



Legal Issues on Tax and the Right of Use of Medicine

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Abstract

The research objective is to demonstrate the observations related to the impact of VAT on the people's equal access to medicine. The analysis was divided into three parts: Overview of VAT on Medicine in Thailand, Summary of Principle of VAT on Medicine under the Laws of Other Countries and Comparative Analysis of VAT on Medicine between Thailand and other Countries. Therefore, the data analysis was on the basis of documents concerning the relevant domestic and international laws in order to acquire the key data on taxation on medicines and to generate the highest benefits for the said analysis.

In this regard, one can say that, for a large number of people, medicine price is an important factor that hinders their equal access to medicines. As tax-related measure causes a higher price of medicines, it contradicts WHO principle - "the taxation on human medicines is unsuitable because it impedes the access to medicines." and to Section 55 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017) - "the State shall ensure that the people receive efficient public health services universally." Consequently, to agree with universal practice and to benefit all concerned parties, tax-related measure should be reviewed to realize a fair and equal rate of tax no matter the medicines are sold by the medical facility or pharmacy or general store.

In sum, this study suggests the introduction of a suitable tax rate to promote the people's universal access to medicine, which is considered as one of the basic needs of human life.

Keywords: *Medicine, Vat, Medical facilities, Pharmacies*

1. Introduction

VAT on medicine causes a higher price of medicine; therefore, it contradicts the WHO Principle of Access to Medicines (WHO, 2019). Under this principle, the taxation on medicines is unfair because it hinders the access to medicines.

Under Section 55 of the Constitution of the Kingdom of Thailand B.E. 2560 (Council of state of Thailand, 2017), the State shall ensure that the people receive efficient public health services universally, ensure that the public has the basic knowledge in relation to health promotion and disease prevention, and shall promote and support the development of wisdom on Thai traditional medicine to maximize its benefits. The public health services under paragraph one shall cover health promotion, control and prevention of diseases, medical treatment and rehabilitation. The State shall continuously improve the standard and quality of public health services.

One can say that it is unfair when wealthy people have better access to medicine in comparison to those poor ones because the former has no financial difficulty to buy medicine as well as when and where to buy them.

2. Objectives

The study aims to examine what aspects of VAT on medicine should be reviewed to comply with internationally-accepted fundamental taxation principle.

In this particular study, VAT on medicines under Revenue Code is examined with a sole focus on domestically-available medicines or medical services.

The main issue is to examine whether the business related to medicinal products should be taxed.

Value Added Tax (VAT) is a kind of indirect taxation on sale, service and import; therefore, it is considered as a revenue source for the Thai government. The entrepreneurs selling goods or providing services are subject to VAT or represent the State to charge VAT from consumers. In other words, those who truly bear VAT burden are the end consumers.



One notion is that tax on medicinal products results in the burden of higher medicine price among most Thais. VAT on medicinal products under Revenue Code thus affects the right to access to medicines as follows:

1) It violates the vertical equity principle when considering the revenue of those who bear VAT burden in medicinal products. It is considered as the regressive tax.

2) It is tax non-neutrality because the application of VAT on medicinal products causes the distortion of decision making and affects the consumers' behavior in buying medicinal products.

3) It breaches WHO Principle of Access to Medicines. The hospital-prescribed medicines are exempt from VAT, while VAT is applied to medicines sold through the pharmacy. Therefore, the question is whether VAT in Thailand conforms to tax neutrality principle. This particular issue is the objective of this study.

3. Materials and Methods

This research aims at the study of VAT on medicines in Thailand in comparison with those actually applied in other country.

This documentary research is conducted by means of study and collection of data from different sources e.g. Revenue Code, law textbooks, articles, journal and electronics media.

4. Results and Discussion

Medicine is the fundamental factor for survival and, under the International Declaration on Human Rights, public access to medicine associates with the rights to live freely and to enjoy physical security.

In high income countries with good networks of health insurance protection, taxes at the rate of 0-25% are applied on medicines. Meanwhile, the tax on medicine ranging from 0-34% are found in certain low- and middle-income countries (LMICs) in spite of their much lower insurance protection against health care expenses. There are the comprehensive studies in the context of prescription charges and insurance arrangements in industrialized countries in order to reflect the effect of taxes on the access to medicines and the potential impact of tax exempt or reduction (WHO/HAI, 2015).

4.1. Overview of VAT on Medicine in Thailand

4.1.1 Rate of VAT on Medicines by virtue of Revenue Code

By virtue of Revenue Code (Revenue Department of Thailand, 2017), there are 2 rates of VAT on medicine (normal and 0% Rate).

(1) Normal Rate

Under Section 80 of Revenue Code, the normal rate (10% VAT) is applied to the sale and import of medicine like any other sales, services or imports. Currently, the Royal Decree No. 646 B.E. 2560 (2017) stipulates the decrease to 6.3% VAT plus 0.7% local tax or equivalent to 7%.

(2) 0% Rate

The export of medicine is not regarded as the export of VAT-exempt goods under Section 81 (3) of Revenue Code; therefore, medicine exporters are subject to 0% VAT.

4.1.2 Business subject to VAT on Medicines by virtue of Revenue Code

There are 3 businesses, which are subject to VAT on medicines under Section 77/2 of Revenue Code:

- (1) sale of goods in the Kingdom by a business person,
- (2) provision of services in the Kingdom by a business person, and
- (3) import of goods by an importer.

These cases can be categorized as follows:

(a) Medicine-Selling Business in the Kingdom by a Medicine vendor

Under the Revenue Department's practice, the medical facility registered under medical facility law is exempt from VAT but the unregistered ones are subject to VAT. The details are as follows:



In case where the company is not permitted to operate medical facility under Section 19 of Medical Facilities Act, B.E. 2541 (1998) (Council of state of Thailand, 2012), its provision of hemodialysis service is not exempt from VAT under Section 81(1) (j) of Revenue Code.

However, if the company is the medical facility under medical facility law, its diagnosis and medical result report services will be considered as medical service provision under medical facility law; therefore, it is exempt from under Section 81(1) (j) of Revenue Code.

As the medicine is deemed as tangible, valuable and ownable asset, the sale of medicine by the business person in the Kingdom (e.g. pharmacy) is subject to VAT under Section 77/2 (1) of Revenue Code.

The medicinal service provision in the Kingdom by a business man is subject to VAT no matter if such service is provided domestically or overseas.

(b) Import of Medicines from Other Countries into the Kingdom by the Importer

(1) Subject to Specific Business Tax

There are 2 businesses, which are exempt from VAT under Section 77/3 of Revenue Code:

- Business subject to Specific Business Tax under Section 91/2 of Revenue Code
- Business subject to the exemption of Specific Business Tax under Section 91/3 of Revenue Code

The medicine-selling business is subject to VAT because it is not subject to Specific Business Tax under Section 91/2 and is not Specific Business Tax exempt under Section 91/3.

(2) Business subject to VAT Exemption under Section 81 (1)

According to Revenue Department's VAT exemption practice, the medical facility registered under medical facility law is exempt from VAT.

However, unregistered medical facilities are not exempt from VAT.

(Example)

Despite the fact that the medicine-selling business is not exempt from VAT under Section 81 of Revenue Code, medicine vendors are exempt from VAT under Section 81(1) (j) of Revenue Code given that their tax base is below 1,800,000 Baht per year (subject to VAT exemption under Section 81/1).

(3) Business subject to VAT exemption under Royal Decree

VAT exemption under Royal Decree (Section 3 (1) of Revenue Code) has to meet certain local or general conditions or circumstances.

4.2 Summary of Principle of VAT on Medicines under the Laws of Other Countries

Value added tax (VAT) and other government-imposed duties and charges on medicine can significantly increase the final price paid by patients (Health Action International (HAI), 2009).

A VAT on medicines applied across European countries is lower than the standard one. Besides, the different VAT rates for reimbursable/prescription-only medicines and for non-reimbursable/OTC medicine are found in France and United Kingdom.

(1) France

Apart the focus of Health and Social Security Code on the safety and study of medicinal product efficiency, the reimbursed pharmaceutical products include medicines, drugs or pharmaceutical products under Article L. 5121 -8 of Code of Public Health (European Commission, 2018).

In conclusion, prescription medicine is cheaper than Over-The-Counter (OTC) ones because of the inclusion of VAT to the cost of all pharmaceutical products, whether reimbursed or not, at a rate of 2.1% and 5.5% for prescription and non-prescription medicines, respectively (General Directorate of Public Finances, 2017) when compared to a standard rate of 20% (Kalyva, Naudts, & Princen, 2015; Avalara, 2019).

(2) United Kingdom

Medicine prescribed by registered pharmacists or under the provisions described in List 8, Group 12, Item 1 are subject to 0% rate (HM Revenue & Customs, 2017).

However, place of prescription may affect VAT, so factual circumstances may be considered. As a result, hospital-prescribed medicinal products are exempt from VAT if being admitted to hospital. (HM Revenue & Customs, 2014; HM Revenue & Customs, 2018).



(3) Canada

Medicines for human use are subject to 0% rate under 2 conditions. (Government of Canada, 2019)

1. Medicine is prescribed by authorized medical professionals.
2. The prescription is issued by authorized medical professionals.

As a result, over-the-counter (OTC) medicine is generally subject to ordinary rate.

Food and Drug Act 1985 (Justice Laws Website, 2019) has separated dispensation and prescription systems. Pharmacists are considered as the professional with specialization and expert in dispensation and prescription. This is to ensure the highest safety, efficiency and quality of medicines sold in Canada.

The in-hospital prescription is regarded as a part of in-hospital service provision, which is exempt from VAT. Therefore, the hospital cannot charge VAT from its patients and must bear the burden of the Input Tax, which is not refundable.

(4) Malaysia

Health Services Act provides the exemption of Goods and Services tax (GST) for health services provided by the facility, which is registered or has been granted the license and for supply category including the utilities and basic foods (e. g. medicines in the National Essential Medicines List) (Royal Malaysian Customs Department, 2013; Ministry of Health Malaysia (MOH), 2016).

Despite GST exemption for medicine by prescription, 6% tax is applied to medicine purchased at the retail pharmacy (Royal Malaysian Customs Department, 2014; Royal Malaysian Customs Department 2019).

4.3. Comparative Analysis of VAT on Medicine between Thailand and other Countries

Medicines prescribed by medical facility under medical facility law are exempt from VAT, while the purchase from pharmacy is not exempt from VAT. Such difference of VAT is contrary to tax neutrality principle.

That means that medicine prescribed by medical facility under medical facility law are exempt from VAT under Section 81(1) (j) of the Revenue Code but those purchased from pharmacy or general store, which is not medical facility, are subject to 7% VAT like the consumption of any other goods or services.

Such difference may affect the decision-making in purchasing medicine. To avoid VAT, patients may probably receive treatments from medical facility instead of buying them from pharmacy where they need pay 7% VAT. Apart from causing difficult and time-consuming access to medicines, the medical facility, especially the public one, may have higher patient load because patients, despite having suffered from minor ailments, may choose to wait for diagnosis at the public medical facility.

Nonetheless, the exemption of VAT on medicine prescribed by medical facility under medical facility law may fail to relieve patients' VAT burden but it even increases more burdens in comparison to the actual application of 7% VAT. By virtue of Section 81(1) (j) of the Revenue Code, medicines prescribed by medical facility are exempt from VAT but the purchase from pharmacy is no VAT exempt. As medical service provision under medical facility law is exempt from VAT under Section 81(1) (j) of Revenue Code, the medical facility is considered out of VAT system resulting in its ineligibility for VAT refund claim from its purchase of medicine from manufacturers or entrepreneurs, who are subject to VAT. Such incurred cost will eventually be passed on to patients by being included in medical bills



รายการ (Items)	
1.	ค่าบริการพยาบาล
1.1	ค่าบริการทางการแพทย์
1.1.1	ค่ายาและสารอาหารทางการแพทย์
1.1.1 (1)	ยาผู้ป่วยใน
1.1.2	ค่ายาหรือเวชภัณฑ์ที่มีขาย
1.1.4	ค่าตรวจวินิจฉัยทางเทคนิคการแพทย์และพยาธิวิทยา
1.1.7	ค่าอุปกรณ์ของใช้และเครื่องมือทางการแพทย์
1.1.8	ค่าห้องผ่าตัด
1.1.12	ค่าบริการพยาบาลของผู้ประกอบวิชาชีพการพยาบาล
1.1.14	ค่าบริการเหมาจ่ายการพยาบาล
1.1.14 (2)	ค่าบริการทางการแพทย์อื่น ๆ
2.	ค่าบริการโรงพยาบาลอื่น ๆ
2.1	(1) ค่าห้องหรือค่าเตียงผู้ป่วยในทั่วไป
2.3	ค่าอาหารผู้ป่วยใน
2.3.1	ค่าอาหารผู้ป่วยในปกติ
2.6	ค่าบริการอื่น ๆ

Lump-sum medical

Figure 1 Example of patients' expenses in receiving medical treatment from medical facility

However, under Section 81(1) (j) of the Revenue Code, the exemption of VAT on medicine prescribed by medical facility under medical facility law may result in patients' burden of higher medical charge because of the medical facility's ineligibility for VAT refund claim. Such incurred cost will eventually be passed on to patients through the overall expenses.

The following issues are found after comparing VAT on medicines under the Revenue Code with those being applied in other countries,

(1) Medicine purchased by prescription are subject to 0% VAT e.g. Canada, Malaysia and United Kingdom.

(2) The purchase in pharmacy or Over-The-Counter (OTC) medicines are subject to normal rate or low rate (2.1%) e.g. France.

(3) Medical service provision in medical facility is exempt from VAT for realizing lower cost (common concept shared by most countries).

It can be said that, in Thailand, the purchase of medicines from pharmacy is subject to higher rate of VAT than those being applied in France. Besides, there is no system in Thailand to clearly separate between Over-The-Counter (OTC) and prescription medicines.

The purchase of medicines from pharmacy is subject to a normal VAT rate; therefore, it may imply that the State has no measures to facilitate patients' access to medicines and to lessen the burden of hospitals, especially the public ones.

The exemption of VAT on medicine for medical facility is contrary to the VAT neutrality principle and fails to relieve patients' VAT burden hidden in the in-hospital treatment expenses. The hospital is also affected as it becomes ineligible for crediting Input Tax from Sale Tax, while the State loses its revenue from VAT on medicine.

5. Conclusion

In sum, the exemption of VAT on medicine prescribed by medical facility under medical facility law may not, in fact, relieve tax burden. In contrary, it may likely increase more burdens when compared to the case of the actual application of VAT because patients who receive medicine prescribed by medical facility still have to bear hidden tax included in other charges apart from medical ones (e.g. other medical bills in the form of lump-sum medical expenses).

Indeed, the medical facility has purchased medicine from manufacturers, who are already subject to 7% VAT; however, under Section 81(1) (j) of the Revenue Code, it is unable to charge VAT on medicine prescribed to patients admitted into the medical facility.

This is due to the fact that the medical faculty is considered out of VAT system resulting in its ineligibility for VAT refund from its purchase of medicines from manufacturers or entrepreneurs. This results in the medical facility's VAT burden, which can eventually be passed on to its patients through lump-sum medical expenses.



To eliminate the contradiction to tax neutrality principle and to facilitate the access to medicine, the following guideline for VAT on medicines is proposed.

5.1 The State should have the measure promoting the access to medicines (not hazardous medicines) through low VAT rate in a manner that the State, entrepreneurs and consumers suitably benefit from such rate.

The data gathered and studied by the State should be considered to identify the appropriate VAT rate or the balance point, which benefit the State and relieve the consumers' VAT burden.

5.2 The fair tax measure should be introduced for household medicines sold in the medical facility or in pharmacy or by prescription.

If those measures are improved, they will truly relieve VAT burden. The medical facilities, pharmacies and general medicine-selling stores will be eligible for crediting Input Tax from the Sale Tax; therefore, they will not bear VAT burden from the sale of medicine. Meanwhile, the State is also benefited from VAT on medicine as the source of revenue for country development. It can be said that low the VAT rate will benefit all concerned parties, particularly the timely access to cheaper medicine and to the necessary ones. The State should thus consult with those concerned to identify a suitable VAT rate that most benefits all related sectors.

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