



THE COLLECTION OF TAXATION ON IMPORTED CARS  
AND PARTS

BY  
MR. PANUWAT TUPMAYTHA

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

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Independent Study Paper Title : The Collection of Tax on Import Car and Part  
Author : Mr.Panuwat Tupmaytha  
Major : Master of Laws (Taxation Law)  
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Faculty of Law, Assumption University approves this Independent Study Paper as the partial fulfillment of the requirement for the Degree of Master of Laws.

  
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## ABSTRACT

The main objective of this research paper is to study the issues in importing luxury vehicles, illegally, into Thailand. The research conductor has dissected the issues that have or could have occurred from various causes in order to analyse the root cause of the issues where preventions can be determined. An illegal importation of luxury vehicles marks a big obstacle in the collection of taxes under Thai law. Therefore, it is deemed necessary to conduct a research based on the principle of collecting exotic tax by comparing the regulations under Thai laws and foreign laws, such as the general principle in collecting exotic vehicles by the United States of America and the Republic of Korea.

In present days, there is a different interpretation in collecting taxes for importing assembled luxury vehicles in contrast to other types of merchandise. The Customer Department of Thailand has established guidelines that restrict type range, import duty rate and including tax calculation methods in accordance with the Excite Tariff Act B.E.2530 Category 17 Part 87. Hence, the bar standard for collecting taxes is different than any other type of product, by 200% higher, which has motivated wrong-doing. The main issue is the importation of vehicle's illegally by smuggling them past the Customs Department. The operator's method is to smuggle parts or used parts of a vehicle through Thailand's border and assembling the vehicle after all parts have been collected and sometimes auctioned being held up by the Customs Department is another channel where the operator can launder illegal vehicles.

A recommendation that was found through the research is to follow the [Motor Vehicle Act B.E.2522] where in Section 17, it was established that the vehicles that can be registered must have all of its parts and equipments fully installed according to the Ministerial Regulations. The amendment of The collection

of excise tax under Excise tax Act B.E.2527, Part 5 stated that vehicles are another type of merchandises that are included in the Excise Tariff Act. As for the parts that were imported, (CKD) will have received tax reduction more than bringing in a fully assembled vehicle (CBU), in accordance with the Announcement by the Ministry of Finance, Sor. Kor.1/2542 No.5. Additionally, tax duties must also be reduced to 20% lower no matter what kind of merchandise in order to promote and support the production of domestic merchandises properly and just.



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Panuwat Tupmaytha

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# **Chapter I**

## **Introduction**

### **1.1 Background and Emphasis of the Problem**

Thailand is a developing country making progress in any kind of development. The government need monetary policy to gain the country's revenue and the most important source of revenue is 'tax.' All citizens that have income must pay tax calculated from their income. Laws are the tools that enable the government to collect taxes. The taxation laws can be divided by the source of income, the Code of Revenue, Excise tax Act, and Customs Duty Act. Moreover, the Thai Constitution also provides the taxation Section which states that every citizen has a duty to pay tax. Therefore; good taxation is one that makes the people willing to pay tax, and that includes fairness, certainty, convenience and economy. To gain the expected annual government statement of expenditure, custom duty taxation is one of the important sources of the country's revenue.

Among the imported goods that Customs Department collected import duty, imported cars are considered to create the highest sources of duty. The management of import duties of cars has an effect on the countries' GDP; therefore; it is necessary to constantly develop the custom duty law to cope with the economic situations even though cars have become the fifth requisites for each family. Meanwhile, car manufactures have become more and more market competitive by enhancing development in technology to satisfy consumer needs, both domestically and internationally.

The manufacturers have the simple strategy to gain most profit, which is to produce high quality goods that has a low price. This is the reason why they seek to lower the cost of production or composition e.g. using cheaper alternatives or trying to avoid paying import duty, excise tax and value-added tax (VAT.) With more demand from consumers, manufacturers need to produce more supplies and therefore seek good quality cars with low price by trying to avoid excise tax from cars produced inside the country or selling illegally imported cars. Imported cars are one of the goods that are likely to be smuggled; the motive is because they are subjected

to import duty higher than 200% and with present Customs Department policy, to create the highest efficiency to collect revenue.<sup>1</sup>

Thailand is one of the countries that have the highest import duty for cars, with the highest custom tariff of 308%. Such a high tariff results in motive for tax avoidance, especially with expensive luxury cars. Each year the government loses huge import duty amounts to billions of Baht from smuggling cars, and this also has a direct affect on manufacturers or importers who comply with the law, making them impossible to compete in the market because of different cost in importing cars. There are many ways to avoid tax e.g. importing without giving notice to the Customs Department, importing without notifying installed appliances to pay lower amount of tax, false statements such as notifying different car models and using false license plates for smuggled luxury cars.<sup>2</sup>

At the moment, there are three kinds of smuggled cars. First, smuggled cars kept inside bonded warehouse pending modification before exporting to third countries. Second, those trying to be smuggled, and third, those claiming to be old car parts imported to be composed. The Department of Land Transport is responsible for following and investigating if there is any smuggled car imported without paying taxes.<sup>3</sup>

Because cars are important for the population, manufacturers have different kinds of strategy to sell their products and the most efficient strategy to gain high profit is to produce high quality products that have a low price. This is the reason why manufacturers seek to lower the cost by altering appliances and most importantly, to avoid paying tax, from manufacturing or modifying cars. The researcher sees the importance of this problem, and decides to study the problem of Thailand's smuggled luxury cars to study and analyze the problems affecting the collection of excise tax, and to finally come up with proposals to be used in collecting tax.

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<sup>1</sup> Damrong Kitsumritroj, Smuggler vehicles seized works of Custom debt (Bangkok: Customs Office, 2001). (unpublished manuscript).

<sup>2</sup> Dusit Siriwan, "Smuggled Cars," Siam-Rat (2 January 2003): 4.

<sup>3</sup> "Smuggle Cars," Matichon (14 December 2002): 1-2.

## 1.2 Hypothesis of the study

The collection of excise tax under Excise tax Act B.E.2527 and the tax under custom tariff Act is not sufficient to cope with the problem of smuggled cars and parts because the law does not cover the method to collect tax which results in the collection of tax under the law concerning determination of car price and related to car preferences. It leads to the tax avoidance by assemble car from imported spare part. Therefore, it is necessary to study the way to develop and improve the laws to be efficient in collecting excise tax and custom tariff.

## 1.3 Objective of the Study

1.3.1 To study theories and principles used in collecting excise tax for cars, type and structure of excise tax

1.3.2 To study the criteria used in collecting excise tax for cars in the United States

1.3.3 To study and analyze the problems of present law that are creating problems in implementation and affecting the collection of excise tax for cars.

1.3.4 To find the fair and standardized way to improve laws or to enhance the collection of excise tax for cars, which will result in effectiveness of tax collection

## 1.4 Study Methodology

Studying, analyzing and collecting information from documents, books, academic dissertations and analysis including the investigation and arrest smuggled cars, the regulations concerning Excise tax Act, Exercise Tariff Act, Custom Duty Act and other laws concerning cars that the researcher studied from ministerial ordinances, announcements, rules, orders and consultations concerning car goods including the method to control collection of excise tax for cars. The study focuses on the problem of smuggling luxury cars, collecting excise tax for cars, the gap of the law, the pros and cons of paying tax for manufacturers who legally import cars.

## **1.5 Scope of the Study**

To study the problem in smuggling luxury cars into Thailand, The focus will revalue on separate different kinds of problems that happened or might happen from various sources to analyze the origin of problems which leads to the prevention or deduction of problems affecting the collection of excise tax. This study shall present proposals for developing effective systems which enhances the country's Development.

## **1.6 Expectation of the Study**

1.6.1 To understand the problem resulting from smuggling luxury cars and the gap of the law which allows for such avoidance

1.6.2 To understand the theories and principles used in collecting excise tax

1.6.3 To recognize the laws concerning the collection of excise tax for cars

1.6.4 To recognize the legal problems which result in adverse effect to the collection of excise tax

1.6.5 To recognize the way to improve and develop the laws or the method used to collect excise tax for cars to be standardized and fair for taxpayers, resulting in a more effective way for the collection of excise tax in the future

## **Chapter 2**

### **Concepts of Collecting Excise Tax on Cars and Parts**

#### **2.1 The Definition and the Structure of Excise Tax**

##### **2.1.1 The Definition of Excise Tax**

Excise tax has been collected in Thailand for a very long period of time. The collection of excise tax is just like every other kind of tax collection where a tax collector imposes the income tax and sends it over the government. Opium and alcohol have been the first two products where excise taxes have been imposed. However, in the past, a separate unit took care of these tax collections, which was the opium department, which was also responsible for setting out regulations for opium taxes and handing the collection over to the government. For the alcohol, regulations were already provided in the legal Code. The tax collector had to deliver the taxes over to the Ministry of Finance but it seemed that the number of collection for alcohol has decreased over time. In B.E.2430, His Majesty King Bhumibol Adulyadej then started the tax classes which has been amended for both imported and alcohol production within Thailand. The tax rate has been conducted to be the same. An alcohol department has been set up and the head of the opium department was appointed to monitor the tax collection within the country whereas the custom department was monitoring the tax collection of the imported alcohol. Subsequently, in B.E. 2472 the alcohol department has been separated from the customs department completely, the government agreed that it would be inappropriate if they kept the name "alcohol department". In addition, it has been believed that there are going to be more collections of other taxes on other products; therefore, it has been changed to "Excise Department". The opium department has been combined and excise and opium department has been used for a while until B.E.2474 where it had completely been changed to "Excise Department".

The excise department has expanded the scope of tax collection to other products; fire matches, cements, cards, salt, tobacco and snuff. In B.E. 2527, a reformation of the products has been conducted and the Excise Tax Act B.E. 2527 has been enacted. In this act, the following products would be imposed excise taxes:

fuel and oil products, beverages, motor vehicles, electric appliance, glass and glassware, ships, incense and make up products, carpet and other textile goods, batteries, motorcycles, marble and granite (tax exemptions), services and substance which destroy atmospheric ozone. The tax collection for snuff has been cancelled by the Excise Tariff Act (No.3) B.E. 2534. In addition, alcohol, tobacco and cards had been separated from the Excise Tax Act B.E. 2527.<sup>4</sup>

There is a different interpretation of the term “Excise” in every country but it is commonly understood to refer to an inland tax on the sale, or production for sale, of specific goods, or, more narrowly, within a country. The duty to pay tax on these items started when the products leaves the industry, on the other hand, some other countries may have a more extensive understanding of what excise means. In these countries, excise taxes do not only refer to products produced within the country but also on imported goods. Value added taxes and other services taxes will be collected which not only base on products but both groups have one similarity which is collecting excise taxes on specific items or products.<sup>5</sup>

Therefore it can be concluded that if excise tax collection has been made on the local level, the excise department will deduct for reserve before sending it over to the Ministry of Interior for allocation to the local.

The Allocation of Excise Tax Act, B.E. 2527 has come into process due to the cancellation of the stuff, fuel and oil products and beverage regulations which were import duty exempted (nowadays: value added tax). Whereas the local government received income from these taxes, the taxpayers had to pay more according to the regulations on allocation of alcohol and beverage, regulations on allocation of fuel and oil products produced within Thailand. Regulations on allocation on cement or from trading (nowadays: VAT) are all provisions which have been removed. Because of this, local government needed replacement and the current act has been put into force.

According to the decree, the taxpayers would pay more excise tax but no more than 10 percent. The additional tax which has been collected will be sent to

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<sup>4</sup> Excise Annual Report Fiscal 2003.

<sup>5</sup> Prapas Kong-ied , Description of excise laws (Bangkok: Nititham Publishing), p. 1.

the Ministry of Interior, 5 percent will be deducted before the Ministry of Interior can allocate the income to Bangkok and other local provinces. Upon ministerial regulations, this would allow each state to have additional income.

This approach has also been stated in the Allocation of Excise Tax Act, B.E. 2527, as following:

1. Tax payers should pay an additional 10 percent on alcoholic beverages products
2. The additional percentage that have been collected shall be giving to the Ministry of Interior, 5 percent will be deducted
3. The Ministry of Interior will allocate the income according to the provisions and regulations of the ministry
4. The Ministry of Interior shall allocate the income according to the Act of allocation on alcoholic beverage B.E. 2527 Ministry regulations<sup>6</sup>

#### Process and tax collection

Additional excise tax that has been collected and will be allocated to Bangkok and other provinces shall have the following procedures:

1. According to the Act, additional excise rate, which will be collected by the government will be as following:
  1. Cement 2.0 %
  2. Snuff 1.5%
  3. Fuel and oil products 1.0%
  4. Fire matches 3.5 %
  5. Electric appliance 3.5%
  6. Beverage 10.5%
  7. Other 10.0%

With the authorization of Section 6 and Section 8 of the Allocation on the Excite Tax Act B.E.2528, the Minister of interior has set a ministry regulation (B.E.2528) stating the following content:

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<sup>6</sup> Virut Virutnipawan, "Instruction Document in Laws of Exise Tax Subject," Sukhothai Thammathirat University, 1998.

1) The ministry of interior shall allocate the additional income according to the Allocation on Excise Tax Act B.E 2527 to Bangkok and the local government by allocation according to the proportion of the total number of citizen registration in accordance with the Governor report. If after allocation, money is still left and it shall be contributed with the next term

2) The allocation shall be done 3 times a year

Term 1: within October

Term 2: within February

Term 3: within June

If by any occasion, it is not possible to allocate the income by time, the decision must be agreed and approved by the Minister of Interior.<sup>7</sup>

### **2.1.2 The Importance of excise tax**

Excise Tax has become very important to the government revenue and to the whole country, both directly and indirectly. The direct benefit would be direct effects on our country, the government and the people. The indirect benefit might not be as visible as the direct affect but it helps our country to monitor and control the consumption within our country.

Direct benefit to our country:

1. It is a significant source of government revenue, there does not only have to be an imposition according to the Revenue Code but also on the government revenue.

2. To monitor consumption, especially on products which are considered to be extravagant or not really necessary toward our daily life, it must be on both products and services which seems to be violating public morals, or even harming the health of the people. By raising the taxes of those products, people may reduce their demand of consuming them.

3. Excise taxes are a prevention measurement which can recover our country's trade losses. For instance, imported products which would need to pay import duty taxes in addition with the excise tax which makes the products expensive and less consumers would want to purchase it.

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<sup>7</sup> Virut Virutnipawan, Ibid., p.9.

#### Indirect Benefits to our country:

1. Society fairness: the collection of excise taxes is quite high therefore only people with higher income would be able to purchase these things, pulling the number of average income of our country up.

2. Consumption: If the government has a certain intention of wanting the people to consume one certain product, they will support such production by either reducing or exempting taxation on that product, for instance, if farmers use their agriculture products for juice and produce them at a proportion not less than stated in the regulation, people would receive an exemption on these products which would both benefit the consumer and the farmer.

3. Saving: If the product has high excise tax rate, people would not want to buy it, people would save up and put it into the bank

4. Environmental protections: Some products according to the Excise Tax Act B.E. 2527 are products that can only be used once which might lead to pollution of the environment, for instance the tax rate for unleaded gasoline which is lower than for normal gasoline

5. Support local government according to the allocation on excise tax B.E. 2527 and Act of excise tax on alcoholic beverages B.E. 2527 such as alcoholic beverages which impose additional 10% in order to send the tax to the Ministry of Interior which then allocate the revenue to Bangkok and local governments

6. Export: Products which are exported out of the country can be tax refunded or even exempted which reduce the price of a product and make it able to compete with foreign products.<sup>8</sup>

#### Purpose of collecting excise taxes:

The government collects taxes to estimate the expenditures of the country. Excise taxes are one of those taxes which need to be collected by the government. In addition, the collection of tax also monitors the economy of our country and balance the standards out between people with high income and people with lower income.

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<sup>8</sup> Virut Virutnipawan, Ibid., pp. 99-102.

### **1. Collecting Taxes to monitor or support the Economy**

Government is able to monitor the consumption of products and services of the people. If a country is facing inflation and the government would not monitor any consumption products or services, people tend to inhale more extravagant and unhealthy products. The government would have to use the revenue to heal people's health issues or in case where a product is very expensive but necessary to the consumers, the government can promote these products by imposing lower tax rate. Another measurement which the government will use is the collection of import duties on foreign products that have been imported to compete with our own products.

### **2. Collection of taxes in order to create fairness and distribute revenue into local states**

Nowadays, there are many different income classes leading to people consuming different kind of products. Some products may affect the people who are not able to afford it. Taxation has therefore become a very important mechanism to balance this out. The people who were able to afford the product would receive tax burden, or people with higher income would have to pay more taxes in order to balance the economy and create fairness for the whole country. When the government collects these taxes, the government uses the revenue to develop local states or uses them to create development programs.

### **3. Collecting taxes to maintain economic stability**

The Economy of a country indicates the improvement or development of a country. Therefore maintaining economic stability is very important. When consumers of a country spend a lot of money on unnecessary products, we are losing currency to other countries, which is a deficit to our trading.

Therefore the government needs to set up tax measurements in order to maintain the stability of our economy. They have to assure that there is not too much movement of money within the country. In addition they have to make sure that no inflation or deflation is happening because it would deficit the monetary stability which would affect our economy's image.

Therefore the tax measurements are very important; the government is the one maintaining the stability of the economy by controlling the product and service prices of their country. They may increase import tax by customs in order to reduce the consumption of products that are imported from other countries. Nevertheless if there is a free trade agreement, the import tax rate may be reduced but the government can increase the excise rate to balance it out.<sup>9</sup>

Excise tax has a very particular distinctiveness, just like the sale tax and value added taxes, excite taxes are also imposed on products and services. However, there are only certain categories or products that impose excise tax. It is used as a base to calculate VAT. Therefore the main purposes of collecting excise taxes are as follows:

1) To promote a sustainable fiscal position, meaning, excise tax is being collected to become the government's revenue. Furthermore it is being used to manage and develop the country's economy. When the state has enough revenue, they will be able to make the finance situation more sustainable. In addition, they also promote the community's economy such as promoting the economic system at the lower level, and promoting the use of existing materials to produce alcohol in the community level. This would imply their strength as well as their fiscal position in the community.

2) To allocate appropriate consumption by using excise tax in certain products and services such as products and services which violate public morality such as alcoholic beverages, tobacco, cars, racecourses, massage facilities including the limitation of consuming extravagant products which are not really necessary like perfume, crystal ware, carpets, beverages, yacht, air conditioners, nightclubs and discotheque

3) Environment Protection by collecting excise taxes on products which might have negative affects onto our environment such as fuel oil products, motor vehicles, motorcycles, batteries and services like golf courses.

Excise tax collection is used to collect from the certain kind of products and services. Therefore, the proper correct way in choosing the product must be collected by excise tax law which is an important matter. The principle

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<sup>9</sup> Chaiyasit Trachutham, Tax law 2 (Bangkok: Aksorn Publishing, 1987), pp.9-11.

which is generally used is 4 principles. It will be used in the separate categorization of other products and services.

The four principles are as follows:<sup>10</sup>

1. The consumption of product which harm health and the moral.  
(Sumptuary Excise)
2. The products which have extravagant character. (Luxury Excise)
3. The products which receive special benefit from the government. (Benefit-Base Excise)
4. The Miscellaneous (Miscellaneous Excise)

The product which may harm the health and moral of the product is provided to pay tax because the consumption of this product is in the high level which may harm the health of the consumer themselves. It makes others get into the trouble or may harm others, for example, drinking too much alcohol which may bring trouble to other people and society in general. The government may come to protect the society and people who are not to consume but they are injured or receive the consequent by the consumers. These kinds of products are also social cost. Some of them see that so many damages are brought by the products, that the government should stop manufacturing the products and prohibit them from selling the product. The government should prohibit the consumption. If the governments do that, there will be consequences. For example in the case of the alcohol, the illegal alcohol manufacturing will be widely spread because the alcohol product seriously harms the consumers and society. An alcohol product is a very popular product in the society. A number of people favor the test of alcohol drink. Therefore, the proper way to limit the consumption is to import the group to excise tax collection. It makes the price of the alcohol product higher and the consumption will be decreased because of the higher price.

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<sup>10</sup> Prapas Kong-ied, Excise Tax Law (Bangkok: Nititham Publishing, 1999), pp.5-9.

The Extravagant Product Character and the excise tax collection from the extravagant product is generally accepted because the using of extravagant products affects the society and the country in many aspects.

The extravagant consumption is the group of persons who have high income so they can consume the high price product. The person who has high income has to pay more tax because they do not consume only the necessary product like other people. It will create a level of fairness to the society.

The extravagant product causes a tax liability which affects the consumers. The consumer will consume less of the extravagant product. It makes each of the family save the money. The money which is not spent will turn into saving money. If each family has more saving money, it will affect the economy of Thailand. The family and the society of the people will be more civilized and they live happily. Whether any products will have fallen into the category of the extravagant, it depends on the period of time because at present, it may be a necessary product such as radio

The government activity will give benefit to certain groups of people and others cannot receive the benefit of the product. This principle is applied to collect tax in petroleum product. It is justified that when the government builds roads, only people who have cars will receive the benefit from the roads. It is unlikely to collect tax from using the road. A car is capable to move because there is fuel. Therefore, the tax collection from fuel is the best way for tax collection.

Miscellaneous principle occurs by itself because sometimes it is necessary for the government to generate income or limit the manufacturing of certain, product, for example, during the war; the government had to provide the raw material for the soldiers to use in the war. Or sometimes the government urgently needs to use a lot of money. Another example, for relieving the hardship of the poor or for the political benefit but there is no money. Therefore, tax collection from some certain products will be provided for their needs.

From the several principles in Thailand, the tax collection in certain products and services are as follows:<sup>11</sup>

#### Part I            Petroleum & Petroleum Product

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<sup>11</sup> Excise Tariff Act B.E.2527.

Part II	Beverage
Part III	Electrical Appliances
Part IV	Glasses and Glassware
Part V	Cars
Part VI	Boats
Part VII	Fragrance Products and Cosmetics
Part VIII	Other Commodities
Part IX	Entertainment
Part X	Taking Chance Business
Part XI	Business That Has The Impact on The Environment
Part XII	Business Permitted From The State Or Concession From The State
Part XIII	Other Services

The excise tax collection in Thailand is divided into products and services. The tax collection from the products is enacted in part 1 to 8 and the tax collection from the services is enacted in part 9 to part 13.

### **2.1.3 The Excise tax Instrument**

There are 7 laws relevant to Excise tax

1. Excise Tax Act B.E. 2527
2. Excise Tariff Act B.E. 2527
3. Liquor Act B.E. 2493
4. Tobacco Act B.E. 2509
5. Cards Act B.E. 2486
6. Allocation of Excise Tax Act B.E. 2527
7. Allocation of Liquor Tax Act B.E. 2527

The state necessarily controls and collects income from some kinds of goods and services which can control many people. The controlling of people is necessary to have an instrument to give the power to do it in a style or justice and proper for the people. So the state issues the law to be the instrument of administrator for use to control of goods and services.

### 2.1.4 Taxpayer

The general principle concerning the taxpayer pursuant to the excise tax Act B.E. 2527

Section 7, provides the industrial entrepreneur, the entertainment entrepreneur, the import of a product or a person provided in this Act. The law provides that the taxpayer has a duty to pay tax by the value or quantity of the product or the services pursuant to the law concerning excise tax tariff which is enforceable at the time tax liability occurs.<sup>12</sup>

From the aforementioned principles provide for the taxpayer, this can be divided into four categories as follows: industrial entrepreneur, entertainment entrepreneur, the product importer and other person who provided by the law, have tax liability.

#### 1. The Industrial Operator<sup>13</sup>

The Excise Tax Act B.E. 2527 Section 4 define, that

“The Industrial Operator” means the owner or manager or person who is responsible for the industrial factory operation.

“The Industrial Plant” means the place where the product is manufactured including the vicinity of the place and the selling beverage machine which shall be included.

“Manufacture” means to make, to compose, to improve, to reform or transform the product or any act which creates the product in any manners. It shall not include the invention which is for sale.

“Product” means the product which is manufactured or imported and specified by the law concerning the categories of excise tax act.

According to the aforementioned definition, it can be said that the industrial operator means any person who is responsible for the operation of the industrial factory. They can be the owner, the manager or the others. It was made in the location where the product is used, composed, improved and reformed for any act

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<sup>12</sup> Section 7 Excise Tax Act B.E.2527.

<sup>13</sup> Section 7 Excise Tax Act B.E.2527.

which has been done to the product in any manner. The product must be specified in the law concerning the excise tax tariff.

## **2. The Entertainment complex Entrepreneur**

“The entertainment complex entrepreneur” means the owner or the manager or other person who is involved in the operation of the entertainment complex.

“The entertainment complex” means the place that is operated to give the service which is provided by the law concerning the Excise tax tariff.

“Service” means to render business service in the entertainment complex

The definition is considered from the above paragraph. The meaning of the entertainment complex entrepreneur may be an owner, the manager or the person who is responsible in operating the entertainment complex. The entertainment complex shall be specified in the Excise tax tariff. The entertainment complex entrepreneur is a taxpayer.

Tax collection from the entertainment complex entrepreneur must be considered whether the business service in the entertainment complex is the entertainment complex pursuant to the excise tax act 2527. If the objective or the purpose is not for generating income for the advantage of the entrepreneur business, it is not taxable.

For example, Golf courses which the owner creates for playing sport for personal gain. It is not opened to public. Therefore, it is not entertainment complex pursuant to the excise tax act 2527.

## **3. The Import of Goods**

“Import” means to import in the kingdom of Thailand Pursuant to law concerning the tariff product of this Act.

“The importer” includes the owner or other person who is interested in the product or a possessor who uses the product for a period of time since the time that the product is legally imported to the time that the product is not in possession of the tariff officer.

The consideration from the aforementioned definition together with the importer pursuant to the excise tax act means the owner or the person who has the ownership or the person who has no ownership or being an owner but he occupies or is interested in the product during the time the product is imported. For example, company A orders the cosmetic in the kingdom of Thailand, company A has the ownership of the product and deemed to be an importer. If the company B which is the liner company, imports the product to the Kingdom of Thailand during the time prior to company B delivers the product to company A, it deems that the company B is the occupier or the person who is interested in the product. Company B is the importer pursuant to Excise Tax law.

#### **4. The Other Person whom is Deemed to be a Taxpayer by Law**

In this matter, to protect the tax avoidance problem and for the efficiency of collecting tax, the law provides other person, to have duty to pay for tax. Other persons who have duty to pay tax are as follows:

- 1) The transferor, the transferee, or other person provided by the law to pay tax for the import of goods which is tax exception or tax reduction
- 2) The transferor and the transferee, or person who has the privilege to manufacture the goods in the Kingdom of Thailand for distributing to the privilege by tax exemption or tax refund.
- 3) The owner of bonded warehouses.
- 4) The industrial entrepreneur or the entertainment complex entrepreneur merged together or transferees the business to each other.
- 5) The modifier of car products.
- 6) The offender pursuant to the criminal code Section 161 and 162.

This is offence pursuant to the criminal code. Apart from the criminal offence, Excise Tax 2527 requires the offender to pay tax for the product which is the object in the criminal case. If the offender refuses to pay for it within the time, the director general or the person assigned by the director general may order the product to be sold through auction.

### **2.1.5 Tax Liability<sup>14</sup>**

The Excise Tax 2527 provides the responsibility in paying for tax in Section 10. It is the liability or the duty in paying tax by the taxpayer provided by the law. Section 10 under enacting of Section 11 paragraph 2 and Section 12 second paragraph the responsibility shall pay tax as follows:

#### **1. Locally-Produced Commodities Section 10(1)**

For the case of commodities which have been produced in the kingdom, it will be considered that the liabilities to pay tax occurs at the time of taking the commodities out of the industrial plant to be kept at the bonded warehouse, bonded warehouse under law on customs, duty free zone or export processing zone, If any industrial operator or any person brought such commodities in the industrial plant, it shall be considered as taking the commodities out of the industrial plant.

For the case of commodities being kept in the bonded warehouse, bonded warehouse under law on customs, duty free zone or export processing zone, it shall be considered that the liabilities to pay tax occurs at the time of taking the commodities out of the bonded warehouse, bonded warehouse under law on customs, duty free zone or export processing zone. Except for taking back the commodities to be stored at the industrial plant or at another bonded warehouse, bonded warehouse under the law on customs, duty free zone or other export processing zone, which shall be considered as taking the commodities out of the bonded warehouse under the law on customers, duty free zone or export processing zone at any case.

For the case of the liability to pay value added tax according to Chapter 4 Title 2 of the Revenue Code partially or totally this occurs before taking the commodities out of the bonded warehouse. Bonded warehouses under the law on customs, duty free zone or export processing zone, this shall be considered as the liabilities to pay tax which occurs at the same time as the liabilities to pay value added tax.

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<sup>14</sup> Section 10 Excise Tax Act B.E.2527.

## **2. Service Section 10(2)**

For the case of service, the liability to pay tax occurs at the time of service payment. For the case of the liability to pay value added tax, according to Chapter 4 Title 2 of the Revenue Code, partially or totally occurs before the time of service payment. This shall be considered as the liability to pay tax which occurs at the same time as the liability to pay value added tax.

## **3. Import Section 10(3)**

For the case of imported commodities, it shall be considered that the liabilities to pay tax occurs at the same time as the liabilities to pay tax for the commodities imported under the law on customs except for importing commodities to store in the bonded warehouse under the law on customers, duty free zone or export processing zone. If any importer or any person brought such commodities in the bonded warehouse under the law on customers, duty free zone or export processing zone, it shall be considered as taking the commodities out of the bonded warehouse under the law on customers, duty free zone or export processing zone at any case.

### **2.1.6 Tax Base**

#### **1. Locally-Produced Commodities 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 paid. And there is a Declaration of Ex Factory Price Accordance with Section 117 provides that:

For the benefit of fixing the value of the commodities, the industrial operator shall state the ex factory price to the Director-General or the person assigned by the Director-General not later than seven days before the date of commencement to sell the commodities.

If there is to be a change in the stated price as mentioned under paragraph one, the industrial operator shall state the change in price to the Director-General or to the person assigned by the Director-General, not later than seven days before there will be a change in price.

## 2. Service Section 8(2)

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

## 3. Import Section 8(3)

In the case of commodities imported, the value shall be based upon the C.I.F 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 due paid.

Tax on goods must be paid to follow the quantity that is based on weight unit or net quantity of goods but not including the following<sup>15</sup>

1) In the case of the goods, food types and packaging container and there is liquid to provide nourishment to preserve the food. The weight of goods include liquid in the container which is tax base.

2) In the case of goods which are appointed in a package or container to distribute all package or container, they have a mark or a sticker to show quantity of the goods sticking on the package or the container. For the benefit of calculation tax, the Director-General deems that the package or container appoint goods to follow quantity which is shown.

### 2.1.7 Tax Rate

Excise tax rate, the excise tax act provides the general rate pursuant to the Excise tax tariff act 2527 which is the ceiling rate to be used for administration and tax collection. By those reasons, the law empowers the administration, which is the minister approved by the cabinet to declare the decrease rate and the tax exemption pursuant to Section 103. It is usually declared in the form of financial regulation. Besides, the law empowers the administration which the minister approved the cabinet resolution by declaring the tax rate reduction and the exemption of tax pursuant to Section 103. It will be in the form of ministerial regulation.

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<sup>15</sup> Section 9 Excise Tax Act B.E.2527.

## **2.2 Collection of Excise tax on car and parts**

### **2.2.1 Collection of excise tax**

Even though cars have become a necessity in our daily life, it is still one of the most efficient sources of the government's revenue. When these taxes have been collected, the government's revenue goes to public services or operations that will benefit the people of the country. However, there are certain products where only a certain group of people can enjoy and gain benefits from this products, therefore the government collects taxes on these things. Before collecting these taxes, it has to be assured that it really does benefit more than the other products.

These conditions have been used in foreign countries in order to collect taxes for petroleum. When the government has finished construction of the road, the people who gain the most benefit out of it would be car drivers, there, we should collect taxes from the car drivers as much as they use the road. But this would be hard to verify because people could change the numbers of kilometers they drove on their meters. It has then been discovered that if a car driver uses the road a lot, he would use a lot of fuel as well, therefore the easiest way to tax the car driver would be to collect from the fuel. Nevertheless, collecting from fuel charges would also affect those who bought fuel but did not use the vehicle on the road at all. Several discussions have therefore been made in regard to construction and who would benefit most out of it. In addition, cars only pollute the environment. Cars have been declared to be extravagant products as there are busses that drive a certain routine. Therefore, if someone really wants to become more comfortable, he must take the burden of paying additional taxes. Sometimes, wealthy people buy more expensive cars than really necessary. These cars also tend to use a lot of fuel and fuel is a natural resource which can become extinct. In order to control and monitor the vehicle consumption, the government has imposed excise taxes in Thailand to collect them as government's revenue.

### **2.2.2 Excise Tax Act B.E.2527**

The Excise Tax Act B.E 2527 set guidelines, theories and regulations to collect excise taxes. This act also covers the people who are entitled to pay the taxes,

duty to pay tax, tax base, filing a tax report and paying for the taxes. Furthermore, they also monitor the collection through to punishment. The government collects excite taxes from products and services. The definition of product and services has been indicted in Section 4 of the Excise Tax Act B.E.2527.

The Excite Tariff Act B.E.2527 is another law that shall be used combined with the Excise Tax Act B.E.2527 as their regulations are related. In the Excise Tariff Act, it clearly states products and services where taxes have been imposed, the tax rate and the authority to interpret the Excise Tariff Act.

According to the Excise Tax Act B.E.2527, tax collection procedures have been compiled from many other acts. They also create a monitoring structure on tax collection. For the collection of excise taxes, the government has set certain procedures:

1. According to the Excite Tax Act B.E.2527, a person is responsible to pay tax when he falls under any of these categories:

1) An entrepreneur who may be an owner or director or another person who is engaged in a business and takes responsible in the industrial operation. This operation may be used to produce goods. It may be engaging in the business, repair, modify or change the total image of a product or even creates something according to the Excise Tariff Act.

2) A person engaging in service business

3) Importer is a person who imports products legally according to the custom regulations

4) Other people

Herewith, the person engaged in a business and engaged in a service business must register with the excite department. If the businesses were established before the amendment of the Excite Tax Act B.E.2527, they must file an excise registration to the director of the excise department within 30 days, starting when this act has been amended.

2. Excise taxes will be collected on products and services which have been imported. According to the Excise Tax Act B.E.2527, the definition of “produce” means when something has been combined, adjusted, modified or created.

According to the Excise tax Act B.E.2527, “entrepreneur” can be divided into 3 categories:

- 1) Manufacturer conducts himself is an entrepreneur
- 2) Contract manufacturer is an entrepreneur
- 3) Modifies operations into business as an entrepreneur
3. A person has the duty to pay taxes on these following
  - 1) If a product has been manufactured within the Kingdom, the burden of tax starts when the products leave the industry or when it leaves the warehouse
  - 2) In case of service, the burden of tax starts when the service has been paid
  - 3) The burden of tax starts to the same time of when an imported good has been imported into the country
  - 4) In case of modified vehicles, the burden of tax starts when the modification has been completed

Being aware of when the burden of tax starts is very beneficial in terms of calculating the taxes.

4. Excise Tax Act B.E.2527 and Excise Tariff Act B.E.2527 regulated that the taxpayer need to either pay the tax rate according to the value or upon the quantity of the product or services. However if a collection of both taxes occur, the tax payer only has to be for the higher rate.

- 1) The taxpayer must file a tax statement and pay the taxes within these durations of time
  - (1) When a good produced in the Kingdom prior to filing a liability to tax at the Excise Department or the Revenue Office
  - (2) When a good that has been imported is filed at the same time as the export receipt
  - (3) Services or other cases; filing within the 15<sup>th</sup> of the month following the tax payment month. The taxes shall be paid at the Excise department or the local excise offices
- 2) Method of tax payment and the monitoring of certain products:
  - (1) Excise stamps, for instance, beverages
  - (2) Usage of marks to verify the tax payment

(3) Fuel, oil products, fuel and meter measurements whereas an official of the excise department shall be attending for monitors.

3) Tax payment shall be paid within the set period of time

(1) Within 10 days, counting when the product has left the factory or warehouse such as fuel and oil products

(2) Filing for tax payment within the 15 of the upcoming month when the product has left the factory or warehouse with guarantee such as beverages, electrical appliances, glass, glassware, vehicles, and perfume or make up

(3) File for tax payment before leaving the factory

5. Calculation tax base can be divided into two categories: value tax base and quantity tax base Quantity Tax Base means that it is based on units, net weight or volume of the good such as containers, cc / kg liter

Value Tax Base means that it is based on the value of the goods or services such as

1) A product that has been manufactured within the Kingdom. It is going to be based on the prices at the factory including excite taxes which would need to be paid

2) Imported products. - The CIF prices of the good shall be added with the import duties, sub charges under the law on investment promotion. The excise department will be collecting the taxes

3) In case of modification of an operation to a business, the price shall be calculated exactly the same as products that has been manufactured within the Kingdom

6. As a taxpayer, the entrepreneur on industry, service businesses and modification shall have the following duties and responsibility

1) Excise Registration

2) Excise registration certification must be displayed in public

3) If the excise registration has been damaged especially in the main contents, the taxpayer shall substitute it as soon as possible

4) If the factory or industry moved their address, new excise registration is needed

5) Daily expenditure account and monthly monetary statement are required to be done

6) Preservation on Mechanical and installed equipment need to be taken

7) In the case of being absent, inform the absent date and time

8) Inform the industry about the sale price or service charge

7. Officials hereby mean employee of the excise department

Excise department employees include civil service under the Excise Department. Their main duty starts when it is believed that avoidance of tax is happening. The Director of the Excise department would be able to give out written order and authorize these officials to enter the premises or the vehicles to inspect, search or even seize bank accounts, documents or other evidences which are proof or show indication to the avoidance of tax. For other provinces, the Provincial Governor or the local excise office has the power to do the same things within the area that they are based at.

Officials, herein, mean civil servants under the ministry of finance. This could also include a person that has been appointed by the Minister of this act.

### **2.2.3 Excise Tariff Act, B.E. 2527 (1984)**

The Excise Tariff Act, B.E. 2527 (1984) has defined the term motor vehicle in Part 5. According to the excise tariff act a “motor vehicle” means a vehicle with more than three wheels propelled by engine, electricity or other energy, but not including a vehicle run on rails and a motorcycle with a wheel of a side-car and other cars as notified by the Minister in the Government Gazette.

The main composition according to this act can be separated as follows:

1. It has to be a vehicle with more than three wheels and
2. Shall be propelled by engine, electricity or other energy

Therefore, if a car is a vehicle with more than three wheels propelled by engine, electricity or other energy, it is considered to be a motor vehicle according to the Excise Tariff Act. The only problem would be the interpretation of the term “other energy”. What does the law define to be “other energy”? Here is an example: a tricycle of a disabled person which has a controlling handle to move the vehicle, does this mean that it is a motor vehicle which is propelled by other energy? Having

a controlling handle and using it to move the tricycle may be considered as “other energy” because scientifically, man’s power is a kind of energy but it is a physical energy, not energy driven by an engine or electricity. The intention of the law, in regard to the term “other energy” is energy with similar characteristic features as engine or electricity energy, such as Steam energy which is not a physical energy. The next problem would be “Is this tricycle considered to be a motor vehicle according to the law or not? And whether the owner has to pay excise taxes or not is a different issue because if someone has to pay excise taxes, the vehicle has to be considered as a motor vehicle first. Then the type of car would be specified in order to evaluate the excise tax rate but this is another process which will be explained afterward.

Therefore it can be concluded that “car” “passenger car” and “truck” are motor vehicles according to the law, each term has its own definition because different kind of cars have different tax rates imposed.

“Motor Vehicle” does not include;

1. Vehicle run on rail
2. Motorcycle with a wheel of side-car
3. Other cars as notified by the Minister in the Government Gazette

Thus, even though all three kinds of vehicles have more than 3 wheels and are propelled by engine, electricity or other energy, they are not all categorized to be motor vehicles. For instance, if a train falls under more than 3 wheels and is propelled by electric energy. It should be considered to be a motor vehicle but the regulations states that motor vehicles do not include vehicles run on rail. Therefore it is not considered to be a motor vehicle. The same goes for a motorcycle with a wheel of a side- car, hereby it should be considered that they are mentioning only a side-car not when the car is adjusted any how else, then the owner would still have to pay the tax. For instance sky lab vehicles which are an adaption of a motorcycle and used to transport people from one place to another. It is very common in the northeastern provinces of Thailand and would be falling under the condition of being a motor vehicle. The minister may notify that a certain motor vehicle does not fall under the regulation of this act even though characteristically it does. Then the owner would not have to pay taxes such as tricycle for disabled people which runs on electric

energy, it is considered to be a vehicle according to the law but if the government does not intend to collect from this group of people, he may notify this in the Government Gazette. Other motor vehicles are notified by the Minister in the Government Gazette.

However, even if a vehicle falls under the definition of this act, as long as it isn't a vehicle according to the Excite Tariff Act, the owner does not have to pay any taxes. According to the Excite Tariff act, taxes have to be paid for passenger cars (type 05.01) Bus with less than ten seats (type 05.02) and other particulars as notified by the Minister in the Government Gazette. Passenger cars and buses with less than ten seats will be explained as follows:

Type 1 Passenger Car means a sedan or motor vehicle designed for seated passengers, including a motor vehicle with similar nature, e.g. motor vehicle with permanent built-in-roof and at the side or the back of the driver's seat fixed with the door or windscreen and another seat, irrespective of the number of seats

From the above regulation, the definition of a vehicle can be decided into 3 types of car

1. sedan which is a general passenger car
2. motor vehicle designed for seated passenger

Designed for seated passenger meaning mainly for personal not public use

3. The purpose of the law in stating these provisions is to fill in the gap in the law. People would argue on the interpretation in order to avoid paying taxes by claiming that their vehicle's feature falls under the regulations.

Collection of taxes has been separated into two categories: passenger cars and bus with less than ten seats whereas each category has more division, as following:

Type 1 Passenger car are all types of motor vehicles that have been considered and approved by the Director of the Excise Tariff Act

1. Any kind of vehicle that falls under no. 05.01 of the excite tariff

1) Expanding or building a cockpit on the back of the driver's seat or additional seating behind the driver's seat.

2) Adding a window behind on the backseat side of the driver or any other objects which can be rotated up, down or sideways.

3) Measure outside the car from the front edge which has the widest angle to the end of the driver's cabinet and does not exceed the length of 180 cm

4) Measuring from the outside from the end of the vehicles along the doors to the end of the drivers cabinet, which shall not exceed 65 cm

This has been defined to make it easier in separating passenger cars with cars that have a space cab. If it exceeds the measurements of 180x65cm it is considered to be a passenger vehicle but if it doesn't, it is considered to be a pickup.

2. Usage of parts which have been designed for passenger cars, even though it has a seat for the driver and an open hood which seems to fit the regulation 05.01

This verdict has been declared in order to protect people from fraud and trying to avoid paying taxes because this detailed part has been imported from abroad. The importer's intention is to make it look like a pickup in order to avoid tax collection or receiving tax exemption therefore a decision has been amended that a modified pickup has to pay the same amount of taxes as a personal car.

However, there have been appeals from affected people, the person claimed to the Complaints Board and the board has diagnosed that the decision has been interpreted other than stating in the Excise Tariff Act and therefore is unenforceable. If someone adds additional designed parts to a pickup, he shall be paying the tax rate of a pickup.<sup>16</sup>

Other than above mentioned, motor vehicles have been divided into more categories to make it easier on tax collection, as following

### **1. Pick-up Passenger Vehicle: PPV**

Pick-up Passenger Vehicle: PPV is a passenger car built on a structure of a pick-up. It shall possess the following structure

1) Frame Construction like a Chassis Model, which shall not be less than 1200 kg, able to load at least 1000 kg and has a total weight of no more

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<sup>16</sup> Praphas Kong-eid, Description of Excise Laws (Bangkok: Nititham Publishing, 1999), p. 33.

then 4000 kg which is the same type of car constructed within Thailand. They are available everywhere or are exported on a regular basis. These pickups are registered as pick-ups according to the regulations on motor vehicles.

2) Distance between the center front wheel and the wheelbase, it shall not have changed its model code and the chassis model is the same one as of a motor vehicle

3) Distance between the centers of the front wheel to the wheelbase shouldn't be less than 2750 mm

4) Should not have a hood like that of a personal vehicle

5) Shall not be modified<sup>17</sup>

## 2. Double Cab

Double cabs are passenger cars built on a structure of a pick-up. The back is an open hood with no cover. The following features shall be included

1) Frame Construction like a Chassis Model, which shall not be less than 1200 kg, able to load at least 1000 kg and has a total weight of no more than 4000 kg which is the same type of cars constructed within Thailand. They are available everywhere or are exported on a regular basis. These pickups are registered as pick-ups according to the regulations on motor vehicles.

2) Leaf spring suspension system

3) Measure outside the car from the front edge which has the widest angle to the end of the driver's cabinet and does not exceed the length of 180 cm

4) Open hood with no cover, length of the pickup no less than 120 cm<sup>18</sup>

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<sup>17</sup> Ministry of Finance, "The features of passenger cars, semi trucks (Pick-up passenger vehicle: PPV)," 27 July 2004.

<sup>18</sup> Ministry of Finance, "The features of passenger cars at pick up (Double Cab)," 27 July 2004.

### 3. Chassis with Windshield

Modified vehicles are vehicles which have been manufactured from a pickup or a chassis and the Windshield. These following features shall be possessed:

1) It must be modified from a pickup or Chassis with Windshield with following features:

(1) Frame Construction like a Chassis Model, which shall not be less than 1200 kg, able to load at least 1000 kg and has a total weight of no more than 4000 kg

(2) It is a model that is available everywhere and has been registered as a pick-up

(3) It is manufactured in Thailand with the operation license and permission by the Ministry of Industry. It has been manufactured for the purpose of a pick-up

There need to be approval of the Model Code and the Chassis Model from the Excise department

2) When modifying the vehicle, 60 percent of the materials used shall be coming from within the country

3) Distance between the centers of the front wheels to the wheelbase shall not be changed from its model code and Chassis Model

4) Seat features of a modified pick up shall be as follows:

(1) For a second-stage modified pick-up or something similar, at least 7 seats which might be different from vehicles which have been manufactured or distributed by the manufacturer within and outside of Thailand.

(2) For Double Cab, at least 5 seats shall be provided which differs from vehicles that have been manufactured and distributed both in and outside of Thailand

(3) The determination of the seats has been set to a distance of 40 cm per seat. If at least, less than 30 cm are left, it shall be considered as another seat.

(4) The length from the floor to the top of the seat shall not be less than 25 cm and from the seat to the top, no less than 85 cm.<sup>19</sup>

#### **4. Off – road Passenger Vehicle: OP**

is considered to be any type of vehicle which is capable of driving on and off paved or gravel surface. An OP must have all these following features:

- 1) 4 wheel vehicle
- 2) At least 4 seats
- 3) Inside space (not including the seats) there should be at least 1/3 space of the total space inside to transport the goods
- 4) Approach Angle (tangent) is the smallest angle, in the side view of a vehicle, formed by the level surface on which the vehicle is standing and a line tangent to the front tire “Static Loaded Tire Radius” are and touching the underside of the vehicle forward of the front tire, not less than 28 degrees
- 5) Break over angel of not less than 14 degrees, it is the supplement of the largest angel in the side view of a vehicle, that can be formed by two lines tangent to the front and rear “Static Loaded Tire Radius” areas and intersecting at a point on the underside of the vehicle
- 6) Departure angle of not less than 20 degrees, it is the smallest angle, in the side view of a vehicle, formed by the level surface on which the vehicle is standing and a line tangent to the rear tire “Static Loaded Tire Radius” areas and touching the underside of the vehicle rearward of the rear tire.
- 7) Running clearance of not less than 200mm which is the distance from the surface on which a vehicle is standing to the lowest point on the vehicle excluding unsprung mass
- 8) Front axle, rear axle and suspension clearance of not less than 175 mm each is the vertical distance from the level surface on which the vehicle is standing to the lowest point on the axle of the vehicle

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<sup>19</sup> Ministry of Finance, “The features of passenger cars produced by car or pick up channels from house and front windscreen (Chassis with indshield) vehicle pickup or modify the cars,” 27 July 2004.

9) Front Tread is the distance between the center of the wheels and the back wheels between the back left wheel to the back right wheel, not less than 1200mm

10) Rear Treat is the distance between the centers of the front wheels to the back wheels between the back left wheel to back right wheel, not less than 1200mm

11) Wheelbase is the distance between the centers of the front and rear wheels not less than 2350 mm

12) No hood like a passenger car

13) Should not be a modification of a passenger car by adding parts to make it look like one

Type 2 According to the Excise Tariff Act, Bus with less than ten seats, a bus means a van or motor vehicle designed for mass transit, including a motor vehicle with similar nature.

Vehicle may be divided into 3 categories:

1. Bus means a vehicle carrying passenger used for public transportation not for loading. Because of their conditions, they cannot be passenger vehicles.

2. A vehicle that has been designed to carry a large number of passengers. These types of vehicles are larger in size such as a Tour bus

3. Vehicles with the similarity to a bus and designed cars for the purpose of carrying a large number of passengers. The law has regulated this condition to fill in the gap in the law and for more flexibility in enforcing other law similar to the one mentioned above. Therefore there needs to be consideration per each case.

Type 3 Other vehicles according to the Minister in the Government Gazette meaning, other than passenger vehicles or vehicles with less than 10 seats which in accordance with the Excise Tariff Act would have to pay for the taxes. In addition to this, the government has also imposed taxes on pickup vehicles that have been designed and weigh no more than 4000 kg.

#### 2.2.4 Excise tax on Car

##### The Definition of Car

According to the Motor Vehicle Act B.E. 2522, the definitions of terms have been defined in Section 4, as follows:

"Vehicle" includes cars, motorcycle, trailer, steamroller and other cars according to the ministry regulations

"Car" can be a public car, service car or personal car

"Public car" is

(1) A hired car that drives between provinces, in other words a car that carries passengers less than 7 passengers. A hired car can only transport the passenger between provinces if he had it registered at the registrar.

(2) A hired car which carries less than 7 passengers or other public transportation that is not a route ride.

"Car service" is a vehicle that carries passengers or is for rent for carrying less than 7 people, accordingly:

(1) Automotive service business which transport people between airports, piers, beaches, bus terminals or rail station and the hotel the customer is staying or at the office

(2) Travel services where the vehicle will be used for transportation of passengers to travel attractions

(3) Rental cars which are on the market for rental needs not for transportation of passengers or loadings

"Personal car" is a

(1) Car, no more than 7 seats

(2) Personal car, exceeding 7 but not 12 seats. In addition the car shall not exceed the weight limits of 1600 kg. This is not used for people or products transportation purpose.

Motor vehicle tax will be collected by the government. The government decides on the tax collection rate for motor vehicles within the countries. These tax rates may differ, depending on the types of cars with cylinder capacities.

## Reforming Car taxation

### 1. Background of the vehicle tax structure revolution

The government had policies on promoting car production and manufacturing within the country since 2504 by decreasing the import duties tax to almost half as much for Completely Knocked Down-CKD parts, reducing import duties by half. For completely Built Unit – CBU, the import duty taxes is 80 percent but for CKD only 40 percent has been imposed until 2512 when the government announced that they will increase the import duties on CKD to 50 percent. In addition, they set a condition that there must be at least 4 local content parts used to manufacture these cars. In 2521, the government had strengthened their policies on the car industries within the country. They have prohibited the import of completely built unit vehicles and announced 5 year strategy plan on automobile parts. Moreover they have to increase the import duty of CKD from 50 to 80 percent. For CBU the import duty has been raised from 80 to 120 percent. In 2528, the government has cancelled the ban of importing cars exceeding 2300cc; at the same time they adjusted the import duty rate of the CBU less than 2300cc to be taxed 180 percent. Engine over 2300cc has been taxed 300 percent. When looking at the measurements which have been taken over the last 30 years, it can obviously be seen that the car industry has always been protected by the government which makes the industry grow slow.

### 2. From reformation of the tax structure to free trade in the Anand Panyarachun's government (2534)

For the theories on adjusting policies on the industrial structure and assembling to free competition in the Chadchai's government, the prices of cars increased rapidly. Pre-emption certifications were put on the market. In 2533, Thailand's economy has raised an additional 10 percent, moreover we have entered the General Agreement on Tariff and Trade (GATT) and become a member, meaning, that we would have to follow international rules. The policy pan was free trade and the government approved on the 31<sup>st</sup> of July 2533 on cancelling the ban of import cars less than 2300cc including permitted import of new completely built units. Furthermore, he assigned the Ministry of Industry, Finance Industry, Ministry of Commerce and the office of the board of investment to come out with a suitable vehicle import duty tax structure to save the benefits of both sides. On August 20,

2533, the Ministry of Industry announced the cancellation of model or design of a manufactured car. However, the industrial restructuring policy of the government has been terminated when The Committee of National Peace acquired power on 23<sup>rd</sup> February 2543. Nevertheless, Mr. Anand Panyarachun carried on these policies and made a very significant change into our vehicle tax structure with the mandate of free competition.

#### Reformation of the import duty on vehicles

On the 9<sup>th</sup> April 2534, the cabinet in the Anand Panyarachun government has agreed to free trade. This policy has been announced by the Ministry of Commerce on the 17<sup>th</sup> April 2534 with following main ideas:

1. To cancel the imported vehicle with engine less than 2300 cc and vehicles exceeding 2300cc.
2. All types of used personal vehicles are prohibited for import, except
  - 1) Any kind of used car that has been used by a Thai citizen in a foreign country and has the purpose to take the car back to homeland, or foreigner who lives in Thailand and would like to import it for personal use
  - 2) For a natural persons, it is not possible to import a used vehicle with an engine of less than 2300cc, but a used vehicle with an engine size of 2300cc, not older than 2 production models a year can be exempted to import no longer than 2 years starting on the announcement day.

The Ministry of Industry also has a very clear policy on free trade by announcing the cancellation of specifying series model and types of the vehicle. Besides the cooperation with the Ministry of Finance on reforming the tax rate structure of vehicles and automobile parts, according to the decision of the cabinet in April, under Mr. Suttet Singane (Back then, head of the Ministry of Finance), the cabinet approved the developed import tax structure on the 2<sup>nd</sup> of July 2534 which has been enforced on the next day. The main idea of this new structure is the import tax on CBU; an engine less than 2,300 cc will be collected at 100 percent which has been decreased from 300 percent. Furthermore, to not affect our manufacturer too much, the government has decreased the import taxes of CKD from 112 to 20 percent. For CKD, both medium and large sizes, the same tax rate 40 percent will be

collected unless using parts within our country (CKD) then the import tax rate would only be 20 not 30 percent anymore.

The government also agreed to adjust the trading tax rate; they have agreed to collect additional 10 percent on certain products. According to table 1, the trade tax rate for vehicles with engines exceeding 2300 cc and using gasoline is 40 percent which has increased from 30 percent. For diesel vehicles, the tax rate stayed the same at 40 percent, but if it is a vehicle with an engine less than 2300 cc, the trade tax will be 35 percent for both diesel and gasoline vehicles. Another 10 percent local tax would have to be added to the trade tax and all surcharges shall be cancelled.

Besides the decreasing of standard profit rate from 80 to 26 percent on CBU and 11 percent on imported parts, the result of the import tax structure and surcharge led to decrease of price by 50 percent, for instance, the C.I.F. import price of a vehicle less than 2300 cc has been reduced to 136.06 percent from almost 400 percent, making the car cheaper by 52.51 percent. Whereas at the same time the tax burden of a vehicle over 2300cc decreased to 208.66 from a percentage higher than 600 percent which makes it cheaper by 56.56 percent.

**Table 1 Table of tax rates on imported vehicle before and after 2<sup>nd</sup> July 2534<sup>20</sup>**

Units: percentage

Type of Vehicles	Former import tariff		New import tariff	
	CBU	CKD	CBU	CKD
1. Motor vehicles not exceeding 2300cc	180	112	60	20
Motor vehicles exceeding 2300cc	300	112	100	20
2. Van, Pick up, Jeep, Station wagon	120	72	60	20
Chassis with installed motor	80	30	30	20
3. medium or large truck	40	30	40	20
Chassis with installed motor	20	10	30	10

Remark: Import tariff includes special duty

<sup>20</sup> Rangsan Thanapornpan, Taxation of Car and Automotive Industries (Prathum Thani: Prathum Thani University, 1993), p. 24.

**Table 2 Taxes according to the new tax structure after 2<sup>nd</sup> July 2534<sup>21</sup>**

	Not exceeding 2,300 cc		exceeding 2,300 cc	
	previous <sup>1</sup>	new <sup>2</sup>	previous <sup>1</sup>	new <sup>2</sup>
1. Import price	100	100	100	100
2. Import duty (C.I.F %)	150	60	200	100
3. Purchase tax (income %)	40	35	40	40
4. Interior tax (10 % of purchase tax)	4	3.50	4	4
5. Standard profit rate	80	26	80	26
6. Commercial and municipal tax burden	217.10	76.06	310.50	108.66
7. Special duty (percent of import duty)	20	-	60	-
Total of Tax Burden	397.10	136.06	610.50	208.66
Percentage on changes in tax burden		(-65.74)		(-65.82)
Car import prices and tax burden (baht)	497,100	236,060	710,500	308,660
Price change percentage				
Car import and tax burden		(-52.51)		-56.56

Remark: 'Cars with gasoline engines, ' Cars using gasoline and diesel

Even though the car industry within the country has been in operation for over 30 years, however the improvement of products in order to compete with foreign market is still very difficult. This may have been due to the government tax structure during the Anand Panyarachun's government who monitors the country through competing with foreign products per free trade. In addition it is, to improve goods and uses, and goods that compete with foreign goods and to strengthen the car industries and escape from the immature status. Therefore changes need to be, as follows:

<sup>21</sup> Rangsarn Thanapornpan, Ibid., p. 7.

**Table 3 Table of Vehicle Tax and Duty Rates since 1<sup>st</sup> January 2535<sup>22</sup>**

Units: percentage

Cylinder Capacity	Import Duty	Excise Tax	Interior Tax (%)	VAT (%)	Total (%)
Not exceeding 2400cc	42	35.75	(32.5+3.25)	7	137.23
Exceeding 2,400cc	68.5	41.80	(38+3.80)	7	210.53

It can be concluded that the total tax burden of the imported cars consists of C.I.F import duty (price including transportation and insurance costs) excise taxes and local taxes in the same rate of a vehicle manufactured in Thailand, then for the manufactured and total management of the market, a profit of 2.13 and 8.52 percent in order. These are the taxes used for the calculation instead of the profit standard and other expenses before thinking about the VAT. Cars that are manufactured in Thailand will be imposing excise taxes according to the industrial rates (which include capital which can be used as credit for the material which has been bought from the excise department. The excise tax rate in addition with the manufacture value and services will be calculated in the same rate as an imported car before adding the VAT. Therefore it can be concluded that the new vehicle tax structure does help reduce the tax burden of the manufacturer because the standard profit has not been added to the calculation like the previous tax structure.

#### **Car in the Excise Tariff Act B.E.2527**

Car are also mentioned in the Excise Tariff Act B.E.2527. The government collects additional taxes which will be combined with the excise tax. It has been enforced on the 1st January 2534.

According to the Excise Tariff Act B.E.2527, Car have been divided into three categories

1. Passenger car according in part (05.01). The Ministry of Finance imposes the excise taxes in accordance with the cylinder quantity and capacity:

1) passenger car of a cylinder capacity not exceeding 2400cc and engine power not exceeding 220 HP

<sup>22</sup> Rangsan Thanapornpan, Ibid., p. 12.

2) Passenger car of a cylinder exceeding 2400cc but not exceeding 3000cc with an engine power not exceeding 220 HP –Value of 43% excise tax rate

3) Passenger car of a cylinder exceeding 3000cc or with an engine power exceeding 220 HP. Value of 50% excise tax rate

4) passenger car meeting the full requirements of the Ministry of Finance Notification approved on the 1st May with excise department order no.134/2537 enforced since the 4th April 2537, Value of 32% excise tax rate

2. Car with less than 10 seats (05.02) The Ministry of Finance imposes the excise taxes in accordance with the cylinder quantity and capacity:

1) of a cylinder not exceeding 2000cc with an engine power not exceeding 220 HP, Value of 30% excise tax rate

2) of a cylinder exceeding 2000cc but not exceeding 2500cc and engine power not exceeding 220HP, Value of 35% excise tax rate

3) Of a cylinder exceeding 2,500 cc but not exceeding 3000cc and an engine power not exceeding 220 HP, Value of 40% excise tax rate

4) Of a cylinder exceeding 3000cc or an engine power exceeding 220 HP, Value of 50% excise tax rate

3. Others (05.09)

Auto parts which have been imported CKD receive higher reduction of import duties than CBU. According to the Ministry of Finance Sor Go 1/2542 No.5 a reduction of 20% import duties will be given no matter to which tariff they belong in order to promoting more manufacturing within the country. Nevertheless, they also have to be under the conditions and regulation of the Ministry of Industry and the Customs Department

In order to import auto parts in, the importer needs approval by the Ministry of Industry and declares the intention to the Customs Department (Tariff rate). That person also has to show the evidences, account, and a detailed list of the components and equipment for the car according to the Customs Department Announcement 2/2542. CKD has been defined in the Custom procedural Code B.E. 2541 No. 06 06 18

For CKD, no excise tax has been imposed. Only additional 10% import duties according to the Announcement of the Ministry of Finance Sor Go 2/2542

### 2.2.5 Excise tax on Auto Parts

#### The Definition of Auto Part

“parts” with in the meaning of the Act, Excise Act 2527 Part 5 defines a car means.

Car parts and accessories.

According to the Excise Tariff Act B.E. 2527, auto part has been divided into:

Auto parts which have been imported from CKD receive higher reduction of import duties than CBU. According to the Ministry of Finance Sor Go 1/2542 No.5 a reduction of 20% import duties will be given no matter to which tariff they belong to in order to promote more manufacturing within the country. Nevertheless, they also have to be under the conditions and regulation of the Ministry of Industry and the Customs Department.

In order to import auto parts in, the importer needs approval by the Ministry of Industry and declares the intention to the Customs Department (Tariff rate). That person also has to show the evidences, account, and a detailed list of the components and equipment for the car according to the Customs Department Announcement 2/2542. CKD has been defined in the Custom procedural Code B.E. 2541 No. 06 06 18

For CKD, no excise tax has been imposed only an additional 10% import duties according to the Announcement of the Ministry of Finance Sor Go 2/2542.

## 2.3 Custom tax on car and parts

### 2.3.1 Custom tax on car<sup>23</sup>

Customs Tariff Decree B.E.2530, Category no.17 part 87 states that cars are products where import duties have been imposed which differs from other products. Not only import duties and Vat will be collected but also excise taxes. The rate of each tax is

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<sup>23</sup> Somchai Chowchankij, Car valuation (Bangkok: Customs Department, 1999), pp. 1-5.

different and whether we have to calculate the same or different tariff depends on the type of car.

Therefore, car goods in the Custom Tariff decree and excise tax collection is defined below

### **Motor vehicles according to the Custom Tariff**

Customs Tariff Decree B.E.2530, Category no.17 part 87 has divided the term motor vehicles into smaller sub-categories

1. Vehicles for the transport of persons on snow; gold cars and similar vehicles (tariff code 8703.10)

2. Other motor vehicles with spark-ignition internal combustion reciprocating piston engine (tariff code 8703.20)

These motor vehicles are gasoline or diesel powered engine in order to categories the tariff by its cylinder capacity as following

1) Of a cylinder capacity not exceeding 1000cc (tariff code 8703.21)  
2) Of a cylinder capacity exceeding 1000 cc but not exceeding 1500cc (tariff code 8703.22)

3) Of a cylinder capacity exceeding 1500 cc but not exceeding 3000cc (tariff code 8703.23)

4) Of a cylinder capacity exceeding 2000cc but not exceeding 3000cc (tariff code 8703.24)

3. Other motor vehicles with compressed ignition internal combustion reciprocating piston engine (tariff code 8703.30)

These motor vehicles can be categorized as following

1) Of a cylinder capacity not exceeding 1500cc (tariff code 8703.31)

2) Of a cylinder capacity exceeding 1500cc but not exceeding 2500cc (tariff code 8703.32)

3) Of cylinder capacity exceeding 2500cc (tariff code 8703.33)

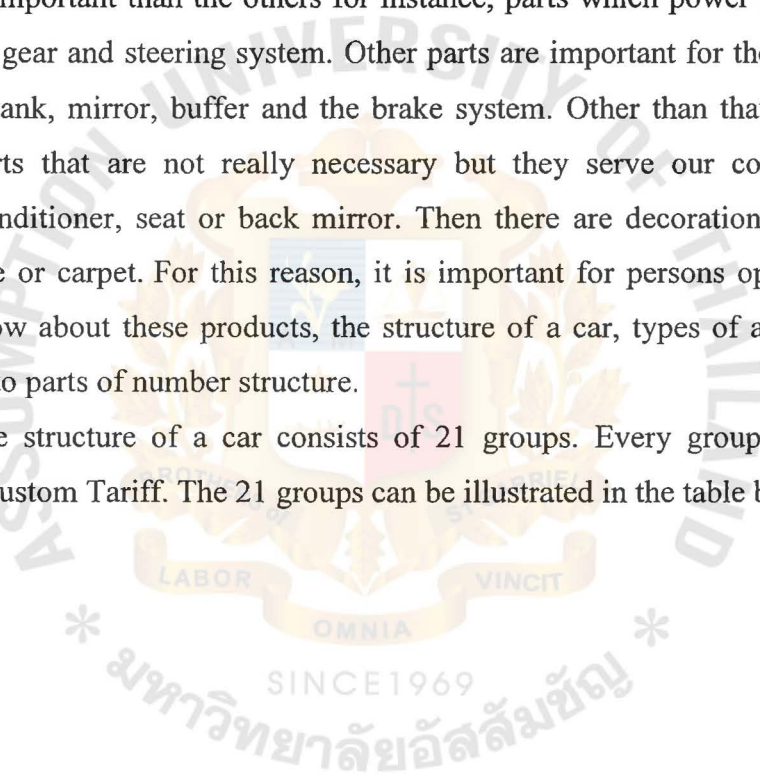
4. Others (vehicles not mentioned in 1.1-1.3) (tariff code 8703.90)

### 2.3.2 Custom tax on Auto Parts

A large number of auto parts have been imported into our country, as one car consists of ten thousands of parts and if we would examine the number of imported parts from each brand, maybe hundred thousand parts could be listed. Because there is a large number of a brand out there, large amounts of automobile parts are needed.

One car consists of over a thousand parts, not only materials of steels are needed but also made out of aluminum, copper, rubber, plastic and glass. Some parts are more important than the others for instance, parts which power the engine like the engine, gear and steering system. Other parts are important for the safety of the driver like tank, mirror, buffer and the brake system. Other than that there are many other parts that are not really necessary but they serve our comfort, for example, air conditioner, seat or back mirror. Then there are decoration parts, for instance console or carpet. For this reason, it is important for persons operating in this field to know about these products, the structure of a car, types of automobile parts and the auto parts of number structure.

The structure of a car consists of 21 groups. Every group has been classified into Custom Tariff. The 21 groups can be illustrated in the table below:



**Table 4 Custom tariff of vehicle structure**

<b>Group</b>	<b>Name</b>	<b>Component sample</b>	<b>Related Tariff (type)...</b>	<b>Duty rates %</b>
1	Engine parts	Smoking, Smoking Cap, piston ring, pump, exhaust valve	8407,8408,8409, ๓	30
2	Equipment used for engine	Radiator, fan belt, fuel filter, gas pump	8708,4010,8421, 8512 ๓	60,35
3	Electrical equipment	Starter battery, charger, set, wiper, horn	8511,8512,8507 ๓	35
4	Wire	Wires, spark plug cable, batter cable, fuses	8544,8536 ๓	40
5	Intake system	Intake and pot intake	8708,8409 ๓	60
6	Fuel system	Oil tank, oil filter, oil pipeline, oil level measurement	8421, 8708,9026 ๓	35
7	Wheel set	Pan, rubber for tires	4013,8708,4017 ๓	35,60
8	Interior parts	Soundproof sheets, sheets covering the top, mattress	8302,8702,4016 ๓	40
9	Mattress set	Seat and head backrest	9401	80
10	Windshield set	Windows and rubber at the window edges	7007,4016 ๓	50
11	Lighting	Front light, back light, flash light, cabin light	8512,8539 ๓	35
12	Suspension system	Springs up, spring pinion, automatic closer , steel frame	8708	60
13	Braking System	Wheel disc brakes, brake clutch, brake rubber	8708 ๓	60
14	Clutch system	Clutch system, spring comb, clutch pipeline	8708 ๓	60
15	Auto body	Ground, Roof, Door, both side	8708 ๓	60
16	Buffer		8708 ๓	60
17	Gross power transmission	Gear, shaft gear, gasket, cogwheel	8483,8484,8708	30

**Table 4 Custom tariff of vehicle structure (continue)**

<b>Group</b>	<b>Name</b>	<b>Component sample</b>	<b>Related Tariff (type)...</b>	<b>Duty rates %</b>
18	Steering System	Steering shaft, Steering, gear set	8708	60
19	Power System	Universal Joint, drive shaft	8483,8708	30
20	Panel (meters)	Panel, meter speed, oil panel	9029,8536	35
21	Other facilities and equipments	Air conditioner, safety belt, radio, pollution control equipment, tire	8415,8527,870 8, 8421 4	60,35

Auto parts can be divided into three categories:

**Type 1** The part can be separated easily, meaning, parts that must be combined in an industry in order to become a finished product, it can be the whole car or auto parts which can be send to the manufacturer to build it together. Removable parts can be categories into 3 types

- 1) Completely Knocked Down (CKD)
- 2) Semi-Knocked Down (SKD)
- 3) Replacement or Claimed Parts

**Type 2** Original auto parts meaning auto parts which the manufacturer produces themselves. They also herewith assure quality and their own trademark. They tend to be distributed for reparation purposes. This type of category has the same quality as those which have been used to manufacture the vehicles from the beginning. The only things that would be different would be the packages, imports, sale and sale price.

**Type 3** Artificial parts are a part that have been produced without any trademarks of the manufacturer. These parts may also be manufactured in the same industry as those parts which are being sent to the other manufacturer. The

quality is very similar; the only difference would be the trademark. However, there is another case where the factory producing these parts copies the original parts and don't send it to the manufacturer. They have their own trademark but the quality of those products is mostly very low.

### 2.3.3 Collection of import duty taxes<sup>24</sup>

Collection of import duty taxes is in accordance with the Custom Tariff Decree B.E.2530 by considering the type of vehicles and import prices as there are many different tax rates. These can be found in the Announcement of the Ministry of Finance Sor Go 1/2542 and could be concluded, as below:

Car Type	Tax rate prices	reduced to
1. Special produced vehicles	200%	60%
2. Gasoline engines vehicles		
1) Ambulance truck	30%	10%
2) Jeep	100%	80%
3) Others	200%	80%
3. Diesel engines vehicles		
1) Ambulance truck	30%	10%
2) Jeep	100%	80%
3) Others	200%	80%
4. Other types of vehicles	200%	80%

Because of the tax collection of cars imported products. In addition to the tax that the Customs Department must be saved. Customs must also levy representatives of the agencies involved which will include

1. Import duty
2. Excise tax (will be collected on behalf of the Excise department)
3. Interior Tax (will be collected on behalf of the Ministry of Interior) and
4. Value added Tax (will be collected on behalf of the Revenue Department)

<sup>24</sup> Somchai Chowchankit, Ibid., p. 9.

### 1. Import duty

Collection of import duties for motor vehicles is regulated in the Custom Tariff Decree, B.E.2530, and category no.17 part 87 type numbers 8703.

The tax payer does not only have to pay taxes according to the Custom Tariff Decree, but also Value added taxes according to the Revenue Code, Excise taxes according to the Excise department and Interior taxes (only when excise taxes have been collected)

### 2. Excise tax

Excise taxes on motor vehicles have been imposed according to the Ministry of Finance. The collection of taxes will be in accordance to the cylinder capacity and the engine power. Engine power has been defined in the custom tariff acts similar to the Excite tax act. In addition, jeep and station wagon has also the same meaning as patrol car in the Excite Tax act. Regulations regarding the requirements have been notified by the Ministry of Finance on the 1 march 2537 and Excite no. 134/2537 which has been enforced on the 4<sup>th</sup> April 2537.

Vehicle Excite Tax Calculation

$$\text{Excise Tax} = (\text{CIP. price} + \text{import duty} \times \frac{\text{Excite tax rate}}{1 - (1.1 \times \text{Excite tax rate})})$$

### 3. Interior Tax

In combination with the excite taxes, the importer would have to pay an additional 10% of the excise takes. This has been illustrated in No.2

### 4. Value-Added Tax

7% Value-Added Tax has been the standard tax rate and this number will also be used for the calculation

$$\begin{aligned} \text{Value added tax} &= \text{CIF price} + \text{Duty (every kind)} \\ &= \text{Vehicle Price} + \text{Import Duty} + \text{Excise Tax} + \text{Interior Tax} \\ \text{Value added tax} &= \text{VAT Tax base} \times 7\% \\ \text{Therefore Total vehicle tax} &= \text{Import Duty} + \text{Excise Tax} + \text{Interior Tax} \\ &\quad + \text{Value added tax} \end{aligned}$$

When comparing the custom duty and the custom tariff act, it can be seen that the types of cars have been set out differently. The reason for this may be because certain types of motors pay different excise taxes. Therefore when assessing the taxes, the inspector must examine the engine by its design. He has to know the different types of cars, size of the engine and HP in order to categorize the vehicle correctly according to both acts.

### **Importing Completely Built Unit Vehicles (CBU)**

The customs department collects the income taxes on CBU. They collect the import duties, surcharges according to the promotion of investment and tax and other surcharges according to the tax decree. Then there are the excise taxes, interior taxes and VAT.

Basis value to calculate excise taxes is C.I.F. + import taxes + surcharges (investment and tax regulation) + surcharges according to the decree + excise taxes + interior taxes

If there are no surcharges on a car, the value of the car shall be used as calculation base = C.I.F. + Import Tax + Excise Tax + Additional tax for interior

#### **2.3.4 Customs value on used cars**

Price assessment and import taxes on used vehicles, exhibit vehicles according to the Custom Act B.E. 2460 as well as vehicles according to Section 10 of the Custom Tariff Act B.E.2530 expect for classic cars has to proceed further proceedings.

##### **1) Examine the Model and Production Year**

(1) Examine the sale contract or import permit (if available) or the vehicle registration or registration approval certification or export certification.

(2) After examining (1.1) cross check the information on whether the model and the production year match or check the reference documents such as Parker's car and Japanese car.

##### **2) Assessment of the price**

(1) Use the price of the new car which the manufacturer has imported into the Kingdom or the exported prices

(2) If there is no price according to (2.1) use the price in the Parker's Car Price Guide (monthly issue) and Japanese car (yearly) which gives 25% discount price due to the FOB

(3) If it is an old car and there is no more price evidence according to (2.1) and (2.2) seek for the prices of the oldest and the newest model, check the cylinder capacity and the size of the engine which features are most similar to your car and reduce the probability of yearly price changes but no more than 20%

(4) If any modification has been done, calculate or assess the price from its current conditions

(5) If any damages occurred such as car accident, car crash, car burned down, consider from the incident and the appropriation

### 3) Determine the Value of freight trucks

(1) If you have the value of the latest freight truck agent who imported the produce, this is used to determine the value

(2) If it doesn't fall under (3.1) use the highest statistics (go 6 months backward) to seek for the most similar vehicle. If there is still no value, have the director of the import department or a custom officer consider upon appropriation

(3) If it doesn't fall under (3.1) and (3.2) compare the highest statistic but of a different model that has been imported before and is no older than 6 months. The weight, structure and features of the car shall be closely examined. If there is still no value, have the director of the import department or a custom officer consider upon appropriation

(4) If the manifesting is higher than the value in (3.2) and (3.3) use the highest number to determine the value

(5) If a vehicle has been imported into the Kingdom, pay the actual price of the air freight transportation, If it cannot be indicted, have the aircraft recheck it with airline company.

(6) If the value could not be found according to (3.1) to (3.5) use the measurements of the FOB where as 10% of the estimated FOB price shall be paid.

#### 4) Insurance assessment

(1) If there has been insurance one day before the ship enters the Kingdom, the actual figure shall be paid

(2) If a vehicle enters the country through aircraft, the actual value shall be paid.

(3) If there are no insurance evidences according to (4.1) and (4.2) use the measurement of the FOB where 1% of the estimated FOB price shall be paid.

#### 5) Use the CIF price in order to calculate the import duties

In accordance with (2) to (4) deduct the discount price of the used car in accordance with the working period and attach it hereby. The remaining shall be used to calculate the import taxes.

#### 6) Period

(1) If an original registration certification exists, or an original approval certification of the registration or an original version of the export receipt, the first registration will be considered at the start of the registration period. The person is entitled to pay the tax.

(2) In case of no original registration available, or no original approval certification or export receipt and the importer certifies that he will be providing the original documents within 30 days starting from when he placed insurance, The period shall be starting from the 1<sup>st</sup> December of the vehicle production year. The person is entitled to pay for the taxes of this vehicle.

When the importer provides the original documents, the period of work shall start as indicated in the original document.

(3) In case that a person is registered for the second time but does not have any evidence of the first registration, the period shall start from the 1<sup>st</sup> of December of the vehicle production year.

(4) In the event that the registration document is a copy, or the copy of the registration certification or export certification and the person does not have any other evidence regarding the registration. The period of usage shall start on the 1<sup>st</sup> of December of the vehicle production year and is entitled to pay the tax.

7) Vehicles which must pay taxes according to Section 10 of the Custom Tariff Decree B.E.2530

For goods exempted from or granted reduction in duty at the time of importation on account of their being imported for personal use by person is entitled for any specifically provided purpose. Use the evaluated price and duty tax according to (5) by indicating the transfer date or upon official letter for instance from the Ministry of Foreign Affairs, Protocol Department or the Department of Technical and Economic cooperation which clearly state the termination date so that the taxes can be collected. If one day prior to maturity, deduction may follow upon it.

#### 8) Evaluating exhibit and remaining vehicles

Custom law permit the usage of discount rate used on used vehicles as attached hereby. Deduct the price until the one month before distributing the vehicle.

## 2.4 Other Tax

To collect excise tax, the government officials must act within the power and authority provided by law. Law is the source of power, consisting of general and specific laws used to serve the purpose of such law and to reach the enforcement goal. Therefore, the authorized government officials should study each and every one of the laws and use them to guide the way of work while upholding fairness and transparency.

### 2.4.1 Revenue Code

The Excise Tax is used as a base to calculate the VAT, and the responsibility to pay Excise Tax arises with the responsibility to pay VAT.

Therefore, when an excise tax from vehicles is collected, this amount will contribute to the value of the imported cars to calculate the VAT. Cars produced domestically are connected to the Revenue code. As for the domestically-produced cars, the Excise Tax Act B.E.2527 Section 10 provides that

1. if the goods are inside the manufacturing plant, the liability to pay tax arises when bringing the goods outside of the manufacturing plant, except for the purpose that the goods will be kept inside the bonded warehouse and if the

manufacturer or any person utilize the goods inside the manufacturing plant, it is considered to be bringing such goods outside the plant

2. The goods kept inside the bonded warehouse, the liability to pay tax arises when bringing the goods outside of the bonded warehouse, except for the purpose of returning the goods back to the manufacturing plant or to another bonded house

As for VAT under the Revenue Code, the liability in bringing the goods outside of the manufacturing plant or the bonded warehouse, the liability to pay VAT arises with the liability to pay tax.

Subject to Section 78/3, value added tax liability for sale of goods shall be in accordance with the following rules:

1. Tax liability for sale of goods, other than those specified in (2), (3), (4) or (5), shall take place at the time of delivery of goods, except in the case where the following events take place before the delivery of goods the tax liability shall be at the time when such events take place;

- 1) Transfer of ownership of goods,
- 2) Payment received for goods sold, or
- 3) Issuance of tax invoice,

According to the provision, for domestically-produced cars, the liability to pay excise tax under the Excise Tax Acct has a close link to the Revenue Code Section 78, principally, the payment of excise tax is under the Excise Tax Act Section 10, that is, the liability to pay tax occurs when bringing the goods outside of the manufacturing plant of the bonded warehouse with the exception in the case that the liability to pay VAT under the revenue code occurs before bringing the goods outside of the manufacturing plant of the bonded warehouse, the liability to pay excise tax is considered to be occurring at the same time, even though the goods have not been brought outside of the manufacturing plant of the bonded warehouse e.g. the transfer of the ownership of the car or the car itself, the price is paid and the tax invoice is prescribed. As for cars, the excise tax liability occurs with the liability to pay VAT.

The problem under the Revenue code Section 78 is when the ownership is transferred, for the movable goods. There is no need for it to be in

writing, as provided by the Thai Civil and Commercial Code (CCC) Section 458, the ownership is transferred immediately after the parties have reached an agreement to buy and to sell. Therefore, it is hard to prove that the agreement is reached and the parties decided to buy and sell. We do not know the exact time where the ownership is transferred. Another problem is when the manufacturer announced the price at the manufacturing plant but the agents sold the goods at a different price, which is higher than the price of the former stated, resulting in the loss of tax money through the gap between the two prices.



## **Chapter 3**

### **Laws regarding Collection of Excise Car Tax Overseas**

Cars are very important in our daily life. We use them for travelling, public transportation and transportation of goods. Therefore, the tariff of vehicles has been divided into three different types: personal vehicle, vehicles below 1 ton and passenger vehicles. The imposing of taxes shall be equal between goods that have the same purpose of usage, for instance, vehicles below 1 ton shall be taxed equally to personal vehicles or personal vehicles that have been exempted due to energy consumption. These tax rates have been set to support security policies and set up diversity in energy consumption. In this paper, the researcher will illustrate his finding about foreign regulations on imposing vehicles, excise taxes and also provide case studies from both the United States of America and Korea as examples for the following:

#### **3.1 Collection of excise car tax in the United States of America<sup>25</sup>**

The collection of taxes in the United States; whether it is a direct taxation or indirect taxation, will be imposed at the level of the Federal government until it reaches the local government. An excise tax has been defined as a part of the Internal Revenue Code which will be imposed by the federal government. There are many levels of imposing taxes starting from the manufacturing phase, importing, retailing and services, also to companies and other business units. In the event of a distribution of business profits to another foreign country which would also relate to income taxation, nevertheless these are not the ones I will be focusing on in this study. In this paper, I will only be focusing on goods and service excise taxes which have clearly been stated in the law.

It has been enforced in 1994, if considering the related regulations, excise taxes in America could be divided into 4 types as follows:

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<sup>25</sup> Prapas Kong-ied, "Comparative Excise Tax Administration," Documentation Management and Academic Instruction of Excise, Sukhothaithammathirat Univesity, 2541.

- (1) Manufacturers excise taxes
- (2) Retail excise taxes
- (3) Excise taxes on services
- (4) Environmental taxes

The relevant taxes to my paper will only be (1) and (2)

### 1. **Manufacturers excise taxes**

In 1994, the manufacturers excise taxes regulation in America imposed taxation only for 5 categories

- 1) Automotive and related items
- 2) Coal
- 3) Certain vaccines
- 4) Recreational equipment and
- 5) Excise taxes on alcohol and tobacco

Hereby I will only discuss the excise tax of goods related to vehicles in each of the following:

#### Excise taxes on Automotive and related items

The law states that there needs to be an imposition of vehicle tax, one which is called “gas guzzler tax”, followed by tires taxes and then petroleum products taxes.

First of all, the manufacturer will be imposing sale tax on the vehicle which uses fuel according to the standard rate of the fuel economy varying by each model. According to the Environmental sector dealing with the regulations of such taxes, the term “Amount of Fuel Usage” shall be meaning the consumption of fuel that the vehicle has used per 1 gallon and the amount of miles that it could go within this 1 gallon (1 gallon = 3,7854 liters). For instance, if a vehicle has been manufactured for 1 gallon with a distance of below 12.5 miles, the tax rate would be \$7,700 per vehicles. (\$ means American dollar) but if 1 gallon of fuel drives a distance of over 22.5 miles, that person will not be taxed. The term “manufacturer” does also include the importer.

Secondly, the manufacturer and import taxes of the tires depend on the weight of the tires.

If the tires weigh 90 Pounds, the first 90 Pounds will be charged \$10.50. Any additional pound will be charged 50, but if the tires do not exceed 40 Pounds, no taxes would have to be paid.

Thirdly, for the excise tax on petroleum products, the law has divided the imposition on taxes into two categories. The first one is gasoline and diesel fuel tax and the second one is fuel used in aircraft.

For the gasoline and diesel taxes, the manufacturer and importer will be the one collecting the taxes, meaning that when fuel has been delivered from the refineries or fuel storage for the purpose of consumption within ones countries, the buyer will be taxed according to the amount of gallons differing by various types of fuel. For example, gasoline levied taxes at a rate of 18.3 cent per 1 gallon, however, the law exempts certain petroleum products which have been specifically set up by the Ministries for certain purposes such as for railways.

According to vehicles used in the air, the law has defined the term "aviation fuel" to be liquid (oil) which is suitable for aircraft. The taxes will be collected by the manufacturer's sale whereas the importer will be mixing such liquid with alcohol according to the Ministry's regulation.

A person responsible for paying these taxes would have to be registered and follow the regulations and conditions of the Ministry of Finance (Secretary of the Treasure Department), in some cases, the person might also need to provide collateral insurance.

## **2. Excise tax on retail products**

According to the law of the United States in 1994, only certain retail products have been categorized to be imposed whereas the retailer would be responsible for paying these taxes. There are three categories as follows:

- 1) luxury passenger vehicles
  - 2) special fuels and
  - 3) heavy truck and trailers
- (1) Luxury passenger vehicles

Not only would you have to pay the manufacturer excise tax, but also for the excise tax on retail products. According to the law, a vehicle will be taxed if it has 4 wheels and weighs no more than 6000 pounds whereas the real burden really starts when the first retail sale starts where the manufacturer and the import tax rate would be 10 percent of the sale price but only the amount that exceeds \$30,000 will be taxed.

Not only does the federal government collect the excite taxes but the people would also have to pay certain business taxes which vary from each government. Therefore the excite tax rate of the federal government must exclude any other sale tax bases especially impose taxes by states and local government. When excluding the sale tax rate, the vehicle does not exceed 30,000; this vehicle would not have to be levied of excise tax.

However, there is also an exemption for those who bought the vehicle for use of passenger transportation or use it for certain government needs such as for police use, firefighters or helping victims and it doesn't matter on whether it has been used by the federal state or local government.

## (2) Certain Fuels

According to the regulations "gasoline" does also include petroleum product which consists of gasoline and other products which are used as additives to gasoline. All these fuels which are considered as gasoline are tax-exempted.

Excise taxes for retail fuel are applicable to other diesel fuels and fuels which are used for the engines, including natural gases which are used as fuel for vehicles, trains or even ships. The collection of tax rate is calculated in gallons or other calculation units which have been approved. There are many different tax rates, approximately 6 cents per gallon which would have to be paid by the retailer. In addition, the law also insists of such retailers to be registered.

The main reason for collecting tax on fuel is because it is associated with the vehicle and the road. The law therefore exempts excise tax in certain operations and for some operations such as transportation by sea, the rate for the tax which has been lower than in other operational use but only as long as it is transported within the country.

### (3) Heavy truck and trailers

The U.S law requires collection of excise tax for heavy trucks and large trailers for the first retailer sale. Tractors have been designed to use as transportation by using components of trailers or semi trailers.

Nevertheless, a truck not exceeding 33,000 pounds and a trailer not exceeding 26,000 pounds will be exempted for excise tax but must comply with the conditions and regulations of the Ministry of Finance.

## 3.2 Collection of excise car tax in the Republic of Korea<sup>26</sup>

In Korea, the federal government collects the excise taxes of the countries. These excise taxes can be defined as following:

- (1) Special excise tax
- (2) Liquor Tax
- (3) Telephone Tax
- (4) Transportation Tax

Each type of excise tax has their own regulations but everything has been enclosed into the same chapter.

Because there are many more other services and goods, there is also a 5<sup>th</sup> category in the Korean law; the special excise tax.

Group 1 consists of automotive products but excludes vehicles with engines of 800cc or less;

1. Vehicles with engines over 2000 cc and camping cars, tax rate by value of 25 percent
2. Vehicles with engines of 1,500 - 2,000 cc, tax rate by value of 15 percent
3. Vehicles with engines less than 1,500cc and motorcycles, tax rate by value of 10 percent

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<sup>26</sup> Ministry of Finance and Economy of Korean, Korean Taxation (Seoul: n.p., 1995), pp. 192-199.

Group 2 consists as follows:

- 1) Gasoline, tax rate is 345 won per liter
- 2) Diesel, tax rate is 40 won per liter
- 3) Petroleum gas including liquefied petroleum gas, tax rate of 18 won per liter
- 4) Natural gas including liquefied natural gas, tax rate of 14 won per liter

There have been 3 prices used to calculate the Bases;

- 1) When the sale price of the good is the same as specified in Category 5, group 1
- 2) Sale price of the good at the time when it got exported from its industry, any other good then specified in 1) and has been exported from the industry
- 3) Price that might loss its value due to custom duties (Price CIF+ Customs)

The calculation of excise tax on imported goods is not included in the base and the calculation of the tax. Therefore it can be concluded that according to the Korean regulation, the rate and the value of a goods has been fixed. According to the law, they shall use the price as the base for tax calculation. In comparison to Thailand's excise tax law, it usually defines the amount and rate. Nevertheless when we calculate the taxes we have to pay, we usually have to pay for the higher amount which has been calculated.



## **Chapter 4**

### **Analysis of the problem of illegal importation of exotic cars**

Automotive Products are one of the most common goods people use to avoid customs. When a vehicle is imported into Thailand, a tax rate higher than 200% would have to be paid. This could easily lead to illegal operations attempts. Main policies of the Department of Customs emphasize on the efficiency in the revenue tax collection, trying to make it as effective as possible. In addition, the administration of the imposition of the excise taxes must adhere to the law and the government body who have full authority in monitoring. Nevertheless, current taxation laws are still ambiguous, which shows that the law still has some gaps which lead to taxpayers being unable to pay for those taxes or certain people taking these opportunities to avoid paying the taxes whereas at the same time the law cannot punish them. Various problems and their obstacles in collecting excise taxes can briefly be described as follows:

#### **4.1 Analysis of the problem of excise car tax on car and parts**

Any good that needs to collect their excise taxes have been imposed to pay the tax for their value and quantity. There must be calculated taxes at both value and quantity rates. After the calculation, any rate that shows the higher income, the tax payer must pay to that higher amount. Therefore, the Excise Tariff Act, B.E. 2527 (1984) and the Excise Tax Act BE 2527 is related and have to always work together in the management of tax collection.

For the cars that need to have the excise taxes collected and have been ruled at the end.

From the definition above, we can divide the elements of cars as the follows:

1. Must be a car with 3 wheels or more, and
2. Must be a car with the use of the engine, electric power or another power usage.

Therefore, the cars that need to pay for excise tax must have these features. And there always is the loophole so that they have to take action strictly based on the rules. That makes the calculation of the vehicle products which have calculated the excise tax, which must have the features similar to the elements so that these avoid the cause of paying taxes which is, To import the used cars' auto parts from foreign countries and assemble in the domestic. Most of them are the expensive cars or 4-wheel drive cars. Sometimes they are quite new but were taken in pieces. For example, cut off the half of the cars and importing one by one. And then, they assemble them together and sell. It is called 'the operated cars' and always ask to beat down the taxes by claiming that they are the cars which were assembled from used parts. So this is the tax being avoided. The problems of the assembled cars in the country came from the cars that were produced in other countries and they all are the passenger cars but then, they are imported into the used parts, and assemble them together to be the pickup trucks and ask for not paying taxes by claiming that there is no regulation in the Excise Tariff that pickup trucks have to get the taxes calculated.

In some cases, the original cars were the passenger cars, Jeep cars or roofed cars of which the importers have taken the roofs off, other countries turn then into a pickup truck which is then imported to Thailand. They claim that the pickup truck does not need to be paid for the taxes because there is no regulation in the Excise Tariff. This is to avoid taxes as well. Some of the automobiles manufactured in Europe, which are more than 10 million Baht each, were imported in the parts as well but have never assembled the genuine parts and engines together, but placed the Japanese engine. Also wrought the body of the car and the plastic fiber doors by using cheap materials, therefore, they all are in lower value, so that they pay the taxes on the lower amount. After they paid less amount of the tax, they took off the Japanese engines and also removed the plastic fiber parts out then placed all the genuine parts back turning to be the totally and completely genuine European cars. This case is an avoidance of tax as well.

For another, one case is about the imported vans with 7 seats, but avoiding the tax by adding more than 10 seats, and claiming that they are the buses that seat up more than 10 seats which do not have to pay for the taxes. Some models are more than 220 horsepower which, is subjected to pay tax in high rates but they claim that

they were not over 220 horsepower. After they paid fewer taxes, they adjusted the engine power to be more than 220 horsepower. Originally, it was the way to avoid tax. Some importers have imported passenger vans but put two passenger seats next to the driver seat and in the back of the driver seat which has not had any seats put and is, left for free space and claimed that of loading goods. Also placed is the solid steal instead of the windows. They claim that the van is the lorry, not the passenger vans and have no need to pay for the taxes. There was the prosecutions and defense to the Supreme Court. And the Supreme Court has judged that they are totally passenger vans and need to pay for the excise tax.

#### **4.1.1 Analysis of excise tax on car**

Based on the above statement, we can divide the issues related to the excise tax on car collection as follows:

1. A car that is required to pay for the excise tax must be a 'Car' in the definition which means each element must be the same as the definition too. So if there is really the import of cars, but in pieces or parts, that means they are not a 'Car' in the definition that is needed to collect the excise taxes. Therefore, it is hard to follow up and define which ones are the component parts of any car brands. And the importer would be waiting to assemble the cars and wear another car's registrations. So this is very difficult for the authorities to monitor. And they could not collect the car taxes because there is no legal status to consider that those materials are called 'cars'.

2. From the definition of 'Car' to be collected as the excise tax this, is a vehicle which has more than 3 wheels. If the auto makers have already assembled a car and it is able to drive like the other cars, but if they have not paid for the tax, when they heard that the government will be working on anti-illegal goods, the owner of that car will be afraid of being arrested. They will park the car at home and remove all its 4 wheels so that we can see this is not called 'Car' under the law. So it is unable for the authorities to arrest them, and still be waiting for the car to consist of 4 wheels. Because of the strictly legal interpretation, any illegal action has never been arrested at all.

3. According to the Excise Tariff Act 2527 (1984), Part 5, In addition to the definition of the word 'Car', there are the provisions that mean a vehicle is regarded as passenger car, transport car, and pickup truck. And each car is divided into many different types such as passenger car which is divided to passenger car and semi- truck- passenger car, the passenger car with the carry-on. Each type is also divided by the amount of CC. This is in order to facilitate the classification for taxation. Allowing those who want a lower tax change or adjust the car's appearance to a car that does not need to pay for engine tax more than 3000 CC engine into the country but stating that the engine is not over 2000 CC to avoid tax or to pay lower tax. Because cars with cylinder capacity do not exceed 2000 CC and has engine capacity not exceeding 220 horsepower, this will be taxed to 30 percent. But the passenger cars with cylinder capacity exceeding 3000 CC, or has engine power above 220 horsepower, will be taxed to 50 percent.

#### **4.1.2 Analysis of excise tax on part**

According to the above statement, we can separate the issues related to the excise tax on part collection as follows:

1. To determine the product 'Car' under the provisions of the Tariff Excise Act 2527 Part 5. It can be separated as follows: To be a vehicle with three wheels and above and run by the engine, electric power or another power usage. This does not cover the essential parts of the vehicle components. There is no excise tax collection for the engine or chassis parts as these are the important components of the car. So this causes the gap and the loopholes to those who wish to find a way to avoiding taxes.

2. The statements about the wheel which are determined from 3 wheels, does not cover to the car that is able to move without a wheel or any car's components that make the car be able to drive. This causes the gap and the loopholes to those who wish to avoid taxes. It shows that this car is not a 'Car' under the law and not a car that needed to pay any excise tax.

3. The collection of the taxes for CKD parts will be not collecting the excise tax but is charged a special tax duty at a rate of 10 percent of all the tax duty which should be according to the announcement of the Ministry of Finance 2/2542.

These provisions could be another channel for the trader to buy a car from other countries such as Japan. And then, disassembles the parts and imports to the country. It is a different agenda and different parties. They will pay the tax as just for the used parts. Later, they will assemble the cars and finish them in the country.

4. To assemble using old automobile components is an indirect damage of automotive industry. Either the new cars manufactured locally or the whole cars imported from abroad are affected by the problem regarding an importation of the components of luxurious car and old automotive parts assembled for sale at cheaper price in Thailand. In order that the importation of vehicle parts for assembly in Thailand levied at lower tax rate than the importation of whole cars or in another word called CBU causing not only afflictions on many car distributors but also negative impacts on the image of the distributors in the country, this leads to an unfair competition for such business. Since the vehicle components removed from abroad and then reinstalled in Thailand for low-priced sale, the duties on imports levied from this type of importation cost a lot cheaper than those levied from importation of whole cars. Assembling spare parts or old vehicle components into cars and selling them in the market is low-cost which can be sold at cheaper prices than those manufactured and distributed locally. Moreover such cars assembled individually are usually advertised on the internet through websites such as some Mini car models set at the price of 2-3 million baht each are sold at only 300-600 thousand baht each. We have to accept that some sections under Thai law influent the assembly of automobile components to be certified by Thai mechanical engineers indicating that those cars are assembled by such mechanical engineers themselves. These cars can be registered at the Department of Land Transport. Anyhow during the preceding years, this type of business has been carried out in the form of the removal and installation of automobile parts and mechanical engines. More importantly it can hardly be proved whether those vehicle parts are imported or stolen. The solution to especially seal the loophole of the law promoting the importation of automobile components from foreign countries for an assembly and distribution in Thailand I would like to suggest are as follow

1) The importation of used vehicles shall be prohibited by virtue of the Ministry of Commerce. Due to the free trade policy, ready-made vehicles are

allowed to be imported into the country. Thus it is not necessary to import used vehicles. Nevertheless the Government also characterized the policy to encourage the local automobile assembly in order to increase the hiring rate of the country which will cause a good impact on Thai economy. Accordingly, the importation of used vehicles shall be prohibited.

2) In case of being unable to stop those used vehicles imported from abroad wherefore regarding (1), tax measure shall be exercised as the followings

(1) Tax rate – high tax rate shall be exercised to be compatible with the brand new cars;

(2) Cost assessment – there should be the total price of special equipments specified such as the price of air conditioner, radio, aluminum alloy wheels and so on while the discount for the depreciation shall be specified at lower rate.

If the tax policy imposed regarding (2.1) and (2.2) has an impact on being able to collect less amount of tax levied, anyhow, the Government is able to collect more tax arisen from the importation of brand new cars has recently been increasing in a large number.

## **4.2 Analysis of the problem of custom tax on car and parts**

### **4.2.1 Analysis of custom tax on car**

Importing cars illegally into the Kingdom, especially from the Thai – Malaysian borders may happen for the following reasons.

1. Result of car thefts in Malaysia. After the car has been stolen, the thief will send it over the borders and sell it to a customer in Thailand. Off Road or 4XWD are very common cars for these operations as they tend to be cheaper than half the market price and this attracts consumers in Thailand.

2. Because the government has certain policies which promote tourism in Malaysia, Singapore and other neighboring countries, travelers are able to take their own vehicles over the borders but only for temporary use. In addition, they would have to do an insurance bond in order to be tax-exempted. This has shown to

be a great opportunity for many embezzlers to avoid customs duties. After contacting their buyer through an agent in Thailand, the embezzlers will be entering one border and inform the delivery at another destination. By the time the officials re-checked the information, it is already way too late as the smuggler may have already escaped to the neighboring country.

3. In the case of importing cars into the Kingdom through certain taxation privileges, such as delivering the vehicles into the industrial plantation for the purpose to export them afterwards by manifesting old used vehicles and repair or RE-BUILD them in order to export them out of the Kingdom afterward. Manufacturers with evil minds may forge export documents to cut off the authorities' accounts but in fact this car has been smuggled within the country.

#### **4.2.2 Analysis of custom tax on part**

From importing spare parts of old used cars is attributed to car imports after being successfully finished. This case is to avoid taxes, import duties as complete vehicles, which was much higher duty. In the past, the Ministry of Commerce had announced a ban on import auto body (chassis) and then into the Kingdom. But today, this announcement has been canceled so this is another channel that traders can buy and drive cars from foreign countries such as Japan and then to isolate parts imported into the Kingdom. Different action and different agenda by the tax will look like old used car parts. Later it will assemble the cars finished in the country and the law of the Department of Transport has opened opportunities for carriers that can be assembled in the car and a strong verification engineer can apply for registration of vehicles and proof of import of the various parts of the car significant enough to be a cars or, if unable to register a car assembled. There is a way more complexity as follows.

1. The wearing out of debris is how the car parts and old cars used to come into the Kingdom to the assembly later on. When the car is assembled, corruptors will remove and amend the serial number of the car body and also modify the engine number. Both the number and chassis and engine and car emerging are taken from a number of car brands, including the same kind of car with the car that is registered before that with the Department of Transport, but the car that has an

accident and damaged hence, destroyed, prevent, the evidence that there are two cars with the same numbers of chassis and engines in this case of which entrepreneurs seek ways to auction from the authority of the government, as well as various insurance companies. The car that bids from the auction is a car that is declared to be in a non-usable condition. Then they will buy a car in its class or close model from Japan.

2. Where there the law of the land, Transportation Department's give the opportunity for the registration of the use of the car above. In some occasions, the identification evidence does not prove the import customs that have details or a list of auto parts based on evidence submitted for official record of the user to complete enough to be assembled into complete vehicles or not. They only look at the strong evidence of credentials of the car and then the car can be registered for use. In this case, if the customs officers can be contacted or coordinate information for the official record of registration for the vehicle in question, especially now that there is a high possibility that a van is used to type 11 seats - for public transportation, that is imported from Japan and not a car that is sold sale by the car dealer company. Such vehicles can be seen as vehicle registration of the assembled car. With not enough evidence of auto parts imports to compose a car in perfect condition, in this case, it is considered as an avoided tax payment case, which is not fully paid tax and violate the customs laws. This car lead to arrest.



**Table 5 Custom and Excise Tax Comparative Charts**

<b>Tax Rate</b>	<b>Custom</b>	<b>Excise</b>
<b>Car</b>	Custom Tariff Decree B.E.2530 1. Special 60% produced vehicles 2. Gasoline engines vehicles 10% Ambulance truck - Jeep 80% - Others 80% 3. Diesel engines vehicles 10% Ambulance truck - Jeep 80% - Others 80% 4. Other types 80% of vehicles	Excise Tax Act B.E 2527 1. Passenger car according in part (05.01)  37.50% - not exceeding 2400 cc 43% - exceeding 2400 cc but not exceeding 3000 cc - exceeding 3000 cc 50% - passenger car meeting the full requirements 32% 2. Vehicles with less than 10 seats (05.02)  30% - not exceeding 2000 cc - exceeding 2000 cc but not exceeding 2500 cc 35% - exceeding 2,500 cc but not exceeding 3000 cc 40% 50% - exceeding 3000 cc

**Table 5 Custom and Excise Tax Comparative Charts**

<b>Tax Rate</b>	<b>Custom</b>	<b>Excise</b>
Part	Custom Tariff Decree B.E.2530 Auto Part      30- 80%	Excise Tariff Act B.E. 2527 Auto Part (CKD) (05.09)      20%



## **Chapter 5**

### **Conclusion and Recommendations**

According to the Customs Department, taxation for importing completely-built vehicle differs from other products. In the provisions, there are clear definitions on the ranges of types, import duty rates as well as how to calculate the import taxes which would need to be paid by the tax payer as the import duties tax would be levied on its total value.

According to the Decree on Customs Tariff Act B.E.2530, Chapter 17, Part 87, a vehicle that has been categorized as a good, needs to be taxed and imposed differently as other goods. Not only would there need to be an imposition on import duties and VAT but also excise taxes which would need to be imposed. The tax rate may vary for each vehicle depending on the type of car and the designated tariff of each category. From my study, the following could be concluded:

#### **5.1 Conclusion**

All imported goods which have been imposed duties taxes belong to the State revenue. Collections of taxes for high-level vehicles have been evaluated to calculate the import tax. These taxes are calculated differently from other general goods. In addition, the government also modifies the rules and procedures of the assessment of the import duties to provide a suitable economy and trade.

There are several governmental units which monitor the import of vehicles in order to be in accordance with government policies. This is, according to the Ministry of Industry, the Ministry of Commerce and the Ministry of Finance. For the Ministry of Finance, there are three main government units monitoring:

1. The Customs Department is responsible for appraisal and collection of import tax duties, price evaluation and determination of the import tax rate. The Customs Department needs to adjust these regulation all the time in order to conform with the policies of the government not only on vehicles but also on manufacturer within the country.

Therefore, there have been certain improvements on pricing evaluation according to the Customs Act BE 2469. Then improvement is in regards to import tax duties according to the Decree on Customs Tariff Act 2503 and the Decree on Customs Tariff Act 2530. For instance, it could be seen that when the government has strict regulations in regard to imports, the customs department also sets up a rather high evaluation measurement and tax rate on imports. This has also been verified as a prevention measure against the import of ready-built vehicles.

2. Revenue Department – Before B.E 2535, the Revenue Department defined the tax rate regulations on completely-built vehicles and the rate was mainly higher than any other products due to protection policies against imported completely-built vehicles and to support manufacturers within the country. The Revenue Department had assigned the Customs Department to collect trade taxes for import into the Kingdom.

Since 2535, the Revenue Department has changed the system from imposition of taxes to a VAT system. The VAT rate is 7% for imported complete-built cars which would equal the rate of tax collections of other products. These collections have still been made by the Customs Department.

3. Excise Tax Department – The excise department has begun to play a role in tax collections for manufactured vehicles when the Revenue Department has changed the taxation of trade to a VAT system, imposing 7% VAT rate which would equal other goods. However, the government considered these vehicles as luxury goods and therefore the Excise department collects more taxes on these specific goods. If they have been imported into the Kingdom, the department of customs who have been authorized by the excise department, will be collecting these excite taxes.

Import tax rates for complete built units cars (CBU) smaller than 2300 CC, impose a tax rate of 100 percent. This rate has dropped from a 300 percent rate; this has also been applied in order to reduce the risk and impacts on manufacturers within the country. The government has also reduced import duty tax on vehicle parts (CKD) from 112 percent to 20 percent. Medium and larger parts will be charged with the same rate as before which is 40 percent unless it has been composited within the country (CKD) where only 30 percent will be imposed.

Moreover, the rate of business tax rate has been increased by 10 percent for vehicles over 2300 cc petrol engine. They have increased from 30 percent to 40 percent tax rate. For diesel engines the imposition of tax the rate is still 40 percent. If a vehicle is below 2,300 cc, the tax rate will be reduced to 35 percent both for petrol and diesel engines. This must also include a local tax rate of 10 percent of the commercial storage of import fees. All the other import fees (surcharged) shall hereby be cancelled.

Besides the changing of the standard profit rate which decreases from 80 to 26 percent and 11 percent for imports of automotive components, the effect of changing this import taxation structure and surcharges are mentioned above. The price of the vehicles has been reduced to 50 percent, for instance, import price of C.I.F of cars less than 2,300 cc will be reduced to 136.06 percent whereas formally it nearly reached 400 percent, which would make the car cheaper by 52.51 percent while the tax burden of cars exceeding 2,300 cc has been reduced to 208.66 percent from the existing 600 percent, meaning that the price of the car would be cheaper by 56.56 percents.

In regard to illegal imports of luxury cars, the smugglers tend to use the loophole in the law to avoid customs duty. These issues could be concluded as follows:

#### **5.1.1 Problem of excise tax on cars**

1. Cars that require to be paid the excise tax must be a 'Car' in the definition which means each element must be the same as the definition too, so if they are really the import of cars, but in pieces or parts, that means they are not a 'Car' in the definition that is needed to collect the excise taxes. Therefore, it is hard to follow up and define which ones are the component parts of any car brands. And the importer would be waiting to assemble the cars and wear another car's registrations. So this is very difficult for the authorities to monitor. And they could not collect the car taxes because there is no legal status to consider that those materials are called a 'car'.

2. From the definition of a 'Car' to be collected the excise tax, this is a vehicle which has more than 3 wheels. If the auto makers have already assembled a

car and it is able to drive like other cars, but if they have not paid for the tax, when they hear that the government will be working on anti-illegal goods, the owner of that car will be afraid of being arrested. They will park the car at home and remove all its 4 wheels so that we can see this is not called a 'Car' under the law. So it is unable for the authorities to arrest them. And they will still be waiting for the car to consist of 4 wheels. Because of the strictly legal interpretation, any illegal action has never been arrested at all.

3. According to the Excise Tariff Act 2527 (1984), Part 5, in addition to the definition of the word 'Car', there are the provisions that means a vehicle which are considered passenger cars, transport cars, and pickup trucks. And each car is divided into many different types such as a passenger car which is divided to a passenger car, semi-truck-passenger car and the passenger car with the carry-on. Each type is also divided by the amount of CC. This is in order to facilitate the classification for taxation. Allowing those who want a lower tax change or adjust the car's appearance to a car that does not need to pay for engine tax more than 3000 CC engines into the country but stating that the engine is not more over than 2000 CC to avoid tax or to pay lower tax. Because there are cars with cylinder capacity not exceeding 2000 CC and have engine capacity not exceeding 220 horsepower, they will be taxed by 30 percent. But the passenger cars with cylinder capacity exceeding 3000 CC or has engine power of above 220 horsepower will be taxed to 50 percent.

### **5.1.2 Problem of excise tax on parts**

1. To determine the product 'Car' under the provisions of the Tariff Excise Act 2527 Part 5. It can be separated as follows: To be a vehicle with three wheels and above and run by the engine, electric power or another power usage, this does not cover the essential parts of the vehicle components. There is no excise tax collection for the engine or chassis parts as these are the important components of the car. So this is caused the gap and the loopholes to those who wish to find a way to avoiding taxes.

2. The statements about the wheel which are determined from 3 wheels, does not cover to the car that is able to move without a wheel or any car's components that make the car be able to drive. This causes the gap and the

loopholes to those who wish to avoid taxes. It shows that this car is not a 'Car' under the law and not a car that is needed to pay any excise tax.

3. The collection of the taxes for CKD parts will be not collecting the excise tax but is charged a special tax duty at a rate of 10 percent of all the tax duty which should be according to the announcement of the Ministry of Finance 2/2542. These provisions could be another channel for the trader to buy a car from other countries such as Japan. And then, this disassembles the parts and imports to the country. It is the different agenda and the different parties. They will pay the tax as just for the used parts. Later, they will assemble the cars and finish them in the country.

### **5.1.3 Problem of custom tax on cars**

1. Result of car thefts in Malaysia. After the car has been stolen, the thief will send it over the borders and sell it to a customer in Thailand. Off Road or 4XWD are very common cars for these operations as they tend to be cheaper than half the market price and this attracts consumers in Thailand.

2. Because the government has certain policies which promote tourism in Malaysia, Singapore and other neighboring countries, travelers are able to take their own vehicles over the borders but only for temporary use, in addition they would have to do an insurance bond in order to be tax-exempted. This has shown to be a great opportunity for many embezzlers to avoid customs duties. After contacting their buyer through an agent in Thailand, the embezzlers will be entering one border and inform the delivery at another destination. By the time the officials re-checked the information, it is already way too late as the smuggler may have already escaped to the neighboring country.

3. In the case of importing cars into the Kingdom through certain taxation privileges, such as delivering the vehicles into the industrial plantation for the purpose to export them afterwards by manifesting old used vehicles and repair or RE-BUILD them in order to export them out of the Kingdom afterward, manufacturer with an evil mind may forge export documents to cut off the authorities' accounts but in fact this car has been smuggled within the country.

4. To assemble using old automobile components is an indirect damage of automotive industry. Either the new cars manufactured locally or the whole cars imported from abroad are affected by the problem regarding an importation of the components of luxurious car and old automotive parts assembled for sale at cheaper price in Thailand. In order that the importation of vehicle parts for assembly in Thailand levied at lower tax rate than the importation of whole cars or in another word called CBU causing not only afflictions on many car distributors but also negative impacts on the image of the distributors in the country, this leads to an unfair competition for such business. Since the vehicle components removed from abroad and then reinstalled in Thailand for low-priced sale, the duties on imports levied from this type of importation cost a lot cheaper than those levied from importation of whole cars. Assembling spare parts or old vehicle components into cars and selling them in the market is low-cost which can be sold at cheaper prices than those manufactured and distributed locally.

#### **5.1.4 Problem of custom tax on parts**

From importing spare parts of old used cars, is attributed to car imports after successfully being completed. This case is to avoid taxes, import duties as complete vehicles which is much higher duty. In the past, the Ministry of Commerce has announced a ban an import auto body (chassis) and then into the Kingdom. But today, this announcement has been canceled so this is another channel that traders can buy and drive cars from foreign countries such as Japan and then to isolate parts imported into the Kingdom. Different action and different agenda by the tax will look like old used car parts. Later, it will assemble the cars finished in the country and the law of the Department of Transport has opened opportunities for carriers that can be assembled in the car and a strong verification engineer can apply for registration of a vehicle and proof of import of the various parts of the car significant enough to be a car. Or, if unable to register a car assembled, there is a way more complex as the following.

1. The wear of debris is how the car parts of the old car used to come into the Kingdom to the assembly later on. When the car is assembled, the corruptor will remove and amend the serial number of the car body and also modify the engine

number. Both the number and chassis and engine and car emerging are taken from a number of car brands, including the same kind of the car with the later that is registered before that with the Department of Transport but the car had an accident damage to be destroyed to prevent the evidence that there are two cars with the same numbers of chassis and engine. In this case, entrepreneurs seek ways to auction from the authority of the government, as well as various insurance companies. The car that bids from the auction is a car that is declared to be in a non-usable condition. Then they will buy a car in its class or close model from Japan.

2. Where the law of the Land Transportation Department gives the opportunity for the registration the use of the car above, in some occasions, the identification evidence does not prove the import customs that have details or a list of auto parts based on evidence submitted for official record of the user to complete enough to be assembled into complete vehicles or not. They only look at the strong evidence of credentials of the car and then the car can be registered for use. In this case, if the customs officers can be contacted or coordinational information for the official record of registration for the vehicle in question, especially now as there is a high possibility that a van used to type 11 seats - for public transportation that is imported from Japan and not a car that is sold by the car dealer company. Such vehicles can be seen as vehicle registration of the assembled car. With not enough evidence of auto parts, imports to compose a car in perfect condition was. In this case, it is considered as an avoided tax payment case which is not fully paid tax and violate the customs laws. This car lead to arrest.

## **5.2 Recommendations**

Nowadays, it cannot be denied anymore that “cars” have become one of the 5th elements in today’s era. So many entrepreneurs want to become the top in the automotive industry. Then manufacturer tries to meet the consumer’s expectations. This would also include low production costs but profitable satisfaction which might sometimes even lead to manufacturer operating illegally and because currently importing a vehicle into Thailand, a tax rate of 200% or more shall be imposed; smugglers tend to see this as an opportunity for their own benefits.

Therefore Thailand should seriously consider and provide a clear target to develop capabilities and better governance of their country. Below are some of the researcher's suggestions:

### **1. Amendment of the Motor Vehicle Act B.E.2522**

Section 7 states that a motor vehicle to be registered under this Act must meet standards set by ministerial regulations and must pass the inspections of the Department of Land Transport.

If the applicant registers for a public transportation car, automotive business or car service, he has to make sure that the car is characterized in accordance with the ministerial regulations.

These provisions, however, do not cover all rights related to vehicles because the Department of Transport permits anyone who has a car to register it without sometimes not even checking the import evidences from the customs and whether the details or list of automobile parts are actually the right one in order to manufacture a standard car. They only check the evidence of the stability of the car.

Therefore, there should be an amendment in Section 7 of the Motor Vehicle Act B.E. 2522 that the inspector must examine all the customs import evidences and the details in order to make it more accurate and right when importing vehicles into the country.

### **2. Amendment of the Excise Tariff Act, B.E. 2527 (1984)**

1) According to Excise Tariff Act, B.E. 2527 Part 5, vehicles are another product where excise taxes are imposed. Vehicles have been divided into three categories; passenger car (05.01), bus with less than ten seats (05.02) and others particulars as notified by the minister in the government gazette (05.90).

The researcher has a very strong interest for the 3rd categories because import duties for imported automobile parts have been reduced more than the import tax rate on Completely-Built Unit (CBU) in reference to the Announcement of the Ministry of Finance Sor Go 1/2542 No. 5 which imposed a reduction to only 20% for any kind of Tariff category. This, however, must comply

with the regulations and conditions of the Ministry of Industry and the Customs Department.

For CKD parts, no excise tax will be imposed but additional duty of 10% of the duty value will need to be collected according to the announcement of the Ministry of Finance Sor Go 2/2542.

This may be an opportunity for consumers to purchase their motor vehicles from foreign countries such as Japan. The automobile parts would be split into smaller parts and then imported into our country while paying taxes for an old used car and then put them back together as a completely-built unit within the Kingdom.

Therefore, we need to amend type Part 5, type 05.09 of the Excise Tariff Act B.E. 2527 to regulate that the same tax rate which shall be used for completely-built unit cars in order to fill in the gap to prevent tax avoidance. Currently, the import duties on completely-built unit vehicles are very high.

2) Tax measurement should be applied in order to collect auto parts for luxury vehicles and used spare parts from other countries which will be assembled in Thailand. The tax rate would set high, so, after calculating its tax, it is equivalent to the new cars. Besides, the assessment should consider the special accessories such as air-condition, audio, magnesium wheels. Lastly, depreciation would set low. These measurements will not have effect in collecting tax.

3) Importing cars by declaring them as an auto part in order to pay less tax is a problem nowadays. Therefore, the regulations which force importers to present documents relating to the objective of importing auto parts must be passed. Such documents will require importers to express their objectives whether the imported auto parts will be used as spare parts or to assemble as a car. The evidences such as order forms or invoice shall be presented to the officers for inspection.

4) Should be an improvement on the statement about the wheels of the Excise Tariff Act of 2527, Part 5. Because the cars in the future might not be using the wheels to drive but the caterpillar tractor so that might make the cars that are needed to pay excise tax turn into the non-taxable cars. Therefore, the statement about the car from 3 wheels or more should cover the car that is able to move without a wheel or any vehicle components that make the car be able to move. When

the wheels have been put in the car, it should be considered that it is a car that is needed to pay the excise tax.

5) Legislation that defines the meaning of car products cannot be implemented in the taxation from the used part trader because it is not a 'Car' in the definition in Excise Tariff Act, 2527 (1984), and if they take the engine or chassis to produce a car and already paid for the tax, this should take it to reduce the excise tax of a car. With the provisions of Section 101<sup>27</sup> of the Excise Act 2527 which already supports, or the collection of the taxes on car parts, in this case, there are various parts of the car assembled all together or able to assemble them together.

6) Tax levied from the importation of old automobile components regarding Section 8(1) paragraph 3 under Excise Tariff Act B.E. 2527 shall be considered in response to the amount specified by The Director-General of the Excise Department according to the principles and measures prescribed in the ministerial regulation for the benefits of excise. The Director-General of the Excise Department by virtue of the Minister shall have power to clarify the cost of such products manufactured in the Kingdom of Thailand. In order to be deemed as a general standard for excise tariffs calculation, The Director-General of the Excise Department shall have charge and control in prescribing the excise tariff rates for cars assembled from old or used components to be consistent with the excise tariff rates for brand new cars.

### **3. Good Cooperation with involved Authorities should be established**

If any suspicion arises, the Forensic Police department shall examine the modified part and mark a number onto the tank and motor. This shall be used as proof for further investigation.

Good coordination and communication with the transportation officials who are responsible for the registration shall be established in order to make them understand that the import documents are incomplete. The officials shall also revoke the license plate (Under the Land Transport Department, if the license registration process is incomplete at any stage. The law gives the authorized officials the power

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<sup>27</sup> Section 101 Excise Tariff Act, 2527.

to revoke the license plates) then proceed the arrest. Pathumthani, Angthong and Lopburi have the highest crime statistics on registered cars.

Any manufacturer who wishes to reduce the tax on the goods which are specified in the ministerial regulations by taking the amount of taxes under this act that have been paid already, for the products which were used as raw materials or components in the production, can deduct from the amount of taxes to pay for the goods.

They will need to apply and follow the rules and conditions of the Director. The decision of the Director on the amount of the request to reduce tax shall be final.

#### **4. Adjourn Car Auctions of the Customs Department**

Car auctions of the customs department are another channel for the manufacturer to launder illegal vehicles. The manufacturer will have to closely monitor the proceedings and public auction of the Customs Department, especially when they have a certain car in mind.

Some of them may pull some strings to cut a few process steps and buy the car for a very cheap price (because the condition of the car is not 100%) After winning the auction, the manufacturer puts the formally disassembled parts into the auctioned car and uses the auction evidence to register the car. In order to stop this cycle, auctions shall be adjourned to prevent the import of illegal cars into our country.

#### **5. Exhibit Destruction**

There should be a destruction of exhibits in order to stop the distribution cycle within the country because importing illegal cars and automobile parts affects not only the consumers but also trustworthy manufacturers. In order to protect, create safety and create fairness in our society, we must get rid of these exhibits.

