

The logo for BDO, featuring the letters 'BDO' in a bold, dark blue, serif font. The letters are positioned to the right of a vertical red bar and above a horizontal red bar, which together form an L-shaped frame. The background is white.

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Updates on Tax Disputes with the Revenue Department

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Outline

- Power of the Revenue Department to Audit or Inspect
- Audit Selection
- Types of Audits
- Current Policy and Approach of Revenue Department
- Managing Tax Risk
- Tax Appeal Procedures



Power of the Revenue Department to Audit or Inspect

Revenue Department must issue a summons within two years of the date of filing the relevant return

- Period can be extended to 5 years from the due date with the approval of the Director General but only if there is evidence of tax avoidance

The Revenue Department must issue an assessment within 10 years of the due date for the payment of the tax



Audit Selection

Factors Which May Give Rise to an Audit

- Refunds not claimed
- Losses for 2 or more years
- Negative gross profit
- No tax payment over an extended period of time
- Non-cooperative companies
- Low profitability compared to competitors



Types of Tax Audits

Four types of audits conducted

- **Business operational Visit (“BOV”)**
- **Investigation under summons**
- **Investigation for specific tax issues**
- **Investigation under a search warrant**



Types of Tax Audits (cont)

BOV

Purpose

- Gain an understanding of the taxpayers business
- Determine the reliability of the taxpayer
- Determine tax compliance status



Types of Tax Audits (cont)

BOV (cont)

Power of the Revenue Department

- conducted under Section 88/3 (a VAT provision) without the need for a summons
- RD can only inspect documents at the taxpayers place of business and can seize such documents
- RD has no power to issue an assessment in respect of any underpaid tax that is identified (except for VAT)



Types of Tax Audits (cont)

BOV (cont)

Power of the Revenue Department (cont)

- If taxpayer agrees with the RD, taxpayer will submit amended returns and voluntarily pay the additional tax, surcharges and penalties
- If taxpayer disagrees and cannot convince RD that tax has not been underpaid, RD will issue a summons to conduct an audit



Types of Tax Audits (cont)

Investigation Under a Summons

Purpose

- **Determine the accuracy of tax returns submitted and tax payments made**
- **Secures the prescription period for auditing of the tax return**



Types of Tax Audits (cont)

Investigation Under a Summons (cont)

Power of the RD

- Conducted under Section 19 or 23
- RD may issue an assessment in respect of underpaid tax and also assess penalties and surcharges



Types of Tax Audits (cont)

Investigation Under a Summons (cont)

Power of the RD (cont)

- Where RD issues a notice of assessment, taxpayer must pay the additional tax, penalties and surcharges assessed
 - Taxpayer can appeal to the Board of Appeal but is still required to pay the tax assessed or put up collateral such as a bank guarantee or government bonds
 - Payment of tax stops the surcharges and allows taxpayer to receive interest from the RD if it wins the appeal



Types of Tax Audits (cont)

Investigation of Specific Tax Issues

Purpose

- Determine the accuracy of tax returns and tax payments

Power of the RD

- Conducted under Section 88/3
- RD can only examine documents at taxpayer's place of business and is able to seize such documents
- RD can issue an assessment in respect of underpayment of VAT



Types of Tax Audits (cont)

Investigation of Specific Tax Issues (cont)

Power of RD (cont)

CIT/WHT/SBT/Stamp Duty

- **If taxpayer agrees with identified underpaid tax, taxpayer and RD will agree the settlement**
- **If taxpayer does not agree with RD, RD will issue a summons**



Types of Tax Audits (cont)

Investigation of Specific Tax Issues (cont)

Power of RD (cont)

VAT

- Revenue Department issues notice of assessment
- If taxpayer does not agree with the RD
 - Taxpayer has the right to appeal to the Board of Tax Appeal but is required to pay the tax due under the assessment or provide collateral such as a bank guarantee or government bonds
 - Payment of tax will stop surcharges and allow taxpayer to obtain interest from the RD if it wins the appeal



Types of Tax Audits (cont)

Investigation Under a Search Warrant

Purpose

- To investigate suspected tax evasion

Power of RD

- Issue a summons under Section 3 quinqué
- Allows RD to enter any premises or vehicle in Thailand to search for and seize or attach any books, documents, or records as are connected to the suspected tax payable
- RD can issue a notice of assessment



Types of Tax Audits (cont)

Investigation Under a Search Warrant (cont)

Power of RD (cont)

- RD issues notice of assessment
- If taxpayer does not agree with the RD
 - Taxpayer has the right to appeal to the Board of Tax Appeal but is required to pay the tax due under the assessment or provide collateral such as a bank guarantee or government bonds
 - Payment of tax will stop surcharges and allow taxpayer to obtain interest from the RD if it wins the appeal



Types of Tax Audits (cont)

Penalties

Tax	Penalty	Reduction at investigation before assessment issued
CIT	100%	0% with approval of the DG
VAT	100% - 200%	2% - 20%
SBT	100% - 200%	2% - 20%
WHT	N/A	N/A
Stamp Duty	N/A	N/A

Surcharges are also payable at the rate of 1.5% per month capped at 100% of the additional tax payable for all taxes other than stamp duty. For stamp duty, the surcharge can be as high as 600% of the duty payable



Current Policy and Approach of Revenue Department

Now adopting a taxpayers supervision policy

- Large Taxpayers Office (“LTO”) at the Central Revenue Department
 - Taxpayers with revenue of Baht 1 billion or more
- Special teams at Local Revenue Departments

Closely supervising taxpayers on on-going transactions

- Significantly increased the number of tax auditors in recent years
- Increasing the number of visits and audits of taxpayers being undertaken



Current Policy and Approach of Revenue Department (cont)

Current Approach (cont)

Revenue Department:

- Using analytical techniques rather than detailed reviews
- Comparing information with prior years
- Focusing more on business issues
- Looking to avoid detailed review of payment vouchers
- Trying not to issue summons



Current Policy and Approach of Revenue Department (cont)

Transactions of Particular Interest

- **Related party transactions – sales, purchases, royalties and service fees**
- **Cross border transactions**
- **Significant changes in business model and operations**



Current Policy and Approach of Revenue Department (cont)

Approach of the Revenue Department

Corporate Income Tax

- Revenue Department is focusing on disallowing major expenses especially related party payments
 - For taxpaying company: disallow to increase tax payable – immediate benefit
 - For loss companies: reduce the quantum of carried forward losses and potentially put taxpayer in a taxpaying position

Other taxes and Stamp Duty

- Target as non-compliance will result in additional tax payments



Current Policy and Approach of Revenue Department (cont)

Approach of the Revenue Department

- **Now regularly visiting taxpayers and requesting information eg reconciliations between revenues for accounting purposes and tax base declared in VAT returns**
- **Up-dating their knowledge of the taxpayer and its business – BOVs**
 - **On-line information**
 - **Cross referencing of other tax information eg withholding tax returns and VAT returns**
- **Closely monitoring tax payments**
 - **Reviewing monthly returns submitted to identify unusual transactions (type and quantum)**



Current Policy and Approach of Revenue Department (cont)

Board of Investment (“BOI”) Promoted Companies

Revenue Department will review carefully

- the BOI certificate issued to the taxpayer to understand the tax privileges granted and the conditions required to be satisfied
- The reports required to be submitted to the BOI:
 - Annual report
 - Sales report
 - Indirect export report
- Information contained in the application submitted to the BOI eg listing of machines, production report per machine



Current Policy and Approach of Revenue Department (cont)

Taxpayer Risks re BOI

- Person who prepares information is not in the same division eg project division or HR and accounting division
- Information included in reports may be different from other documents due to differences in reporting methodologies used
 - All differences should be reconciled



Managing Tax Risk

Prior to a Revenue Department Audit

- Review your company's profile to determine if your company would be a target for an audit
- Conduct a tax health check review to determine any potential exposures and implement any remedial action that is required
- Ensure all significant changes in the business or company structure have been documented and explained and any action required is actually initiated



Managing Tax Risk (cont)

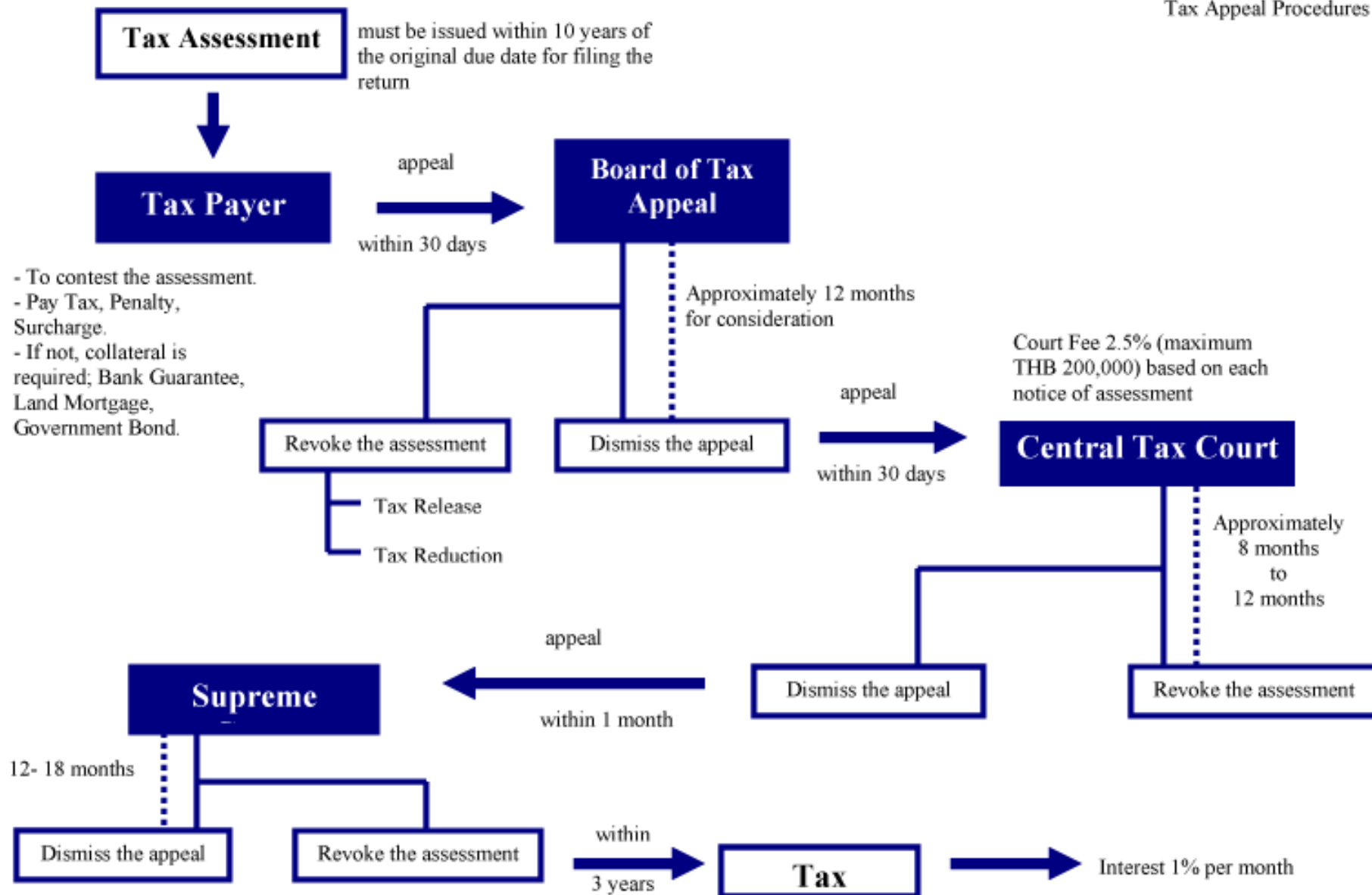
During

- Select appropriate staff to represent the company
- Seek to have a central contact person
- Have your tax advisers present for all important meetings
- Determine what the Revenue Department are looking for
- Do not provide raw data or documents if possible
- Take copies of all documents provided to the Revenue Department
- Determine possible outcomes under different scenarios
 - Take into account issues the RD would compromise on and on which the company will not concede
- Reassess possible outcomes
- Seek to negotiate for best case scenario by presenting benefits to Revenue Department of proposed settlement package
- Request for tax rulings on issues in dispute to explore other opinions in the Revenue Department
- Document all statements given to Revenue Department
- Review carefully all statements Revenue Department requires to be signed by representatives of the company



Updates on Tax Disputes with the Revenue Department

Tax Appeal Procedures



Conclusion

The Revenue Department is increasing its contact with taxpayers and is increasing the number of visits and audits being conducted

- More staff and better trained than in the past
- Company's job is to know what the Revenue Department is after

Taxpayers should be well prepared for Revenue Department visits

- Know in advance where your exposures are and seek to remedy them
- Keep your documentation up to date
- Not to do so is likely to result in a significant tax cost



Q & A



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Andrew is a Senior Tax Partner with BDO Richfield Advisory Limited and is based in Bangkok. He has 30 years of tax consulting experience of which 22 years have been in Asia (Hong Kong, Singapore and Thailand).

Andrew has a Bachelor of Commerce degree from the University of Melbourne and is a Fellow of the Australian Society of Certified Practising Accountants.

Andrew has extensive experience in developing tax effective financing arrangements and in advising clients on cross border transactions, transfer pricing, corporate reorganisations and financial restructuring and mergers and acquisitions. In addition, he has advised numerous clients on establishing operations in Thailand as well as carrying out tax due diligence assignments for potential investors in a wide range of industries.



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