



THE COLLECTION OF EXCISE TAX ON  
TELECOMMUNICATION SERVICE

BY  
MR. SEATHAWUTH SIRIMONGKOL

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


GRADUATE SCHOOL OF LAW  
ASSUMPTION UNIVERSITY

DECEMBER 2009

**THE COLLECTION OF EXCISE TAX ON  
TELECOMMUNICATION SERVICE**

BY

**MR. SEATHAWUTH SIRIMONGKOL**

The seal of Assumption University of Thailand is a circular emblem. It features a central shield divided into four quadrants: top-left (blue with a white lily), top-right (white with a blue ship), bottom-left (white with a blue star), and bottom-right (red with a white cross and the letters 'D S'). The shield is flanked by golden laurel branches. Below the shield is a banner with the text 'BROTHERS of' on the left and 'S1 GABRIEL' on the right. At the very bottom of the seal is the word 'OMNIA'. The outer ring of the seal contains the text 'ASSUMPTION UNIVERSITY OF THAILAND' at the top and 'SINCE 1969' at the bottom.

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

**GRADUATE SCHOOL OF LAW  
ASSUMPTION UNIVERSITY**


**DECEMBER 2009**



Independent Study Paper Title : The Collection of Excise Tax on Telecommunication Service  
Author : Mr.Seathawuth Sirimongkol  
Major : Master of Laws (Taxation Law)  
Advisor : Mr.Prapas Kong-ied

---

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

The seal of Assumption University of Thailand is a circular emblem. It features a central shield with four quadrants: top-left (blue with a white lily), top-right (white with a blue scale of justice), bottom-left (red with a white cross), and bottom-right (white with a blue star). The shield is flanked by golden laurel branches. Above the shield is a golden crown. Below the shield is a golden ribbon with the Latin motto "LABOR OMNIA VINCIT". The outer ring of the seal contains the text "ASSUMPTION UNIVERSITY OF THAILAND" at the top and "SINCE 1969" at the bottom. In the center of the seal, the letters "A M D S" are visible, likely representing the Assumption Mary Dominican Sisters.  
..... N. Posakabutra Director of the Graduate School of Law  
(Assoc.Prof. Nattapong Posakabutra)  
Committee:  
..... N. Posakabutra Chairman  
(Assoc.Prof. Nattapong Posakabutra)  
..... Ratana Pechvijitra Committee  
(Mrs.Ratana Pechvijitra)  
..... Prapas Kong-ied Advisor and Committee  
(Mr. Prapas Kong-ied)

Independent Study Paper Title : The Collection of Excise Tax on Telecommunication Business

Author : Mr. Seathawuth Sirimongkol

Major : Master of Laws (Taxation Law)

Advisor : Mr. Prapas Kong-ied

---

## ABSTRACT

The objective of this research is to study the method of telecommunication enterprise tax collection in Thailand. It has to consider the way of earning income which enters into the state directly and increasing the most utility to the state by providing a private sector through making the telecommunication enterprise. The during 2546 to 2550 year, Thailand collected excise tax from the telecommunication enterprise but it could not revoke the prior concession contract so there collected I hybrid method, in the fact that, collecting excise tax from the telecommunication enterprise and provides the concession parties deduct such excise taxable from concession fee according to the contract. But this method was applied only 3 years and then it was terminated. It was replace by reduce rate at 0% which the state will receive income from the telecommunication enterprise only concession fee.

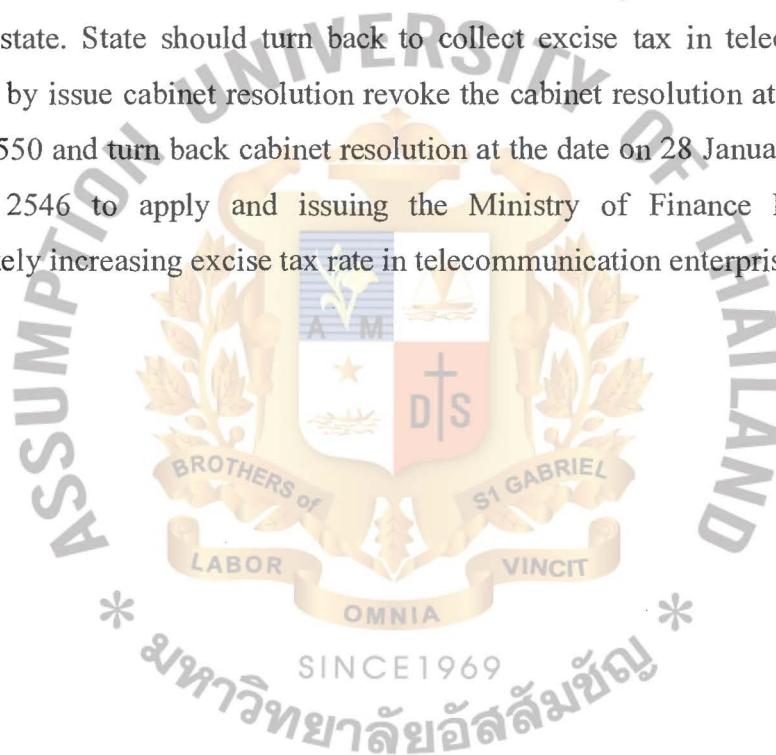
It is found that the problem of concession fee payment of private sectors which do not directly pay to state but pay enter into the enterprises at first which is public companies and telecommunication enterprise as well as the private sectors parties. The telecommunication enterprise concession is the state give the privilege by using natural resource in transmission of signals so only the state can be owner the concession. Therefore, concession fee payment must directly pay to the state. Directly concession payment to the enterprises regard as they are the owner concession but in the fact that, they transform to public company, therefore, they are fully enter into the telecommunication enterprise competition as private sector, there are without the organize of state go on. This method impacts with the state from the telecommunication enterprise income uncertainly because the state will be earn



income only in case of the enterprises pay dividend. So, in case of the enterprises get loss, the state cannot take any benefit from them.

It is recommend that the method of excise tax is justice and appropriate for utility of state. State should turn back to collect excise tax in telecommunication enterprise by issue cabinet resolution revoke the cabinet resolution at the date on 23 January 2550 and turn back cabinet resolution at the date on 28 January 2546 and 11 February 2546 to apply and issuing the Ministry of Finance Regulation for appropriately increasing excise tax rate in telecommunication enterprise.

It is recommend that the method of excise tax is justice and appropriate for utility of state. State should turn back to collect excise tax in telecommunication enterprise by issue cabinet resolution revoke the cabinet resolution at the date on 23 January 2550 and turn back cabinet resolution at the date on 28 January 2546 and 11 February 2546 to apply and issuing the Ministry of Finance Regulation for appropriately increasing excise tax rate in telecommunication enterprise.



## ACKNOWLEDGEMENT

This Independent Study paper, entitled “The Collection of Tax on Telecommunication Service” could not have been successfully completed without the support of A. Prapas Kong-iead as the advisor of the Independent Study paper, for his knowledge, insightful comment, inspiration, patience, and guidance to help me complete my research.

Especially, I am very thankful for Assoc. Prof. Nattapong Posakabutra, to give my guideline, ideas and teach me on how to write and what should be the approach in conducting the research, and which has been of great assistance to the author.

Moreover, I would like to thank my family members for their support and encouragement. I would like to thank my father greatly for his love and advice through all my difficult moments. And special thank to my mother for taking good care of me and support during my research.

Lastly, I would like to thanks all my friends in LL.M. classmates at Assumption University, especially Miss Sirikorn Peethong for their support and cheerfulness,

If I have missed anyone, please kindly accept my apology.

Seathawuth Sirimongkol



## Table of Content

	Pages
<b>Abstract</b> .....	iii
<b>Acknowledgement</b> .....	v
<b>Chapter 1 Introduction</b>	
1.1 Background and General Statement of the Problems.....	2
1.2 Hypothesis of the Study .....	3
1.3 Objectives of the Study.....	3
1.4 Study Methodology.....	4
1.5 Scope of the Study.....	4
1.6 Expectation of the Study.....	4
<b>Chapter 2 Development, Concept of Collecting Excise Tax on Telecommunication Business</b>	
2.1 Development of Collecting Income from Telecommunication Business.....	5
2.1.1 The Definition and Format of Concession.....	5
2.1.2 Development of Concession on Telecommunication Business.....	6
2.1.3 The Excise Tax on Telecommunication Business.....	8
2.1.4 The Collection Income from Telecommunication Business at the Present.....	10
2.2 The General Structure of Excise Tax.....	12
2.2.1 Introduction.....	12
2.2.2 The Excise Tax Instrument.....	13
2.2.3 The Principle of Collecting Excise Tax.....	13
2.2.4 Taxpayer.....	16
2.2.5 Tax Liability.....	19

**Pages**

2.2.6 Tax Base.....	20
2.2.7 Tax Rate.....	21
2.2.8 Filling Excise Tax Return, Exemption and Refund, Deduction.....	22
2.2.9 System of Control.....	25
2.3 Collecting Excise Tax on Telecommunication.....	25
2.4 Collection Concession on Telecommunication Business.....	26

### **Chapter 3 Excise Tax in United State of America and Excise Tax of Canada**

3.1 Telecommunication Excise Tax in Illinois State.....	30
3.1.1 The Law Relate to Excise Tax Collection.....	30
3.1.2 Taxpayer.....	31
3.1.3 Tax Point.....	31
3.1.4 Tax Base.....	31
3.1.5 Tax Rate.....	32
3.1.6 Tax Exempt.....	33
3.2 Telecommunication Excise Tax in Canada.....	36
3.2.1 The Law relate to Excise Tax Collection.....	36
3.2.2 Taxpayer.....	36
3.2.3 Tax Point.....	36
3.2.4 Tax Rate.....	36
3.2.5 Tax Base.....	37
3.2.6 Tax Exempt.....	38

### **Chapter 4 Analysis of Legal Problem**

4.1 Analysis Method Collecting Revenue from Concession Fee.....	41
4.2 Analysis Collecting in the Format of Excise Tax.....	44
4.3 Analysis Administrative Cost of State Authority and Private Sector.....	53



**Pages**

4.3.1 Analysis Administrative Cost of Excise Department.....	53
4.3.2 Analysis Administrative Cost of Private Sector.....	53

**Chapter 5 Conclusion and Recommendations**

5.1 Conclusion.....	55
5.2 Recommendations.....	57

<b>Bibliography</b> .....	59
---------------------------	----



# **Chapter 1**

## **Introduction**

### **1.1 Background and General Statement of the Problem**

On 23 January, 2550, the cabinet approved the screened resolution of the committee on canceling the cabinet resolution dated 28 January, 2546 (Collection of the Telecommunication Excise Tax) in the specific agenda collection of the telecommunication excise tax; the private sector party must deduct the excise fees from the revenue share which the private sector shall deliver to the public sector party including canceling the cabinet resolution dated 11 February, 2546 (Collection of the Telecommunication Excise Service Tax) which approved the guideline process of deducting the excise fees from the revenue share pursuant to the ministry of information and communication technology's propose.

Ministry of Finance provided the excise tax rate which collects from the telecommunication activities by issuing the ministerial regulation on reduction of excise tax rate (No.79). It reduced the excise tax rate by canceling the text in chapter 12, that permitted activities or concessions by government in the categories of 12.01, and to reduce the excise tax rate of communication activities to zero percent.

Reducing the excise tax rate of telecommunication activities to zero percent directly affects government revenue because the excise tax will be immediately collected when the telecommunication activities service fees are charged and received. This tax revenue will be directly collected in full amount to the government pursuant to the provided law.

At the present, the collection of government revenue from the telecommunication activities earns huge revenue. The government revenue from the aforementioned activities obtained in the form of concession fees that the government gives to the private sector party. The concession fees will be given to the government so the private companies shall obtain the monopoly right in using the resources of the country to operate the businesses. Generally, in concession contract, the concession party will directly deliver the revenue to the government but in Thailand, in the matter of telecommunication activities, whether the government will receive the



revenue, depends on the operation of two state enterprises which are TOT Public Company Limited and CAT Telecom Public Company Limited.

These two enterprises are the parties of the concession contract and the concession belongs to the government. Before these two enterprises were privatized from the government agency into state enterprises pursuant to Capital of the state enterprise act 2542, being a concession right owner, it was undisputable. In the present, these two companies are privatized into public companies. Therefore, they have to operate their own business and generate the incomes and profits and they will deliver the tax revenue to the government by their own operation. Moreover, these two companies operate telecommunication activities like other companies that have to pay for the concession fees but they don't. It is the marketing mechanism in various aspects such as pricing, and services. People will receive less advantage from the competition than they should. Given the concession right to the state enterprises causes other entrepreneurs unfairness in telecommunication activities.

In the present, the concession fees from the concession contract, the company which is a contract party with the government shall deliver concession fees to the TOT and CAT as the income of the two enterprises, for example, Advance shall deliver the concession fees to TOT, in the same situation, DTAC shall deliver to CAT because it is the contractual party with CAT. Therefore, two enterprises will send the earned income from the telecommunication activities to the competitive companies in operating the business. It is unfair to the private companies. TOT and CAT will consider the concession fees from the private companies as their own income. It is considered as being the income of the two companies rather than being revenue of the government. The consequent is the two enterprises can spend concession fees before delivering it to the government.

Both of the public companies will deliver the income to the government in the form of dividends because the Ministry of Finance is the 100 percent shareholder of both companies. Usually, the concession fees will be directly sent to the government but in Thailand, the concession will be considered as the state enterprises income to deduct the various expenses of the companies first. The enterprises expenses should be paid by from income and the profit from the operations of both enterprises rather than spending by the government income.

The concession fees are in the form of dividends which means the two enterprises must gain a profit from the operations. If the two enterprises don't have a profit but lose, the government will obtain no concession fees. For example, if the executives of the TOT Company think the operation of this year will have a profit but they don't want to deliver it to the government, they will plan to expand the business of the company and it will affect the profit of the company. The profit of the enterprises will turn into loss. The shareholder who is the Ministry of Finance will not obtain the dividend. This means the government will not receive the concession fees from the telecommunication at all.

In the present, there are problems in collecting taxes concerning concession fees. Concession fees from telecommunication activities are not directly delivered to the government. It reduces government revenues which affects government administration in various aspects of the country. The concession fees from the telecommunication activities seem to be owned by TOT and CAT rather than belonging to the government which is considered to be unusual.

If the collection in the form of the excise tax will directly generate certain government revenue without passing through any public companies because the excise tax is collected from the beginning. It means when the service is rendered, the income will be directly delivered to the government.

## **1.2 Hypothesis of the Study**

The collection of excise tax in telecommunication activities will benefit the government by sent income directly to government more than collection in the form of concession fees which government gets income in form of dividend when the enterprises operating have profit.

## **1.3 Objective of the Study**

This independent research is:

1. To study structure of the excise tax on the provision of telecommunication business in Thailand under the Excise Tax Act.



2. To study the legal problems applying to the telecommunication business on excise taxation.

3. To analyze the problem on telecommunication business in Thailand which is subject to tax at zero rate under the Ministry of Finance Announcement No.68

4. To find the solution of the problem in order to solve the problem to be a suitable principle.

## **1.4 Study Methodology**

The research paper will analyze telecommunication business on the excise tax structure accordance with the Excise Tax Act and the Ministry of Finance Announcement No.68. This can be done by utilizing document research i.e. the Excise Tax Act, the Excise Department Journal, the Tax and Business Journal, textbooks, journals, applicable there, the sections and excise information regarding to telecommunication business in Thailand, America and Canada.

## **1.5 Scope of the Study**

The scope of an Independent Study is to study telecommunication business in Thailand according to both the Excise Tax Act subject to excise tax at the rate of fifty percent on such telecommunication business in Thailand and the Ministry of Finance Announcement No.68 which reduce excise tax to zero rates. This research is considered for benefit of country.

## **1.6 Expectation of the Study**

1. To know the characteristic of the system of the Excise Tax on telecommunication business.

2. To know the significant role between the telecommunication business subject to zero rate at and subject to tax at fifty percent.

3. To know the legal opinion and interpretation.

4. To identify the legal problems and establish the solution for the problem.

## Chapter 2

### Development, Principle of Collecting Excise Tax on Telecommunication Business in Thailand

#### 2.1 Development of Collecting Income from Telecommunication Business

The telecommunication business means the service business for sending, spreading or receiving signal mark, alphabet, number, picture, sound, code and any acts which are able to understand in wireless system, frequency wave system, light system, electric magnet is system or any system or more system mixing. Including, the other telecommunication business is despised by law or the committee.<sup>1</sup> The business is divided by two types. The first is Fixed-line Communication Networks such as base telephone, international call, public telephone and Internet. The second is Wireless Communication Networks such as mobile phone, pager and radio communication.

##### 2.1.1 The Definition and Format of Concession

Concession is the absolute right in long term in procession or using benefit from natural or any asset which is limited period. Most of them are used by government projects which are designed to distribute for private sector operation, it may manufacture products or some kinds of services under the state controls. The private sectors must pay concession since they obtain the right and maybe any expenditure which depends on agreement. There are many kinds of them as follow:<sup>2</sup>

---

<sup>1</sup> The National Telecommunications Commission, Meaning of Telecommunication Business in Thailand, At [http://www.ntc.or.th/uploadfiles/1224666842\\_ogанизation.pdf](http://www.ntc.or.th/uploadfiles/1224666842_ogанизation.pdf). (last visited 7 October 2009).

<sup>2</sup> Praypon Kumsup and Samai Gotintakom, Concession in Facility Business (Bangkok: n.p., 2544), pp.17-19.

Lease Contract, the government is the owner fundamental of project and then the private sector has to pay for all of operating expenditure. When the period of the lease contract expires, the private sector maybe transfers all of the instruments, equipment and any facilities to the state, it depends on the agreement.

The private sector, who obtains the concession, is responsible for fundamental project construction. After completing construction, the business immediately belongs to the state but the private sector still had power to manage it until the termination period of the contract. This is “Build Transfer Operate “(BTO). But in case the private sector operates at first and after that transfer the business to the state, it is called “Build Operate Transfer” (BOT). Some cases the private sector may renovate before the operation. And then the business transfers to the state, it is called “Rehabilitation Operate Transfer” (ROT). Moreover, in case the state allows the private sector as an investor in construction and then is owned and operated without transferring the business to the state but the state agrees to purchase the products and services in some period. It is called “Build Own Operate” (BOO)

Because facility investment in the past spends a lot of money, the state could not invest everything at the same time. For the country is rapidly and efficiently developed, the state opens opportunity to the private sector investment which provides concession rights in the limited time and after that it will turn back to the state at agreed on time according to the contract. It is rapidly development in Thailand.

In the view of the private sector, obtaining concessions requires much capital and a long time to capital return. But the advantage is that the private sector has an absolute right in the business as a monopoly business. It is able to fully take benefits and operations of the facility will be more efficient than the government’s own management, because the private sector has to take benefit as much as they can.

### **2.1.2 Development of Concession on Telecommunication Business**

Technology and Communication are rapidly changing, both format and channel in communication. People also increase their communication technology rapidly. The Telephone Organization of Thailand and Communications Authority of Thailand are the main organizations to control and provide services in



telecommunication which have limited money and an officer to invest. They could not expand the telecommunication fundamental investment adequately to meet the demand of the people. Therefore, the measurement to solve this problem is supporting the private sectors to join in the characteristic of Build Transfer Operate (BTO)

At first, there were two main telecommunication service providers, 1. Advanced Info Service Company by Telephone Organization of Thailand (TOT) concession provider and 2. TOTAL ACCESS COMMUNICATION COMPANY by Communications Authority of Thailand (CAT) concession provider. The characteristics of those concessions were fitted for BTO.

The summarization of the contracts is as follow:

Mobile service operating contract between Telephone Organization of Thailand and ADVANCED INFO SERVICE COMPANY were signed on 27 March 2533. TOT allowed mobile service operating in NMT900 system for 20 years and then was expanded to 25 years

Mobile service payment according to the concession contract

Called in same local area	Per Minute	3 Baht
Called in the connecting area	Per Minute	8 Baht
Called across an area that is not connected	Per Minute	12 Baht

Allowed mobile service operating contract in Celura system between Communication Authority of Thailand with Total Access Communication Company (TAC). The contract was signed on 14 November 2533, TAC was the service provider of frequency 800 and PCN 1800 system for 15 years and then it was expanded to 22 years after that it was expanded to 27 years again. The benefit payments started since on 16 September 2534 as the starting providing service.

Most conditions in the details were similar to AIS, including, service payment condition. The benefit which CAT would receive each year must not be less than the minimum of benefits which is provided for 27 years and the total revenue was more than 1.7 million baht.

### **2.1.3 The Excise Tax on Telecommunication Business in Thailand**

The telecommunication business in Thailand is the business which receives the concession in using resource from the government. The telecommunication business requires the resources concerning the frequency channel of the country. The benefit will be collected to the government in the form of concession. Later, excise tax was collected in the year 2546 by the approval of the cabinet dated on 28 January B.E. 2546<sup>3</sup> the resolution is as follows:

“The government cabinet approved the proposal of the ministry of finance concerning the rate reduction and the exemption of the excise tax ( No..) (Provide the rate which is used in collecting tax from service in each category) and to continue the operation. They assign the Ministry of Information and Communication Technology (MICT) or the telephone organization of Thailand (TOT). The ministry of finance receives the notice from the cabinet that the entertainment complexes which provide the bathing service or sauna or massage are just the cover activities of the prostitution. The entertainment complex will have excise tax rate of 10 percent of the income. It is equal to the golf course activities which provide sport services. Golf course is in the categories of the business which affect the environment. It should be considered whether it is appropriate. According to the approval of the cabinet vote for the approve of the draft amendment of Excise tax tariff Act (No...) B.E. (expanding the excise tax collection for the service business) the draft of the amendment of the excise tax act B.E.2527 B.E....(amendment the definition of

---

<sup>3</sup> The Cabinet Resolution on 28 January B.E. 2546, At [http://www.cabinet.soc.go.th/soc/Program2-3.jsp?top\\_serl=190346&key\\_word=&owner\\_dep=nn&meet\\_date\\_dd=28&meet\\_date\\_mm=01&meet\\_date\\_yyyy=2546&doc\\_id1=&doc\\_id2=&meet\\_date\\_dd2=&meet\\_date\\_mm2=&meet\\_date\\_yyyy2=](http://www.cabinet.soc.go.th/soc/Program2-3.jsp?top_serl=190346&key_word=&owner_dep=nn&meet_date_dd=28&meet_date_mm=01&meet_date_yyyy=2546&doc_id1=&doc_id2=&meet_date_dd2=&meet_date_mm2=&meet_date_yyyy2=). (last visited 12 October 2009).

“service” and “entertainment complex”) in two laws and to proceed it urgently. There will be countersigned in the draft of the act and the Gazette dated on 28 January 2546. The draft had been criticized from many parties and it may cause doubt to the people. Therefore, the ministry of Information and Communication Technology and the council of the state are assigned to hold a press conference to understand that these two laws are made in accordance with the constitution section 218. It is not contract translation or the concession so it is not against the constitution section 40. Including that it does not affect to the benefit of the country and people because the country still receives the same benefit.

The resolution of the cabinet dated on 11 February B.E.2546<sup>4</sup> is as follows:

“The cabinet approved the proposal of the ministry of Information and Communication Technology to deduct the excise tax from the sharing revenue from the contract which has to deliver to the government agency called communication authority of Thailand and the TOT corporation limited company. It can be concluded as follows: (1) Home base phone, private sector party has to pay tax by summarizing the amount that has to pay to the government agency every month. The calculation of the income is rendering the services in the country, (2) mobile phone business or radio communication in the cellular system is taxable to the private sector by calculating tax from the income from providing the mobile phone service or the radio communication in the cellular system and to pay the minimum return of the benefit to the public sector in accordance with the quantity and the time pursuant to the contract in every quarter. At the end of the year, the operation shall pay full amount of the return advantage in the rate provided by the contract. However, the private parties’ contract has the right to deduct the tax from the return benefit which is paid to public sector parties at the end of the process year.

---

<sup>4</sup>The Cabinet Resolution on 11 February B.E. 2546, At [http://www.cabinet.soc.go.th/soc/Program2-3.jsp?top\\_serl=190493&key\\_word=&owner\\_dep=nn&meet\\_date\\_dd=11&meet\\_date\\_mm=02&meet\\_date\\_yyyy=2546&doc\\_id1=&doc\\_id2=&meet\\_date\\_dd2=&meet\\_date\\_mm2=&meet\\_date\\_yyyy2=](http://www.cabinet.soc.go.th/soc/Program2-3.jsp?top_serl=190493&key_word=&owner_dep=nn&meet_date_dd=11&meet_date_mm=02&meet_date_yyyy=2546&doc_id1=&doc_id2=&meet_date_dd2=&meet_date_mm2=&meet_date_yyyy2=). (last visited 12 October 2009).



In excise tax collection in the telecommunication business, it will be collected in 50 percent pursuant to the Excise tariff tax 2527 but the Excise tax rate is reduced according to the ministry of finance regulation concerning the reduction and the exemption of the excise tax ( No.68)<sup>5</sup> in article 2 to reduce and to exempt the excise tax by adding the provision in chapter 10 Gamble business, chapter 11 the business affect the environment and chapter 12 business allow or concession from the government in the annex in the ministerial regulation concerning rate reduction and exemption of the excise tax (No.27) dated on 30 December, 2534 pursuant to the schedule in this regulation. It provides the reduction rate of excise tax in the telecommunication from 50 percent to 2 percent for providing home base phone and reduction from 50 percent of the mobile phone service to 10 percent.

The government policy requires to collect the excise tax from the telecommunication business; it increases the income into treasury from thus business more than ten thousand million baht.

#### **2.1.4 The Collecting Income from Telecommunication Business at the Present.**

There are objections and disagreement with excise tax collection broadly because it makes give benefits to the concession receiver and it is corrupted by policy of the prime minister at the time. When there is a change of the government later on, the cabinet resolution dated on 23 January, 2550<sup>6</sup>, the cabinet passes the resolution which is proposed by inspection committee. The first committee voted to cancel the cabinet resolution dated on 28 January, 2546 (concerning excise tax collection from telecommunication business). Especially, on the issue of excise tax collection by the private sector party, it delivers the excise tax to deduct from the sharing revenue which the private sector part required to deliver to the public sector party. Including to cancel the cabinet resolution on 11 February,

<sup>5</sup> The Ministry of Finance Regulation(No.68), At <http://www.mof.go.th/rule/getfile.php?ID=428>. (last visited 12 October 2009).

<sup>6</sup> The Cabinet Resolution on 23 January 2550, At [http://www.cabinet.soc.go.th/soc/Program2-3.jsp?top\\_serl=211168&key\\_word=&owner\\_dep=nn&meet\\_date\\_dd=23&meet\\_date\\_mm=01&meet\\_date\\_yyyy=2550&doc\\_id1=&doc\\_id2=&meet\\_date\\_dd2=&meet\\_date\\_mm2=&meet\\_date\\_yyyy2=](http://www.cabinet.soc.go.th/soc/Program2-3.jsp?top_serl=211168&key_word=&owner_dep=nn&meet_date_dd=23&meet_date_mm=01&meet_date_yyyy=2550&doc_id1=&doc_id2=&meet_date_dd2=&meet_date_mm2=&meet_date_yyyy2=). (last visited 12 October 2009).

4676 c.1

2546 (concerning excise tax collection from the telecommunication business) it was approved the operation to deduct the excise tax from the sharing revenue pursuant to Ministry of Information and Communication Technology proposed and submitted for the consideration of the excise tax rate from the telecommunication business in the rate of zero percent. The council of the state takes it for consideration on legal issue concerning the making contract between public sector party and the private sector party whether it follows the procedure in the private sector cooperation or operation of the government business Act 2535. Guidelines on this matter will be presented and the consideration result will be suggested and proposed to the cabinet with the approval of ministry of Information and Communication Technology. The approval proposes the amendment to the Ministry of Information and Communication Technology letter no. TA 0200.11(PKL.)/6659 on 12 December, 2549 page 2 article 2.2. The sentence stated that “inconsistence with the provision of law” was cut.

After the cabinet passed the resolution, the financial regulation is declared to reduce the excise tax rate by canceling the sentence in chapter 12 the business which is permitted or received the concession from the government in the category no. 12.01 and reduce the tax rate in telecommunication business into zero percent.

The ministerial regulation concerning the excise tax rate reduction (No.79)<sup>7</sup>

For the economics benefit of the country empowered by section 103 of the Excise Tax Act B.E. 2527 amend the Excise tax act (No.2) 2534. The minister of the finance approves the cabinet resolution which declares as follows:

Clause 1 to reduce the excise tax rate by canceling the sentence in chapter 12 the approved business or concession from the state in the category no.12.01 in the annex of ministerial regulation concerning the tax rate reduction and the exemption of the excise tax (No.27) dated on 30 December, 2434. Which was amended by declaring the ministerial regulation concerning the tax rate reduction and the exemption of the excise tax (No.68) on 28 January 2546 and applied the category of the regulation instead.

<sup>7</sup> The Ministry of Finance (No. 79), At <http://www.mof.go.th/rule/getfile.php?ID=908>. (last visited 12 October 2009).



Clause 2 this regulation is enforced since the gazette is published.

Thailand is turned to collect only concession fee from telecommunication business after declared this Ministry of Finance Regulation.

## 2.2 The General Structure of Excise Tax

### 2.2.1 Introduction

The excise tax is to collect the tax from the products and services which are good reasons to be responsible for higher tax rate than normal tax, for example, the consumption may harm health or the moral, or the product which is extravagant and the products or services which receive special benefit from the government business.

The character of the excise tax is divided into the two types as follows:

1. Selective Sale Tax
2. Indirect Tax.

#### 1. Selective Sale Tax

Selective Sale Tax is to collect the tax from the certain product which should be responsible more than other taxes. The rates of the tax are different from each other. It depends on each of the products.

The collection of specific sale tax will increase the rate from other product which is usually collected. It is not the replacement to other taxes, for example, one of the product is collected for VAT and this product is still collected by excise tax law. Therefore, the two taxes shall be collected and it is not replacement for each other.

#### 2. Indirect Tax

Indirect tax is the excise tax which is collected from the product manufacturing in the country and the imported product. It is the character of the consumption tax which is indirect tax. The indirect tax collection is different from the direct tax such as a personal tax income; the taxpayer are required to pay by themselves but the indirect tax can be transferred to the consumers. The indirect tax



which is collected in several countries and generates income to the country in the high amount of money as VAT.

The excise tax is different from the tax collected from the product and other services because the excise tax will only be collected from certain products or services.

### 2.2.2 The Excise Taxation 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 a lot of people that necessary to have instrument to give the power to do it in justice style and proper for people. So the state issued the law to be the instrument of administrator to use to control goods and services.

### 2.2.3 The Principle in Excise Tax Collection

In excise tax collection is to collect from the certain kind of products and services. Therefore, the proper and the correct way in choosing the product that must be collected by excise tax law which is an important matter. The principle which is generally used is 4 principles. It will be used in the separate categorization of other products and services.

The 4 principles<sup>8</sup> are as follows:

---

<sup>8</sup> Prapas Kong-ied, Excise Tax Law Explanation (Bangkok: Nititham Publishing, 1999), pp.5-9.

1. The consumption product which may harm health and the moral.  
(Sumptuary Excise)
2. The product which has 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 the product is provided to pay tax because the consumption of this product is in the high level which may harm health of the consumer themselves. It makes others get into the trouble or may harm others, for example, drinking too much alcohol may bring trouble to other people and society in general. The government may come to protect the society and people who are not consume but they are injured or receive the consequent by the consumers. These kinds of products are 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 consequent. For example in 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 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, the consumption will be decreased because of the higher price.

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

The extravagant consumption is the group of the 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 the 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 the live happily. Whether any products will be 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 group 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 some time it is necessary for the government to generate income or limit the manufacturing of certain product, for example, during the war; the government has 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, for example, for a relief the hardship of poor people or for the political benefit but there is no money. Therefore, tax collection from some certain products will be provided for the needs.

From the several principles in Thailand, the tax collection in certain products and services are as follows<sup>9</sup>:

- Part I      Petroleum & Petroleum Products
- 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

---

<sup>9</sup> Excise Tariff Act B.E 2527.



- 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 enacts in the part 1 to part 8 and the tax collection from the services enact in part 9 to part 13.

#### 2.2.4 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>10</sup>

From the aforementioned principles provide for the taxpayer which can be divided in 4 categories as follows: industrial entrepreneur, entertainment entrepreneur, the product importer and other person who provided by the law to have tax liability.

##### 1. The Industrial Operator<sup>11</sup>

The Excise Tax Act B.E. 2527 section 4 define that

“The Industrial Operator” means the owner or manager or person who 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 shall be included.

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

<sup>10</sup> Section 7 Excise Tax Act B.E. 2527.

<sup>11</sup> Section 7 Excise Tax Act B.E. 2527.

“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 and it was made in the location where the product, is used composed, improved, reformed transformed or any act has been done to the product in any manners. 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 involves 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 is the person in charge in the entertainment complex. The 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 course which the owner creates for playing sport for the 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 have no ownership or being an owner but he occupies or being 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 be Deemed to be a Taxpayer by Law

In this matter, to protect the tax avoidance problem and for the efficiently 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 goods which is tax exception or tax reduction
- 2) The transferor and the transferee, or person who has privilege to manufacturing the goods in the Kingdom of Thailand for distributing to the privilege by tax exemption or tax refund.
- 3) The owner of bonded warehouse.
- 4) The industrial entrepreneur or the entertainment complex entrepreneur merged together or transferred the business to each other.
- 5) The modifier of car product.
- 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 Act 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.

### **2.2.5 Tax Liability <sup>12</sup>**

The Excise Tax Act 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)**

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.

2) 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, it shall be considered as taking the commodities out of the bonded warehouse under the law on customs, duty free zone or export processing zone at any case.

---

<sup>12</sup> Section 10 Excise Tax Act B.E. 2527.

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 taking the commodities out of the bonded warehouse, bonded warehouse under the law on customs, duty free zone or export processing zone, it shall be considered that the liabilities to pay tax occurs at the same time as the liabilities to pay value added tax.

## **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, it shall be considered that the liability to pay tax 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 customs, duty free zone or export processing zone. If any importer or any person brought such commodities in the bonded warehouse under the law on customs, duty free zone or export processing zone, it shall be considered as taking the commodities out of the bonded warehouse under the law on customs, duty free zone or export processing zone at any case

### **2.2.6 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 changed 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 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 follow the quantity that based on weight unit or net quantity of goods but not include the followings:<sup>13</sup>

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

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

### **2.2.7 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

---

<sup>13</sup> Section 9 Excise Tax Act B.E. 2527.



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.

## 2.2.8 Filing Excise Tax Return, Exemption and Refund, and Deduction

### 1. Filing Excise Tax Return

#### 1) Locally-Produced Commodities.

(1) Tax liability occurs when the commodities have been taken out of the Industrial Plant.

filing tax return before taking the commodities out of the Industrial Plant i.e. beverage.

filing tax return within the 15<sup>th</sup> of the month following the month of taking the commodities out of the Industrial Plant.

(2) Tax liability occurs the same time as the VAT occurs and before the commodities have been taken out of the Industrial Plant.

filing tax return within 15<sup>th</sup> of the month following the month of taking the commodities out of the Industrial Plant.

(3) Filing tax return within ten days after the day of taking the commodities out of the Industrial Plant i.e. *petroleum products*

(4) Commodities required by law to be affixed by stamps or marks showing the payment of tax.

filing tax return before taking the commodities out of the Industrial Plant.

#### 2) Service

filing tax return within the 15<sup>th</sup> of the month following the month that tax liability has occurred.

#### 3) Imported commodities.

filing tax return the same time as the filing of customs duty.

#### 4) Others

filing tax return within the 15<sup>th</sup> of the month following the month that tax liability has occurred.

## 2. Exemption & Refund

1) Imported commodities classified as commodities exempted from customs duty in Chapter 4 of Customs Tariff shall also be exempted from excise tax by basing upon the same principles and conditions as prescribed under the law on customs tariff

2) Exemption or refund for Exported commodities. comply to principles, procedures and conditions as specified under the Ministerial Regulations.

export includes taking commodities into duty free zone or place.

3) Commodities donated, distributed to privileged persons and fuel products filled in the aircraft.

Section 102<sup>14</sup> “The industrial operator shall be entitled to receive tax refund or exemption under the following cases:

(1) Commodities specified under the ministerial regulation, which has been donated to the public as charities through the authority in the central, provincial or local authority or through the public organization which the minister has specified by publishing in the government gazette.

(2) The commodities specified in the ministerial regulation which have been donated as public benefit to the authorities in the central, provincial or local authority or to the public organization specified by the minister by publishing in the government gazette.

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

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

---

<sup>14</sup> Section 102 Excise Tax Act B.E. 2527.

4) Revenue Derived from a Service which is Donated.

(1) Section 102 bis

The service operator shall be exempted from excise tax for revenue from services specified in the ministerial regulation that is donated to government organizations both in federal and local or donated to charitable organizations.

5) Benefit of the Economy or the Happiness of the Public: Section 103

For the benefit of the economy of the Kingdom or for the happiness of the public, the minister by the approval of the cabinet shall have authority to announce a reduction or exemption of tax for any commodities or services, In this, principles and conditions may be specified.

6) Damaged Commodities: Section 104

The industrial operator shall be entitle to receive tax refund on the tax paid for the commodities specified in the ministerial regulation, if it can be proved that such commodities have been damaged or deteriorated so that it cannot be used.

7) Imported Commodities and Later Exported.

(1) Section 105

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

(2) Section 106

Commodities exported, if proved that they have been produced by imported commodities for which tax has been paid, the tax shall be refunded for the commodities for which tax has been paid to the importer according to the same principles, procedures and conditions as the refund of import duty under the law on customs.

### 3. Deduction: Section 101

Any industrial operator who shall wish to receive tax allowance for commodities specified under the ministerial regulation by taking the amount of tax under this act already paid for the commodities used as raw material or part of the



commodities in the production and deduct from the amount of tax to be paid for those commodities by submitting the application and complying with the principles, procedures and conditions as specified.

#### **2.2.9 System of Control**

1. License & Registration
2. Stamp & Mark showing payment of tax
3. Tool & Machine
4. Account & Documentation
5. Officers observing at the manufacturing plant
6. Bonded Warehouse
7. Investigation & Law Enforcement

The state uses this system to check goods and service which is in system of excise tax.

The state can control and collect excise tax from goods and services which have to pay tax.

### **2.3 Collecting Excise Tax on Telecommunication Business**

The Ministry of Finance Regulation number 68 declares to collect excise tax on telecommunication service at rate 10% for mobile phone and 2% for base phone. Telecommunication business is in tariff of excise tax collection telecommunication business must be collected excise tax when receiving income or deem to be receive according to section 8(2) of Excise Tax Act. The income will through to government directly and immediately when income from service of telecommunication business occur Excise Department is collector and sending to Ministry of Finance according to Budget Procedure Act. Excise tax takes a lot of revenue to the state.

Table below shows income from collecting excise tax from Excise Department<sup>15</sup>

Goods	2546	2547	2548	2549
Telecommunication Business Tax	6,419.63	12,625.35	13,935.05	15,522.79
Base Phone(Domestic Call)	1,291.89	2,756.39	573.58	980.48
Base Phone(International Call)	45.02	0.00	0.00	51.92
Mobile Phone(Domestic Call)	4,421.54	9,689.89	13,217.24	14,376.61
Mobile Phone(International)	0.67	179.07	134.65	23.14
Telecommunication Business(other)	660.51	0.00	9.58	90.64

This table shows income from collecting excise tax from telecommunication business in Thailand. The state got a lot of income when directly collecting in form of excise tax. The state does not base on operate of TOT.

## 2.4 Collection Concession Fee on Telecommunication Business

The concession fee is collected according to agreement of concession contract since year 2533. The concession fee is send to TOT at first and it becomes income of TOT. TOT will calculate net profit of company. After that, the government will get income from telecommunication business in form of dividend. It means that the government will get the income when TOT has profit from operating business. But if TOT pays a lot of bonus to committee, officer and plan to expand business, it will affect to profit of the company and then dividend for paying to the state is low. The state will get less income from TOT.

There are two classifies of revenue to TOT, the first amount had minimum in each year and the second was provided to percent of profit and any profit which the company should be earn before any expend deducting including taxation. If which

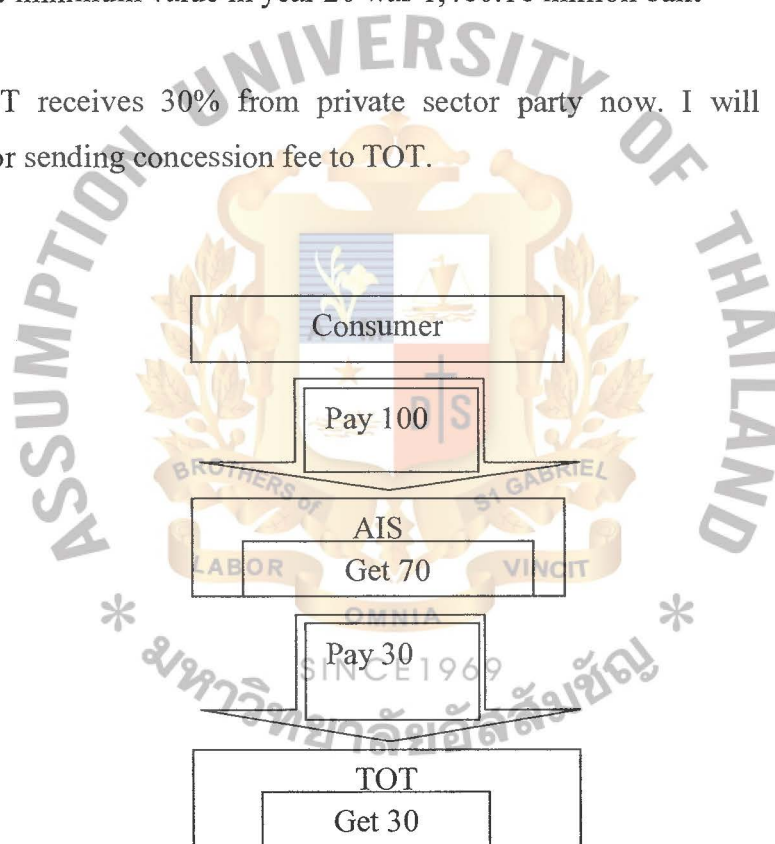
<sup>15</sup> Result of Collecting Revenue of Excise Department, At <http://edweb.excise.go.th/stastw/ProductDetailSummaryMonthlyInfoAction.do>. (last visited 10 November 2009).

one could be earn more, it would be deemed that amount to pay. The period determination as follows:

Year 1 TO Year 6	15%
Year 7 TO Year 10	20%
Year 11 TO Year 15	25%
Year 16 TO Year 20	30%

The minimum value in year 20 was 1,460.16 million baht

TOT receives 30% from private sector party now. I will show you for example for sending concession fee to TOT.



From example show the payment of consumer amount 100 units to AIS Company.

Then AIS Company take income sent to TOT 30 units.

TOT gets concession free from AIS following to concession contract and following to the rate which assign in the contract.



Table below Show Dividend and Net Profit of TOT Public Company Limited<sup>16</sup>

TOT Company Limited	Dividend	Net Profit
2546	1,500,000,000	11,265,149,870
2547	4,500,000,000	11,522,962,767
2548	10,116,000,000	6,690,740,000
2549	5,508,000,000	6,981,220,000
2550	1,002,000,000	6,232,700,000
2551	5,511,000,000	5,602,800,000

The private company gets benefit from collecting excise tax. They reduce payment from rate of excise tax. So it affect to profit of company and status part of finance of company. If the company is in stock market, the share of the company will increase following to finance status. The telecommunication company supports payment to state in form of excise tax for more benefit of company.

The private sector can take benefit from changing concession contract to excise tax collection as follows:

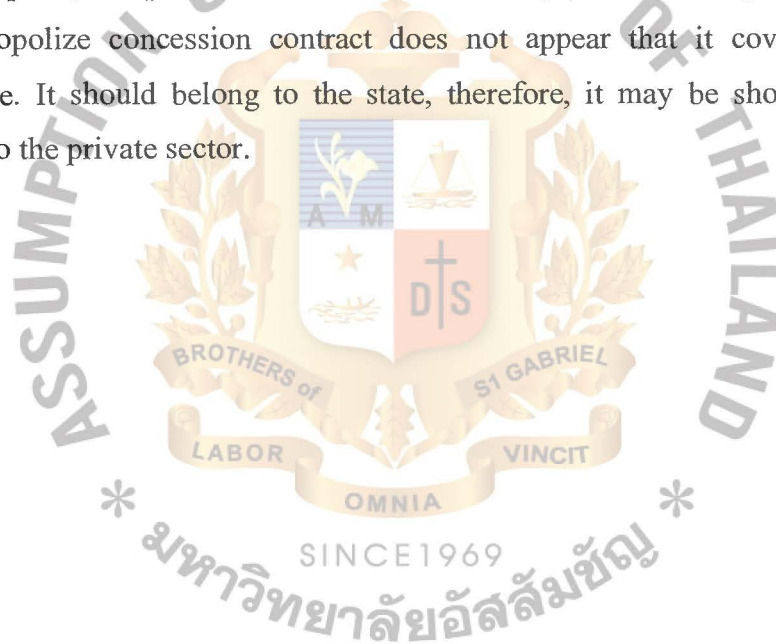
1. Bring to change in concession contract for telecommunication business can terminate apart of income payment to the state. And also it may make condition for monopoly market in old telecommunication business and in the future, it may be without concession fee.

2. Collecting excise tax replaces concession fee, it shoes that the new private sector in the telecommunication business has never gotten benefit from monopolize such as no have customer base. Because the new entrepreneur has never made concession contract with the state but he has to pay apart of income according to the old of concession contract in excise tax model. The new entrepreneur must invest the all of fundamental, faces to obstruct from collecting excise tax and competes with the old entrepreneur who has lower cost than him. Because the old entrepreneur already

<sup>16</sup> Annual Report of TOT Public Company Limited, At [http://www.tot.co.th/index.php?option=com\\_content&task=blogcategory&id=32&Itemid=325](http://www.tot.co.th/index.php?option=com_content&task=blogcategory&id=32&Itemid=325). (last visited 12 October 2009).

has instrument, customer list and the profit surpluses from monopolize. Moreover, payment for using signal license from the Nation Telecommunications Commission (NTC). The new entrepreneur can find that worth for investment. This system does not generous for completion. Although the government would announce that the excise tax rate may reduce to the new entrepreneur, it depends on decision of the government. But it is not NTC's decision.

3. The private sector can take benefit from turn the whole assets back to the state and are able to operating business continually. The concession fee indicated that after terminated of contract, the whole assets including, building, customer list must belong to the state which is the all of them are enormous value. It means that the state has capacity to operate the business immediately. But collecting excise tax from such monopolize concession contract does not appear that it covers to benefit compensate. It should belong to the state, therefore, it may be shown that being generous to the private sector.



## **Chapter 3**

### **Excise Tax in the United States of America and Excise Tax in Canada**

#### **3.1 Canada**

##### **3.1.1 The Law Relates to Excise Tax Collection**

Excise tax of Canada is governed by two laws as follows:

###### **1. Excise Act**

It provides tax rates together with controlling the products and permission under the law called “Excise Duty” which are collected from Alcoholic Beverages Beer and Tobacco. The provided rates for Tobacco for Alcohol, Wine and Tobacco products are enacted in the Excise act 2001 and the rate of Beers are enacted in The Excise Act

###### **2. Excise Tax Act**

Under this law, there are several kinds of taxes but the main taxes are as follows:

1) Excise Tax. In this law the tax rates are enacted but it does not control the manufacturing and the distributing the products. Excise tax is collected from the products as follows:

- (1) Large size of vehicle
- (2) Air conditioner in the car
- (3) Certain oil products
- (4) Some of the insurance policy

2) Air Transportation Tax. The tax is collected from the passenger of the plane. The collected taxes are used for airports.

3) Telecommunication Service Tax is collected from the payment from person who uses the services before other taxes such as other telecommunications.



### 3.1.2 Taxpayers

In general, in case of telecommunication service tax, the person who has duty to pay tax is service provider. In telecommunication service tax, the service provider is the licensee. The licensee means “any person to whom a license has been issued under subsection 21.3(2) and includes any person who is required by subsection 21.3(1) to apply for a license”.

### 3.1.3 Tax Point

In general, Tax point of taxable service in telecommunication service will at the time the amount charged is paid or payable, whichever is the earlier.<sup>17</sup>

In specific circumstances, in case a licensee has provided a taxable service to itself to use in the administration or management of its business. If the service had been provided to a person with whom the licensee was dealing at arm's length and the amount charged shall be deemed to be payable at the end of the month in which the service was provided.<sup>18</sup>

### 3.1.4 Tax Base

1. In general, Tax base is the amount charged for a taxable service acquired from a licensee. Thus, in order to understand Tax Base, one must know what the taxable service is. In “Taxable service” was defined as follows:

---

<sup>17</sup> Excise tax act Section 21.24 (1) There shall be imposed, levied and collected a tax at the rate of eleven per cent on the amount charged for a taxable service acquired from a licensee, payable by the person charged for the service at the time the amount charged is paid or payable, whichever is the earlier.

<sup>18</sup> Excise tax act Section 21.25(1) Where a licensee has provided a taxable service to itself for use in the administration or management of its business, for the purposes of this Part, the licensee shall be deemed to have acquired the taxable service from itself for an amount charged equal to fifty per cent of the amount charged that would have been reasonable in the circumstances if the service had been provided to a person with whom the licensee was dealing at arm's length and the amount charged shall be deemed to be payable at the end of the month in which the service was provided.

“(a) any telecommunication service,  
 (b) the commencement or cessation of a telecommunication service,  
 (c) the provision of any instrument, device, equipment or apparatus or any part thereof, other than terminal equipment for the provision of which a separate charge is made, that is

(i) used in conjunction with a telecommunication service, and

(ii) provided by the person providing the telecommunication service or by any person authorized or designated by him for the purpose or acting on his behalf or by any person related to him, if the person providing the telecommunication service requires that the instrument, device, equipment, apparatus or part be acquired exclusively from him or any other person referred to in subparagraph (ii), and (d) the installation, disconnection, replacement, repair or maintenance of any instrument, device, equipment or apparatus or any part thereof referred to in paragraph (c) by the person providing the telecommunication service in conjunction with which it is being used or by any other person referred to in subparagraph (c)(ii), but does not include a taxable service within the meaning assigned by subsection 21.1(1)”<sup>19</sup>

2. In case of long distance telephone service, Tax Base is the amount charged for the taxable service exceeds fifty cents.

3. In case of paging service, the tax base is taxable service for each month or fraction of a month.

### 3.1.5 Tax Rate

The Tax rate in this Act can be divided in four forms; it depends on the circumstances as follows:

#### 1. In General

The tax rate will be eleven percent on the amount charged for a taxable service acquired from a licensee, payable by the person charged for the service.

---

<sup>19</sup> Section 21.1 Excise Tax Act of Canada.

## 2. Long Distance Telephone Service

In specific circumstances, in case long distance telephone service is acquired and paid for by means of a coin-operated telephone and the amount charged for the service exceeds fifty cents, the tax payable in respect of the service shall be calculated at the rate of five cents for every fifty cents or part thereof charged for the service in excess of twenty-four cents or part thereof charged for the service in excess of twenty-four cents.

## 3. Paging Service

In specific circumstances, in case paging service is acquired; the tax payable in respect of the service shall be calculated at the rate of thirty cents for each month or fraction of a month in which the service is acquired.

## 4. Telecommunication Service

In case of international telecommunication service, the tax rate shall be calculated on the amount charged for the service only to the extent that the amount charged is for service provided in Canada.

### 3.1.6 Tax Exempt

The exemption of the Telecommunication Service in the Excise Tax Act can be divided in 3 categories as follows:

#### 1. General Exemption<sup>20</sup>

1) The collection of the tax will not come in to force on any amount charged for

(1) the provision, commencement or cessation of residential telephone service, other than the provision of long distance telephone service; or

(2) the provision, installation, disconnection, replacement, repair or maintenance of any instrument, device, equipment or apparatus or any part thereof that is used in conjunction with residential telephone service.

---

<sup>20</sup> Section 21.26 Excise Tax Act of Canada.



2) No tax is payable under section 21.24 on any amount charged for telephone service acquired and paid for by means of a coin-operated telephone, other than long distance telephone service for which the amount charged exceeds fifty cents.

3) No tax is payable under section 21.24 on any amount charged for any taxable service that is provided entirely outside Canada.

## **2. Diplomat Exemption<sup>21</sup>**

Taxable services which are exempted by this law are as follows:

1) Taxable service acquired by a person described in section 2 of Part II of Schedule III or by a member of the family of that person, if that member is not a Canadian citizen or a permanent resident of Canada.

2) taxable service acquired by an organization in respect of which the Governor in Council has provided, by order made pursuant to subsection 4(1) of the Privileges and Immunities (International Organizations) Act, that the organization shall have the privileges and immunities set out in paragraph 7(a) of Schedule I to that Act.

3) Taxable service acquired by a government of a country designated by the Governor in Council pursuant to heading No. 98.10 of Schedule I to the Customs Tariff, or acquired by a Canadian government agency on behalf of such a government, if the amount charged relates to telecommunication originating or terminating at a military or defense establishment in Canada.

4) taxable service acquired by Her Majesty in right of a province, other than a province in respect of which there is in force at the time that the service is acquired a reciprocal taxation agreement referred to in section 32 of the Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act.

5) Taxable service acquired by an Indian or band within the meaning of subsection 2(1) of the Indian Act, if the amount charged is billed to the Indian or band at a reserve within the meaning of that subsection and relates to telecommunication originating or terminating at a reserve.

---

<sup>21</sup> Section 21.27 Excise Tax Act of Canada.

### 3. Licensee Exemption<sup>22</sup>

The exemptions for licensee of this law are as follows:

1) Taxable service acquired by a person to whom a license has been issued under subsection 21.3(2) for provision to another person or for use directly in providing another taxable service, other than a paging service, to another person.

2) Taxable service acquired by a person to whom a license has been issued under section 21.18 for use in providing, by means of telecommunication, a programming service within the meaning of subsection 21.1(1) to another person for an amount charged within the meaning of that subsection or in producing a programming service for such provision.

---

<sup>22</sup> Excise tax act Section 21.2821.28 (1) No tax is payable under section 21.24 on any amount charged for a taxable service acquired by a person to whom a licence has been issued under subsection 21.3(2) for provision to another person or for use directly in providing another taxable service, other than a paging service, to another person.

(2) No tax is payable under section 21.24 on any amount charged for a taxable service acquired by a person to whom a license has been issued under section 21.18 for use in providing, by means of telecommunication, a programming service within the meaning of subsection

21.1(1) to another person for an amount charged within the meaning of that subsection or in producing a programming service for such provision.

(3) Subject to subsection (4), no tax is payable under section 21.24 on any amount charged for a taxable service acquired, by a telecommunications carrier who provides telecommunication service solely outside Canada, for provision to another person outside Canada or for use directly in providing another taxable service to another person outside Canada.

(4) Subsection (3) does not apply in respect of any telecommunication service between a place in Canada and a place outside Canada that is provided by means of a telecommunication line, channel or other facility that is dedicated to the sole use of a person.

NOTE: Application provisions are not included in the consolidated text; see relevant amending Acts. R.S., 1985, c12 (4th Supp.), s. 11.

3) Taxable service acquired, by a telecommunications carrier who provides telecommunication service solely outside Canada, for provision to another person outside Canada or for use directly in providing another taxable service to another person outside Canada.

4) In case the previous paragraph does not apply in respect of any telecommunication service between a place in Canada and a place outside Canada that is provided by means of a telecommunication line, channel or other facility that is dedicated to the sole use of a person.

## **3.2 U.S.A. Illinois State**

### **3.2.1 The Law Relating to Excise Tax Collection**

In the matter of telecommunication, the government enacts the specific law for excise tax collection. The applicable law in the state of Illinois is “Telecommunication Excise Tax Act”.

### **3.2.2 Taxpayer**

The specific meaning of Taxpayer was provided in the definition of this law. It means a person who individually or through his agents, employees or a permitted person engages in the act or privilege of originating or receiving telecommunications in this state and who incurs a tax liability under this Article. In short, the telecommunication service provider has the duty to pay excise tax.

### **3.2.3 Tax Point**

Tax Point occurs when the telecommunications is purchased at retail from a retailer.

### **3.2.4 Tax Rate**

The tax rate of this law is separated in two rates by the period of time as follows:

The first period, until December 31, 1997, a tax is imposed upon the act or privilege of originating or receiving intrastate telecommunications by a person in



this state at the rate of 5% of the gross charge for such telecommunications purchased at retail from a retailer by such person.

The second period, beginning January 1, 1998, a tax is imposed upon the act or privilege of originating in this state or receiving in this state intrastate telecommunications by a person in this state at the rate of 7% of the gross charge for such telecommunications purchased at retail from a retailer by such person. However, such taxes are not imposed on the act or privilege to the extent such act or privilege may not, under the Constitution and statutes of the United States, be made the subject of taxation by the State.

### 3.2.5 Tax Base

Tax base in Telecommunication Excise Tax Act is a Gross Charge. The word "Gross Charge" is a technical term which was defined in the definition section<sup>23</sup>

"Gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in this state and for all services and equipment provided in connection therewith by a retailer, valued in money whether paid in money or otherwise, including cash, credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of materials used, labor or service costs or any other expense whatsoever. In case credit is extended, the amount thereof shall be included only as and when paid. "Gross charges" for private line service shall include charges imposed at each channel termination point within this state, charges for the channel mileage between each channel termination point within this state, and charges for that portion of the interstate inter-office channel provided within Illinois. Charges for that portion of the interstate inter-office channel provided in Illinois shall be determined by the retailer as follows: (i) for interstate inter-office channels having two channel termination points, only one of which is in Illinois, 50% of the total charge imposed; or (ii) for interstate inter-office channels having more than two channel termination points, one or more of which are in Illinois, an amount equal to the total charge multiplied by a fraction, the numerator of which is the number of

---

<sup>23</sup> Section 2 Excise Tax Act of U.S.A. Illinois State.

channel termination points within Illinois and the denominator of which is the total number of channel termination points. Prior to January 1, 2004, any method consistent with this paragraph or other method that reasonably apportions the total charges for interstate inter-office channels among the states in which channel terminations points are located shall be accepted as a reasonable method to determine the charges for that portion of the interstate inter-office channel provided within Illinois for that period. Besides the meaning of gross charge, there is the exemption of gross charge which is defined in the law as well.

### **3.2.6 Tax Exempt**

The Excise tax in Illinois is calculated from “Gross Charge” but some of the charges do not consider being gross charge. The Exempt Charges are as follows:

#### **1. The General Exemption of Illinois State**

The exemption is by the definition, the Exempt Charge is provided as follows:

1) Any amounts added to a purchaser's bill because of a charge made pursuant to (i) the tax imposed by this Article; (ii) charges added to customers' bills pursuant to the provisions of Sections 9-221 or 9-222 of the Public Utilities Act, as amended, or any similar charges added to customers' bills by retailers who are not subject to rate regulation by the Illinois Commerce Commission for the purpose of recovering any of the tax liabilities or other amounts specified in such provisions of such Act; (iii) the tax imposed by Section 4251 of the Internal Revenue Code; (iv) 911 surcharges; or (v) the tax imposed by the Simplified Municipal Telecommunications Tax Act.

2) Charges for a sent collect telecommunication received outside of the state.

3) Charges for leased time on equipment or charges for the storage of data or information for subsequent retrieval or the processing of data or information intended to change its form or content, such equipment includes, but is not limited to, the use of calculators, computers, data processing equipment,



tabulating equipment or accounting equipment and also includes the usage of computers under a time-sharing agreement.

4) Charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges.

5) Charges to business enterprises certified under Section 9-222.1 of the Public Utilities Act, as amended, to the extent of such exemption and during the period of time specified by the Department of Commerce and Economic Opportunity.

6) Charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries when the tax imposed under this Article has already been paid to a retailer and only to the extent that the charges between the parent corporation and wholly owned subsidiaries or between wholly owned subsidiaries represent expense allocation between the corporations and not the generation of profit for the corporation rendering such service.

7) Bad debts. Bad debt means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectable, as determined under applicable federal income tax standards. If the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made.

8) Charges paid by inserting coins in coin operated telecommunication devices.

9) Amounts paid by telecommunications retailers under the Telecommunications Municipal Infrastructure Maintenance Fee Act.

10) Charges for nontaxable services or telecommunications if (i) those charges are aggregated with other charges for telecommunications that are taxable, (ii) those charges are not separately stated on the customer bill or invoice, and (iii) the retailer can reasonably identify the nontaxable charges on the retailer's books and records kept in the regular course of business. If the nontaxable charges cannot reasonably be identified, the gross charge from the sale of both taxable and



nontaxable services and telecommunications billed on a combined basis shall be attributed to the taxable services or telecommunications. The burden of proving nontaxable charges shall be on the retailer of the telecommunications.

## **2. The Exemption of Prepaid Telephone**

The second exemption starts in January 1, 2001. Since aforesaid time, prepaid telephone calling arrangements shall not be considered telecommunications subject to the tax imposed under this Act.



## **Chapter 4**

### **Legal Problem Analysis**

Collecting revenue of the government must be considered to be appropriate with a situation in each period. The analysis of the advantages and disadvantages of the revenue collecting method from telecommunication business in Thailand which refers to TOT and CAT because the both of them are the private companies status. They are separated into two methods as follows:

#### **4.1 Analysis Method of Collecting Revenue from Concession Fee**

Providing concessions from the state to private sector, there are enter into operating in facility, manufacture products and any service replace the state. Because the state cannot invest in mega project, in the same time enter into investment of private sector replaces the state by concession that is impact to the country. There are advantages and disadvantages as follows:

Advantage of collecting revenue from concession fee, first, it creates one ability for the state to develop any operations is equally with people's demand. This way the economic would be developed rapidly. The state does not invest in mega project but the state is able to own the business after contract terminated.

The state certainly earns revenue from concession fee for take it to Ministry of Finance and then it must be used to develop the country. But in Thailand, the private sector does not pay directly to Ministry of Finance; therefore the country certainly cannot receive revenue from concessionaire.

The business, which is operated by a private concessionaire, has more efficiency than the state operating because the private sector must spend a lot of money to invest so if it is efficient in operating, it will gain with higher profits and people will get more profit too.

The disadvantage of collecting revenue from concession fee from the fact that a private concessionaire obtains the operating right in limited period, it causes a problem to control prices of services. People may be taken advantage of the private concessionaire.

Collecting general revenue from telecommunication in format of concession, if it is directly pay all of the amount entering into the state, this method can be more advantageous. But in case of concession fee payment from the private concessionaire to TOT and CAT as the old parties in concession provider to the private sector. But in current time, the both of the enterprises are in private status, therefore, they are without privilege to conduct like that.

Proving the private concession party sent revenue from concession fee to the both of the enterprises will be affect as follows:

To pay the sharing revenue from the concession fees to the contract party. The concession means the state permits the private sector to render public service or natural resource management within the duration and the condition which is provided by the government, for example, the concession for the mass transportation bus, concession for the woods etc.

The government owns the contract which generates revenue in accordance with the agreement concerning concession. It will be directly sent to Ministry of Finance. If there is nothing wrong, the government can generate a certain amount of income by the concession contract. However, the concession in the telecommunication business in Thailand is defective so it affects the revenue of the government.

The defect is paying the sharing revenue to the private sector contract which should be paid to the government but in the concession of the telecommunication business, the sharing revenue will be sent to the state enterprises account. At present, it is legally deemed to be the private sector company. The delivery of the sharing revenue makes it suspicious that the enterprises which are the concession owners in telecommunication business or the government owner. How can the government earn the revenue from the telecommunication business.

Whether the enterprises own the concession of telecommunication business, the concession can only belong to the government. Therefore the owner of concession is the government. The government established The National Telecommunications Commission which has the duty to supervise the concession contract. Therefore, there is no connection between the state enterprise and the



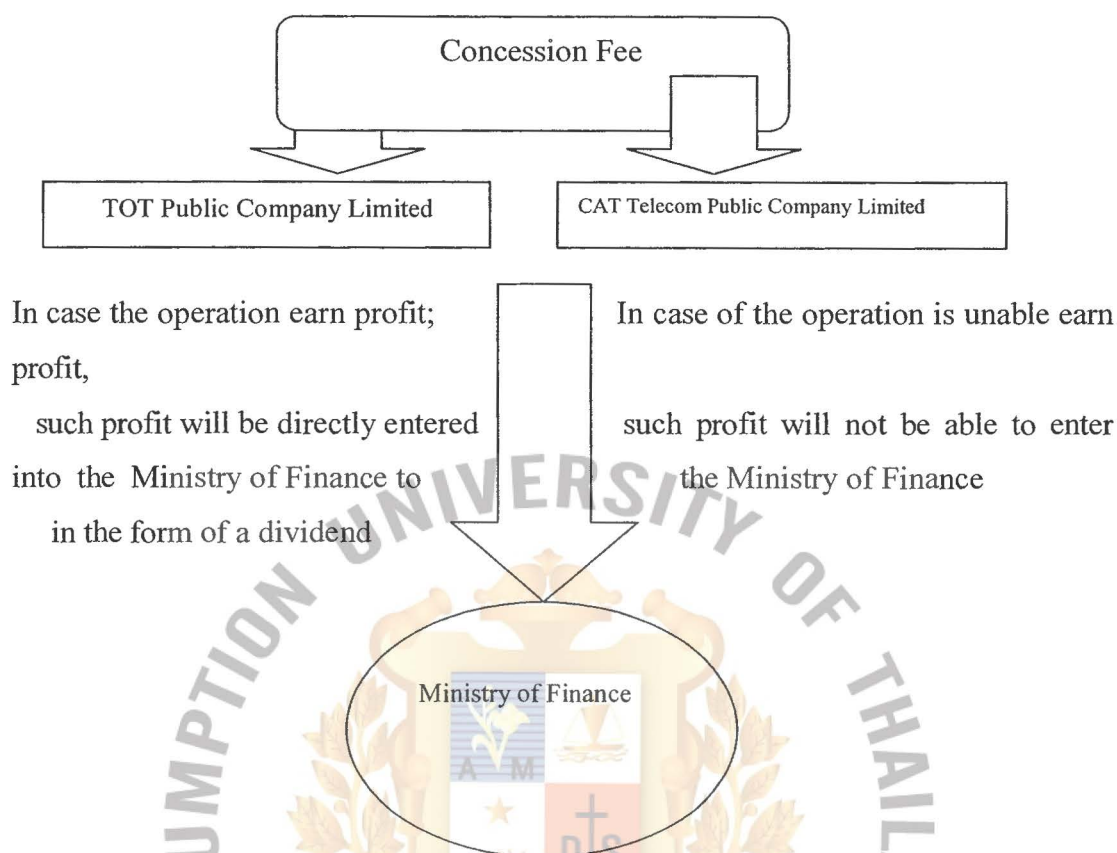
concession contract. However, the revenue from the telecommunication business is paid to the state enterprises.

When the enterprises receive the revenue from the telecommunication business, how can the government receive the revenue from the telecommunication business? The government holds 100 shares of the state enterprise. The revenue will be received from the dividends of two enterprises when there is a profit in doing the business. The government as the owner of the concession contract will receive sharing revenue from the contract party, and the private sector must wait for revenue to deliver to the ministry of finance in the form of dividends of the two enterprises. It is incorrect. The revenue should be sent to the Ministry of Finance and how the money should be spent is another matter.

The government does not receive the revenue from the telecommunication business directly and the amount which is uncertain affects the money in administrating the country. The revenue is uncertain because the uncertainty of the enterprises (The uncertain of receiving income, by the reason that). There is no guarantee that the state enterprise will gain profit in every quarter. That government receives revenue from the dividends means the enterprises that the Ministry of Finance which holds 100 percent shares. If there is no profit, there will be no dividend to the shareholder. The government cannot receive any revenue from the concession of the telecommunication business because the two state enterprises cannot generate profit.

In the pessimistic aspect, the state enterprises have profit but they don't want to send it to the government or send the least amount as they can. The money may be spent for a bonus for every employee and the administrators. They may have plans for continually expanding the business. These things decrease the revenue or there may be no revenue from this concession.

The diagram indicates the revenue sent to the ministry of finance in accordance with the concession system, the ministerial regulation of ministry of finance No.79



“Sharing revenue from the concession party, if the business has a profit, the revenue will be sent to the Ministry of Finance in the form of dividends. If the business has no profit, there will be no dividend to the ministry of Finance”

By the reason that the government does not directly receive tax revenue from the concession of the telecommunication business, it affects the development of the country in many aspects because the telecommunication business has a large amount of revenue. The sharing revenue which should be delivered pursuant to the concession contract is tremendous.

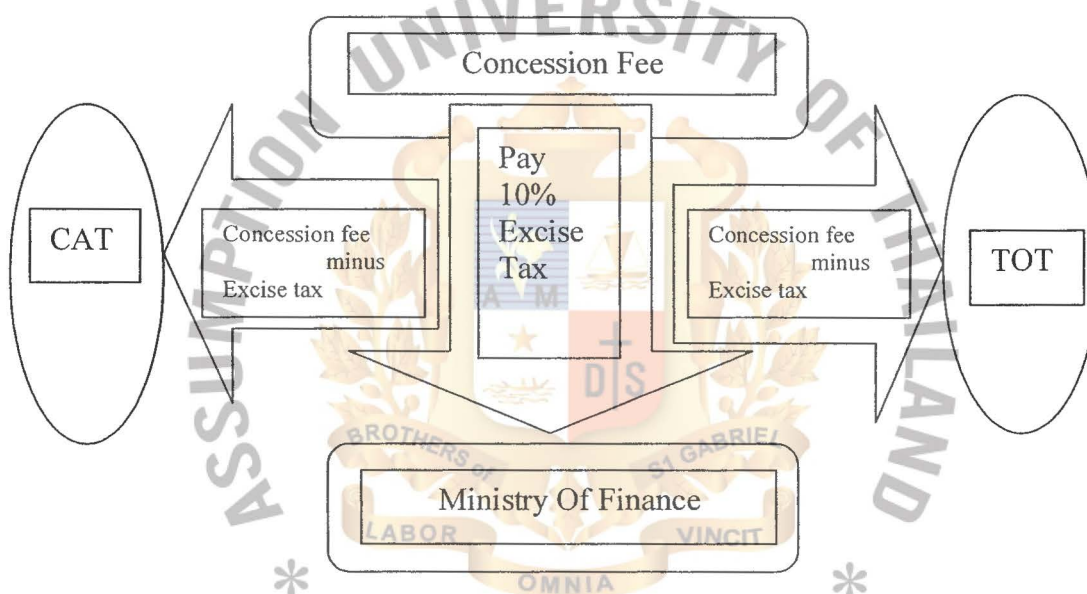
It will surely affect the government budget. When it impacts the public sector, the burden will fall to the people from not having not enough budget.

## 4.2 Analysis Collecting in the Format of Excise Tax

There are many countries using this method to collecting revenue from telecommunication business such as Canada and America in the state of Illinois.

Both of them have strong economic and use this method in collecting for a long time which it can get a lot of benefit and revenue to their states. Thailand has never collected any excise tax for telecommunication business because it still has concession contract with private concessionaire which is not revocable before the period according to the contract condition.

The diagram indicates the revenue sent to the Ministry of Finance in accordance with the excise tax system, the ministerial regulation of Ministry of Finance No.68.



The flow chart illustrates the tax income collection of government pursuant to ministerial regulation of the financial ministry. It indicates that the Ministry of Finance will certainly receive income from excise tax which is collected in 10 percent of the concession fee from the private contractual party. The income will be certainty and directly paid to the Ministry of Finance. If the two state enterprises operate the business but there is no profit or the money is used in expanding the business, the government still receives the income from this 10 percent. And when the TOT and CAT have profit the state will get corporate income tax and dividend in status of shareholder.

The advantages and disadvantages of only collecting excise tax in telecommunication business are as follows:



The advantage of only collecting excise tax in telecommunication business are Collecting excise tax in telecommunication business, the state is able to receive revenue directly because collecting excise tax is immediately collected when having service payment so the supplier has duty to collect excise tax from consumers and then remits them to the state.

The state can control the operation of telecommunication business by excise tax rate determination.

The telecommunication business develops rapidly and there is consumed technology at large. If the state regard as there is so over consumption that it may occur disadvantage engage in people, the state excise tax is to control their consumption by increasing excise tax rate in telecommunication business.

The disadvantages of only collecting excise tax in telecommunication business are the state can not control the operation of telecommunication business. The state can observe and control that concession in a necessary case. But collecting excise tax must be deemed the private for freedom, not depends on contract condition of the state. The state can not intervene, in case, the high service fee shall be deem to be the company scheme, people are in trouble.

Maintaining the concession contract between the state and the private sector cannot be terminated before condition period. Taking directly excise tax collection is not able to act right now but the state can take the excise tax for collecting the part of revenue.

Thailand used this format in B.E.2546-2550. This method is flexible because it takes advantage and disadvantage of the concession and excise tax to compensate each other. Directly, revenue id entered into the state and the people do not have burden in high living.

This method, the private sector has to pay concession fee; it means payment without any expense deduction by having percentage determination and a minimum which is of more benefit, and use that rate to the state. And collecting excise tax at the rate of 10 percent in mobile telecommunication, the state will take the amount of revenue from collecting excise tax deducted from concession fee at the end of the year. It collects from the same amount of money which must be sent to the state but sent in the format of excise tax in some part.

Some part of revenue is directly entered into the Ministry of Finance. If the state only collects concession fee, the revenue must pass through TOT and CAT before. Therefore, the state will receive the revenue when dividend is paid that it is uncertain. And it is not appropriate or correct.

The state also receives dividends, besides, some part of the revenue. Collecting from the same amount of money, the private sector must sent concession fee every year.

For certain on the revenue entering into the state, the tables below show the revenue from collecting in B.E.2546-2550 to compare with receiving dividend replacement as follows:

**Table 1. Show annual budget year 2546<sup>24</sup>**

Goods Month	Telecommu ication Enterprise Tax	Telecom Standard Enterprise (Domestic Call)	Telecom Standard Enterprise (International Call)	Mobile Telecom Enterprise (Domestic Call)	Mobile Telecom Enterprise (International Call)	Telecommunica tion Enterprise (Other)
October	0.00	0.00	0.00	0.00	0.00	0.00
November	0.00	0.00	0.00	0.00	0.00	0.00
December	0.00	0.00	0.00	0.00	0.00	0.00
January	0.00	0.00	0.00	0.00	0.00	0.00
February	45.62	28.89	0.00	16.73	0.00	0.00
March	944.85	263.32	0.00	681.53	0.00	0.00
April	876.29	169.64	11.28	569.95	0.00	125.42
May	795.88	163.98	8.03	549.35	0.00	74.52
June	917.58	161.31	5.84	615.57	0.00	134.86
July	961.44	180.14	0.00	681.97	0.67	98.66
August	955.23	164.92	9.85	678.15	0.00	102.31
September	922.73	159.68	10.02	628.29	0.00	124.74
Total	6,419.63	1,291.89	45.02	4,421.54	0.67	660.51

<sup>24</sup> Excise Department, Statistic of Tax, At <http://edweb.excise.go.th/stastw/ProductDetailSummaryMonthlyInfoAction.do>. (last visited 10 November 2009).

**Table show annual budget year 2547<sup>25</sup>**

Goods Month	Telecomm uni cation Enterprise Tax	Telecom Standard Enterpris e (Domesti c Call)	Telecom Standard Enterprise (Internationa l Call)	Mobile Telecom Enterpris e (Domesti c Call)	Mobile Telecom Enterprise (Internationa l Call)	Telecommunica tion Enterprise (Other)
October	973.17	45.99	0.00	917.24	9.94	0.00
November	924.50	48.53	0.00	745.85	130.12	0.00
December	1,013.53	43.97	0.00	963.00	6.56	0.00
January	1,144.75	751.51	0.00	378.05	15.19	0.00
February	928.53	43.32	0.00	885.21	0.00	0.00
March	1,024.00	39.89	0.00	966.85	17.26	0.00
April	1,336.54	910.72	0.00	425.82	0.00	0.00
May	984.50	700.22	0.00	284.28	0.00	0.00
June	1,126.14	41.85	0.00	1,084.29	0.00	0.00
July	1,066.82	43.19	0.00	1,023.63	0.00	0.00
August	1,046.45	44.48	0.00	1,001.97	0.00	0.00
September	1,056.39	42.70	0.00	1,013.69	0.00	0.00
Total	12,625.35	2,756.39	0.00	9,689.89	179.07	0.00

<sup>25</sup> Excise Department, Statistic of Tax, At <http://edweb.excise.go.th/stastw/ProductDetailSummaryMonthlyInfoAction.do>. (last visited 10 November 2009).



**Table show annual budget year 2548<sup>26</sup>**

Goods Month	Telecommunica tion Enterprise Tax	Telecom Standard Enterprise (Domestic Call)	Telecom Standard Enterprise (International Call)	Mobile Telecom Enterprise (Domestic Call)	Mobile Telecom Enterprise (International Call)	Telecommunica tion Enterprise (Other)
October	1,085.92	47.04	0.00	1,038.88	0.00	0.00
November	1,151.27	42.42	0.00	1,108.85	0.00	0.00
December	1,148.89	46.65	0.00	1,102.24	0.00	0.00
January	1,152.73	62.16	0.00	1,090.57	0.00	0.00
February	1,176.58	13.98	0.00	1,162.60	0.00	0.00
March	983.77	13.07	0.00	970.70	0.00	0.00
April	1,306.18	14.32	0.00	1,291.86	0.00	0.00
May	1,412.77	121.64	0.00	1,291.13	0.00	0.00
June	1,161.34	40.99	0.00	1,120.35	0.00	0.00
July	1,091.82	46.78	0.00	1,045.04	0.00	0.00
August	1,079.85	40.82	0.00	1,039.03	0.00	0.00
September	1,183.95	83.74	0.00	955.98	134.65	9.58
Total	13,935.05	573.58	0.00	13,217.24	134.65	9.58

<sup>26</sup> Excise Department, Statistic of Tax, At <http://edweb.excise.go.th/stastw/ProductDetailSummaryMonthlyInfoAction.do>. (last visited 10 November 2009).

Table show annual budget year 2549<sup>27</sup>

Goods Month	Telecommunication Enterprise Tax	Telecom Standard Enterprise (Domestic Call)	Telecom Standard Enterprise (International Call)	Mobile Telecom Enterprise (Domestic Call)	Mobile Telecom Enterprise (International Call)	Telecommunication Enterprise (Other)
October	1,062.48	40.92	49.92	962.04	0.19	9.41
November	1,122.92	87.37	0.00	1,035.37	0.18	0.00
December	1,261.81	114.95	0.00	1,146.86	0.00	0.00
January	1,385.27	82.02	0.00	1,294.18	0.03	9.04
February	1,354.77	81.99	0.00	1,262.22	0.03	10.53
March	1,350.63	85.49	0.00	1,265.73	0.03	-0.62
April	1,454.27	86.86	0.00	1,347.24	0.03	20.14
May	1,304.96	72.09	0.00	1,221.91	0.03	10.93
June	1,271.02	79.90	0.00	1,185.54	0.03	5.55
July	1,186.29	74.32	0.00	1,078.66	22.52	10.79
August	1,399.94	104.03	2.01	1,286.61	0.03	7.26
September	1,368.42	70.53	0.00	1,290.24	0.03	7.62
Total	15,522.79	980.48	51.92	14,376.61	23.14	90.64

<sup>27</sup> Excise Department, Statistic of Tax, At <http://edweb.excise.go.th/stastw/ProductDetailSummaryMonthlyInfoAction.do>. (last visited 10 November 2009).

**Table show annual budget year 2550<sup>28</sup>**

Goods Month	Telecommu ica tion Enterprise Tax	Telecom Standard Enterprise (Domestic Call)	Telecom Standard Enterprise (International Call)	Mobile Telecom Enterprise (Domestic Call)	Mobile Telecom Enterprise (International Call)	Telecommunica tion Enterprise (Other)
October	1,227.05	70.94	0.00	1,148.45	0.03	7.63
November	1,224.85	72.37	0.00	1,145.01	0.03	7.44
December	1,213.19	71.13	0.00	1,134.63	0.03	7.40
January	1,275.18	67.26	0.00	1,200.73	0.03	7.16
February	1,266.95	56.65	0.14	1,202.97	0.03	7.16
March	1,020.84	64.77	0.00	956.37	0.03	-0.33
April	1.07	1.07	0.00	0.00	0.00	0.00
May	0.00	0.00	0.00	0.00	0.00	0.00
June	0.00	0.00	0.00	0.00	0.00	0.00
July	0.00	0.00	0.00	0.00	0.00	0.00
August	0.00	0.00	0.00	0.00	0.00	0.00
September	0.00	0.00	0.00	0.00	0.00	0.00
Total	7,229.15	404.19	0.14	6,788.17	0.18	36.47

From the table 1 to 5 above, the state receives telecommunication business revenue from excise tax. The amount of revenue is more than 10 thousand million baht per year which was taken in the state every month.

<sup>28</sup> Excise Department, Statistic of Tax, At <http://edweb.excise.go.th/stastw/ProductDetailSummaryMonthlyInfoAction.do>. (last visited 10 November 2009).



**Table Show Dividend and Net Profit of TOT Public Company Limited<sup>29</sup>**

TOT Company Limited	Dividend	Net Profit
2546	1,500,000,000	11,265,149,870
2547	4,500,000,000	11,522,962,767
2548	10,116,000,000	6,690,740,000
2549	5,508,000,000	6,981,220,000
2550	1,002,000,000	6,232,700,000
2551	5,511,000,000	5,602,800,000

The information table shows that it is uncertain of the state from TOT dividend payment. In B.E.2548 and 2549 period of collecting excise tax mix with collecting concession fee in telecommunication business together, the net profit collecting excise tax period shows that the profit of TOT is not effected: not loss, although TOT must pay both excise tax and concession fee in the same time. The company has still had profit but there is a bit reducing which effects with the bonus of the employees and the executive of company. However, it is an individual benefit, the state should not concern to support in this issue.

The collecting of income from telecommunication business by concession method is taking the problem to the state. The state is the owner of natural resources in the country and an investor in TOT and CAT. But the state cannot be confident about the income of telecommunication business. At the present, the state has to wait for TOT and CAT for the income. It is in correct and improper. So they should consider other methods to use to collect income from telecommunication business in a good way for the state.

<sup>29</sup> Excise Department, Statistic of Tax, At <http://edweb.excise.go.th/stastw/ProductDetailSummaryMonthlyInfoAction.do>. (last visited 10 November 2009).

### 4.3 Analysis Administrative Cost of the State Authority and the Private Sector

The collecting tax should consider increasing cost of both authority and taxpayer. This cost is important part which should consider together with the collecting income.

#### 4.3.1 Analysis Administrative Cost of Excise Department

The administrative cost of Excise Department on average is 0.48 when collected income 100 baht. So if Excise Department collects tax from telecommunication business 15,522.79 million baht, then the administrative cost will equal 74.51 million baht

Administrative cost on 2549 is 0.48<sup>30</sup> from the telecommunication business

Administrative cost on 2549 from the telecommunication business

$$15,522.79 \times 0.48 / 100 = 74.51 \text{ million baht}$$

The state gets worth revenue from the telecommunication business. The administrative cost is very low when compare with revenue.

#### 4.3.2 Analysis Administrative Cost of Private Sector

The administrative cost of the private sectors per 100 baht average is 6.245<sup>31</sup> baht. Therefore, their administrative cost is 969.398 million baht from excise tax payment at the amount 15,522.79 million baht.

Administrative Cost of private sector about management excise tax

$$15,522.79 \times 6.245 / 100 = 969.398$$

<sup>30</sup> Excise Department, Annual Report, At <https://www.excise.go.th/index.php?id=443>. (last visited 4 December 2009).

<sup>31</sup> Advanced Info Service Public Company Limited, Annual Report, At <http://investor.ais.co.th/ArticleListAISIRNews.aspx?mid=77>. (last visited 4 December 2009).

The private sector has more administrative cost than the tax authorities.  
But the administrative cost is not more than revenue of the state.

When consider to administrative cost of excise department and private sector, the administrative cost is very lower than obtaining the revenue of the state.  
So the collecting excise tax from telecommunication business is proper for Thailand.





## **Chapter 5**

### **Conclusion and Recommendation**

#### **5.1 Conclusion**

The income collection from the telecommunication business is less than it should be. The income from telecommunication business is in a huge amount but the government receives little income from the private sector that uses the resources in the form of frequency. If the other concessions such as woods concession or public transportation concession, the government will receive the income from the concession contract and it is directly delivered to the government.

The concession system for the telecommunication business which is used in many countries, but the problem are not the same as in Thailand. Because the concession from other countries in tax collection from telecommunication business, the contract party who obtains concession shall directly deliver the sharing income to the government but in Thailand, the government does not receive the money from the contract party because the private sector party will pay sharing income which is called "concession fees to the TOT Public Company Limited and CAT Telecom Public Company Limited. They are state enterprises under the ministry of technology and communication. It was called telephone organization of Thailand and communication authority of Thailand. The ministry of finance holds the share in 100 percent but they are privatized into public companies which fully express themselves as private companies of the state enterprises. They operate and compete with other companies in rendering telecommunication service.

The contract party, private sector, still has to pay income tax to the state enterprise in the form of concession fees. It is incorrect and improper in many aspects.

1. The concession fees will be sent directly to the government but in concession of telecommunication business, the person who receives income is enterprises, even though they are public companies,
2. Income is not sent to the government in full amount of money as it should be,

3. Income will be sent to the government in the form of dividend and it depends on the capacity in operating the business of state enterprises which are the public companies.

4. It will cause unfairness in competition of the company who operates telecommunication business.

5. There are many steps of procedure before the income is sent to the government.

6. There is a loophole for corruption of the mentioned income.

Income collection from the government by using concession system for the telecommunication business will affect the economy in many issues. The concession system is improper and not suitable for telecommunication business.

Collecting income of government from the telecommunication is business in the form of Excise tax.

Collecting income in the form of Excise tax, there are guidelines of the good governance because the United States of America in Illinois State and Canada, they have collected excise tax in telecommunication business for a long time. They will receive income from the telecommunication business in the proper amount of money and directly to the government. Therefore, bring the income to administrate the country and it affects the economic system

Thailand collected excise tax from telecommunication business during B.E. 2546-2550 which collected for the period of 3 years. However, the income would be sent directly to the government more than ten thousand billion baht per annum. The income was certain and directly to the government. The government does not have to wait or depend on the capability of the state enterprises which was collected in the form of excise tax. This method will be useful for the country as follows:

1. The income will be sent directly to the government.
2. The income will be sent in the certain amount.
3. As the result of the income being sent directly to government, it does not creates the loophole for corrupting the income tax.
4. It creates the fairness to all telecommunication business operation.

Therefore, excise tax collection in the telecommunication business is useful to the country in the matter of tax income. The competition in this kind of business is more than income collection in the concession system which is uncertain but it may be collected.

At the present, even though there is cancellation in the chapter 12, the business is permitted or concession privilege from the government in the category no.12.01 by collecting excise tax from telecommunication business in the rate of zero percent. The reduction of the rate into zero percent the telecommunication business is still in the excise tax system. Therefore, it is still the benefit because if the ministry of finance. It is very convenient and rapid to operate. If it is necessary or any other reason which is for the benefit of the country, it is easy to operate.

It is different from the excise tax exemption in telecommunication business which is outside the tax system. The consequence is to control of telecommunication business will be difficult to operate or if it is necessary to use it again, it takes time for the approval from the legislative. It cannot be ready to be used for the benefit of the country.

The telecommunication business in the tax affects to the tax system of the country as mentioned it above. The exemption will be disadvantage to the tax system.

## 5.2 Recommendation

In an economic crisis, there are problems from all over the world. The government should collect every type of tax income thoroughly and strictly. It is for the utmost benefit in administrating the country and developing the country for the benefit of the people to live happily.

The tax collection from telecommunication business should be collected in the form of excise tax; it will be a considerable advantage to the country. The government still has the concession contract with the private sector so it cannot be collected only in the form of excise tax. If the collection is only in the form of excise tax, we can use the guideline of United State of America or Canada in collecting excise tax to be our model in collecting excise tax. Both countries have collected



excise tax from the telecommunication business for a long time. Both of them have a strong economics system so it is suitable for using the guideline of both countries to be the model in collecting excise tax from telecommunication business of the countries with the highest efficiency.

The two enterprises are supported by the state provided that the private sector parties must pay concession fee to the enterprises. This state provision is not appropriate because the concession fee must obtain the state as the owner concession. Paying concession to the enterprises causes uncertain of telecommunication enterprise's income because the state must wait for the income in the form of dividend from the enterprise payment. This method is not appropriate because the state is the owner of the resource. The state should collect income from the telecommunication business which enter into the state directly that is an efficient collection method which regard as the excise tax collecting method in B.E. 2546 to 2550 period. The method was the state collected excise tax only 10 percent from gross income of the private sector parties and then the amount of taxable income which was paid by such excise tax could be deducted with concession fee. However, the enterprises have still been supported by state, although it is reducing, this method is the most appropriate to both state and the enterprises. Because the certain income is able to enter into the state directly and in case the enterprises have profit, the state also will collect the both corporate income tax and dividend from them. But in case the enterprises have a loss from operating the business, the state has still had the income from the telecommunication business's collecting excise tax.

The fore mention, the method is justice and appropriate for utility of state. State should return to collecting excise tax in telecommunication business by issuing cabinet resolution revoke the cabinet resolution of 23 January 2550 and take back cabinet resolution of 28 January 2546 and 11 February 2546 to apply. And issuing the Ministry of Finance Regulation for appropriately increasing excise the tax rate in telecommunication business.

## Bibliography

### Books

- Prapas Kong-ied. Excise Tax Law Explanation. Bangkok: Nititham Publishing, 1999.
- Vittaya Aussavanik. Excise Tax Law Explanation B.E. 2526. Bangkok: n.p., 2525.
- Praypon Kumsup and Samai Gotintakom. Concession in Facility Business. Bangkok: n.p., 2544.

### Law

- Excise Act B.E. 2527.
- Excise Tariff Act B.E 2527.
- Excise Tax Act Telecommunication Services Tax of Canada.
- Telecommunications Excise Tax Act of Illinois State.

### Internet

- Advanced Info Service Public Company Limited. Annual Report. At <http://investor.ais.co.th/ArticleListAISIRNews.aspx?mid=77>. (last visited 4 December 2009).
- Department of Justice. Excise Tax Act of Canada. At <http://laws.justice.gc.ca/en/E-15/index.html>. (last visited 20 October 2009).
- Excise Department. Annual Report. At <https://www.excise.go.th/index.php?id=443>. (last visited 4 December 2009).
- Excise Department. Statistic of Tax. At <http://edweb.excise.go.th/stastw/ProductDetailSummaryMonthlyInfoAction.do>. (last visited 10 November 2009).
- Justia US Law. Telecommunication Excise Tax Act. At <http://law.justia.com/illinois/codes/chapter8/620.html>. (last visited 20 October 2009).
- Ministry of Finance. Ministry of Finance Regulation (No.68). At <http://www.mof.go.th/rule/getfile.php?ID=428>. (last visited 12 October 2009).
- Ministry of Finance. Ministry of Finance Regulation (No.79). At <http://www.mof.go.th/rule/getfile.php?ID=908>. (last visited 12 October 2009).

The National Telecommunications Commission. Meaning of Telecommunication Business in Thailand. At [http://www.ntc.or.th/uploadfiles/1224666842\\_organization.pdf](http://www.ntc.or.th/uploadfiles/1224666842_organization.pdf). (last visited 7 October 2009).

The Royal Institute. Meaning of Concession. At <http://rirs3.royin.go.th/new-search/word-40-search.asp>. (last visited 22 September 2009).

The Secretariat of the Cabinet. The Cabinet Resolution 23 January 2007. At [http://www.cabinet.soc.go.th/soc/Program2-3.jsp?top\\_serl=211168&key\\_word=&owner\\_dep=nn&meet\\_date\\_dd=23&meet\\_date\\_mm=01&meet\\_date\\_yyyy=2550&doc\\_id1=&doc\\_id2=&meet\\_date\\_dd2=&meet\\_date\\_mm2=&meet\\_date\\_yyyy2=](http://www.cabinet.soc.go.th/soc/Program2-3.jsp?top_serl=211168&key_word=&owner_dep=nn&meet_date_dd=23&meet_date_mm=01&meet_date_yyyy=2550&doc_id1=&doc_id2=&meet_date_dd2=&meet_date_mm2=&meet_date_yyyy2=). (last visited 12 October 2009).

The Secretariat of the Cabinet. The Cabinet Resolution on 11 February 2003. At [http://www.cabinet.soc.go.th/soc/Program2-3.jsp?top\\_serl=190493&key\\_word=&owner\\_dep=nn&meet\\_date\\_dd=11&meet\\_date\\_mm=02&meet\\_date\\_yyyy=2546&doc\\_id1=&doc\\_id2=&meet\\_date\\_dd2=&meet\\_date\\_mm2=&meet\\_date\\_yyyy2=](http://www.cabinet.soc.go.th/soc/Program2-3.jsp?top_serl=190493&key_word=&owner_dep=nn&meet_date_dd=11&meet_date_mm=02&meet_date_yyyy=2546&doc_id1=&doc_id2=&meet_date_dd2=&meet_date_mm2=&meet_date_yyyy2=). (last visited 12 October 2009).

The Secretariat of the Cabinet. The Cabinet Resolution on 28 January 2003. At [http://www.cabinet.soc.go.th/soc/Program2-3.jsp?top\\_serl=190346&key\\_word=&owner\\_dep=nn&meet\\_date\\_dd=28&meet\\_date\\_mm=01&meet\\_date\\_yyyy=2546&doc\\_id1=&doc\\_id2=&meet\\_date\\_dd2=&meet\\_date\\_mm2=&meet\\_date\\_yyyy2=](http://www.cabinet.soc.go.th/soc/Program2-3.jsp?top_serl=190346&key_word=&owner_dep=nn&meet_date_dd=28&meet_date_mm=01&meet_date_yyyy=2546&doc_id1=&doc_id2=&meet_date_dd2=&meet_date_mm2=&meet_date_yyyy2=). (last visited 12 October 2009).

TOT Public Company Limited. Annual Report. At [http://www.tot.co.th/index.php?option=com\\_content&task=blogcategory&id=32&Itemid=325](http://www.tot.co.th/index.php?option=com_content&task=blogcategory&id=32&Itemid=325). (last visited 12 October 2009).



