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TAX
LITIGATION
IN THAILAND

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Tax Litigation in Thailand

Overview of Litigation in Thailand

The litigation of tax disputes in Thailand is regulated by the Act for the Establishment of and Procedure for the Tax Court B.E. 2528 (1985) and the Regulation on Tax Cases B.E. 2544 (2001). Any matters not addressed by these are subject to the provisions of the Civil Procedure Code of Thailand.

Tax Courts in Thailand. There are two types of tax courts of first instance in Thailand: the Central Tax Court and the recently established Provincial Tax Courts. The Central Tax Court has jurisdiction over the provinces of Bangkok, Samut Prakan, Samut Sakhon, Nakhon Pathom, Nonthaburi, and Pathum Thani. While established in principle, the Provincial Tax Courts have not yet been formally set up in their respective provinces. As such, the Central Tax Court still retains jurisdiction over tax cases throughout Thailand.

Appeals against judgments and orders of the Central Tax Court are made directly to the Tax Case Division of the Court of Appeals for Specialized Cases, with petitions for further appeal addressed to the Supreme Court. Consideration of whether to accept an appeal is made at the full discretion of the Supreme Court.

Jurisdiction of Tax Court. The Central Tax Court exercises jurisdiction over civil cases:

- Pertaining to appeals against decisions made by competent officials or committees recognized under applicable tax law;
- Pertaining to government tax debt claims;
- Pertaining to tax refunds;
- Pertaining to rights and obligations established under agreements for tax collection purposes; and
- Falling under the jurisdiction of the Thai tax courts.

Customs Cases. Since Thai tax courts can exercise jurisdiction only over civil disputes, only customs cases that involve civil matters fall under the jurisdiction of tax courts. These civil customs disputes are also subject to the Act for the Establishment of and Procedure for the Tax Court B.E. 2528 (1985) and the Regulation on Tax Cases B.E. 2544 (2001). Examples of customs cases falling under the jurisdiction of the tax courts include:

- Cases pertaining to appeals against decisions made by competent officials or committees under Thai customs laws, such as:
 - Appeals against a decision made by customs officers alleging false duty payment;
 - Disputes over the classification of customs tariffs; and
 - Objections to the identification of prohibited goods.
- Cases pertaining to the government's claims on tax debts, such as cases filed by the Customs Department to claim tax debt.
- Cases concerning tax refunds, such as cases filed by private entities to claim for duties paid in excess.

- Cases pertaining to rights and obligations established under agreements for tax collection purposes, such as claims regarding false duty payment where the duty in question has been pledged in favor of another party.

The Customs Act B.E. 2560 (2017) also imposes criminal sanctions on individuals for certain classes of wrongdoing. Prosecution of these claims is under the jurisdiction of the criminal courts.

Filing Conditions. Thai Tax Courts only entertain two types of cases once all necessary procedures have been fulfilled:

- Cases involving an appeal against a decision made by a competent official or committee under applicable tax laws. For example, this may include cases related to income tax, value-added tax, specific business tax, or stamp duties. A prerequisite for such cases is that an objection or appeal must have been filed with the competent authority, and a decision on that objection or appeal must have already been issued.
- Cases concerning tax refunds, where the claim for tax refunds has been submitted following prescribed criteria, procedures, and time limits.

Litigation Process and Procedures

Complaint. For a tax dispute arising in the provinces of Bangkok, Nakhon Pathom, Nonthaburi, Pathum Thani Samut Sakhon, or Samut Prakan, the complaint (plaint) must be filed with the Central Tax Court. However, for disputes arising in other provinces, the dispute can be presented to either the Provincial Court with jurisdiction over the defendant's place of domicile or the Central Tax Court.

The Provincial Court is responsible for forwarding any complaints concerning tax disputes to the Central Tax Court for consideration of whether to accept the complaint. The plaintiff must prepare one copy of the complaint to be retained at the Provincial Court, and the original will be delivered to the Central Tax Court for consideration. After receiving the Central Tax Court's order on whether to accept the complaint, the Provincial Court will notify the plaintiff of whether the Central Tax Court has accepted the complaint within seven days of receiving the Central Tax Court's order.

The plaintiff is required to submit the complaint within the timeframe specified by the relevant tax laws, which usually allow for a period of 30 days. If the plaintiff is unable to meet the prescribed deadline, it may file a petition requesting an extension, which is granted at the court's discretion.

The complaint must include the essential facts and allegations forming the basis of the claim, and any cited laws or regulations must be submitted along with the complaint. If the defendant raises concerns about the ambiguity of the complaint, the court may require the plaintiff to modify it.

It is also important to note that appeals to an assessment by the competent authority and the filing of a complaint are not considered as deferrals of tax payment obligations. However, certain tax laws may allow for the filing of a motion for a stay.

Answers and Counterclaims. Upon receiving the summons and complaint, the defendant is required to file an answer with either the Central Tax Court or the Provincial Court to which the complaint was filed within a period of 15 days, though the court extend this timeframe. If the summons must be posted to the defendant's registered address, the law allows an additional 15 days for the filing of the answer.

The answer must state the basis for any denials and set forth any related counterclaims. Additionally, any cited laws or regulations must be submitted along with the answer. If the answer is filed with the Provincial Court, the plaintiff must prepare one copy of the answer to be retained at the Provincial Court, while the original filing will be delivered to the Central Tax Court.

The plaintiff must, in turn, answer any counterclaim within 15 days of being served with the defendant's answer and counterclaim.

Default Order. If the defendant fails to submit an answer, the plaintiff can apply for a default order within 15 days of the defendant's failure to answer. The Provincial Court will then inform the Central Tax Court of the petition for default and submit a summons, a copy of the complaint, along with the plaintiff's request for a judgment or order in their favor due to the defendant's default. The court, upon the plaintiff's motion, will then declare the defendant in default for failing to answer.

However, the defendant may appear and provide an explanation for the default. If it deems the reason justified, the court will typically allow the defendant additional time to submit an answer. However, if the default is deemed unjustified, the court will proceed with the action without permitting the defendant to file an answer.

If the plaintiff fails to apply for a default order within 15 days of the expiration of the period designated for the defendant to answer, the court will dismiss the case. Additionally, the court may opt to refund a portion of the paid court fees.

If neither party appears in court, the action will be dismissed without prejudice, allowing the possibility of refiling the suit later. If only the plaintiff fails to appear, the court will dismiss the action unless the defendant requests that proceedings continue, in which case the court will adjudicate the case in the plaintiff's absence.

It is important to note that the court cannot render a verdict solely based on one party's default; the case must be determined on its substantive merits. In this regard, the court can address any legal issues and consider evidence during the adjudication process. Furthermore, a party in default is not entirely barred from the court and retains the right to cross-examine the opposing party's witnesses and evidence. However, the defaulting party is penalized by being unable to present evidence and witnesses.

Mediation. The tax court also offers a mediation process as an alternative dispute resolution mechanism. To resolve a dispute through mediation, a party can submit a petition to the court before or during the commencement of proceedings.

Procedures during Trial

Submission of Documents. Any documents or objects to be introduced or referenced as evidence in support of a party's claims or arguments must be in the list of evidence, which must be submitted no later than 30 days before the scheduled pretrial hearing date. In certain uncomplicated cases where a pretrial hearing is not required, the list of evidence must be submitted no later than seven days before the date of the witness examination hearing. A petition to submit an additional list of evidence can be submitted, subject to the discretion of the court and the objection of the opposing party.

Parties may introduce new evidence after the deadline for filing the list of witnesses if the requesting party can demonstrate reasonable grounds and if the new evidence is relevant to a material point at issue.

Along with the required list of evidence, parties must submit original copies of documentary evidence and any physical evidence in their possession. However, parties are not obligated to provide copies of these documents to the other party. Failure to submit evidence in their possession will result in such evidence being deemed inadmissible unless the court orders otherwise (e.g., due to force majeure or the evidence being relevant to a material point at issue).

If physical or documentary evidence (which must be presented to the court at the pretrial conference) is not in the possession of the party, the party may request the court to issue a summons to the person or entity who possesses the evidence requiring submission to the court prior to the pretrial conference or the witness examination hearing.

Pretrial Hearings. After the pleadings are filed, a list of issues in dispute, called “settlement of issues,” must be established, either by party agreement or with the assistance of the court. Subsequently, the court will schedule a pretrial conference to address the settlement of issues and specify which matters must be proven through the introduction of evidence at trial, along with determining each party's burdens of proof.

At the pretrial hearing, the court will also ask each party whether there are any objections to the initial issues in dispute and if they are willing to accept some or part of the issues. After the pretrial conference, a party may file a petition within seven days to contest the issues in dispute or the burdens of proof assigned by the court. The court will then review and decide upon these objections before the date of any scheduled witness examination hearings.

While Thai courts do not generally take an active inquisitory role in disputes, they nonetheless have the authority to inquire about allegations, arguments, evidence, and any facts pertaining to the pleadings submitted to the court during the pretrial conference, at which parties are required to be in attendance. However, even where a party is absent, it does not prevent the pretrial conference from proceeding. In such case, the party who fails to appear at the pretrial conference is considered to have acknowledged the proceedings on that date and will be prohibited from later raising objections to the list of issues in dispute unless they can provide a valid reason for their objection.

Written Questionnaire. The court may send a written questionnaire to any or all parties requiring them to respond to the questions during the pretrial hearing. Additionally, any party may send a factual statement to the other party at least seven days before the pretrial conference or the witness examination, requesting the other party to affirm the facts during the pretrial conference or witness examination.

If a party fails to answer questions about specific facts or denies those facts without reasonable grounds, they will be presumed to have accepted those facts unless they provide valid reasons for their refusal. The court may also order the party to submit a statement concerning the disputed facts within a certain timeframe.

Summons. After the pretrial conference, the court will schedule a date for the witness examination hearing—typically about two to six months after the pretrial conference. During this period, any party who is unable to bring a witness to court must request the court to issue a summons and notify the witness at least 20 days prior to the scheduled witness examination day.

Witness Examination Hearing. After the pretrial conference, the court will schedule the number of days for witness examination hearings and set a date for presentation of the judgment.

Both parties must complete their witness examination according to the hearing schedule determined by the court. If either party needs to make any adjustments to the scheduled witness examination dates, they must submit a petition seeking the court's approval before the final date set for their witness examination hearings.

If a case is filed with the Central Tax Court, the witness examination hearing will be held at the Central Tax Court in Bangkok. However, if the case is filed at the Provincial Court, the witness examination hearing may take place either at the Central Tax Court or at the Provincial Court at the court's discretion. Despite the Regulation on Tax Cases B.E. 2544 (2001) allowing the Central Tax Court to assign Provincial Courts to conduct witness examination hearings, the Central Tax Court usually conducts such witness examinations itself.

Because tax cases often involve complex and substantial amounts of data, witnesses appearing in court are permitted to refer to notes or memoranda while providing testimony.

To ensure efficiency, parties are also permitted to submit written witness statements, which is similar to the submission of affidavits and declarations in Western jurisdictions. Such a witness statement must be submitted to the court, and a copy must be provided to the opposing party at least seven days before the scheduled witness examination hearing. The person who provided the witness statement is required to attend the witness hearing to confirm the statement's accuracy and to undergo cross-examination by the opposing party.

Video Conference. In cases where it is inconvenient for the witness to be present at the court, such as when a witness resides in a foreign country, a party may petition the court to allow the witness examination via video conference. Permission to conduct virtual testimony is granted at the discretion of the court.

Illegitimate Proceedings. For a judgment to be decided based on the merits of the case, minor illegitimate proceedings that were not caused by the willfulness or neglect of that party or that do not otherwise put the other party at a disadvantage can be rectified upon the court's discretion and within a specified period.

Expert Witness. Both the court and the parties have the authority to present expert witnesses to testify regarding specific details in a case. The parties must include these expert witnesses in the list of evidence and, if necessary, they can request the court to issue a summons to the expert witnesses requiring their presence in court.

Judgments. Judgments are disclosed in the court on the date that is scheduled for judgment at the pretrial conference. When deemed necessary, the scheduled formal reading of the judgment may be postponed.

Procedures after Trial

Execution of Judgments. Since the Central Tax Court has jurisdiction throughout Thailand, it also has the authority for execution of judgments. To handle the execution of tax cases in provinces outside of Bangkok, the Central Tax Court may delegate responsibility to the Legal Execution Department under the Ministry of Justice. Moreover, for areas where there is no Legal Execution Department office, the Central Tax Court can issue a writ enabling the Provincial Court in that province to carry out execution.

Appeals. Appeals must be filed with the Court of Appeals for Specialized Cases within one month of the judgment being rendered. The Court of Appeals for Specialized Cases will only accept an appeal of legal issues and factual issues in a case where the amount in controversy exceeds THB 50,000. Judgments of the Court of Appeals for Specialized Cases are final unless the case has been approved for subsequent appeal to the Supreme Court. To appeal to the Supreme Court, a party must file a petition to appeal within one month of the judgment on the appeal being entered by the Court of Appeals for Specialized Cases. Under law, whether to accept an appeal is made at the full discretion of the Supreme Court if it deems the issues novel or of importance. Most petitions to appeal to the Supreme Court are denied.

CLOSING COMMENTS

We hope that this tax litigation overview provides useful insights into the legal and practical aspects of tax litigation in Thailand and assists in broadening knowledge about the tax litigation process in Thailand.

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