

Tax litigation

It is difficult for any reader to forget the recent news concerning the sale, to a foreign entity, of shares in a company belonging to one of the most influential politicians in Thai history, and the subsequent assessment of the sale by the Revenue Department. The defence of the assessment, and the legal procedures confused many. In this article, we attempt to clarify the process.

In general, when an individual is assessed by the Revenue Department, he is entitled to appeal the assessment to the Board of Appeals within 30 days. Once the Board has completed its review, it issues an order. If the individual wishes to object, he must submit a complaint to the Central Tax Court within 30 days after receipt of the Board's order.

However, this process may vary depending on the specific circumstances. For example, to determine the correct procedure, when filing an appeal, the appellant should consider the following.

◆ **Geographical jurisdiction.** In the future, provincial tax courts will be established with jurisdiction over specific provinces. The Central Tax Court will have jurisdiction throughout Bangkok, Samut Prakan, Samut Sakhon, Nakhon Pathom, Nonthaburi and Pathum Thani. However, until the provincial tax courts are established, the Central Tax Court has jurisdiction over all provinces.

◆ **Legal jurisdiction.** The Tax Court has jurisdiction to hear the following types of civil cases:

- ◆ Cases related to an appeal against an order of the officer or committee under tax law.
- ◆ Cases related to disputing the state's claim as to a tax obligation.
- ◆ Cases related to disputes over refunds.
- ◆ Disputes as to the rights and duties under the obligation made for the benefit of collection of Tax and duty.
- ◆ Other cases prescribed by the law to be under the jurisdiction of the Tax Court.

For appeals in cases decided under a revenue code (such as personal income tax, tax on a juristic person, company or partnership, value added tax, and specific business tax), the assessed person must appeal to the Board of Appeals under the revenue code within 30 days after receipt of the assessment, prior to filing the case to the court. If not, the court will dismiss the case (Supreme Court Precedent Case No. 498/1974).

In the case of an industrial operator or importer who has been assessed by

the officer regarding excise tax under an Excise Act, the company is entitled to file an objection to a director of the Excise Department, or a person authorised by the director, within 45 days. If the order is not favourable, the industrial operator or importer is entitled to file an appeal within 45 days.

Once the Board of Appeals issues an order, the industrial operator or importer can appeal to the court within 30 days. If the proper procedure has not been followed, the court will not accept the complaint (Supreme Court Precedent Case No. 7199/2000).

If there is any dispute as to whether a particular case falls within the jurisdiction of the Tax Court or any other Court of Justice, the President of the Supreme Court is authorised to make a final determination as to jurisdiction. It should be noted that neither the court of First Instance nor the Supreme Court is entitled to consider this issue. In addition, if the issue is submitted to the Supreme Court for consideration, the Supreme Court will deliver a copy of the petition to the President of the Supreme Court to issue an order (Supreme Court Precedent Case No. 9240/1996).

The Chief Justice of the Central Tax Court, subject to the approval of the President of the Supreme Court, is authorised to issue rules of the court on the procedure for the hearing of evidence in the tax cases.

The current rule in the Tax Court is the rule in tax case B.E. 2001.

Consequently, if this rule is silent on a particular procedural issue, the court must apply the Civil Procedure Code to consider the case (Supreme Court Precedent Case No. 7819/1997).

A taxpayer can file a complaint against the Revenue Department as the principal and sole defendant, or against the Revenue Department and one or all of the members of the Board of Appeals as co-defendants.

A decision of the Tax Court may be appealed directly to the Supreme Court. There are no further routes of appeal and the decision of the Supreme Court is final.

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