

Abstract

The rule of the International law “State’s Jurisdiction” restricted the state to enforce its own law in its own territory only. In other word this rule prohibits state from enforcing its laws in other state territory, to prevent the conflict between states and retain order in the international societies. This rule is necessary; however it cause the tax law enforcing problem in many states. Such as this case, the person who is liable to tax according to the law of X state doesn’t have any properties in this state or such properties are not sufficient to pay all of the tax arrears. On the contrary, this person has many properties in the Y state. As long as he doesn’t bring these properties into the territory of X state, this state can’t collect the tax arrears with the execution procedure of its tax law. Mostly, this situation arises as the result of the global of Trade and Investment. But it can also be used as a plan to evade tax liability in one jurisdiction.

In the past 19th century; nevertheless; the principle governing the cross border recovery of tax debts has been denied. Merely, many states want to preserve their enforcing power on the behalf of their own laws. However the attitude about this principle has been changed when the tax law enforcing problem increases continuously in many jurisdictions. So the International co-operation, which isn’t contrary to the jurisdiction of the state rule, is determined to provide mutual assistance in collection of tax debts between contracting states. That is the International co-operation in the enforcement of tax arrears principle. As a result of this international co-operation, the contracting state is obliged to assist other contracting state in the collection of taxes owed to it. Such assistance also includes other actions which are supported the tax collection procedure, that is to say, seizure or the freezing of assets to guarantee that these assets will still be available when collection can subsequently take place (also called “the measure of conservancy”) or using information gathering measures to gain the information about the person who is liable to tax or his properties.

Currently, there are no provisions of law or other methods which allow Thailand to request other states to collect tax arrears in the identical nature of the

international co-operation in the enforcement of tax arrears. Considering that there are many facts that allow Thailand's taxpayers to have assets throughout the world, to decrease the possibilities of tax avoidance and evasion, the author suggests that Thailand shall conclude the agreement for mutual assistance in collection of tax arrears with other countries. Due to the mentioned cause, the author wrote this thesis by studying and analyzing the principle and procedure of the international co-operation in the enforcement of tax arrears which are provided in many conventions, for instance, United states model income tax convention, The Agreement for The Avoidance of Double Taxation of Australia, Article 27 OECD model Tax convention, Joint Council of Europe / OECD Convention on Mutual Administrative Assistance in Tax Matters. After studying, the author would like to present the manner which Thailand should adapt in drafting and implementation of agreement for mutual assistance in collection of tax arrears as follows.

1. The agreement drafting procedure shall be proceeded according to the section 190 Constitutional law. The administrative branch shall conclude the international agreement with the consent of the legislative merely.

2. The author suggests that the agreement drafting structure should be complied with the article 27 OECD model Tax convention. In preference to conclude this agreement in the double taxation convention, it should be separated to become another convention. Because Thailand double taxation conventions are determined according to the revenue code section 3 which only has the purpose to allow reduction or exemption in revenue code taxation. The agreement for mutual assistance in collection of tax arrears wouldn't be fit with that purpose.

3. The working process of the agreement for mutual assistance in collection of tax arrears is a reciprocal manner. The contracting state is obliged to assist other contracting state in the collection of taxes in pursuance of the request. The enforcement procedure shall be proceeded with the taxation law of the requested state. Subject to the condition that the foreign revenue claim is finally adjudicated and can be enforceable under the law of the requesting State and that claim is owed by a person

who cannot, under the law of that State, prevent its collection. For the benefit of the requested state in collection of its own taxes, in no case, the foreign revenue claim shall not have any priority according to the law of the both state.

4. However, the requested state is not obligated to provide assistance in the following case; to provide assistances which would be contrary to the laws and administrative practice or contrary to the public policy or the essential interest of the requested state, to provide assistances in the case of the administrative burden for the requested state is clearly disproportionate to the benefit to be derived by the requesting state, to provide assistance if the requesting state has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice.

After concluding the agreement with the foreign countries, to implement this convention as domestic law, the legislative act must be issued. The author suggests that the structure of the International Co-Operation in Criminal matters Act B.E. 2543 should be adapted in the drafting process of this new legislative act. Because the extent of International Co-Operation in Criminal matters Act prescribed the mutual assistance rules between Thailand and the foreign countries, which empowered the authority of Thailand to undertake the criminal procedure on behalf of the foreign countries. Such assistances, for example, include the investigation, search and finding person, forfeit or seizure properties. Moreover this act also provides the limitation to the assistance. The structure of this act is in the same manner as the agreement for mutual assistance in collection of tax arrears so it can be adapted to determine the mutual assistance in tax collection between Thailand and the contracting state.