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Tax Refund Part 1

by

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Many people ask me about my experience in tax practice as to what is the most difficult task, I would reply “Asking for tax refund is tough”. The tax authorities’ duty is to collect tax so when it comes to granting a tax refund, they are careful especially they want to make sure that the applicant pays all taxes due first before they start reviewing the refund application.

It should be noted that normally a refund has to be filed within three years even though Section 193/31 of the Civil and Commercial Code provides:

“The period of prescription for claims of Government for taxes and rates is ten years. As to other claims of the Government relating to obligations, the provisions of this Title shall apply.”

You may ask for refund under four or five categories:

1. Refund of personal income tax
2. Corporate income tax
3. Value Added Tax or VAT
4. Specific Business Tax
5. Stamp duty
6. Interest on the refund

In principle, if you overpaid the tax either directly or indirectly, such as you did not do your mathematics correctly or fail to claim certain allowances or there is a withholding tax and you cannot use all the credits within the same financial year, such excess credit cannot be carried forward into the following year, then you should ask for a refund. However, if you have excess purchase tax on VAT, such amount can be brought forward for as long as you wish.

Further, Section 67 ter of the Revenue Code requires a company or partnership to estimate their annual profit and pay 50% of the tax by filing form 50 at half year, if they are optimistic about their profit picture lot of mid-year tax is payable. Then due to unexpected circumstances, revenues drop or unforeseen expenses occur resulting in a smaller profit and tax is overpaid, then a refund is possible.

Prior to proceeding with the application, you should consider the following:

- (1) You actually overpaid the tax.
- (2) The credit cannot be used within the same year.
- (3) You have all the supporting documents for your refund.
- (4) The application is filed within the prescription which normally is three years.
- (5) You fill in the proper request and file it with the authority who has the power to approve the refund.

Personal Income Tax

This is supposed to be the easiest for a refund. Each year, it is estimated that there are about 10 million returns, either in form Phor.Ngor.Dor. 90, Phor.Ngor.Dor. 91 (the short form for salary workers) including form Phor.Ngor.Dor. 94 for half year tax, filed with the Revenue Department out of about 67 million Thai population. By virtue of Section 50 of the Revenue Code the employer or payer of certain income shall deduct withholding tax from employees and wage earners, such withholding tax enable the government to collect money before its due date at the end of the year.

In fact, the withholding tax mechanism offers advantages to both the collector because tax can be reaped sooner. With respect to the wage earners, payment of tax in advance enable them to manage their cash flow. Otherwise four out of five or 80% of the people will spend all their money and has no cash to pay tax at year end. Tax payment through withholding relieve the burden on tax payers so that they do not have to borrow or ask for defer payment from the government.

As a result, any individual who overpaid tax or has too much credit can request for a refund by marking at the bottom of the front page of his tax return. However, do not wait for the check to come in through the mail. Where two or three months have passed and you have not been contacted or received no refund, you should follow up and inquire about the delay whether you supplied all supporting documents or more information are required.

If you are entitled to a reasonable amount of refund such as in ten of thousands of Baht, it would be advisable to proceed with the application. However, if the overpayment is a few hundred Baht, it may not be worthwhile.

The Revenue Department issues a pamphlet advising you how to fill out your tax return. After a few readings, then you should be able to make a good sense out of it. The pamphlet can be downloaded from the Department website at www.rd.go.th or a copy obtained from the Revenue Office all over the kingdom.

However, it is found that only a tiny section is devoted to tax refund. It merely states that the refund money will be forwarded by check through Krungthai Bank. Further, if the applicant does not sign the tax form, then it will not be processed. It would be a good idea that the government give more information on the refund because there are questions from the payers such as documents required to support the application, statute of limitation which is normally three years and where to file for refund. If such data is readily available, then the tax payer does not have to make inquiry and this saves time for both the applicant and the government.

Corporate Income Tax

Application for refund of corporate income tax is much more complicated because companies and partnerships including branches of foreign corporations as well as joint ventures have to pay income tax only when they have profit during the twelve months financial year. Therefore, if no profit is generated, then no corporate income tax is due.

In addition, if a company suffers losses, such losses can be carried forward to offset against profit in the following five accounting years. During Thaksin's Administration, there were considerations whether the five years loss carried forward should be extended according to the Petroleum Income Tax Act, which is ten years. However, such proposal has not been seriously pursued.

It is noted that during the financial crisis from 1996 to 1997, numerous companies suffered tremendous losses and it took them at least five or six years to make a turn around. All the losses that they had cannot be used in time and many listed companies have to adopt shareholders resolutions to reduce capital and forfeit the losses because under the Civil and Commercial Code as well as the Public Company Act, a company can pay dividend only out of profit. If it has any deficit, then such losses must first be made good by subsequent profit. As a consequence, many companies could not use the loss in five years and they cannot pay dividend even it has annual profit. The remedy is to reduce capital and do away with the deficit because there is no use keeping it on the book. After the capital reduction, shareholders can forward to the day when dividend shall be paid.

A company which has excess tax credit either due to:

1. Income and expenses have been adjusted based on accrual basis resulting in overpayment of tax.
2. Excess withholding tax credit. Many companies selling goods or services to the government are subject to 1% withholding tax under Section 69 bis of the Revenue Code. Further, there are withholding tax under Section 3 tredecim of the Revenue Code and Order No. Tor Por 4/2528 that a company receiving service fee or rental shall be subject to withholding tax at 3 and 5%, respectively. These companies could have too much withholding tax credit.
3. Certain companies filing mid-year estimated tax using form Phor.Ngor.Dor. 51 under Section 67 ter could have forecast high profit and overpaid tax.
4. There might be tax credit from other circumstances that cannot be carried forward into the following year.

These companies can file for tax refund by marking at the bottom part of the first page of corporate income tax return, form Phor.Ngor.Dor. 50 or file an application in the form of Khor 10.

However, a refund can be approved only when the applicant is audited by the authority to ensure that it does not owe any tax. This is a complicated procedure because law, rules and regulations are subject to interpretation where each party could have a different opinion especially when the accrual method of accounting is applied. There are other sensitive issues such as conversion of foreign exchange, expenses incurred offshore and writing off bad debt under

Ministerial Notification No. 186 where each party may come up with a different conclusion.

From the experience of many companies, if the tax credit is not a large amount such as Baht 1 million or less, probably it might not be worthwhile to pursue an application. In addition to filing the request with various supporting documents, the company needs to see the tax authority many times to answer questions and the result is the company underpaid tax and subject to additional assessment plus penalty and surcharge. Only companies doing large construction projects whereby the withholding tax credit could run into hundreds of million of Baht a year making it worthwhile to file for refund. If they set a good standard and are assigned high credit rating, then the refund procedure could be quick.

Otherwise in a complicated case, services of a tax consultant would be useful.

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