

LEGAL PROBLEMS ON TAX COLLECTION FROM MUTUAL FUND

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ABSTRACT

Since the tax collection of Thailand is subject to the Revenue Code (No. 52) B.E. 2562 (2019) specifying that the mutual fund is the company or juristic partnership to collect tax from investment in bonds of mutual fund at the rate of 15%, however, the National Strategy (2018-2037) to enhance the competitiveness specifies the opportunity of development of financial products to facilitate the access to the investor's funding. The legal problem are whether the mutual fund is the financial products under the National Strategy to enhance the competitiveness or not, and whether the specification that mutual fund is the company or juristic partnership under the Revenue Code has any legal impact on the retail investors who are ordinary persons or not, and how.

The result of research finds that the mutual fund is the financial products under the National Strategy (2018-2037) to enhance the competitiveness and specification that the mutual fund is the company or juristic partnership under the Revenue Code has the legal impact on the retail investors who are ordinary person. The mutual fund has to be subject to tax from interest derived from investment in bond, which is one kind of investment in mutual fund.

Keywords: Tax, Mutual Fund, Financial Products

INTRODUCTION

Since the tax collection under the Revenue Code has been amended by the Revenue Code (No. 52) B.E. 2562 (2019) dated May 19, 2019 and it came into force on August 20, 2019 onwards, such amendment of the Revenue Code has made the change to specify the type of juristic person under Section 39 of the Revenue Code that "company or juristic partnership" means a company or juristic partnership established under a Thai or foreign law, and shall include (3/1) mutual fund which is the juristic person established under a Thai or foreign law". The amendment of such Revenue Code might have any impact to retail investors who are ordinary person to collect tax from them through mutual fund. While Thailand has announced National Strategy (2018-2037), Article 4: the National Strategy on Enhancement of Competitiveness, Article 4.5: Economic Development on the Basis of New Entrepreneurs, which Article 4.5.2 specifies to enhance the opportunity to access financial management, promote the access to financial services of the entrepreneurs by providing source of funding and supporting various reliable money channels, develop financial products and risk

management to response to the appropriate requirement of each group. Every sectors are enable access to financial service at reasonable costs by using technology and innovation to facilitate the access to sources of fund. There are the legal problems on personal income tax collection that have social network [Khanthong Jaidee and Ludech Girdwichai, 2016] on investment in mutual fund as follows:

First, the problem is whether the mutual fund is the financial products under the National Strategy on Enhancement of Competitiveness or not; and

Second, the problem is whether the specification that the mutual fund is the company or juristic partnership under the Revenue Code has legal impact on the retail investors who are ordinary person or not, and how.

Therefore, the legal problems on tax collection from mutual fund should be studied as a guideline to build the economic opportunity to people and to intensify economy stably and sustainably according to the objectives of such National Strategy.

OBJECTIVE

1. To study law on tax collection from investment in mutual funds;
2. To analyze and collect the recommendation and guideline to amend the relevant laws on tax collection from investment in mutual funds.

REVIEW OF RELATED LITERATURE

Definition of Mutual Fund

Mutual fund is a pool of money collected from many investors together to be a certain amount of investment and used to invest in securities or various kind of assets, such as investment in bonds or equity instruments. Then, the investors shall receive “Unit Trust” as an evidence of ownership. [The Stock Exchange of Thailand, 2015]

Type of Return from Mutual Fund

Dividend

Type of return of investment may be in the form of dividend in case that such mutual fund has policy to pay dividend to the unit holders. Therefore, such dividend shall be considered under the provision of Sections 1200, 1201 paragraph three, and 1202 of the Civil and Commercial Code. Dividend are the profit sharing to the shareholders [Thipchanok Rattanosot, 2013] and dividend in tax is interpreted under the Supreme Court Judgment as follows:

Supreme Court Judgment No. 7671/2546 decided that the Revenue Code had not specified the definition of “Dividend” specifically so it should consider based on the provision of the Civil and Commercial Code, which specified about the dividend and reserved fund in Sections 1200-1205 specifically. In consideration of Sections 1200, 1201 paragraph three and 1202 paragraph one, it was seen that the dividend paid by the company to the shareholders was a part of profit derived during the accounting period of operation under the registered objectives and in order to avoid the company to pay dividend to the shareholders from all profits which would cause lack of cash flow in operating, the law prescribes that the company has to distribute a part of profit from operation as a legal reserved every time of dividend payment.

Supreme Court Judgment No. 13935/2555 decided that the Revenue Code had not specified the definition of “Dividend” specifically. The consideration is whether the assessable income derived from limited partnership is dividend or profit sharing. It should consider from the provision of Section 1084 of the Civil and Commercial Code specifying that “No dividend or interest may be distributed to partners with limited liability except out of the profits made by the partnerships. If the capital of the partnership has been reduced by losses, no dividend or

interest may be distributed to partners with limited liability until the said losses have been made good. Based on the provision of such laws, it shows that the dividend of such partnership shall have profit sharing that the partnership shall compensate to the partners at the proportion of share investment while it is normally operated but not liquidated.

Capital Gain of Unit Trust

When the investors in the mutual fund hold the unit trusts and later sell them to the investment management companies, it can be seen that upon selling unit trusts with price higher than the buying price, the profit of this part is a capital gain of investment as well.[The Stock Exchange of Thailand, 2015]

Collection of tax from mutual fund in investment in bond

Previously, assessable income is the bond interest, debenture interest, interest of bill of lading which is legal fruit[Tanawat Pisitchinda, 2015] from mutual fund that are not subject to tax collection because mutual fund is not included in the dividend of “company or juristic partnership” according to the Section 39 of the Revenue Code.

However, the amendment of the Revenue Code (No. 52) adds (3/1) of the definition of “company or juristic partnership” in Section 39 that “company or juristic partnership established under Thai laws or established under foreign laws and shall include (3/1) the mutual fund that is juristic person established under Thai laws or foreign laws.”

Therefore, the status of the mutual fund is the tax unit in type of juristic person under Section 39 (3/1) of the Revenue Code, and when the mutual fund has income from bond interest, debenture interest, interest of bill of lading under Section 67 of the Revenue Code as amended, it prescribes to be subject to tax [Tassanee Luengruengrong, 2019]. This would impact to investment in bond of mutual fund to be subject to tax at the rate of 15.0% of income according to the Revenue Code derived from mutual fund as juristic person which is a direct tax. [Dunyaluk Trachutham, 2019]

METHODOLOGY

This research is the qualitative research from provision of laws, textbooks, books, articles, research, information in many websites relating to tax collection from mutual fund to collect many information to study, analyze and arrange systematically.

Documentary Research

The research in this part is used to answer the objectives of the research “for studying laws in relation to the tax collection from investment in mutual fund” and for analyzing and collecting recommendation and guideline to amend the law relevant to the tax collection from investment in mutual fund” which is the documentary research.

Typological Analysis

After the researcher has collected the data, data shall be divided into 4 parts as follows: 1.Provision of Thai laws. 2. Provision of international laws 3.Explanation from textbooks and other books. 4.Research and articles

Data Analysis

The researcher will analyze, interpret, and giving definition of data in the form of explanation by reading, catching up the main points, grouping data, connecting ideas, extending connection, seeking for meaning and finding the results.

Place to Collect Data

Textbooks, books, articles, research, thesis, and laws from the National Library, library of Suan Sunanda Rajabhat University and Bangkok Library.

RESULTS

The result of the research is found that the mutual fund is characterized as the financial products according to the National Strategy(2018-2037),the National Strategy on Enhancement of Competitiveness Article 4: the National Strategy on Enhancement of Competitiveness, Article 4.5: Economic Development on the Basis of New Entrepreneurs, which Article 4.5.2 specifies to enhance the opportunity to access financial management, promoted the access to financial services of the entrepreneurs by providing source of funding and supporting various reliable money channels, development of financial products.

For the specification that the mutual fund is the company or juristic partnership under the Revenue Code has legal impact to the retail investors who are ordinary person to be liable to pay tax from bond fund which is one kind of investment of previous mutual fund that are not subject to tax collection, which Section 39 (3/1) of the Revenue Code specifies that the mutual fund is under the definition of “company or juristic partnership” to be subject to tax at the rate of 15% of income before deduction of expense under Section 67 (3) of the Revenue Code.

DISCUSSION

The amendment of the Revenue Code by the Revenue Code (No. 52) B.E. 2562 (2019) specifies that the mutual fund has the status as the “company or juristic partnership”, which has impact on the investment of mutual fund in relation to bonds, which are bond, debenture, and bill of lading to be subject to tax. Then, when the mutual fund has income derived from such interest of bond, debenture and bill of lading, which is the assessable income under Section 40 (4) (a) of the Revenue Code, it is subject to the tax at the rate of 15% of income before deduction of expenses pursuant to Section 67 (3) of the Revenue Code, which previously has not been subject to tax collection. This is the reason that the ordinary persons view that the investment in mutual fund gives less return of investment, which might cease to invest in the mutual fund.

The researcher opines that the amendment of such laws is not complied with the National Strategy (2018-2037), the National Strategy on Enhancement of Competitiveness which intends to develop the economy on the basis that the entrepreneurs can access to the financial service at reasonable costs. Also, this is resulting to reduce the interest of the investors who are ordinary person in connection with various mutual fund, which are the financial products of financial institution.

CONCLUSION AND FUTURE WORK

Social Recommendation:The laws should be amended to reduce tax rate of interest of bond, debenture and bill of lading from investment in mutual fund to persuade the ordinary person to make more investment in the mutual fund and encourage the ordinary person to make more investment in the mutual fund and stimulate the economy according to the National Strategy.

Academic Recommendation: This research is to study the problem of legal impact and investment due to amendment of the Revenue Code in connection with mutual fund investing in bond and deriving interest from bond. Further studying on interest of loan of the financial institution should be made.

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