



TMI Eyes No. 18: Technical Insights in Tax Litigation: A Brief Overview

On October 21, 2024, TMI received a favorable judgment from the Court of Appeal in a case we had previously won in the Central Tax Court but was appealed by the Revenue Department. TMI is sharing key technical insights from this tax litigation for readers who may need to defend themselves in a similar tax dispute.

Background

In this case, a taxpayer (plaintiff) was assessed by a Revenue Office, which argued that payments made by the taxpayer for a design were not service fees but royalties, leading to an assessment of withholding tax, penalties, and surcharges. The dispute arose primarily from contractual terms stating that, although the taxpayer owned the design, they were prohibited from allowing third parties to use it.

The Central Tax Court ruled in favor of the Plaintiff, reasoning that the restriction on third-party use was aimed at protecting the design company's reputation and did not, by itself, turn the payments into royalties. The Revenue Department then appealed the case to the Court of Appeal, but the Court of Appeal upheld the lower court's decision in favor of the plaintiff taxpayer on October 21, 2024. (The plaintiff taxpayer wins.)

TMI's Defense Strategy

When defending against tax assessments by the Revenue Department, it is essential to leverage both substantive tax laws (the laws applied to make the assessment) and procedural laws. Below, TMI explains how these legal defenses were used in this case:

1. Substantive Tax Law: Revenue Code and Double Tax Avoidance Treaty

Understanding and correctly interpreting the law is crucial in tax litigation. In this case, the key to success in both the Central Tax Court and the Court of Appeal was the plaintiff taxpayer and TMI's ability to demonstrate that the payments were for services, not royalties. The plaintiff taxpayer argued that the service provider used its knowledge and effort to produce the design, which then belonged to the taxpayer. This contrasts with royalties, which involve payments for the use or right to use intellectual property or industrial, commercial, or scientific information.

In building a substantive defense, taxpayers must also focus on the real nature of the transaction rather than its form, consider the implications of any relevant international treaties (e.g., double taxation

agreements (DTAs), demonstrate that the transaction had valid business purposes and provide clear supporting evidence, etc.

2. Procedural and Administrative Law Defense

Taxpayers must ensure that the Revenue Department follows proper legal procedures during audits and assessments, and throughout the litigation process. Any procedural errors can be grounds to contest the validity of the assessment or the legal process itself.

For instance, in this case, the plaintiff taxpayer argues with the Revenue Department's appeal that the Revenue Department:

- Failed to properly specify which parts of the Central Tax Court's decision were incorrect or which specific points they intended to contest.
- Raised "factual issues" in the appeal, rather than legal issues, which is prohibited under the Civil and Tax Procedure Code.
- Introduced new issues in the Court of Appeal that had not been raised in the Central Tax Court, a practice prohibited by tax litigation procedures.

Taxpayers should also review whether assessments comply with the Administrative Procedure Act, 2539 BE (1996), such as whether the Revenue Department provided adequate legal references and reasoning for their assessment.

TMI's Observations and Recommendations


When undertaking tax litigation, it is beneficial to combine both substantive and procedural defenses. For example, readers could argue that the assessment is incorrect because the tax law was misapplied or misunderstood (substantive defense), and because the Revenue Department failed to follow the proper audit, notification, or litigation procedures (procedural defense).

By addressing both legal and procedural aspects, readers significantly increase their chances of having the tax assessment reduced or overturned.

Daiki Koso, Partner
Monchai Varatthan, Partner
Shota Sugiura, Associate
Marin Viriyapongpanich, Paralegal
TMI Associates (Thailand) Co., Ltd.


** This Article is for general informational purposes only and does not constitute legal or tax professional advice. Readers are urged to thoroughly review the information before acting upon it. TMI accepts no responsibility whatsoever with respect to the use of this information.*




 bangkok@tmi.gr.jp

Tokyo | Nagoya | Osaka | Kyoto | Kobe | Fukuoka | Shanghai | Beijing
| Yangon | Singapore | Ho Chi Minh City | Hanoi | Phnom Penh |
Bangkok | Jakarta* | Kuala Lumpur* | Silicon Valley | London | Paris

*Affiliated office

 Sathorn Square Office Tower, 22nd Floor, unit 2212,
North Sathorn Rd., Silom, Bangrak, Bangkok 10500

 Facebook: TMI Associates – Thailand
Instagram: tmi_bkk
LinkedIn: TMI Associates (Thailand)