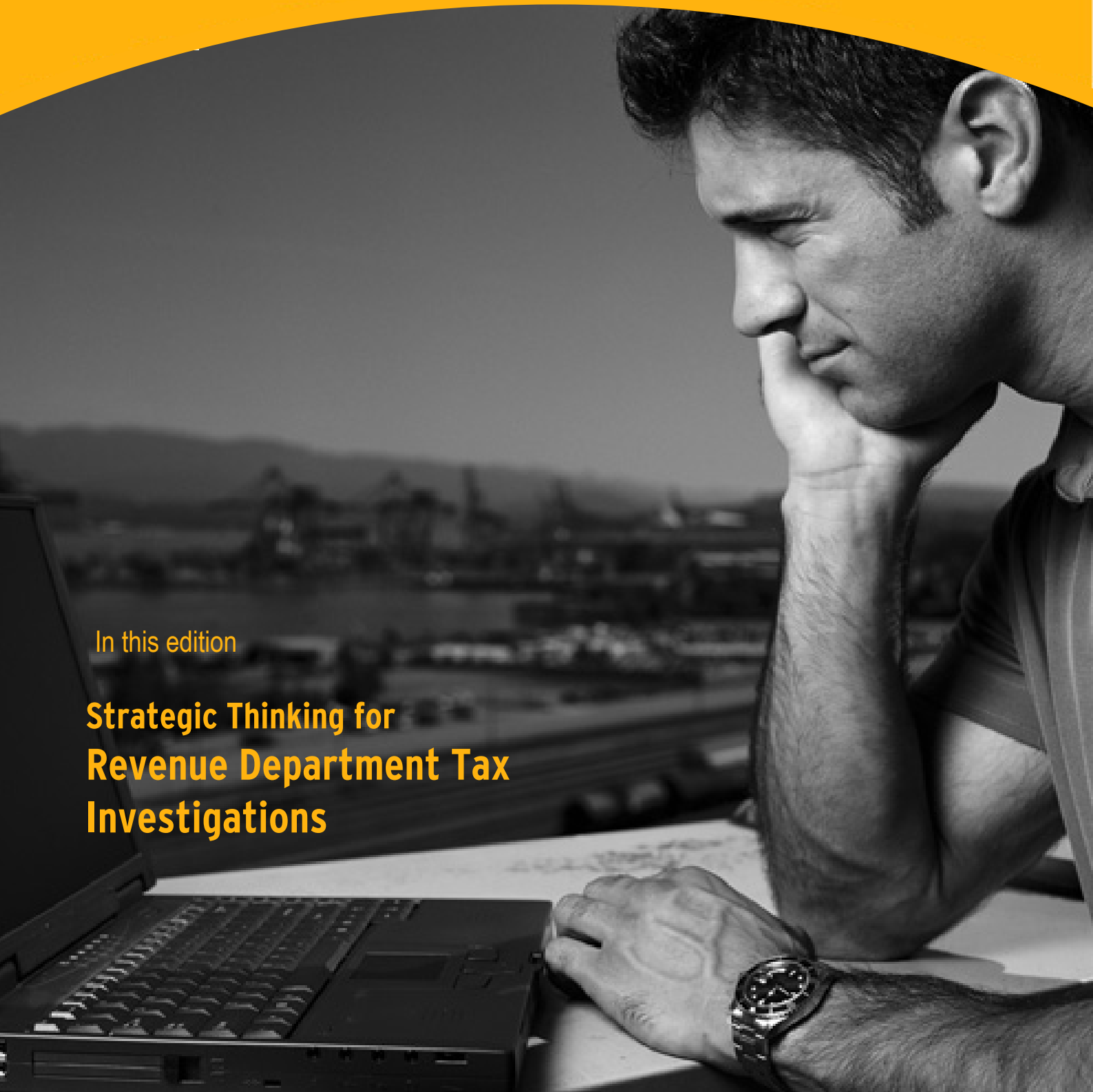


Call in for a Coffee

In this edition

**Strategic Thinking for
Revenue Department Tax
Investigations**



Strategic Thinking for Revenue Department Tax Investigations

What can you expect?

If you make a claim for a tax refund from the Thailand Revenue Department, the audit officers will carry out a tax investigation of your company. And irrespective of the type of tax for which you are claiming a refund, the Revenue officers will examine all your company's tax compliance matters (i.e. tax compliance for VAT, corporate income tax, corporate withholding tax, personal withholding tax and stamp duty). This is done to ensure that there are no taxes owed by your company before the Revenue Department makes any refund of tax to your company.

When conducting the tax investigation, the Revenue Department officers will generally adopt an attitude of 'guilty until proven innocent'. They will often form a view about certain compliance matters, assert that your company has done something wrong, and they will invariably argue over compliance matters.

In short, you should expect your claim for a refund of tax to be a long-winded and a frustrating experience for you and your staff.

Update to Call in for a Coffee
Edition No 64
US Financial Interpretation No 48
Accounting for Uncertain Tax Positions

On 23 January 2008, the US Financial Accounting Standards Board deferred the effective date of FIN 48 *Accounting for Uncertain Tax Positions* for eligible US non-public companies. Eligible non-public companies are now permitted to defer their adoption of FIN 48 to accounting periods commencing after 15 December 2007. As a result, US public companies are required to adopt FIN 48 for their **2007** financial years, but US non-public companies may defer adoption of FIN 48 to their **2008** financial years.

What should you do?

The RSM Thailand tax consultants have learned over the years that there is no shortcut to securing your tax refund. You have to 'play the tax investigation game', you have to answer and address each issue as it arises. But, success comes in how you 'play the tax investigation game' in answering and addressing the Revenue's questions.

If you adopt the approach of leaving all the matters to your accounting staff to handle, it is likely to become very drawn out, and you may find your accounting staff being overwhelmed with it all. You should note that Thai cultural issues play a major role in Thailand tax investigation processes.

RSM Thailand would advise the CFO and the CEO to get involved at the earliest possible time. Secondly, RSM Thailand would advise you to adopt strategic thinking for the tax investigation process.

What kind of strategic thinking?

Strategic thinking for tax investigations is very similar to strategic thinking for the company's marketing and promotion, business strategies and other commercial matters. The CFO and CEO have the vision and the strategic thinking, and it should also be employed for Thailand tax investigation matters.

1. Enhance the documentation

Firstly, you could 'enhance the documentation', which the Revenue officers are basing their assertions on. That is, you could review the documentation that has been provided to the Revenue audit officers by your accounting staff and enhance it with any additional supporting documentation that you may have to help address the particular issue for the Revenue officers.

2. Make a presentation

Secondly, you could 'make a presentation' to the Revenue officers, addressing all of the issues at the same time. For example, if your strategic thinking of the issues raised by the Revenue Department officers suggests that they primarily arise from the Revenue's concerns about the performance of your company (e.g. because your company has incurred losses), you could demonstrate to the Revenue officers that your company's performance was not in fact due to any of the issues raised, but due to environmental, commercial or business reasons.

In other words, the strategy of 'make a presentation' can address a Revenue officer's preconceived notion that your company may be guilty of indiscretions with respect to the issues by demonstrating that the real reason causing the Revenue officer's concerns is due to external factors and not due to any indiscretions.

3. Prepare defense documentation

Thirdly, you could consult a tax advisor concerning specific matters and prepare and file written 'defense documentation'. Filing such defense documentation presents the Revenue Dept officers with a detailed analysis of the matter in terms of the following:

- The true facts and circumstances of the matter;
- The technical merits of the company's position in terms of specific tax legislation/regulations; and,
- The Revenue Department's previous decisions in tax rulings for similar cases.

The advantage of this alternative is that the Revenue officers are presented with a comprehensive analysis that, prima facie, sets out the company's defense, which is often sufficient to deter the Revenue officers from persisting with the matter or issue.

4. Voluntary adjustment

Last but not least, you could consider a strategy of 'voluntary adjustment' for the matters or issues that are clearly wrong or for which the company may have made a mistake.

Making a voluntarily adjustment for mistakes made by the company is a very good strategy to consider in Thailand, when a CFO or CEO can see a voluntary tax payment as a small price to pay for gains to be made. Thai cultural issues also come into play with this strategy. Never does a Thai company own up and pay for mistakes made, and therefore, making a voluntary adjustment and payment of tax can send a powerful message to the Revenue officers about your company.

A simple demonstration of this is where, for example, the Revenue officers are arguing with the company over whether the overseas traveling expenses are for the purpose of business in Thailand. The company could make a voluntary payment of corporate income tax by filing an additional corporate income tax return with respect to the portion of the expenses that are for the purpose of business in Thailand and end the argument. No penalties are imposed for doing this, and the company would only be obliged to pay 1.5% per month surcharge (interest) for the late payment of corporate tax.

This strategy provides the Revenue Dept officers with a 'win' and it should also provide the company with a 'win' in terms of achieving the overall objectives of the company (e.g. securing a much larger tax refund).

Strategic thinking acknowledges the risks under tax investigations and the desire to manage those risks by adopting strategies that embodies a willingness to work with the Revenue officers to complete the tax investigation and secure the highest possible refund of tax for the company.

RSM international tax consultants

Specialized international tax consultants are at RSM Thailand to assist you with your tax risk management and strategic thinking.

We can identify your risks, perform technical reviews of your issues or matters, provide you with specific defense documentation, advise you in relation to tax rulings issued for similar cases, and advise you when to make a voluntary payment.

RSM Thailand

RSM Thailand

RSM Thailand is a member firm of RSM International, the seventh largest worldwide organization of independent accounting and consulting firms represented in each of the top 40 business centers around the world with more than 25,000 staff in over 64 countries, driven by the common vision of providing high quality professional services in their domestic markets and in serving the international needs of their client base.

The RSM service line leaders in Thailand are:

Corporate Advisory

Gareth.Hughes@rsmthailand.com

Accounting & Tax Compliance

Mark.Butters@rsmthailand.com

Executive Recruitment

Mike.Holloway@rsmthailand.com

Business Services & Legal

Pardorn.Suchiva@rsmthailand.com

Taxation Consulting

Steven.Herring@rsmthailand.com

Audit & Assurance

Prawit.Wipusirikup@rsmthailand.com

Audit & Assurance

Surachai.Damnoenwong@rsmthailand.com

We welcome your comments and feedback. Please feel free to contact us on the details below:

RSM Thailand
26th Floor, Sathorn City Tower
175 South Sathorn Road
Bangkok 10120
Thailand

T: +66 (0) 2670 9002-6

F: +66 (0) 2670 9027-8

E: AskUs@rsmthailand.com

W: www.rsmthailand.com

The information contained herein is for general reference purposes only. RSM Thailand and the author cannot take responsibility for any action taken or not taken as a result of information provided or opinions expressed. Readers should seek professional advice for particular situations and matters.