

Date: 18 March 2014

Source: Website Bangkok Post

<http://www.bangkokpost.com/business/news/400360/it-time-to-level-the-taxation-playing-field>

LEADING THE WAY

It's time to level the taxation playing field

Published: 18 Mar 2014 at 00.38

Newspaper section: Business

I read with great interest the article published in the Business section of the Bangkok Post on March 3. The author, Teera Phutrakul, chairman of the Thai Financial Planners Association, suggested that it was time to “think outside the box” in order to tackle the pernicious problem of corruption.

He advocated a strengthening of “the rule law through citizen empowerment”. This resonated strongly with me. As a tax professional with nearly 30 years’ experience, it has long been apparent to me that tax laws, in particular the disparate ways in which they treat the taxpayer compared to the tax authorities, contribute to creating an environment in which corruption can exist.

Any system in which the citizen is disadvantaged compared to the state is a system that invites dishonesty – on both sides. In the case of a tax system, the citizen is demotivated from paying taxes correctly as he recognises the inherent unfairness of the system. In the case of the state – the excessive and disproportionate power of the authorities provides them with the opportunity to exercise power in an arbitrary and corrupt manner.

Much could, therefore, be done to reduce the environment for corruption by creating a system which more fairly balances the rights and obligations of the citizen and the state.

Perhaps the most obvious area of inequality in tax law is in the appeals process. If the tax authorities raise an assessment, a taxpayer has 30 days in which to file an appeal. That appeal must contain substantially all the evidence the taxpayer wishes to place before the courts in order to support his position.

In addition, to be permitted to appeal the taxpayer must either pay the tax first, or provide some form of guarantee or surety for the tax payment. Both the process of preparing the appeal and of providing the guarantee therefore impose significant costs on the taxpayer.

Costs of pursuing justice: Before the appeal is passed to the Board of Appeal, the tax authorities are permitted to prepare their case. The state, however, is not subject to a deadline for submitting the appeal. It is, therefore, not unusual for an appeal to be held up for months and even years while the case is prepared. Justice is, therefore, delayed and as the legal maxim states, “Justice delayed is justice denied.”

The opportunities here for corruption should be apparent. The taxpayer is faced with significant costs simply to pursue the appeal and may, therefore, be encouraged to settle the dispute through “unofficial” means. In addition, once any progress in the process is subject to the discretion of any individual, it provides that individual with the opportunity to demand payment to facilitate progress.

What could be done to reduce the opportunities? Here are some suggestions based on practices in other jurisdictions:

Make the process of filing an appeal a formality. If the taxpayer wishes to appeal he simply files an appeal form. He is not required to prepare a detailed statement of evidence – this would be submitted at the time the appeal is heard.

Place the administration of the appeal in the hands of the body independent of the tax collection authorities so that the latter are not in a position to delay progress.

Apply the same time limits to the tax authorities and taxpayer. Require the tax authorities to file their response to the appeal within the same 30 day limit imposed on the taxpayer.

Permit the taxpayer to postpone payment of tax that is in dispute.

A similar approach could be taken to the processing of tax refunds. At present the taxpayer must sometimes wait months or years to receive refunds of tax that has been overpaid. Again, as the refund process is in the hands of the tax authorities, they are in a position to demand payment to facilitate the process.

Compare this to the taxpayer who must pay tax by a certain deadline or suffer penalties and interest for paying late. So why not require the tax authorities to process all refunds within a certain time limit, say 90 days? Does that sound unreasonable compared to the rules that apply to the taxpayer?

Simply writing less ambiguous tax laws and regulations would also help by reducing uncertainty over how laws should be applied. Any uncertainty is an invitation for the tax authorities to interpret the law in a way that is disadvantageous to the taxpayer and, therefore, an opportunity for corruption.

Why not encourage taxpayers and professionals to participate in the process of drafting laws and regulations (as is done in many countries) – this would go a long way to ensuring that there is mutual understanding between the taxpayers and the tax authorities on how the laws should be applied.

Pessimists will no doubt suggest that adopting these policies would result in less tax being collected. The argument is that taxpayers won't pay tax unless forced to and the state needs the tools to do the forcing. I accept that reduced tax collection may be one possible consequence of a more equitable system, but I would argue that a reduction in tax collection is not a necessary outcome.

I would even go so far as to argue that collection may increase. If payment is being made to a corrupt official, it is not being made to the state. Eliminate the opportunity for corrupt payments and tax payment to the state should, over time, increase. Levelling the playing field between the taxpayer and the state in these or similar ways could, therefore, not only reduce opportunities for corruption but also enrich the country.

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