{Excise tax} &= \frac{(607,914.42 + 486,331 + 48,633) \times 29/100}{1 - (1.1 \times 29/100)} \\ &= 331,434.73 \end{aligned}$$

$$0.681 \text{ Must pay excise tax} = 486,688.29 \text{ Baht}$$

with a tax surcharge to the Ministry of Interior of 10% tax = 48,668.82 baht

and must pay tax = 535,357.11 Baht

2.5.5 Excise Tax Exemption for Yacht

1. Import excise tax to pay for an exemption under the law by holding custom tariff criteria and conditions defined in law by custom tariff.

2. Goods imported that interest tax. If sent back out. To tax returns to lead the way in terms of guidelines with the import duty refund under the law on customs.³¹

³¹ Samutsakorn Excise Office, Yacht and Water Vessel, At <http://samutsakorn.excise.go.th/produce/boat.php>. (last visited 30 November 2009).

2.6 Tax Law Related to the Yacht

2.6.1 Customs Duty

1. Taxable Person

“Importer” shall apply to any owner or other person for the time being possessed of and beneficially interested in any goods at and from the time of importation thereof until the time that such goods are delivered out of the charge of the officers of custom;

“Exporter” shall have the same application, mutatis mutandis.

The liability to pay duty on imported goods shall be incurred at the time when the importation thereof brings to effect. Deemed to be the time at which the ship importing such goods actually came within the limits of the port of discharge or consignment.

2. Exemptions and Reductions

Exempted from or granted reduction in duty for personal use and specific purpose.

Goods transferred to non privileged person exemption or reduction is caused.

Goods are subject to duty assessed on the nature and values and at the rates of duty at the time when the transfer occurs.

Payment of duty or additional duty shall be the liability of “Transferor” of the goods.

3. Tax Base and Rate

1) Calculation of duty with the nature and value of goods at the time when the liability to pay duty is incurred (ship arrive the port)

2) In the case of goods stored in a bonded warehouse, the calculation of duty shall be at the time when such goods are withdrawn from the bonded warehouse.

3) Goods released from a duty free zone are calculated at the time when such goods are released from the duty free zone.

4. Goods Exemption from Duty Payment

1) Export articles including re-exports which are re-imported within 1 year without any change in character or form and;

2) Imported goods which its duty has been paid and subsequently sent out of the country for repairs and re-imported within 1 year from the date of exportation.

3) If accompanied by the owner or temporarily imported and to be re-exported within 6 months from the date of importation. For example vehicles, boats and aircraft accompanied with owner.³²

2.6.2 Value Added Tax

Value Added Tax (VAT) has been implemented in Thailand since 1992 replacing Business Tax (BT). VAT is an indirect tax imposed on the value added of each stage of production and distribution.

1. Taxable Person

Any person or entity that regularly supplies goods or provides services in Thailand and has an annual turnover exceeding 1.8 million baht is subject to VAT in Thailand. Service is deemed to be provided in Thailand if the service is performed in Thailand regardless where it is utilized or if it is performed elsewhere and utilized in Thailand.

An importer is also subject to VAT in Thailand no matter whether one is a registered person or not. VAT will be collected by the Customs Department at the time goods are imported. Certain businesses are excluded from VAT and will instead be subjected to Specific Business Tax (SBT).

Under VAT, taxable goods mean all types of property, tangible or intangible, whether they are available for sale, for own use, or for any other

³² Prapas Kong-ied, "Customs Law," Paper Presented at the Consumption Tax Class, Assumption University, Bangkok, Thailand, January 2009, pp.10-15.

purposes. It also includes any types of articles imported into Thailand. Services refer to any activities conducted for the benefits of a person or an entity.

2. Exemptions

Certain activities are exempted from VAT. Those activities are:

- 1) Goods exempted from import duties under the Industrial Estate law imported into an Export Processing Zones (EPZs) and under Chapter 4 of the Customs Tariff Act;
- 2) Imported goods that are kept under the supervision of the Customs Department which will be re-exported and be entitled to a refund for import duties.

3. Tax Base

- 1) General Goods and Services

Tax base of VAT is the total value received or receivable from the supply of goods or services. Value means money, property, consideration, service fees, or any other benefits which is ascertainable in terms of money. Tax base will also include any excise tax that arises in connection with such supply. However, tax base is exclusive of the value added tax itself and does not include any discounts or allowances, but only if discounts or allowances are clearly shown in the tax invoices.

- 2) Imported Goods

$$\text{Tax base} = \text{C.I.F. price} + \text{Import duty} + \text{Excise Tax (if any)} + \text{other taxes and fees (if any)}$$

- 3) Exported Goods

$$\text{Tax base} = \text{F.O.B. price} + \text{Excise Tax (if any)} + \text{other taxes and fees (if any)}$$

4. Tax Rates

- 1) General Rate

Currently, the rate is 7 percent.

- 2) Zero Percent Rates

Certain activities are liable to VAT at the rate of zero percent.

Those activities include:

- (1) export of goods;
- (2) services rendered in Thailand and utilized outside Thailand in accordance with rule, procedure and condition prescribed by the Director-General;
- (3) aircraft or sea-vessels engaging in international transportation;
- (4) supply of goods and services to government agencies or state-owned enterprises under foreign-aid program;
- (5) supply of goods and services to the United Nations and its agencies as well as embassies, consulate-general and consulates;
- (6) supply of goods and services between bonded warehouses or between enterprises located in EPZs.

5. Time of Supply

The time of supply of goods or services is important because it determines when a registered person should account for VAT. The time of supply will be determined as follows:

- 1) Goods
 - (1) General goods, the earliest of:
 - a. the time of delivery; or
 - b. when ownership of goods is transferred; or
 - c. a payment is made; or
 - d. a tax invoice is issued.
 - (2) Imports, the earliest of:
 - a. the time import duty is paid; or
 - b. a guarantee is put up; or
 - c. a guarantor is arranged for; or
 - d. a bill of lading is issued.
 - (3) Exports, the earliest of:
 - a. the time export duty is paid; or
 - b. a guarantee is put up; or
 - c. a guarantor is arranged for; or
 - d. a bill of lading is issued; or
 - e. goods are sent from Thailand to an EPZ; or
 - f. goods are exported from a bonded warehouse.³³

³³ The Revenue Department, Valued Added Tax, At <http://www.rd.go.th/publish/6043.0.html>. (last visited 7 September ,2009).

Chapter 3

Excise Tax Collection on the Yacht in Foreign Countries

3.1 Excise Tax Collection on the Yacht in India

3.1.1 Structure of Excise Tax

Central Excise duty is an indirect tax levied on goods manufactured in India. The tax is administered by the Central Government under the authority of Entry 84 of the Union List (List 1) under Seventh Schedule read with Article 226 of the Constitution of India.

The Central Excise duty is levied in terms of the Central Excise Act, 1944 and the rates of duty, ad valorem or specific, are prescribed under the Schedule I and II of the Central Excise Tariff Act, 1985. The taxable event under the Central Excise law is 'manufacture' and the liability of Central Excise duty arises as soon as the goods are manufactured. The Central Excise Officers are also entrusted to collect other types of duties levied under Additional Duties (Goods of Special Importance) Act, Additional Duties (Textiles and Textiles Articles) Act, Cess etc.

Till 1969, there was physical control system wherein each clearance of manufactured from the factory was done under the supervision of the Central Excise Officers. Introduction of Self-Removal procedure was a watershed in the excise procedures. Now, the assessee was allowed to quantify the duty on the basis of approved classification list and the price list and clear the goods on payment of appropriate duty.

In 1994, the gate pass system gave way to the invoice-based system, and all clearances are now affected on manufacturer's own invoice. Another major change was brought about in 1996, when the Self-Assessment system was introduced. This system is continuing today also. The assessee himself assesses his Tax Return and the Department scrutinises it or conducts selective audit to ascertain correctness of the duty payment. Even the classification and value of the goods have to be merely declared by the assessee instead of obtaining approval of the same from the Department.

In 2000, the fortnightly payment of duty system was introduced for all commodities, an extension of the monthly payment of duty system introduced the previous year for Small Scale Industries.

In 2001, new Central Excise (No.2) Rules, 2001 have replaced the Central Excise Rules, 1944 with effect from 1st July, 2001. Other rules have also been notified namely, CENVAT Credit Rules, 2001, Central Excise Appeal Rules, 2001 etc. With the introduction of the new rules several changes have been effected in the procedures. The new procedures are simplified. There are less numbers of rules, only 32 as compared to 234 earlier. Classification declaration and Price declarations have also been dispensed with, the CENVAT Declaration having been earlier dispensed with in 2000 itself³⁴

In order to determine the rate of excise duty on a good, classification is prerequisite. Excise duty payable is based on the classification of goods given in the Central Excise Tariff Act, 1985 (CETA). The Act gives a list of items chargeable to Central Excise duty. It is divided into 96 Chapters grouped in twenty Sections. Each of these twenty sections relates to broader class of goods such as Section I relate to Animal and Dairy Products, Section VI relates to Products of Chemical and Allied Industries, while Chapter XI relates to Textiles and Textile Articles. The Central Excise Tariff Act was amended in 2004. Earlier there was six digits classification code for classification of the goods, which has been replaced by an eight digits classification code. With introduction of this eight digits classification code, a detailed classification of the goods is now available. The classification of items is significant because it is only the proper classification, which leads to determination of rate of duty.

In Central Excise Tariff, against each item a rate of duty has been prescribed. These are normally termed as "tariff rates". In order to determine the rate of duty on a particular product, first find out the chapter heading under which the item is classifiable. Against that classification, the corresponding tariff rate has to be read with the exemption notification, if any. Thus, effective rate of duty on an item is obtained.

³⁴ Central Board of Excise and Customs (CBEC), Department of Revenue, Ministry of Finance, Government of India, A Central Excise Manual, At http://www.cbec.gov.in/excise/cx-manual/manual/chap1_part2.htm. (last visited 1 September 2009).

Some commodities may be subject to 'special duty of excise' prescribed under the Central Excise Tariff Act, 1985. Certain goods may also be subject to duty under some other Acts such as Additional Duty of Excise (Goods of Special Importance) Act, 1957 or certain Cess.³⁵

1. Importance of Central Excise Duty

Central excise revenue is the biggest single source of revenue for the Government of India. The Union Government tries to achieve different socio-economic objectives by making suitable adjustments in the scope and quantum of levy of Central Excise duty. The scheme of Central Excise levy is suitably adapted and modified to serve different purposes of price control, sufficient supply of essential commodities, industrial growth, and promotion of small scale industries and like Authority for collecting the Central Excise duty.

Article 265 of the Constitution of India has laid down that both levy and collection of taxes shall be under the authority of law. The excise duty is levied in pursuance of Entry 45 of the Central List in Government of India Act, 1935 as adopted by entry 84 of List I of the seventh Schedule of the Constitution of India. Charging section is Section 3 of the Central Excises and Salt Act, 1944.³⁶

2. Types of Excise Duties

1) **Basic Excise Duty:** This is the duty leviable under First Schedule to the Central Excise Tariff Act, 1985 at the rates mentioned in the said Schedule.

2) **Special Excise Duty:** This is the duty leviable under Second Schedule to the Central Excise Tariff Act, 1985 at the rates mentioned in the said Schedule. At present this is leviable on very few items.

³⁵ Government of India, Business Knowledge Resource Online in Taxation of Excise Duty, At <http://business.gov.in/taxation/classification.php>. (last visited 1 September 2009).

³⁶ India Finance and Investment Guide, Central Excise Tax Duty, At http://www.finance.indiamart.com/taxation/excise_duty/index.html. (last visited 3 September 2009).

3) Additional Duties of Excise (Textiles and textile Articles): his duty is leviable under section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978. This is leviable at the rate of fifteen percent of Basic Excise Duty payable on specified textile articles.³⁷

4) Additional Duties of Excise (Goods of Special Importance): duty is leviable under Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 authorises the levy and collection in respect of the goods described in the Schedule to this Act. This is levied in lieu of sales Tax and shared between Central and State Governments. These are levied under different enactments like medicinal and toilet preparations, sugar etc. and other industries development etc.³⁸

5) National Calamity Contingent Duty : Normally known as NCCD. This duty is levied as per section 136 of the Finance Act, 2001, as a surcharge on specified goods.

6) Excise Duties and Cesses Leviable under Miscellaneous Act: On certain specified goods, in addition to the aforesaid duties, prescribed rate of excise duty and cess is also leviable.

7) Education Cess: on excisable goods is levied in addition to any other duties of excise chargeable on such goods, under the Central Excise Act, 1944 or any other law for the time being in force.³⁹

³⁷ Government of India, Business Knowledge Resource Online in Taxation of Excise Duty, At http://business.gov.in/taxation/different_kinds.php. (last visited 3 September 2009).

³⁸ India Finance and Investment Guide, Central Excise Tax Duty, At http://finance.indiamart.com/taxation/excise_duty/index.html. (last visited 3 September 2009).

³⁹ Government of India, Business Knowledge Resource Online in Taxation of Excise Duty, At http://business.gov.in/taxation/different_kinds.php. (last visited 3 September 2009).

3.1.2 Taxpayer

Section 3 of the Central excises and Salt Act, 1944 provides that there shall be levied and collected in such manner as may be prescribed, duties of excise on all excisable goods other than salt which are produced or manufactured in India at the rates set forth in the schedule to the Central excise Tariff Act, 1985. It is therefore clear that as soon as the goods in question are produced or manufactured, they will be liable to payment of Excise duty. However for convenience duty is collected at the time of removal of the goods. While Section 3 of the Central Excises and salt Act, 1944 lays down the taxable event, Rules 9 and 49 of the Central excise Rules, 1944 provides for the collection of duty.

Central Excise duty is an indirect tax levied on those goods which are manufactured in India and are meant for home consumption. The taxable event is 'manufacture' and the liability of central excise duty arises as soon as the goods are manufactured. It is a tax on manufacturing, which is paid by a manufacturer, who passes its incidence on to the customers.

The term "excisable goods" means the goods which are specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 , as being subject to a duty of excise and includes salt.

The term "manufacture" includes any process,

1. Incidental or ancillary to the completion of a manufactured product and
2. Which is specified in relation to any goods in the Section or Chapter Notes of the First Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture or
3. Which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer.

As incidence of excise duty arises on production or manufacture of goods, the law does not require the sale of goods from place of manufacture, as a mandatory requirement. Normally, duty is payable on 'removal' of goods. The

Central Excise Rules provide that every person who produces or manufactures any 'excisable goods', or who stores such goods in a warehouse, shall pay the duty leviable on such goods in the manner provided in rules or under any other law. No excisable goods, on which any duty is payable, shall be 'removed' without payment of duty from any place, where they are produced or manufactured, or from a warehouse, unless otherwise provided. The word 'removal' cannot be necessarily equated with sale.

The removal may be for:-

1. Sale
2. Transfer to depot etc.
3. Captive consumption
4. Transfer to another unit
5. Free distribution

Thus, it can be seen that duty becomes payable irrespective of whether the removal is for sale or for some other purpose.⁴⁰

3.1.3 Tax Rate

Excise tax rate on the Yacht is stated as follow;

CHAPTER 89

Ships, boats and floating structures

8903 Yachts and other Vessels for Pleasure or Sports; Rowing Boats and Canoes

⁴⁰ Government of India, Business Knowledge Resource Online in Taxation of Excise Duty, At http://business.gov.in/taxation/different_kinds.php. (last visited 3 September 2009).

Tariff Item		Description of goods	Unit	Rate of duty
8903 10 00	-	Inflatable	u	16%
	-	Other :	u	16%
8903 91 00	-	Sail boats, with or without auxiliary motor	u	16%
8903 92 00	-	Motorboats, other than outboard motorboats	u	16%
8903 99	-	Other :	u	16%
8903 99 10	-	Canoes	u	16%
8903 99 90	-	Other	u	16%

Generally, the Central excise duty in respect of different goods is on ad-valorem basis (i.e. the duty is fixed as a percentage of assessable value of a good). It thus becomes important to find out as to how the value of a good is to be assessed. The valuation of the goods as per Central Excise Act 1944 can be determined on the following three basis:-

1. Tariff Value

The Central Government may fix tariff values of any article by way of notification. The duty is payable on the tariff value so fixed.

2. Transaction Value

This is the most common way to determination of assessable value. In most of the products, the value for the purpose of charging duty shall be taken as the price actually paid or payable for the goods, when sold to buyer. This means the amount, which has been transacted between the seller and the buyer in normal course of business is the assessable value.

For applicability of transaction value in a given case, for assessment purposes, certain essential requirements should be satisfied. If any one of the said requirement is not satisfied, then the transaction value shall not be the assessable value and value in such case has to be arrived at under the valuation rules notified for the purpose. The essential ingredients of a Transaction value are:-

- 1) The goods are sold by an assessee for delivery at the time of place of removal. The term "place of removal" has been defined basically to mean a factory or a warehouse
- 2) The assessee and the buyer of the goods are not related and
- 3) The price is the sole consideration for the sale.

3. Maximum Retail Sale Price

The value is based on maximum retail sale price in terms of the Central Excise Act, 1944. This is applicable to notified commodities. The notification issued in this regard indicates the extent of abatement to be allowed for arriving at the assessable value for determination of amount of duty. Central Government can specify goods in respect of which, the value shall be deemed to be the retail sale price declared on the goods less the abatement. This provision is applicable to those goods in relation to which, the requirement of declaration of retail sale price on the package is there under the provisions of Standards of Weights and Measures Act, 1976 or rules made there under.⁴¹

3.1.4 Wealth Tax on the Yacht in India

Besides Income-tax, there is another direct tax act namely Wealth Tax Act, 1957 which imposes tax, inter alia, on individuals coming within its purview. Pensioners, retired persons or senior citizens have not been accorded any special benefits under this Act. Wealth tax is an annual tax like income tax. The important provisions concerning the Act are mentioned hereinafter.

This Act may be called the Wealth-tax Act, 1957. It extends to the whole of India. It shall be deemed to have come into force on the 1st day of April, 1957.

The Wealth Tax Act is important direct tax legislation. Wealth tax is tax on the benefits derived from property ownership. The tax is to be paid year after year on the same property on its market value, whether or not such property yields any income.

⁴¹ Government of India, Business Knowledge Resource Online in Taxation of Excise Duty, At http://business.gov.in/taxation/different_kinds.php. (last visited 3 September 2009).

Wealth tax is charged for every assessment year in respect of net wealth of corresponding valuation date, inter alia, on every individual Hindu Undivided Family and company at the rate of one per cent of the amount by which net wealth exceeds Rs. 15 lakhs. "Valuation Date" is 31st March immediately preceding the assessment year [Section 2(a)], Assessment year, as under the Income-tax Act, means a period of 12 months commencing from 1st day of April every year falling immediately after the valuation date [Section 2(d)]. Net wealth means taxable wealth. It means the amount by which the aggregate value of all assets (excluding exempted assets) belonging to the assessee on the valuation date including assets required to be included in the net wealth, is in excess of the aggregate value of all debts owed by the assessee on the valuation date which have been incurred in relation to the taxable assets.

1. Taxpayer

Incidence of tax in the case of an individual depends upon his residential status and nationality. Residential status is decided as per the provisions of the Income-tax Act (Chapter I Supra).

The scope of liability to wealth tax is as follows:

1) In the case of an individual who is a citizen of India and resident in India, a resident—HUF and company resident in India; Wealth tax is chargeable on net wealth comprising of

- (1) All assets in India and outside India;
- (2) All debts in India and outside India are deductible in computing the net wealth.

2) In the case of an individual who is a citizen of India but non-resident in India or not ordinarily resident in India, HUF, non-resident or not ordinarily resident in India and a company non-resident in India;

- (1) All assets in India except loan and debts interest whereon is exempt from income-tax under section 10 of the Income-tax Act are chargeable to tax.

(2) All debts in India are deductible in computing the net wealth.

(3) All assets and debts outside India are out of the scope of Wealth Tax Act.

3) In the case of an individual who is not a citizen of India whether resident, non-resident or not ordinarily resident in India: Same as in 2):⁴²

Assessee means a person by whom the wealth tax or any other sum of money is payable under the provisions of the Act, and includes the legal representative, executor or administrator of a deceased person and a person deemed to be an agent of a non-resident.

Under the Act tax is charged on the following persons in respect of the wealth held by them during the assessment year:

Chargeability to tax also depends upon the residential status of the assessee. The Act provides that the residential status for the purpose of the Act shall be same as the residential status for the purpose of Income Tax Act. The chargeability also depends upon the Citizenship of a person. In order to be a citizen of India, a person must have domicile in the territories of India and must fulfil any of the following conditions:

- (1) He must have been born in India;
- (2) Either of his parents must have been born in India;
- (3) Before the formation of Republic i.e. 26th January 1950, he has been ordinarily resident in India, for a period of 5 years. For individuals and Hindu Undivided Families, the date shall be 31st July.

A person ceases to be a citizen of India, if he voluntarily acquires the citizenship of a foreign nation. The incidence of tax has been explained here with the help of the following chart: ⁴³

⁴² Income Tax Department and Department of Revenue, Ministry of Finance, Government of India, The Wealth Tax Act, At http://www.incometaxindia.gov.in/publications/7_Tax_Benefits_for_Pensioners/Chapter7.asp. (last visited 4 September 2009).

⁴³ Tax 4 India: The Wealth Tax India, At <http://www.tax4india.com/wealth-tax-india/wealth-tax-who.html>. (last visited 4 September 2009).

Citizen of India	Non-citizen
<p>1. If he is "resident & ordinarily resident", his assets and debts located anywhere in the world are chargeable to tax.</p> <p>2. In any other case only the assets and debts located in India are chargeable to tax.</p>	<p>In this case all his assets and debts located in India are taxable, irrespective of whether he is a resident, a non-resident, or not ordinarily a resident. The value of all assets and debts located outside India are exempt here.</p>

2. Wealth Tax is Chargeable only on the Following Assets:

The assets liable to wealth tax as per the definition given in section 2 of the Wealth Tax Act are as under:

1) Any building or land appurtenant thereto which shall include:

- (1) commercial buildings;
- (2) residential buildings;
- (3) any guest house;

(4) a farm house situated within 25 kilometres from the local limits of any municipality (whether known as Municipality, Municipal Corporation or by any other name) or a Cantonment Board.

However, the following buildings will not be included to assets:

(1) a house meant for residential purposes which is allotted by a company to an employee or an officer or a director who is in whole time employment, having a gross annual salary of less than Rs. 500,000/-.

(2) any house for residential or commercial purposes which forms part of stock-in-trade;

(3) any house which the assessee may occupy for the purposes of any business of profession carried on by him.

The following buildings shall also not be an asset w.e.f. A.Y. 1999-2000:

(1) any residential property that has been let out for a minimum period of 300 days in the previous year.

(2) any property in the nature of commercial establishments or complexes.

2) Motor Cars (excluding those used by the assessee in the business of running them on hire or as stock-in-trade).

3) Jewellery, bullion, furniture, utensils or any other, article made wholly or partly of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals (excluding those held as stock-in-trade by the assessee). Jewellery includes:

(1) ornaments made of gold, silver, platinum or any other precious metal of any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stones, and whether or not set in any furniture, utensils or other article or worked or sewn into any wearing apparel;

(2) precious or semi-precious stones, whether or not set in any furniture, utensils or other articles or worked or sewn into any wearing apparel.

For the removal of doubts it has been clarified by explanation 2 to section 2(ea) that the term jewellery does not include the Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 notified by the Central Government.

4) Yachts, boats and aircrafts used for non-business purposes (excluding those used by the assessee for commercial purposes).

5) Urban land; "Urban Land" means land situated:

(1) in any area which is comprised within the jurisdiction of a local authority and which has a population of not less than ten thousand according to the last proceeding census of which the relevant figures have been published before the valuation date; or

(2) any area within such distance, not being more than eight kilometres from the local limits of a local authority as the Central Government may,

having regard to the extent, and scope for urbanisation of that may, and other relevant considerations, specify in this behalf by notification in the Official Gazette.

However, the following urban land shall not be included in assets;

(1) land on which construction of a building is not permissible under any law for the time being in force in the area in which such land is situated;

(2) land occupied by any building which has been constructed with the approval of the appropriate authority;

(3) any unused land held by the assessee for industrial purposes for a period of two years from the date of its acquisition by him.

(4) land held by an assessee as stock-in-trade for a period of five years from the date of its acquisition by him. (Ten years w.e.f. A.Y. 1999-2000)

Note: Agricultural land situated in urban area is not liable to wealth-tax.

6) Cash in hand;

(1) In case of an individual and HUF cash in hand in excess of Rs. 50,000/- shall be included in assets.

(2) In case of any other person cash in hand not recorded in the books of account shall be included in assets.

The value of all the taxable assets on the valuation date is clubbed together and is reduced by the amount of debt owed by the assessee. The net wealth so arrived at is charged to tax at the rates specified. The present rate of tax is 1% of the amount by which the net wealth exceeds Rs. 1,500,000. The rate is the same for individuals, HUF's and companies. Special rules have been laid down in the Act regarding valuation of various assets like immovable properties, shares, jewellery etc.⁴⁴

⁴⁴ Income Tax Department and Department of Revenue, Ministry of Finance, Government of India, The Wealth Tax Act, At http://www.incometaxindia.gov.in/publications/7_Tax_Benefits_for_Pensioners/Chapter7.asp. (last visited 6 September 2009).

3. Wealth Tax Rates In India

For Individuals and Non-Specified HUF's

Net Wealth	Rate (in per cent)
On the first Rs. 250,000 of net wealth	NIL
On the next Rs. 750,000 of net wealth	1/2
On the next Rs. 1,000,000 of net wealth	1
Balance exceeding Rs. 2,000,000 of net wealth	2

For Specified Hindu Undivided Family

Net Wealth	Rate (in per cent)
On the first Rs. 150,000 of net wealth	NIL
On the next Rs. 350,000 of net wealth	1
On the next Rs. 500,000 of net wealth	2
Balance exceeding Rs. 1,000,000 of net wealth	3

For Individuals, HUF's and Companies

Wealth tax will be charged in respect of the net wealth on the corresponding valuation date, of every individuals, HUF and company at 1% of the amount by which the net wealth exceeds Rs. 15 lakhs.

In the case of partnership firms, AOPs and BOIs the wealth of the firm is allocated to individual partners or members equitably.

4. Valuation of Assets in Wealth Tax

For the purpose of Wealth-tax the value of any asset (other than cash) shall be its value as on the valuation date determined in the manner laid down in Section 7(2) and in Schedule III to the Wealth Tax Act.

1) Subject to the provisions of sub-section (2), the value of any asset, other than cash, for the purposes of this Act shall be its value as on the valuation date determined in the manner laid down in Schedule III.

2) The value of a house belonging to the assessee and exclusively used by him for residential purposes throughout the period of twelve months immediately preceding the valuation date, may, at the option of the assessee, be taken to be the value determined in the manner laid down in Schedule III as on the valuation date next following the date on which he became the owner of the house or the valuation date relevant to the assessment year commencing on the 1st day of April, 1971, whichever valuation date is later:

Explanation---For the purposes of this sub-section---

(1) where the house has been constructed by the assessee, he shall be deemed to have become the owner thereof on the date on which the construction of such house was completed;

(2) "house" includes a part of a house being an independent residential unit.

Valuation of jewellery in wealth tax India

Jewellery Includes:

a. Ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stones, and whether or not worked or sewn into any wearing apparel.

b. Precious or semi-precious stones, whether or not set in any furniture, utensils or other article or worked or sewn into any wearing apparel.

In support of the valuation of jewellery, the prescribed form to be attached with the return is:

a) Where the value of the jewellery on the valuation date is up to Rs.5 lakhs, a statement in Form No. 0-8A, as prescribed by rule 13(c), signed by the assessee, or

b) Where the value of the jewellery on the valuation date exceeds Rs.5 lakhs, a report of Registered Valuer in Form No.0-8, as prescribed by rule 8D. The report can be the basis for arriving at the valuation for 4 subsequent years. All that is needed is to substitute the value of gold, silver or any alloy of the base year

with that of the relevant year. Again, adjustment for purchases and sales made during the relevant year will have to be carried out.⁴⁵

3.2 Excise Tax Collection on the Yacht in Greece⁴⁶

3.2.1 Structure of Excise Tax

Greece has been a member of the European Union since 1981 and for several years, developed a series of antiquated and complicated formalities for the management of yachts. From a procedural standpoint Greece languishes at the bottom for being a tourist friendly destination. You spend a disproportionate amount of time at port authorities during your visit. This can result in being assessed for cruising tax if you stay over 90 days. Greece could enhance its tourist industry and business development by studying their EU neighbors including Croatia and Turkey.

Greece took a big step when it attempted to assess a cruising tax in 2000. The bureaucrats designed a plan to collect tax from all non Greek yachts visiting Greece. The basic goal was to collect additional revenue, in the form of a cruising tax from rich yacht owners. To accomplish this, the Greek government passed legislation in 2000 N 2743/99, Chapter three, and Private Pleasure Yachts - article ten, paragraph 6A and 6B, which established a cruising tax on non-Greek pleasure yachts.

It did not take long for Greek citizens and fellow members in the European Union, to raise holly hell over the new tax and procedures. It was Greece's position that they had a right to impose such fees. They responded only when the European Union Courts in Brussels intervened. The EU reprimanded Greece for not complying with tax matters compatible with articles 23, 25, 133, of the Treaty. These

⁴⁵ Tax 4 India: The Wealth Tax India, At <http://www.tax4india.com/wealth-tax-india/valuation-assets-wealth-tax.html>.(last visited 4 September 2009).

⁴⁶ Ministry of Economic and Finance of Greece, The Law Knowledge, At http://www.mnec.gr/export/sites/mnec/el/nomothesia/law/Documents/3790-2009-143-A_2009_08_07.pdf .(last visited 4 November 2009).

articles prohibit taxes that have the same effect as custom duties on imports from other Member States and “third countries”.

Originally it was proposed to apply the tax to all leisure vessels for two reasons. First, so that vessels using out-of-the-way without port police would pay their way; second, so that port police would not have to deal with leisure traffic. The Greek courtesy flag must be flown and also it should be in good condition, as torn or frayed flags are regarded as a sign of disrespect.

As Greece is a member of the European Union, formalities for EU vessels and nationals should be simple, although this does not always appear to be the case.

Formalities for non-EU vessels can be just as complicated as before and so the entire procedure is described below, even if in practice this may not be adhered to as strictly by local officials.

On arrival in Greece all Non-EU boats must clear with Immigration, Health and Customs (in that order). Non-EU vessels will be issued with a transit log; valid for 6 months; extendable for up to a year.

All boats must then visit the Port Authority (Police). If the boat is over 10m then a Traffic Document (DEKPA) must be purchased from here. Non-EU boats may also be subject to a Reciprocal Tax charge instead of having to purchase a Cruising Permit.

Yachts must carry their original registration document and ship's radio license. One member of the crew must have a radio operator's certificate of competence.

The original insurance certificate must be carried and a Greek translation showing third party insurance with the amounts in figures. The minimum amounts are 293,470 euro liability for death or injury by sinking, collision or other causes for crew and third parties, 146,753 euro for damage, 88,041 euro for pollution. It should be noted that if a boat is owned by a company or corporation, it will cause fewer difficulties with the authorities if the name of the company is the same as that of the boat (or nearly so).

3.2.2 Taxpayer

As part of his 2009 Budget, the Greek Minister of Economy and Finance announced new measures to increase revenue from ALL yachts in Greece.

The measures are the following:

1. Annual Excise Duties

Annual excise duties are imposed on yachts over 10m and on sailing boats over 15m docking in the Greek harbours. The duties will scale according to the length of the yacht and depending on whether it is powered by a motor or sails. The excise duties will be payable by all yachts, of private or professional use, irrespective of whether these belong to natural persons or Greek or foreign enterprises, provided they are registered or docked in Greece from 1/1/2009.

2. An extraordinary One-Off Levy

An extraordinary one-off levy is imposed on the owners of yachts, on the same terms and conditions governing the imposition of the yacht excise duties. The extraordinary levy will be calculated based on the length of the yacht and will scale accordingly, so as to correspond to its owner's tax-paying ability.

However, the Law Enforced by Greece

1) EU flagged Yachts entering Greek waters must purchase a "Private Pleasure Maritime Traffic Document" in the customs office which costs €30. This document must be stamped at each port by Port Police for a fee of up to €15. Proof of insurance is also required.

2) All non-EU yachts are required to carry a document called a "Yacht Transit Log" with similar fees. At the end of ninety days, the yacht is subject to a "cruising tax".

3) All non-EU yachts in Greece over ninety days, regardless whether "in or out of the water" or "under bond", are imposed a "cruising tax". This tax is

calculated monthly at €14.67 plus 19% VAT per meter every three months. The tax is collected when the yacht departs Greek waters or at intermediate stops as determined by officials. There is no written document explaining this tax procedure.

4) Greece is the only EU country imposing these time consuming taxes and regulations which are administered unevenly throughout the country.

The Transit Log: The architects of the cruising tax wanted justification to control yachts so they could collect their tax so they developed the "Transit Log". This document has no other purpose and is totally bureaucratic. Yachters touring Greece are tourists on vacation and this detour to the Port Police is not welcomed. The total process is misguided. The processes appear to be developed by individuals who are uninformed, and do not understand the negative impact on tourism nor the value of the spending power of Yachts. They should study their neighbor's policy both in and out of the European Union. Greece would benefit from visiting yacht friendly Croatia.

3.1.3 Tax Rate

In August 7, 2009 Greece has raised it head above the parapet by introducing a new annual tax law for boats which remain in Greek waters for more than 40 days. This tax applies to ALL boats.

Currently the rates are as follows:-

1. Power boats over 10 metres

First 13m = 300 Euros per metre

Next 4m (14 to 17) = 550 Euros

Next 4m (18 to 21) = 800 Euros

Next 4m (22 to 25) = 1050 Euros

Over 26m = 1300 Euros per metre

Example- 15m power boat would need to pay (13300) + (2550) = 5000 Euros per year.

2. Sail boats over 15 metres

First 20m = 200 Euros

Next 5m (21 to 25) = 400 Euros

Over 26m = 600 Euros per metre



Chapter 4

Analysis of the Problem of Exempt Tax on the Yacht

4.1 The Problem of Collecting Excise Tax on the Yacht

4.1.1 Analysis of the Impact in Terms of Exempt Excise Tax on the Yacht

The reason which the government claims in the announcement of the financial department for exemption of the excise tax on the yacht is a support the travel industry. The revenue from travelling is the higher income and can build the value added highly. Moreover the popularity of travelling by yacht is increasing in Thailand. The tourism business service can build more income and the foreign currency reaches to Thailand immense. Thailand is regarded as a number one in a leader of tourism country in this provincial. Touring with a yacht in Thailand is extensively popular with foreigners and Thai people and increasing every year, especially in the provinces of Puket, Krabi, Pang-nga, and other provinces near the Andaman coastline where growth is increasing quickly. One of Thailand's tourist attractions is the sea where there is beautiful topography and a fertile state. Therefore, this is the choice for a tourist to come and admire the beauty with the yacht whose popularity is increasing every year. It can average around more than 1,000 yachts per year counted from the statistics information that was given to The Water Transportation and Navy Office part 5 (Phuket province). There has the yacht rental entrepreneur more than 10 companies and the Yacht harbour entrepreneur that is a private company more than 11 places. In numbers of yachts that tour in the boundary of Thailand it appears that 90 percent belong to foreigners and 10 percent belong to people who have Thai nationality.

From the education meets that, the development of Yacht's business in Thailand has many problems to be considering study for adjust and revise the regulations, the law and the policy. Moreover should be appropriate, clearness and correspond the present situation. Many a company where proceed a business s about the yacht , include a person who has need to buy the yacht use the loop hole of the excise law which is exemption tax with the customs tariff tax part four for avoids a

tax duty of import the yacht and spare parts of a yacht. The laws which are relevant with the yacht are Excise Tax Act B.E. 2527, Excise Tariff Act B.E. 2527, Customs Tax Act B.E. 2527, Customs Tariff Act B.E. 2530, and the Announcement of the Ministry of Finance. A problem that meet can break to the issue for the clearly study as follows;

The problem about the time period of permission for temporarily importing and exporting of the yacht is the customs law requires all the yachts in the waters of Thailand must inform the customs department about entry and exit for manifest of imported ship. The current exemptions are allowed to moor in the port place a notice period of six months and six months to recover.

But the process and timing of licenses and extension of time are not clear on the documentation, the fee, the process for extending and the power of approval. Gaps in the law that make the operator, businessman or individual persons who want a yacht in possession use this loophole to bring the yacht into the country causes evasion of taxes. So just only exemption customs tax is enough for the reason of supporting the travel, it is not exemption another tax law especially the excise tax.

Because of bring the Yacht into country, it is make pollution and use the resource of country. The concept of Excise Tax is collecting money for use to develop the thing that is destroyed from the Yacht. If the government does not collecting this tax, it make an affect with the public loss of income tax proportion that should be receive become or loss everything. As these people have a responsibility to pay taxes on the consumption of luxuries and the use of national resources.

The Royal Ordinance of Custom Tariff B.E. 2530 which was revised follows the additional of Royal Ordinance of Custom Tariff B.E. 2530 (no.7) was effective on 5 January 2548. That issue can extend the time depending on the suitability and necessary situation. The Director of the Custom Department has authority to decide the time to be extended. Moreover, in the special situation, it is not necessary to limit time although in the theory of law the limit for extending time is only six months but in practice it does not comply with existing laws. As a result of the problem there is significant damage to the nation.

Therefore, this is a loophole of the laws that gives more power and authority to the government officer, some business groups cooperate with the government officer and the traveler by doing the processes as follow:

1. The business groups will hire a foreigner disguised as a tourist who needs to bring the yacht into the country for travelling.

2. The tourist will get privileges for visitor's permits by using section 3 (a) and (c) in the customs tariff law part four is a topic of goods exempted from payment duty.⁴⁷ So they do not have to pay an importation tax.

⁴⁷ The Customs Tariff Decree B.E. 2540 Part IV is Goods exemption from payment of duty as...

“3. The under mentioned articles, if accompanied with the owner or temporary imported and to be re-exported within six months from the date of importation:

- (a) Articles for use in theatrical or other similar performances, imported by itinerant performances visiting Thailand;

- (b)...

- (c) Vehicles, boats and aircrafts accompanied with the owner; ...

Note: The duty exemption for tools and equipments for building and construction shall apply only to the different of the amount of duty chargeable at the time of importation and the amount of duty calculated by the time of staying in the Kingdom of goods at the rate 1% per month (fraction of month regarded as a month) of duty chargeable at the time of importation. The duty liable shall be paid before re-exportation of goods with regulations specified by the Director-General of Customs shall have been followed.

1. As regards goods mentioned in this heading, the importer may be required to make a contract with the Department that they will refund or release the security given only after all the obligations so contracted having been fulfilled.

As regards the period of six months so fixed, the Director-General of Customs may extend the said period to the extent may think fit.

3. For the excise tax, they do not have to pay too because the imported commodities classified as commodities exempted from customs duty in Chapter 4 of Customs Tariff shall also be exempted from excise tax by basing upon the same principles and conditions as prescribed under the law on customs tariff.⁴⁸

4. For the value added tax (VAT) , as number 2 and 3 have not pay any tax or pay less because the tax base for calculation of the value added tax comes from the product value plus amount of customs tax plus amount of excise tax. Usually the base of VAT will be calculated by the value of product plus freight (CIF) plus importation tax plus excise tax plus interior minister tax and the total will multiple with VAT (seven percent). Therefore, if exempt the formula for calculating VAT tax base is only the value of product plus freight (CIF) and multiplies by VAT (seven percent).

5. Then, they will sell the yacht to the customer and ask the foreigner to extend the time period of the permission for waiting a suitable time to inform the officer in authority the yacht broke down at sea. This process needs help from the officer who has full authority to decide.

Moreover, the imported parts and equipment on the boat and yacht maintenance are separate parts and do the same method above to avoid the tax the same way.

For the procession above, Thailand loses more revenue as can be seen in the statistics.

⁴⁸ The Excise Act B.E. 2527, Section 99 the imported commodities classified as commodities exempted from customs duty in Chapter 4 of Customs Tariff shall also be exempted from excise tax by basing upon the same principles and conditions as prescribed under the law on customs tariff.

The Cabinet of Ministers for approval. Authorities announced in the Government Gazette.

(Assigned to any consumer product under paragraph is taxable under this Act.)

For the quantity of the yacht registered in Thailand in the years 2005 to 2009⁴⁹

Number of boat by size	2005	2006	2007	2008	2009 (lasted 8 October, 2009)
0 - 5	320	287	297	264	4434
5.1 -20	30	56	61	72	
20.1 - 50	14	9	17	9	152
50.1 up	2	3	4	4	33
Total	366	355	379	349	4619

For the revenue from collecting excise tax before exemption in Thailand in year 2003 to 2004⁵⁰

Type	2003	2004
Yacht	20,498,000	20,300,000

Values: baht

As mentioned earlier, it shows that if in the year 2005 Thailand collecting the excise tax at the rate of 5 percent following the announcement of the Ministry of Finance number 65 enforcement on 1 December 2544:

If we assume a yacht has a value of 1 million baht and the excise tax rate at 5 percent, it equals 50,000 baht. In the year 2005 the total was 366 yachts so Thailand lost revenue appropriately 18,300,000 baht. Anyway, it is sure the real price is higher than 1 million baht.

⁴⁹ Marine Department, The Boat Register Report, At <http://www.md.go.th/statistic>. (last visited 20 November 2009).

⁵⁰ Excise Department, The Revenue Annual Report, At <http://www.excise.go.th/index.php?id=5>. (last visited 20 November 2009).

4.1.2 Analysis the Problem of the Fairness Taxation

Thailand uses the theory of progressive income tax. The citizens who have high income, should pay higher tax rates. The principle is fairness. This definition of effectiveness and fairness is from the tax administrators' perspective. Fairness to the taxpayer is presumably inferred from the statement that only the right amount of tax will be collected at the right time. In most systems based on the rule of law, it would not be open to administrators to collect more than the right amount of tax and to collect it earlier than the prescribed due date. The last sentence mentions proportionality, but then refers to the risks involved. That is more a question of efficiency in the allocation of resources than a statement that the measures used against a taxpayer should be proportionate to the amount of tax or level of avoidance involved. The term "fairness" usually falls within the principle of equity. From the taxpayer's perspective, where fairness equates to equity, there are two major requirements for an equitable tax. It should treat people in similar circumstances in the same way: this is horizontal equity. It should ensure that tax is allocated fairly between people in different circumstances: this is vertical equity. Notwithstanding the difficulties, the principle is generally accepted.⁵¹

Principles of taxation must focus on a social justice, look for people doing good things such work is useful and increase, and protect and reduce people do a bad thing luxurious. So should be increasing taxation to reduce people to do bad things such as liquor and cigarettes, lavish big car, home, vacation condominium, resort, yacht, gem, pub, liquor store, massage parlor, the thing that cause a pollution. It will have a benefit both the block is that wasteful and harmful with health and increase revenue to the state for help a poor person.⁵²

However realistically, it does not follow the principle. The yachts that are only a few groups of people who have ability to pay get the benefits from the tax. There do not have to pay tax and get the exemption. If compared with a car that is one type of product in the excise tax law that most people have to use, must pay the

⁵¹ Clinton Alley and Duncan Bentley, A Remodelling of Adam Smith's Tax Design Principles (Queensland: Bond University, 2005), pp.600-601.

⁵² Witayakorn Changkul, "Duty to be Fair for Collecting Tax," Rangsit University Magazine (2009): 15.

excise tax at the rate of 10 percent to 50 percent depending on the size of car. It can be seen that is not fair for most people because a car is necessary for living more than the yacht. Moreover, the reason following the announcement is for supporting traveling in Thailand but fewer people use the yacht for travel. A car is more suitable with the landscape of Thailand.

4.2 The Problem of the Different Definition of the Yacht between Excise Tax and Customs Duty

The definition of a yacht is unclear. It has a related law on a boat which is Customs Law and Excise Law. If explore in the Excise Tariff Tax Act B.E. 2527 numbering code of 06.01 as mention the meaning in the chapter two is not corresponded with the tax customs and number code in the Customs Tariff Tax Act. B.E.2530. The Customs Tariff Tax Act is explain about a yacht at the number code 89.03 is yacht and other vessels for pleasure or sports includes rowing boats and canoes. Moreover, it is divide the rate of inflatable, sailboats with or without auxiliary motor and motorboats, other than outboard motorboats. Therefore, the meaning of the yacht in both laws is different. There is a conflict of interpretation. In practice, it has a problem for the authority officers who have to calculate a tax because some boats can define as a yacht in customs duty but in excise duty, it is not a yacht so the authority officer will confuse.

4.3 The Problem of Double Taxation on Excise Tax

If collecting excise tax on the yacht, it can be affect with an input expense or input tax of the manufacturing on the yacht in term of excise tax not VAT. A manufactory has some product related with a yacht or use with a yacht is subject to tax on excise tax so it will become an excise tax on excise tax. For example, a yacht producer or manufacture buy a carpet which it is subject to excise tax and they bring to rebuild into the yacht or make a decorate inside the yacht. This is claim to a raw material or something that use with a yacht. And after that when they sell the yacht

to other person, it will be taxed again on a carpet because it is increase a value of yacht. It is a double tax on a carpet.



Chapter 5

Conclusion and Recommendations

5.1 Conclusion

The yacht excise tax, which is the topic that is debated here is not at all a new topic of tax collection in Thailand. However, according to the practice and lesson learned from the past, it can be seen that the government could collect such tax and can collect more but now it is not collecting in full amount, and the overlapped income distribution still occurs. The excise tax system was just one of the strategies which were used to decrease the prosperity of rich people but this method is always a political issue because it affects the income and activities of rich people who have the power both economical and political. It is hard to flight for collecting taxes again in the near future.

Although the yacht industry can produce the products for more exportation and importation, it is difficult for the government to estimate the price of the yacht and control to payment of tax. Most the owners of yachts and the yacht operation industry that have knowledge in law try to use the gap in the law to avoid the tax. As a result, the country has to calamity revenue that should be receive for compensation of deteriorate from the resource.

The governments of many countries set up specific rules to collect the tax on the yachts that ride and float in the country. For example, excise tax, luxury tax, wealth tax depending on the policy of each country.

In Thailand, according to the excise tariff tax, we exempt the collection of tax on the yacht. Moreover, for the customs tariff tax, we give the privilege to the tourist to bring the yacht into the country and not have to pay tax for six months but the authority officer can extend the time period with no limit.

However, in this research I would like to show the affect from exemption of the excise tax on the yacht. In the chapter two that study about the general taxation, classification of tax and then specify into the principle of excise tax and excise tax in

Thailand. Moreover, it is a clearly of the type of the yacht and the laws and the revenue of the country which is affect when exempt the excise tax on the yacht.

In chapter three will study and analyze about the taxation on the yacht in India for understand and learn about tax on the yacht in the developing country like Thailand. Moreover the excise tax on the Yacht, India is still collect tax from the Yacht in the name of wealth tax.

In Greece, the country that have bigger harbor also collecting the excise from the yacht by imposing the tax from the size of yacht. Therefore, it make they has a income from the yacht that floating in their country and the income will become a budget for them to supervisory a cleaning in sea, make a facilities and develop the harbor.

5.2 Recommendations

From the analysis, we should consider taking the principle of Excise tax in India as an example in order to adapt to Thailand because the excise tax law of India utilized the tax collection of excise along with luxury to help prevent tax avoidance by passing the Yacht as a property of the foreigner and tourist. Tax calculation focuses on base tax total value of the Yacht and the tax rate that will be apply should be defined in the different rate which is depend on the type of the yacht.

Therefore, the first thing that should be revise is the announcement of the Ministry of Finance number 70 enforcement on 14 February, 2547 issues on exemption of excise tax, exemption to collected tax from Yacht. It should be backward to use The announcement of the Ministry of Finance number 65 enforcement on 1 December, 2544 issues on reduction of excise tax, reduce the ad valorem rate of Yacht from 50 percent to 5 percent for the Yacht which is decorate like a accommodation.

The announcement of the Ministry of Finance should clearly define and classify the type of boat or yacht by distribute the size, motor and decoration of yacht to pay the tax as different rate.

The conflict of definition of a yacht on the Excise Tariff Tax Act B.E. 2527 and the Customs Tariff Tax Act B.E. 2530, it should harmonize a both law in the

same meaning. The Excise Tariff Tax should revise a yacht definition follow the Customs Tariff Tax.

For the double excise taxation on a yacht, it has the Excise Tax Act B.E. 2527 on section 101 can be apply to eliminate this problem which is any industrial operator who shall wish to receive a tax allowance for commodities specified under the Ministerial Regulation by taking the amount of tax under this Act already paid for the commodities used as raw material or part of the commodities in the production and deduct from the amount of tax to be paid for those commodities by submitting the application and complying with the principles, procedures and conditions as specified.

In order to avoid the problem that might occur from the law enforcement, the clear regulations should be enacted by considering about the possible upcoming problem. According to the Custom Tariff Act B.E. 2530 part four sections three at the note of section for the term of the power authority officer to extending the time period for exempt tax in the term of import an accompanied with the owner or temporary imported should be limited and set the time for extension. For example, if the tourist used to asked for extension the time period for six months at one time for the yacht license and permit to import into the country and they want to extend time again, it should not to permit.

Moreover, tax payers also pay an important role for improving the tax collection efficiency. If tax payers understand in the tax regulations and punishment, they will understand and cooperate on the tax payment. Unfortunately, most people are lack of the knowledge in excise tax regulation and do not comprehend it.

Finally, the government should apply the wealth tax to enforcement in Thailand. Wealth tax is a direct tax, which is charged on the net wealth of the assessee. It is a tax on the benefits derived from ownership of property. The tax is to be paid year after year on the same property on its market value, whether or not such property yields any income. The aimed of the wealth tax is reducing the growing wealth gap between the rich and the poor. It was meant to raise revenue for addressing pressing social requirements and also to discourage the attitude towards amassing wealth. Taxes on wealth can bring about vertical as well as horizontal equity which income tax fails to achieve. For example, neither a wealthy person nor

a poor one with no income will pay income tax. But the wealthy ones need to cough up the wealth tax while the poor need not. For example, the Yacht should be taxed on wealth tax because the buyer has surplus wealth which will pay to buy the Yacht that is not necessary to have for life living.



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