



**INCOME TAXATION ON NONPROFIT  
ORGANIZATIONS STUDY ON ASSOCIATIONS AND  
FOUNDATIONS**

**BY**

**MR. VIRIYA PONHEM**

**A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE  
REQUIREMENTS FOR THE DEGREE OF MASTER OF LAWS**

**IN BUSINESS LAW (ENGLISH PROGRAM)**

**FACULTY OF LAW**

**THAMMASAT UNIVERSITY**

**ACADEMIC YEAR 2015**

**COPYRIGHT OF THAMMASAT UNIVERSITY**

**INCOME TAXATION ON NONPROFIT  
ORGANIZATIONS STUDY ON ASSOCIATIONS AND  
FOUNDATIONS**

**BY**

**MR. VIRIYA PONHEM**

**A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE  
REQUIREMENTS FOR THE DEGREE OF MASTER OF LAWS  
IN BUSINESS LAW (ENGLISH PROGRAM)**

**FACULTY OF LAW**

**THAMMASAT UNIVERSITY**

**ACADEMIC YEAR 2015**

**COPYRIGHT OF THAMMASAT UNIVERSITY**



THAMMASAT UNIVERSITY  
FACULTY OF LAW

THESIS

BY

MR. VIRIYA PONHEM


ENTITLED

INCOME TAXATION ON NONPROFIT ORGANIZATIONS: STUDY ON  
ASSOCIATIONS AND FOUNDATIONS

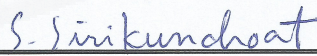
was approved as partial fulfillment of the requirements for  
the degree of Master of Laws in Business Laws (English Program)

on August 11<sup>st</sup>, 2016

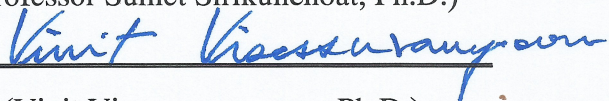
Chairman

  
\_\_\_\_\_  
(Assistant Professor Munin Pongsaparn, Ph.D.)

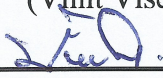
Member and Advisor

  
\_\_\_\_\_  
(Professor Sumet Sirikunchoat, Ph.D.)

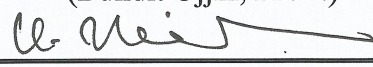
Member and Co-Advisor

  
\_\_\_\_\_  
(Vinit Visessuvanapoom, Ph.D.)

Member

  
\_\_\_\_\_  
(Bundit Ujjin, Ph.D.)

Dean

  
\_\_\_\_\_  
(Professor Udom Rathamarit, Docteur en droit)



Thesis Title	INCOME TAXATION ON NONPROFIT ORGANIZATIONS STUDY ON ASSOCIATIONS AND FOUNDATIONS
Author	Mr. Viriya Ponhem
Degree	Master of Laws
Major Field/Faculty/University	Business Laws (English Program) Faculty of Law Thammasat University
Thesis Advisor	Professor Sumet Sirikunchoat, Ph.D.
Thesis Co-Advisor	Vinit Visessuvanapoom, Ph.D.
Academic Years	2015

## **ABSTRACT**

As organizations incorporated to carry out beneficial public actions without profit-making, foundations and associations should be supported by the governmental sector, making them government representatives to help communities when accidents, fires, and storms occur. The government should encourage citizens to participate in charitable activities by volunteering and donating money and property to foundations and associations to help them independently finance their activities. Foundations and associations work as centers for citizens to operate charitable activities, concurrently benefiting countries and reduce economic inequality.

Results revealed disadvantages in the Thailand Revenue Code and related provisions, providing inadequate support, for example, income tax computation based on gross income, including organizational features on foundations and associations and charitable contributions which are small sum of limit, is another problem.

These findings suggest that relevant provisions for income taxation on foundations and associations under the Revenue Department and Notification of the Ministry of Finance (No.531) should be amended, permitting foundations and

(2)

associations to perform beneficial actions for the government as an overall shelter for the population.

**Keywords:** Income taxation on nonprofit organizations, charitable contributions, foundations and associations.



## ACKNOWLEDGEMENTS

I am using this opportunity to express my gratitude to everyone who supported me throughout the course of this Master of Law Program in Business laws (English program).

I wish to express my sincere thanks to Professor Dr. Sumet Sirikunchoat and Dr. Vinit Visessuvanapoom as advisors for providing me with all the aspiring guidance, invaluable constructive criticism and friendly advice. I would like to thank Assistant Professor Dr. Munin Phongsapan, the director of this program and also one of the thesis's examination committees for your support and guidance. I would like to thank Dr. Bundit Ujjin, thesis's examination committee for your kind advice.

Most importantly, none of this could have happened without my family. My classmates who encourage me. Every time I was ready to quit, you did not let me and I am forever grateful. This thesis stands as a testament to your unconditional support and encouragement.

Thank you,

Mr. Viriya Ponhem,  
Thammasat University,  
Year 2015

## TABLE OF CONTENTS

	Page
ABSTRACT	(1)
ACKNOWLEDGEMENTS	(3)
LIST OF TABLES	(7)
LIST OF FIGURES	(8)
LIST OF ABBREVIATIONS	(9)
CHAPTER 1 INTRODUCTION	1
1.1 Background	1
1.2 Hypothesis	5
1.3 Objectives	5
1.4 Scope of study	6
1.5 Methodology	6
CHAPTER 2 GENERAL CONCEPTS OF NONPROFIT ORGANIZATIONS	7
2.1 Definition of Nonprofit Organizations	7
2.2 Background of Nonprofit Organizations	8
2.3 Rules on Nonprofit Organizations	12
2.4 Rules on Income Taxation on Nonprofit Organizations	15
CHAPTER 3 INCOME TAXATION ON NONPROFIT ORGANIZATIONS UNDER FOREIGN LAW	23
3.1 Income Taxation on Nonprofit Organizations on	

the Law of the United States	23
3.1.1 Introduction	23
3.1.2 Background of Nonprofit Organizations	23
3.1.3 Rules on Nonprofit Organizations	29
3.1.4 Rules on Income Taxation on Nonprofit Organizations	30
3.2 Income Taxation on Nonprofit Organizations on the Law of Japan	43
3.2.1 Introduction	43
3.2.2 Background of Nonprofit Organizations	43
3.2.3 Rules on Nonprofit Organizations	45
3.2.4 Rules on Income Taxation on Nonprofit Organizations	50
 CHAPTER 4 INCOME TAXATION PROBLEMS RELATED TO ASSOCIATIONS AND FOUNDATIONS IN THAILAND	 55
4.1 Introduction	55
4.2 Background of Associations and Foundations	57
4.3 Rules on Associations and Foundations	61
4.4 Rules on Income Taxation on Associations and Foundations	69
4.5 Analyze Problems of Taxation on Foundations and Associations in Thailand	77
4.5.1 Problems Related to Income Tax Computation and Organizational features	78
4.5.2 Problems Related to Charitable Contributions	84
 CHAPTER 5 CONCLUSIONS AND RECOMMENDATIONS	 87
5.1 Conclusions	87
5.2 Recommendations	88
 REFERENCES	 93
 APPENDIX	 101





**LIST OF TABLES**

Tables	Page
3.1 Sources of Nonprofit Sector's Funds 2012	26
3.2 The number of nonprofit organizations in the United States	37
3.3 Tax Rate Schedule of the United States	35
3.4 Sources of Charitable Giving in the United States	38
3.5 Recipients of charitable giving in the United States	41
3.6 The Numbers of Different Nonprofits in Japan	50
3.7 The Limit of Charitable Contributions in Japan	54
4.1 Number and Percentage of Non-Profit Organization by Type of Non-Profit Organization and Region, Whole Kingdom: 2012	59
4.2 Tax rate of foundations and associations	74

## LIST OF FIGURES

Figures	Page
3.1 The Categories of Nonprofit Organizations in Japan	45
3.2 Two-Stage System of Obtaining Donor Tax Deductions	46



## LIST OF ABBREVIATIONS

<b>Symbols/Abbreviations</b>	<b>Terms</b>
AGI	Adjust Gross Income
CEO	Chief Executive Officer
CSR	Corporate Social Responsibility
ESG	Social and Governance
IRC	Internal Revenue Code
IRS	Internal Revenue Services
NPO	Nonprofit Organizations
TRC	The Thai Revenue Code
TCC	The Thai Civil and Commercial Code
WHO	World Health Organization

## CHAPTER 1

### INTRODUCTION

#### 1. Background

At present, different societies and the different classes of people in those societies – the rich, the poor, the disadvantaged (those who receive few opportunities) including the disabled – have dissimilar requirements.<sup>1</sup> Assistance has traditionally been provided by the government through state social welfare and social solution policies.<sup>2</sup> Although governments are trying to help their citizens to attain a reasonable standard of living, it is normally not enough to support them.<sup>3</sup> According to the poverty overview from the World Bank, poverty rates have declined over the past few decades. Despite this progress, a large number of people in many societies around the world still encounter difficulties of this kind according to information from the World Bank.<sup>4</sup>

As above, the social sector was created to assist them. Generally, social sectors may be called nonprofit sectors, which are the sum of private, voluntary and nonprofit organizations or third sectors,<sup>5</sup> with the first sector as the government and the second sector as business or commerce. Mostly, nonprofit sectors provide welfare provision, education community development, environment, art and culture. They are the sector which has gained most prominence in recent years.

The reason why civil societies would like to help people is that they desire to give something back to society. They have been inspired to serve their communities. In

---

<sup>1</sup> Jirawan Phakdeebutra. **The Role of Nonprofit Organization to Develop Country: the classification of nonprofit organizations**. National Institute of Development Administration. 1 (1996).

<sup>2</sup> *Id.* at 2.

<sup>3</sup> *Id.*

<sup>4</sup> World Bank, “*The poverty overview*.”

<http://www.worldbank.org/en/topic/poverty/overview> , (accessed January 17, 2016).

<sup>5</sup> Helmut K.Anheier. **Nonprofit Organizations: Theory, management, policy**. New York: Routledge. 4 (2005).

rural areas, there may be a lack of good health so people who are rich may donate money to establish health services in order to tackle this.

Nowadays, nonprofit organizations are part of wider civil societies and the welfare system of modern societies rather than the government sector or business sector. They have been developed in many countries and regions such as the United States, the United Kingdom, Europe, Africa and Asia. It is not just countries that establish nonprofit organizations, they may also be founded at the international level, such as World Health Organization (WHO).

Nonprofit organizations will operate their own activities for civil societies, charities, philanthropic and voluntary bodies without making any profits. However, they may carry on activities for profit to make money for their own activities. One thing that is a concern is that they cannot distribute any profit to their members.

It is not only nonprofit organizations that can help society but also the business sector. They may contribute through nonprofit organizations or operate on their own. Many companies follow the concept of Corporate Social Responsibility (CSR) and try to integrate socially responsible behavior into their entire business because this concept can attract investors, shareholders and consumers to invest. This indicates that they are responsible companies working in the interests of society, something that will encourage people to support their businesses. Nevertheless, the business sector still carries on its business to maximize profits for shareholders who want to obtain money from profit company receive. Therefore, directors have to control business under duty of care to have maximize profit in order to distribute to shareholders.

However, a new type of organization has been created in the United States called a “public benefit corporation” which allows a business to be run for profit and non-profit at the same time. It is one legal entity which the directors manage which balances profit distributed to shareholders and to societies.

As far as tax is concerned, nonprofit organizations can potentially receive tax benefits depending on the government policy of the particular country. In some countries, tax exempt status is given to nonprofit organizations because they do not



operate for profitable activities<sup>6</sup> and donations to nonprofit organizations can be considered tax deductible with limitations.

In the Thai context, nonprofit organizations are formed under the Civil and Commercial Code as associations<sup>7</sup> and foundations.<sup>8</sup> It can perhaps be argued that they have helped some groups of people more than the government has. For example, Universal Foundation for Persons with Disabilities supports the disabled in various fields: it has goal to create good attitude for Thai people to think that disabled persons have more potential and knowledge.<sup>9</sup> Contributions that the foundation receives will be directly spent on the disabled.<sup>10</sup> It may supply wheelchairs to them.

Prior to 1983, associations and foundations were tax exempt. In 1983, they started to pay tax on the basis of their income. These can be divided into two categories: general associations and foundations; and associations and foundations prescribed by the notification of the ministry of finance on income tax and value added tax (No. 531).<sup>11</sup> General associations and foundations are taxable on their income while associations and foundations prescribed by the notification of the ministry of finance on income tax and value added tax (No. 531) are exempt from taxable income.

However, the practice of taxing associations and foundations continue to have many problems which should be improved, namely, they are not allowed to deduct any

---

<sup>6</sup> ไพศาล ลิ้มสถิตย์. “ความสำคัญของกฎหมายส่งเสริมภาคประชาสังคม.” *จตุสารสมาคม-นิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์*. เล่มที่ 3 : 2558. (Paisan Limsatid. “*The importance of public society law.*” **Law Pamphlet of Thammasat University**. No. 3: 2558, at 27.)

<sup>7</sup> The Thai Civil and Commercial Code, section 78

<sup>8</sup> The Thai Civil and Commercial Code, section 110

<sup>9</sup> Universal Foundation for Persons with Disabilities. “*Background of Universal Foundation for Persons with Disabilities.*” <http://www.wiriya.net/en/historyufpd.php> (accessed January 26, 2016).

<sup>10</sup> *Id.*

<sup>11</sup> สุเมธ ศิริคุณโชติ. “ภาษีเงินได้กับมูลนิธิและข้อคิดเห็นบางประการ.” *สรรพากรสาส์น*. เล่มที่ 4: 2528 ,น. 79-85 ( Sumet Sirikunchoat. “*Taxable income of foundations and some suggestions.*” **Sanpakornsarn**. No. 4: 2528, at 79-85.)

expenses, the limit of deduction contributions from individuals and corporations is low and any excess amount of donations cannot be carried over to the next year. Improvements in these areas would be supported by nonprofit organization circles in Thailand in order for them to carry out their activities for society which the government cannot do.

In some foreign countries such as the United States, the advantages of tax policy on nonprofit organizations is that in general, they receive tax-exempt status as long as they operate for exempt purposes under section 501 (c) of the Internal Revenue Code.<sup>12</sup> They run activities that may be the exempt organization's very reason for existence, such as health care providers or the gift shop of a museum which this area is a support function and business activity unrelated to the organization's exempt purposes. It is carried on to raise fund to support its main mission.<sup>13</sup> Such business activities which are unrelated to the exempt purpose must pay tax. They do not pay tax only on gross receipts but are allowed to deduct expenses that are directly connected with business.<sup>14</sup> Charitable contributions are allowed to be carried over if an excess amount remains. In addition, the new hybrid legal form, benefit corporation, has been established. This type of corporation is a business legal entity which operates both for profit and nonprofit in the public interest.<sup>15</sup> In comparison, in Japan, a nonprofit organization is generally

---

<sup>12</sup> Internal Revenue Code. "26 U.S. Code § 501 - Exemption from tax on corporations, certain trusts, etc." <https://www.law.cornell.edu/uscode/text/26/501> (accessed June 5, 2016).

<sup>13</sup> James J. Fishman. **Taxation on Nonprofit Organizations Cases and Materials**. Fourth Edition. New York : Foundation Press. 311 (2015).

<sup>14</sup> Department of Treasury. "*Publication 598: Tax on Unrelated Business Income of Exempt Organization, at 11.*" <https://www.irs.gov/pub/irs-pdf/p598.pdf> (accessed January 5, 2016).

<sup>15</sup> Fishman, *supra* note 13, at 427.

exempt from corporate tax but any income they have from profit-making activities as stipulated under the corporation tax law is subject to the same tax rate as a company.<sup>16</sup>

Therefore, studying taxation of nonprofit organizations by comparing foreign countries will be useful to in this research on Thailand.

## **1.2 Hypothesis**

Income taxation of foundations and associations and charitable contributions policy to support the public benefit are inappropriate: tax base and tax rate of foundations and associations, the problem of notification of ministry of finance on income tax and value added tax (No. 531) and charitable contribution measures which allow only a small sum of deduction and disallow for the carryover. In addition, the current supervision of foundations and associations continues to have problems such as the misuse conducting and lacking of efficiency control. In addition, operation of charitable organizations in Thailand has some legal restrictions that are not conducive to the pursuit of profit together with public interest activities. Therefore, Thailand should amend the law to be good measures for income taxation on foundations and associations.

## **1.3 Objectives**

1. To study general principles and income taxation of nonprofit organizations focusing on associations, foundations and benefit corporations.
2. To study income taxation of nonprofit organizations focusing on associations and foundations in Thai law compared to United States and Japanese law.

---

<sup>16</sup> Japan NPO Center. *“About NPO Law in Japan.”*

<http://www.jnpoc.ne.jp/en/nonprofits-in-japan/about-npo-law/> (accessed April 7, 2016).

3. To provide appropriate legal measures related to income taxation of nonprofit organizations focusing on associations, foundations in Thailand

#### **1.4 Scope of Study**

This thesis mainly focuses on the concept and significant principles of nonprofit organizations by considering foundations and associations and appropriate income tax measures including charitable contributions.

#### **1.5 Methodology**

This thesis will mainly study documents, such as collection related documents, journals, textbooks, previous research, and electronic websites focusing on Thailand, the United States and Japan.

## CHAPTER 2

### GENERAL CONCEPTS OF INCOME TAXATION ON NONPROFIT ORGANIZATIONS

Globally, Helmut K. Anheier categorized a nonprofit organization represented as a “nonprofit sector” and also called “third”, “independent”, “charitable”, “voluntary”, “philanthropic”, “civil society” and “tax exempt” sector. The nonprofit or third sector has also existed in the fields of community development, social welfare, education, environment, or art and culture. It is different from government being the first sector and the world of business and commerce being the second.<sup>17</sup>

Not all nonprofit organizations work for the public interest. They may work for a mutual group of people and they are able to obtain any income from others but any income derived from any source cannot be shared among members of the board.<sup>18</sup> In the view of the authorities, nonprofit organizations are deemed as working for the public so in many cases they are given a tax-exempt status. Yet, they are not prohibited from earning income from commercial affairs and, perhaps, such income can be taxed.

#### **2.1 Definition of Nonprofit Organizations**

It is very difficult to define the exact meaning of “nonprofit organizations”. There are many scales, scopes and forms. They operate to cover public activities such as education, religions, museums, hospitals etc. Many researchers have provided definitions of nonprofit organizations in relation to various aspects.

A nonprofit organization is, in essence, an organization that is barred from distributing its net earnings, if any, to individuals who exercise control over it, such as members, officers, directors or trustees. It should be noted that a nonprofit organization is not barred from making profits. Many nonprofit organizations in fact consistently show annual accounting surplus, for instance, Baanaree foundation, which has been

---

<sup>17</sup> Helmut, *supra* note 5, at 4.

<sup>18</sup> Fishman, *supra* note 13, at 3.

established to foster the Buddhism activity, art and culture, has annually submitted financial statement to give permission for people in examining the way they spent their money.<sup>19</sup>It is only the distribution of the profit that is prohibited among members.<sup>20</sup>

According to a nonprofit organization definition from the United Nations, they “are legal or social entities created for the purpose of producing goods and services whose status does not permit them to be a source of income, profit, or other financial gain for the units that establish, control or finance them. In practice, their productive activities are bound to generate either surpluses or deficits but any surpluses they happen to make cannot be appropriated by other institutional units.”<sup>21</sup>

The basic definition of “not-for-profit” and “nonprofit” can be given as follows:

"Not-for-profit" refers to an activity, for example, a hobby (like fishing).

"Nonprofit" refers to an organization established for purposes other than profit-making. Note here that nonprofit does not necessarily mean "charitable".<sup>22</sup>

## 2.2 Background of Nonprofit Organization

It is difficult to explain the universe of nonprofit background because globally every country has different backgrounds. The nonprofit sector emerged together with philanthropic activities. In order to fully understand it, we must undertake a comparative study of the nonprofit sectors in different countries.

Three dimensions of the organizational background of a nonprofit sector are as follows: the legal system, the level of development and the degree of centralization.

---

<sup>19</sup> Baanaree foundation . “*Financial Statement of Baanaree foundation.*”

[http://www.baanaree.net/main/index.php?option=com\\_content&view=category&layout=blog&id=74&Itemid=178](http://www.baanaree.net/main/index.php?option=com_content&view=category&layout=blog&id=74&Itemid=178) (accessed June 5, 2016)

<sup>20</sup> Fishman, *supra* note 13, at 3-4.

<sup>21</sup>United Nations. “*Handbook on Non-profit Institutions in the System of National Accounts, 2003, P12.*” [http://unstats.un.org/unsd/publication/seriesf/seriesf\\_91e.pdf](http://unstats.un.org/unsd/publication/seriesf/seriesf_91e.pdf) (accessed December 15, 2015).

<sup>22</sup> The Social Study Help Center. “*Non Profit Organizations.*”

[http://www.socialstudieshelp.com/Eco\\_Non\\_Profits.htm](http://www.socialstudieshelp.com/Eco_Non_Profits.htm) (accessed January 17, 2016).



*Legal system.* This impacts on nonprofit sector activities both under civil law and common law. Under the civil law system, the rights and obligations of individuals and organizations are explicitly provided by the law. On the other hand, under common law (the United States and United Kingdom), they are able to claim the benefits of nonprofit sectors through their rights. The common law system has built up a much more ambivalent system of case law that defines what communities mean by public goods.<sup>23</sup>

*Level of development.* With economic growth, the number and scope of social roles increases. The greater the degree of differentiation of social roles, the more highly defined the nonprofit sector is likely to be. The rise of a middle class plays an important role in the emergence of nonprofit organizations. The stronger the middle class, the more developed the nonprofit sector will be.<sup>24</sup>

*Degree of centralization.* The structure of the nonprofit sector has been affected by the degree of centralization that citizens are willing to tolerate in their countries' basic political and institutional structures. The more centralized the government's structure, the less room there is for a coherent nonprofit sector structure.<sup>25</sup>

There are charitable organizations that exist the non-profit institutions such as hospital, educational institute and church. The charitable organizations are huge and contain various groups which mainly carry on the activities for societies and help to strengthen communities. They consist of volunteers or donors who subsidize them. The Council of Foundation has the task of defining the main features that support the charitable activities such as scientific, educational, cultural, religious, or related charitable purposes.<sup>26</sup>

However, a nonprofit entity is unable to cover all types of legal forms which founders would like to establish because some of them are required to carry on the

---

<sup>23</sup> Amara Pongsapich. **Thailand Nonprofit and Social Development**. Bangkok : Chulalongkorn University, 2, (1997).

<sup>24</sup> *Id*, at 3.

<sup>25</sup> *Id*.

<sup>26</sup> Council of foundation. "*Foundation life circle*." <http://www.cof.org> (accessed February 25, 2016).

activities mainly to make profits and focus on social and charitable activities together. On the other hand, existing legal forms of businesses such as those that are companies have to operate to maximize profits for shareholders<sup>27</sup> who invest in the businesses and wish to obtain a return. For their part, nonprofit organizations have to mainly concentrate on nonprofit activities. For these reasons, the new hybrid corporate form has been established to support the corporation to make profits and nonprofits collectively.<sup>28</sup>

In 1970, in the United States, there was just one social responsibility for businesses which was to use its resources and engage in activities designed to increase its profits within the rules of game, which is to say, to engage “in open and free competition without deception or force”.<sup>29</sup> This contrasts with a stakeholder approach for which the phrase “stakeholder theory” was popularized and the idea that a corporation should consider the ramifications of its actions, not just on its shareholders, but on all those impacted by corporate decisions.<sup>30</sup> In addition, to affirm the concept of a new corporate duty, the CEO of Wholefood, John Mackey, in 2005 follow this aspect to describe his business which adhere to a stakeholder model and dominate the economic landscape.<sup>31</sup> It can be concluded that businesses are rather concerned about their business career to make priority for profits than not for profit under the

---

<sup>27</sup>นิลอุบล เลิศนุกววัฒน์. รายงานฉบับสมบูรณ์ **Benefit Corporation: ลักษณะ ข้อพิจารณา และความเป็นได้ในการปรับใช้ในประเทศไทย**, น.4, (2557). (Nilubol Lertnuwat. **Complete Report regarding Benefit Corporation: characteristic, considering point and a possibility of adaptation in Thailand**, 4, (2557)).

<sup>28</sup> Fishman, *supra* note 13, at 428.

<sup>29</sup> Milton Friedman. “*The Social Responsibility of Business Is to Increase Profits.*” New York Times. (September 13, 1970). at 271.

<sup>30</sup> R. Edward Freeman. **Strategic Management: A Stakeholder Approach**, 34, (2010).

<sup>31</sup> Mystica M. Alexander, **Benefit Corporations- the Latest Development in The Evolution of Social Enterprise: Are They Worthy of A Taxpayer Subsidy?**

“shareholder theory”. Shareholder theory states that the purpose of corporations is to maximize shareholder profits while carrying on their businesses.<sup>32</sup>

At present, we are moving away from the traditional business entity because of the financial crisis in 2008 which began in the United States where many people questioned whether corporations should be purely profit-driven entities, and whether they should first and foremost serve the financial interests of the shareholders. Jay Gilbert as Co-founder of B-Lab addressed this: “With public trust in business at an all time low, [benefit corporations] represent the first systemic response to the underlying problems that created the financial crisis”. After financial crisis released, states legislatures and circle recognize importance of corporate social conscience called “Benefit Corporations”. Maryland was the first state to pass benefit corporation legislation in April 2010.<sup>33</sup>

Today, there are many foundations which close to the profit and nonprofit organizations such as Bank of America Charitable Foundation: it works for purpose to make financial lives better by fulfilling environmental, social and governance (ESG) responsibilities. As part of this work, it has developed strong partnerships with nonprofit organizations serving community needs, bringing collective networks and expertise to help communities grow and thrive<sup>34</sup> and GE Foundation which provided assistance to people in connection with education and health, for example, it encouraged people by assisting them to improve the skills they demand to carry out their goals. In addition, GE foundation have played the role to assist people in the

---

<sup>32</sup> Nilubol Lertnuwat, *supra* note 27 at ,5.

<sup>33</sup> NBIS. “*B Corporations, Benefit Corporations and Social Purpose Corporations: Launching a New Era of Impact-Driven Companies, 2012, P 2.*” [http://nbis.org/wp-content/uploads/2012/10/ImpactDrivenCompanies\\_NBIS\\_Whitepaper\\_Oct2012.pdf](http://nbis.org/wp-content/uploads/2012/10/ImpactDrivenCompanies_NBIS_Whitepaper_Oct2012.pdf) (accessed November 20, 2015).

<sup>34</sup> Bank of America. “*Bank of America Charitable Foundation Funding Opportunities.*” <http://about.bankofamerica.com/en-us/global-impact/charitable-foundation-funding.html#fbid=Ignt3rfewul> (accessed July 11, 2016).

natural disasters such as tsunami in Indonesia which it donated money for them. In the same way, they as nonprofits, operate for profit retailers to sell their merchandise.<sup>35</sup>

In Asia countries, Japan has been the country in which the nonprofit sector has played an important role in society, especially in the period of after World War II. There are various kinds of organizations which allow managing organizations in the public interest such as social welfare corporation, religious corporation, labor Union, medical service corporation and etc.<sup>36</sup> They may be formed as nonprofit organizations either general associations and foundations or public interest foundations and associations. Tax benefits are provided by law for public interest corporations which would be described later.<sup>37</sup>

### 2.3 Rules on Nonprofit Organizations

There are various terms to define the nonprofit sector because it is too difficult to find the exact term of nonprofit sector. The terms have been called different words such as “nonprofit sector”, “charities”, “third sector”, “independent sector”, voluntary sector”, tax-exempt sector”, “nongovernmental organizations”, “associational sector”, “philanthropy”; and, in the European context, “social economy” and “social enterprise” to name but a few.<sup>38</sup>

A nonprofit organization is an organization that is prohibited from distributing its net earnings to individuals who exercise control over it, such as members, officers,

---

<sup>35</sup> GE Foundation. “*About GE Foundation.*” <http://www.gefoundation.com/about-ge-foundation/> (accessed February 18, 2016).

<sup>36</sup> The Japan Association of Charitable Organization. **Charitable and Non-profit Organization in Japan.** Bunkyo-ku : Hon-komagome, 4, (2014).

<sup>37</sup> Public Interest Commission. “*promoting public interest activities by private sector*” [https://www.koeki-info.go.jp/pictis\\_portal/other/pdf/ENGLISH.pdf](https://www.koeki-info.go.jp/pictis_portal/other/pdf/ENGLISH.pdf) (accessed June 20, 2016).

<sup>38</sup> Helmut, *supra* note 5, at 39.

directors or trustees. It is not barred from making a profit; it is only the distribution of the profits that is prohibited. This can be termed the “nondistribution constraint”.<sup>39</sup>

In addition, we can classify the definition of existing nonprofit organizations into four aspects according to the service they provide: legal, functional, economic and structural-operational.

1. *Legal definition* means a nonprofit organization can be provided under the country’s laws and regulations. For example, in the United States, nonprofit organizations are for the most part under section 501 of the Internal Revenue Code (IRS).

In contrast to common law countries such as the United States, the United Kingdom or Australia, civil law countries such as Germany, France and Japan have two types of organizations: private law associations and corporations. To be a legal entity, an association has to be registered with authority and is consist of a minimum number of members, a charter and a governing board. An association conducts its activities with a non-commercial objective. Being the legal entity of a nonprofit organization does not imply that it is tax exempt. In most civil countries, they have to be certified by the government’s agency. In France and Japan, there are many more nonprofit organizations than tax-exempt organizations.<sup>40</sup>

2. *Functional definition*. This type focuses on the function or purpose of nonprofit organizations. The organization mostly promotes the public interest or public purpose. For example, in the United Kingdom, the UK’s Cabinet Office categorizes ten purposes as follows:
  1. The prevention and relief of poverty
  2. The advancement of education
  3. The advancement of religion

---

<sup>39</sup> Fishman, *supra* note 13, at 3.

<sup>40</sup> Helmut, *supra* note 5, at 43.

4. The advancement of health (including the prevention and relief of sickness, disease or of human suffering)
5. Social and community advancement (including the care, support, and protection of the aged, people with a disability, children and young people)
6. The advancement of culture, arts and heritage
7. The advancement of amateur sport
8. The promotion of human rights, conflict resolution and reconciliation
9. The advancement of environmental protection and improvement
10. Other purposes beneficial to the community

In civil law countries, the legal nonprofit organization emerged in the nineteenth century and became prescribed in the civil codes and provision in various tax laws that related to public interest activities. They may or may not receive tax exempt status depending on their activities which show to government's agency while they apply to receive nonprofit status.

3. *Economic definition.* The important feature of the economic definition is the revenue they receive. Generally, nonprofit organizations do not receive income from the sale of goods and services but they do receive from voluntary dues and contributions from members and supporters. However, they may be allowed to receive income from fees and service charges.<sup>41</sup>
4. *Structural-operational definition* does not focus on the purpose of the organization but on the basic structure and operation of nonprofit organizations. They have to organize, institutionalize to some extent

---

<sup>41</sup> Helmut, *supra* note 5, at 45.



separate from government, equipped to control their own activities (self-governing), not returning profit generated to their owners or directors and involving some meaningful degree of voluntary participation.<sup>42</sup>

According to the above categories, in classifying nonprofit organizations, they are mostly classified according to the purposes of their activities such as culture and recreation; education and research; health; social services; environment; development and housing; law; advocacy and politics; philanthropic intermediaries and voluntarism promotion; international, religious, business and professional associations and unions.<sup>43</sup>

## **2.4 Rules on Income Taxation on Nonprofit Organizations**

The tax treatment of nonprofit organizations is considered in many countries. Also, each country imposes different taxation on the nonprofit sector. Most nonprofit sectors are charitable organizations. The major concept in the nonprofit sector is commonly termed the “nondistribution constraint”. This means that they are allowed to make profits but are forbidden from distributing them to any persons or entities.<sup>44</sup>

In terms of the role of the tax system, it has been specified four significant functions to explain background policy in taxation on nonprofit organizations. They set out the following four reasons: support, equity, regulatory and border patrol.<sup>45</sup>

First, the support function encourages the continuation and expansion of the nonprofit sector through relief from tax. A central policy issue is whether tax exemptions and charitable deductions are subsidies and whether this type of support is justified and appropriately provided by the tax system.

Second, the equity function, under the goal of redistributing resources and opportunities, has its roots in the history of charity. The debate here is over the extent to which tax benefits should depend upon an organization’s redistributive mission.

---

<sup>42</sup> Helmut, *supra* note 5, at 47.

<sup>43</sup> *Id.*, at 55.

<sup>44</sup> Fishman, *supra* note 13, at 45.

<sup>45</sup> *Id.*, at 54.

For example, should the exempt status be conditioned on service to the poor and disadvantaged? What is the appropriate degree of private benefit that may be derived by donors, and how much influence may donors wield?

Third, the regulatory function is designed for the tax system by the policing of the fiduciary behavior of a nonprofit's trustees, managers and donors. At the outset, this raises a recurring jurisdictional puzzle: is the tax system which is intended primarily to collect revenue, the most appropriate regulator? Why should not the states play the more active role?

Last but not least, the patrol function shapes what a nonprofit may or may not do if they wish to secure and maintain their exempt status, for example, the limit of charities in various aspects, while the restriction on commercial activities and unrelated business income tax patrol the nonprofit-business border.

As discussed earlier, taxation in the nonprofit sector has different features in different countries. Many countries provide tax privileges for nonprofit organizations because they trust that nonprofit organizations intend to support society and communities in difficult areas, the disabled and the poor. Many countries have tried to design a proper taxation system for the nonprofit sector.

Therefore, to understand the features of taxation for nonprofit organizations, it is necessary to study what different countries provide to them.

#### **2.4.1 Tax status – exempt and non-exempt status**

Each country imposes organizational status in taxation for nonprofit organizations. It depends on policies of each country. In general, the tax status of nonprofit organizations may be under tax-exempt status and non tax-exempt status depending on the government's policies.

Tax-exempt status may be obtained by fulfilling some conditions<sup>46</sup> such as operating in public charitable activities or automatically obtained without any

---

<sup>46</sup> Revenue Department. "Notification of The Ministry of Finance on Income Tax and Value Added Tax (No. 531)." <http://www.rd.go.th/publish/47182.0.html> (accessed November 24, 2015).

conditions as long as it is applied for.<sup>47</sup> Different countries have different regulations according to the different perspectives taken.

Those that support taxation see that it is necessary because it would be unfair to other business entities. Providing tax exempt status may be unfavorable to the business sector. And, it may also increase tax avoidance because the companies may use a nonprofit form to distribute profits from the companies. Also, taxation increases revenues to government.<sup>48</sup>

On the other hand, those against this argue that nonprofit organizations find it difficult to raise funds and capital. They really lack access to equity capital since they are bound by the principle of “nondistribution constraint”.<sup>49</sup> Donations alone, which are an uncertain source of capital, are an inadequate basis to run charitable organizations. The need for capital subsidies provides the nonprofit sector with an exemption from corporate taxation. They mostly work for the public than for their own private interests.

In the United States, those in the nonprofit sector are tax exempt. The regulation is prescribed in section 501(c) of the Internal Revenue Code. Nonprofits may be established in the form of unincorporated associations, legal associations and foundations or trusts. They carry on social activities mainly related to activities such as the community chest, fund or foundation; organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competitions.<sup>50</sup> Commonly, nonprofit organizations work for the public and work for their members as mutual organizations such as labor unions.

---

<sup>47</sup> Internal Revenue Code, section 501 (c).

<sup>48</sup> สุเมธ ศิริคุณโชติ. **ภาษีอากรตามประมวลรัษฎากร 2558**. กรุงเทพฯ : เรือนแก้วการพิมพ์, น 79-85, (2558). (Sumet Sirikuncoat. **Taxation under Thai Revenue Code 2558**. Bangkok : Ruenkaew Printing, 79-85, (2558).)

<sup>49</sup> Fishman, *supra* note 13, at 67.

<sup>50</sup> Department of Treasury, *supra* note 14, at 3-4.

Also, in Japan, public interest associations and foundations are exempted from tax when the money they receive is from public interest activities.<sup>51</sup> The Public Interest Commission is the body that authorizes tax exempt status.

Like Thailand, nonprofit organizations are largely registered in the form of foundations and associations and they are generally tax exempt if they show they conduct their business for public charitable interests and meet the conditions of the Revenue Department.<sup>52</sup> They are able to apply to obtain tax-exempt status.

#### 2.4.2 Tax bases

Tax bases of nonprofit organizations are based on national policy provided to the nonprofit sector. The tax bases of nonprofit organizations are categorized into two: first, based on unrelated business incomes, and second, based on gross income.

For the first,<sup>53</sup> in some countries such as the United States, nonprofit organizations may be tax exempt organizations. They are not required to pay tax on income they derive if they operate for charitable purposes. Even nonprofit organizations that operate in the public interest are not prohibited from making economic profits because income producing activities are vital to support their missions and to reduce dependence on government.<sup>54</sup> Therefore, they enjoy tax-exempt status but if they obtain earnings from commercial activities and unrelated business income that is regularly carried on and not “substantially related” to an organization’s exempt purposes,<sup>55</sup> then they must collect such income and pay tax at the same rate as business corporations. It is able to consider the conditions for an activity to be categorized as unrelated trade or

---

<sup>51</sup> Council of foundations. “Japan.” <http://www.cof.org/content/japan> (accessed December 3, 2015).

<sup>52</sup> Revenue Department, *supra* note 46.

<sup>53</sup> Department of Treasury, *supra* note 14, at 4.

<sup>54</sup> Fishman, *supra* note 13, at 311.

<sup>55</sup> *Id.*, at 314.

business: (1) the activity must be a “trade or business” (2) it must be “regularly carried on”; and (3) it must not be substantially related to an organization’s exempt purposes.<sup>56</sup>

Moreover, in computation of unrelated business taxable income, it bases on gross income derived from trade or business minus allocable deductions for business expenses, losses, depreciation and other kinds directly connect with trade or business treaded as deductible expenses.<sup>57</sup>

Regarding to passive investment income such as dividends, interest, rents and royalties<sup>58</sup>, it is excluded from unrelated business income which is not derived from charitable activities because it is a suitable source of revenue for charitable organizations to support themselves and does not cause competition problems between profit sector and nonprofit sector. Passive investment income means fixed and determinable annual periodic income such as dividends, interest, rents and royalties, and excluding income effectively connected with a trade or business.<sup>59</sup> They are derived from passive activities and do not active them to compete in the market.<sup>60</sup> Therefore, passive investment income which nonprofit organizations received would not be counted as taxable income.<sup>61</sup>

Secondly, taxation of nonprofit organizations is taxable on gross income such as Thailand.<sup>62</sup> This tax base is collected from all of the incomes derived from activities. Those are prohibited to be deductible expenses from income they receive. The rationale

---

<sup>56</sup> Fishman, *supra* note 13, at 344.

<sup>57</sup> Department of Treasury, *supra* note 14, at 11.

<sup>58</sup> *Id.*, at 9.

<sup>59</sup> EY. “*Tax Alert: FATCA considerations for multinational non-financial corporate groups, August 2013.*” [http://www.ey.com/Publication/vwLUAssets/EY-FATCA-Alert-August-2013-Eng/\\$FILE/EY-FATCA-Alert-August-2013-Eng.pdf](http://www.ey.com/Publication/vwLUAssets/EY-FATCA-Alert-August-2013-Eng/$FILE/EY-FATCA-Alert-August-2013-Eng.pdf) (accessed January 25, 2016).

<sup>60</sup> Fishman, *supra* note 13, at 370-371.

<sup>61</sup> Legal Information Institute. “*26 U.S. Code § 512 - Unrelated business taxable income* Internal Revenue Code section 512(b)(1)-(5).”

<https://www.law.cornell.edu/uscode/text/26/512> (accessed Jan 25, 2016).

<sup>62</sup> The Thai Revenue Code, tax rate schedule.

of the government to do this is that nonprofit organizations should not receive any profits from business activities because they are meant to be working in the public interest. In addition, a tax based on gross income has nonprofit organizations to do not concern about items which shall not be allowed as expenses in the calculation of net profits.<sup>63</sup> They should only derive money from donations and member fees.

### 2.4.3 Tax rate

Tax rate may be a benefit to nonprofit organizations offered by the governmental policy. As the focus of the nonprofit sector is to promote activities that are in the interest of the public, the national government may provide those organizations with a lower tax rate.

In Japan, there are some special tax rates for public interest activities while corporation income tax is 25.5 percent. For example, a medical corporation, which is a kind of public interest corporation, will enjoy a tax rate of 22 percent on profits.<sup>64</sup>

### 2.4.4 Tax measures on charitable contributions

Research shows that many countries such as the United States, Japan and Thailand provide charitable deductions in their tax systems.

Charitable contributions have been challenged in many countries. There are many discussions about why a government must support the provision of charitable contributions in the tax system. Some critics claim that providing charitable contributions will be more useful to upper class people. They obtain tax benefits from the state by doing this. If they wanted to donate money to society, then why do they not donate it voluntarily without receiving any compensation? As such, it appears that this policy benefits to higher income.<sup>65</sup>

---

<sup>63</sup> Sumet Sirikunchoat, *supra* note 11, at 85.

<sup>64</sup> Tomoki Debari. **Charity Law Jurisdictional Comparison**. London: European Lawyer Series, 139-150, (2012).

<sup>65</sup> Fishman, *supra* note 13, at 546.

On the other hand, charitable contributions are very useful for the public. This policy gives individual incentives to people who are ready to donate assets to other people. Moreover, supporting contributions can reduce the gap between the rich and the poor. The other arguments are that the government is unable to adequately help the poor while charitable organizations can assist the poor better than the public sector. The government sector has many conditions before it can give money to the public.<sup>66</sup>

The charitable contributions are able to be considered in the aspects of donors, donees and assets for donations.

The donors who qualify to donate are in the form of corporations and individuals.<sup>67</sup> Contributions are controlled by limiting charitable deductions. The limitations are regulated in order to control individuals and corporations from donating too much in order to avoid paying tax. In the United States, Japan and Thailand, there are different limits to contribution deductions.

Not all nonprofit organizations qualify to participate charitable deduction when donors contribute your own assets. The governments will consider qualified organizations that are suitable to receive donations as nonprofit organizations. Such qualified organizations must operate their own activities for public charitable activities. In some countries such as the United States, nonprofit organizations must be certified and operate for specific purposes such as religious, charitable, scientific, testing for public safety, literary or educational.<sup>68</sup> In Thailand, tax law for tax exempt organizations have been prescribed not only for specific purposes but also to ensure that nonprofit organizations indicate how much they spend on society and public.<sup>69</sup>

---

<sup>66</sup> วิริยะ นามศิริพงศ์พันธุ์. “ปฏิรูปภาษี การคลังและงบประมาณ เพื่อลดความเหลื่อมล้ำและสร้างความเป็นธรรมในสังคม.” วารสารนิติศาสตร์. เล่มที่ 1 : 2555, น. 16. (Wiriya Narmsiripongpan. “*Tax reformation, public finance and budget for a reduction of inequity and contributing fairness to societies.*” Faculty of Law’s Journal. No. 1: 2555, at 16)

<sup>67</sup> Thai Revenue Code, section 47 (7)(b) and 65 Ter (3).

<sup>68</sup> Internal Revenue Code, section 501 (c) (3).

<sup>69</sup> Revenue Department, *supra* note 46.

The reason why nonprofit organizations which qualify for donation benefits must be under the regulations is because no government wants them to be run improperly.

Assets which qualify for donations may be in the form of cash and properties. To be considered a donation, it must not be qualified if donors receive some thing a return benefits.<sup>70</sup>

In the *American Bar Endowment* case, the court affirmed that payment of money generally cannot constitute a charitable contribution if the contributor expects substantial benefits in return. A transfer does not qualify as a gift if the transferor receives a return benefit.<sup>71</sup>

---

<sup>70</sup> Fishman, *supra* note 13, at 574.

<sup>71</sup> Fishman, *supra* note 13, at 574.



## CHAPTER 3

### INCOME TAXATION ON NONPROFIT ORGANIZATIONS UNDER FOREIGN LAW

#### 3.1 Income Taxation on Nonprofit Organizations on the Law of the United States

##### 3.1.1 Introduction

In the United States, nonprofit organizations are known as charitable organizations. Federal, states and locals create specified regulations for nonprofit organizations. People believe that nonprofit organizations play a social role in communities.

Considering the nonprofit sector as a whole, what all the organizations have in common is, firstly, adherence to the nondistribution constraint.<sup>72</sup> and secondly, exemption from income taxations

The main objective of nonprofit organizations is to conduct activities for the benefit of the general public without shareholders and allowable deductions expenses they receive from trade or business.<sup>73</sup>

##### 3.1.2 Background of Nonprofit Organizations

In the past, the United States as the new world needed to establish public facilities such as hospitals, churches and schools.<sup>74</sup> It wished to solve social problems through philanthropy. The courts asserted a permissive charity doctrine that supported the donors' benevolent intentions. In the period of Colonial America, philanthropy was not uniform so money for charities came from public spending and private spending.<sup>75</sup>

---

<sup>72</sup> Fishman, *supra* note 13, at 3.

<sup>73</sup> Department of Treasury, *supra* note 14, at 11.

<sup>74</sup> Fishman, *supra* note 13, at 22.

<sup>75</sup> Fishman, *supra* note 13, at 22.

In the immediate post-revolutionary period, the favorable attitude towards charity continued. The law relating to charities reflected the general uncertainty and transition that characterized all American law in the post-Revolutionary period. Some states established philanthropy as a central principle because it was a required activity to address local needs and customs. For example, the Massachusetts Constitution of 1780 states that: “It shall be the duty of legislatures and magistrates in all future periods of this commonwealth to countenance and inculcate the principles of humanity and general benevolence”.<sup>76</sup> After that, Pennsylvania, Vermont and New Hampshire also gave constitutional protection to charities. Other states passed statutes facilitating and reaffirming the benefits of charities to community.

Traditionally, nonprofit organizations were formed as trusts rather than corporations for charitable activities. The reason was that the United States had been a colony of England where trusts were popular. After independence, the United States as a new world country repealed the validity of charitable trusts, and charitable corporations were used for philanthropic activities instead.<sup>77</sup>

The early colonial corporations were of two kinds. The first was the public corporation-municipal corporation which would be formed by the town or administrative board. The second kind was the private corporation related to religious worship, and religious and educational purposes.<sup>78</sup>

During the independence period, federal and state laws tried to support individual groups so that they could incorporate as charitable organizations such as churches, schools, and literary societies. The rationale for this was that it would be beneficial to individuals as it would assist the people. In other words, it would relieve the legislative workload.<sup>79</sup>

A scholar has categorized the five major considerations for the nonprofit sector as follows:<sup>80</sup>

---

<sup>76</sup> Fishman, *supra* note 13, at 22.

<sup>77</sup> *Id.*, at 23.

<sup>78</sup> *Id.*, at 24.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*, at 26.

1. *Historical*. The nonprofit sector's existence is able to explained by historical factors, such as the growth of voluntary organizations in the American Colonies that predated government
2. *Market Failure*. Market failure refers to the creation of nonprofit organizations which contain limitations of the market system that dominates the American economy. The government was not able to provide for people so nonprofit organizations were established to do this.
3. *Government Failure*. Nonprofit sector emerged to dominate when the government sector failed to provide the collective goods because government needed majority support. On the other hand, nonprofit sector can provide the needs for people faster than the government because they are smaller groups and it is an easier process to provide the required items to the poor or disabled. They can also be easily formed.
4. *Pluralism/Freedom*. Nonprofit organizations have shown themselves to play a valuable role in promoting the values of pluralism and freedom. This is clear from the various groups that formed nonprofit organizations in terms of educational institutions, churches or hospitals.
5. *Solidarity*. The nonprofit sector is a mechanism through which an individualistic democratic society can express solidarity through action.

The major sources of funds of nonprofit organizations in the United States derive from contributions provided from private and government sources), fees for goods and services. As table 3.1, below, in 2012, it shown the amount of money which nonprofit organizations received. Most funds came from fees for services at 50 percent and private contributions are 12.9 percent and government sources are 23.1 percent. In order to exist, nonprofit organizations may carry on business activities as providing services and goods.<sup>81</sup>

---

<sup>81</sup> Fishman, *supra* note 13, at 13.

**Table 3.1: Sources of Nonprofit Sector's Funds 2012**

<b>Source</b>	<b>Amount (in Billions) of Dollars</b>	<b>Percentages</b>
Fees for services and Goods (Private Sources)	1,080.0	50
Private Contributions	278.6	12.9
Government Grants	198.7	9.2
Fee for Services and Goods (Government Sources)	499.0	23.1
Investment Income	77.8	3.6
Other	25.9	1.2
<b>Total</b>	<b>\$2,160</b>	<b>100%</b>

In the view of taxation of the nonprofit sector, all of the nonprofit organizations must follow the “nondistribution constraint”. This means they must not distribute profits to any person or entities and must be under the principle of exemption statute section 501 of the Internal Revenue Code of 1986. There are two major types of nonprofit organizations:

- (1) The first area refers to “charitable organizations” established under section 501(c)(3) which conduct their activities exclusively for religious, charitable, scientific, testing for public safety, literacy, or educational purposes
- (2) The second area refers to “noncharitable nonprofit organizations” listed in section 501 (c)(4) – (25). These organizations are social welfare organizations, social clubs, veterans ‘organizations, labor unions, burial societies, chambers of commerce, marketing cooperatives and other associations which conduct the activities for the private interests of their members.

We will see that under the United States laws on taxation of nonprofit organizations there is a clear separation between “charitable organizations” and “nonprofit non-charitable organization”. It is convenient to do this in order to offer benefits to nonprofit organizations based on the objectives of such nonprofit

organizations. The list of nonprofit organizations below shows how they are categorized. There are a large number of nonprofit organizations under section 501 (c)(3). These conduct charitable activities while the other nonprofits are noncharitable nonprofit organizations.

**Table 3.2: The number of nonprofit organizations in the United States**

<b>Section 501 (c) by subsection</b>	<b>2013 (Number)</b>	<b>2014 (Number)</b>
(1) Corporations organized under act of congress	615	708
(2) Title-holding companies	4,730	4,752
(3) Religious, charitable, and similar organizations	1,052,495	1,117,941
(4) Social welfare organizations	91,056	148,585
(5) Labor and agricultural organizations	48,545	48,711
(6) Business leagues	66,985	68,208
(7) Social and recreation clubs	54,962	56,139
(8) Fraternal beneficiary societies	48,578	47,773

(9) Voluntary employees' beneficiary associations	6,884	6,909
(10) Domestic fraternal beneficiary societies	16,049	16,998
(12) Benevolent life insurance associations	5,486	5,601
(13) Cemetery companies	9,482	9,858
(14) State-chartered credit unions	2,711	2,326
(15) Mutual insurance companies	905	871
(17) Supplemental unemployment benefit trusts	112	110
(19) War veterans' organizations	31,674	32,039
(25) Holding companies for pensions and other entities	813	815
Others 501 (c) subsections	115	110
Section 501 (d) Religious and apostolic associations	222	222

Nonexempt Charitable trusts	128,041	125,177
<b>Total tax exempt organizations and other entities</b>	<b>1,599,013</b>	<b>1,723,315</b>

### 3.1.3 Rules on Nonprofit Organizations

The general legal form of nonprofit entities falls under three categories: unincorporated associations, charitable trusts and nonprofit corporations.<sup>8283</sup> Their founders determine the type. There are pros and cons to each. An explanation of each is given below.

*Unincorporated Associations.* These have been established for fledgling organizations with uncertain prospects or founders who do not want to conduct their activity or project to fruition.

The advantages of unincorporated associations are that they are flexible and do not approval from government. They can receive federal tax exemption under 501 (c)(3).<sup>84</sup> However, the disadvantages outweigh the advantages. They do not have a separate legal existence beyond their members so members are liable, they cannot contract in their own name and they cannot receive or hold property in the association's name.<sup>85</sup>

*Charitable Trust.* This represents a benefit to the community rather than private individuals. A charitable trust has a fiduciary relationship with respect to property. The

---

<sup>82</sup> Department of Treasury Internal Revenue Service. “*Form 1023-EZ Streamlined Application for Recognition of Exemption Under Section 503(c)(3) of Internal Revenue Code p 1.*” <https://www.irs.gov/pub/irs-pdf/i1023ez.pdf> (accessed May 11, 2016).

<sup>83</sup> Fishman, *supra* note 13, at 34.

<sup>84</sup> *Id.*, at 35.

<sup>85</sup> *Id.*

individual who holds a trust property must deal with the property for charitable purposes. The charitable trust form offers ease and swiftness of formation, administration with fewer formalities than the corporate form, fewer housekeeping requirements, a perpetual or indefinite period of existence, and the possibility of continuing control by the grantor. A charitable trust may be less expensive to maintain than a nonprofit corporation.

*Nonprofit Corporation.* This is a popular form of nonprofit organizations. The difference between nonprofit corporations and business corporations is that nonprofit corporations have a “nondistribution constraint”. They are not allowed to allocate any profits among members. However, this does not mean that nonprofit corporations are prohibited from making profits. It only prevents them from distributing any net profit to their members. A nonprofit corporation must operate to more formalities in its creation and dissolution. In addition, it has full ownership rights over property. A nonprofit corporation are normally foundations, associations or funds.

If nonprofit entities wish to be given tax-exempt status, they must apply for it under the Internal Revenue Code.<sup>86</sup> The appropriate type should be established. In choosing a type, the founders should consider limited liability, the sophistication and goal of the founders, financial resources, and the type and scale of activities to be conducted. There are many types of nonprofit organizations under Section 503(c) but only 503 (c)(3) allows for tax-deductible contributions. The entities must be corporations, trusts, or unincorporated associations referred to corporation, community chest, fund or foundations.

### **3.1.4 Rules on Income Taxation on Nonprofit Organizations**

Before examining income taxation of nonprofit organizations, the essential concept that nonprofit organizations have been founded for charitable or group mutual benefit and not for private business groups should be considered. Federal law has provided special tax regulations to them as part of the nonprofit sector.

---

<sup>86</sup> Internal Revenue Code, section 501 (c).



The early history of tax-exempt organizations is relatively uninformative but Congress and the courts paid attention regarding nonprofit sector preferring seeking profit. Especially after World War II, nonprofit sector impacted to society in order to assist people.<sup>87</sup> Federal income tax exemption emerged in 1894 with the first for corporation income tax which included an explicit exemption for corporations, companies or associations organized and conducted solely for charitable, religious or educational purposes. It is important to understand the tax structure that is in place:

### 3.1.4.1 Taxable person

In the US, corporate entities must file a corporate income tax return<sup>88</sup> on their worldwide income except exempt entities under section 501 (c) of the Internal Revenue Code. Foreign companies are taxable in the United States on income that is effectively connected with a US trade or business and on certain US-source incomes.<sup>89</sup>

Taxation of nonprofit organizations in the United States has to be considered under the Internal Revenue Code in section 501 (c). In section 501 (c), it divides Nonprofit Organizations to be qualified tax – exemptions in many types but the organizations are under section 501 (c)(3) refer to as “charitable organizations” which exclusively conduct the activities in regard as religious, charitable, scientific, testing for public safety, literary, or educational purposes. These group would be focus on the public interest activities, charities. For other subsections, 501(c)(4) – (25) are noncharitable nonprofit organization working for private interest among their members.<sup>90</sup>

In addition, charitable contributions<sup>91</sup> under section 501 (c)(3) can be deductible from income. This measure make the tax payers participate in charitable activities

---

<sup>87</sup> Fishman, *supra* note 13, at 54.

<sup>88</sup> Department of the Treasury Internal Revenue Service. “*Instructions for Form 1120, 2014, P 2.*” <https://www.irs.gov/pub/irs-pdf/i1120.pdf> (accessed April 23, 2016).

<sup>89</sup> EY. **World Wide Corporate Tax guide 2015**, 1539, (2014)

<sup>90</sup> Fishman, *supra* note 13, at 46.

<sup>91</sup> Internal Revenue Code, section 170(b), (d)(1).

together with avoiding the higher tax rate from their income. This topic will be discussed next.

In the United States, consideration of tax treatment for Nonprofit Sector has been covered in four significant functions. They are: support, equity, regulatory, and border patron.<sup>92</sup>

1. The support function encourages the continuation and expansion of nonprofit sector through tax relief. The policy of tax exemption and charitable contributions are subsidies them. Tax exemption status is able to foster them to spend that money to public and charitable contributions would be incentive for individuals and companies to donate their money to societies.
2. The equity function set goal of redistributing resources and opportunities which is the roots of the charitable face.
3. The regulatory function which focus on fiduciary behavior of trustees, manager including donors
4. The Border patron function checks that whether nonprofit organizations properly conduct the activities or not. Should they exist and maintain exempt status? Especially, the relations to commercial activity unrelated business income should not be over.

To obtain “charitable nonprofits”, they must be examined with the process of nonprofit organizations from section 501(c)(3). An organizations must meet the following requirement:<sup>93</sup>

#### 1. Organizational and Operational Test

The organizational and operational test will be examined in the areas of legal forms and the scopes of activities which the organizations produce as charitable activities. To qualify for exempt status under 501(c)(3), the following conditions must be met:

---

<sup>92</sup> Fishman, *supra* note 13, at 54.

<sup>93</sup> Fishman, *supra* note 13, at 72.

1) It must be organized as nonprofit corporation, or as a community chest, fund, or foundation. “Corporation”, for this purpose, is construed to include unincorporated associations, and fund or foundation includes wholly charitable trusts.

2) It must be organized and operated exclusively for religious, charitable, scientific, testing for public safety, literacy or educational purposes to foster national or international amateur sports competition (as long as the activity does not involve the furnishing of athletic facilities or equipment). It should also not be cruel to children and animals.

3) No part of its net earnings may inure to the benefit of any private shareholders or individuals.

4) No “substantial part” of the organization’s activities may consist of certain lobbying activities, with substantiality being measured either by vague balancing standard or, for eligible electing charities, by more objective expenditure tests.

5) The organization may not participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office.

The operational test requires the organizations operate the activities for exempt purpose under section 501 (c)(3), related to religious, charitable, scientific, testing for public safety, literary, or educational purposes. In general, they are organized under two form: private foundations and public charities.

A private foundation is defined as a fund of private sources established for charitable purposes, usually in perpetuity. Most of them originate from a single individual or corporate or from a wealthy family. Private foundations must pay out at least 5 percent of their assets each year in the form of grants and charitable activities. Foundations in the United States are established under state law and can apply for exemption under the Internal Revenue Code. All private foundations are 501(c)(3) organizations under the Internal Revenue Code.<sup>94</sup>

---

<sup>94</sup> Council of Foundation. “*Foundation Basics.*”

<http://www.cof.org/content/foundation-basics> (accessed February 12, 2016).

On the other hand, public charities derived their support from government or the general public, or the nature of their activities, such as education or medical care. This makes them accountable to a broader constituency.<sup>95</sup> Most of them obtain funds from multiple sources such as individuals, corporate, government or free of charge.

The main distinction between private foundations and public foundations is where they obtain their funds from. Most funds of public charities derive from many sources but private foundations may have a single source of income.

The law does not prohibit nonprofit organizations including both private foundations and public charities from conducting profitable activities. They are able to operate profitable activities but the substantial part must be for exempt purposes and they are prohibited from distributing any profit to members.

#### **3.1.4.2 Tax base**

In general, nonprofit organizations under United States law are tax-exempt organizations. However, they must be taxable tax if they engage in activities that are “commercial” in the sense that they resemble business conducted by for profit firms. This falls under the phrase “unrelated trade or business income”<sup>96</sup> or commercial activities and related business income.<sup>97</sup> The consideration of the phrase “commercial activities and unrelated business income” is very important for the tax treatment of nonprofit organizations because that determines whether tax is taxable from them. The trade or business activities must be operated with the intention of profiting to constitute a trade or business.

As an example, a health club program has as its purpose to provide for the welfare of young people. The organization operates charitable activities and maintains facilities that will contribute to the physical, social, mental and spiritual health of young people at a minimum or no cost to them. Nominal annual dues are charged for membership of the organization and use of the facilities. In addition, the organization

---

<sup>95</sup> Fishman, *supra* note 13, at 431.

<sup>96</sup> Department of Treasury, *supra* note 14, at 3.

<sup>97</sup> Fishman, *supra* note 13, at 311.

organizes a health club program that its members can join for an annual fee in addition to the annual dues. The annual fee is comparable to fees charged by similar local commercial health clubs and is significantly higher to restrict participation in the program to a limited number of the community. Therefore, the health club program is in addition to the general physical fitness program of the organizations. Operating this program does contribute importantly to the organization achieving its exempt purpose and, therefore, is unrelated to trade or business.<sup>98</sup>

Form 990-T will be required if the organizations receive gross income from unrelated business of \$1,000 or more.<sup>99</sup> This form is designed for exempt organizations which receive business income. Exempt organizations have to disclose details under any part such as unrelated trade or business income or deductions.

Commonly, unrelated business income will be taxable but there are exclusions and special rules which are considered when calculating taxable income. These include passive investment income, rents, royalties, research income and monogrammed exclusion.

The reason why such income is excluded from unrelated business tax base is that it is regarded as a proper source of revenue for charitable and educational organizations and not likely to cause competitive problems for taxable business.

### 3.1.4.3 Tax Rate

**Table 3.3: Tax Rate Schedule of the United States**

<b>Taxable Income (\$)</b>	<b>Tax Rate</b>
0 to 50,000	15%
50,000 to 75,000	\$7,500 + 25% Of the amount over 50,000
75,000 to 100,000	\$13,750 + 34% Of the amount over 75,000
100,000 to 335,000	\$22,250 + 39% Of the amount over 100,000

<sup>98</sup> Department of Treasury, *supra* note 14, at 5.

<sup>99</sup> Department of Treasury, *supra* note 14, at 3.

335,000 to 10,000,000	\$113,900 + 34% Of the amount over 335,000
10,000,000 to 15,000,000	\$3,400,000 + 35% Of the amount over 10,000,000
15,000,000 to 18,333,333	\$5,150,000 + 38% Of the amount over 15,000,000
18,333,333 and up	35%

### Taxation on Commercial Activities and Unrelated Business Income (UBIT)<sup>100</sup>

The UBIT was enacted in response to real and perceived abuse by tax exempt organizations. It was added to the Internal Revenue Code in 1950.<sup>101</sup> Unrelated trade or business is an income-producing activity (other than passive investing) that is regularly carried on and not substantially related to an organization's exempt purposes apart from the need for income to support its charitable or other exempt missions.<sup>102</sup>

*Unfair competition.*<sup>103</sup> In the United States tax law, nonprofit organizations are not prohibited from conducting profitable activities because of reasons of existence and spending so profitable activities can potentially be pursued such as health care providers or museum cafeteria or gift shops etc. Sometimes, these trades or businesses may not relate to an organization's exempt purposes. In some cases, nonprofits can set lower prices for their goods or services. Conducting business in such a way may cause unfair competition to business entities. The UBIT was established to eliminate a form of unfair competition and raise revenues by closing a loophole.<sup>104</sup>

*Limit to profitable income.* Although nonprofits engage in commercial activities, nowadays, there is no limit to income unrelated to trade and business which

<sup>100</sup> Internal Revenue Code, section 512 (a)(1).

<sup>101</sup> Fishman, *supra* note 13, at 311.

<sup>102</sup> Fishman, *supra* note 13, at 314.

<sup>103</sup> Fishman, *supra* note 13, at 338.

<sup>104</sup> Fishman, *supra* note 13, at 336.

nonprofit organizations should receive but some cautious assume that it is approximately 20 percent of total revenue related commercial activities for plaining purpose.<sup>105</sup>

The following is an example of activity that was determined to be unrelated to business income. An organization whose exempt purpose was to stimulate and foster public interest in the fine art through exhibits, sponsoring cultural events, and furnishing information about fine arts leases studio apartments to artist tenants and operates a dining hall primarily for these tenants. Both these activities do not contribute importantly to accomplishing the organization's exempt purpose. Therefore, they are unrelated to trades or business income.<sup>106</sup>

Furthermore, the following activities will be excluded from the definition of unrelated trade or business:<sup>107108</sup> passive investment income such as dividends, interest, annuities, rents and royalties.<sup>109</sup> Congress stated that passive investment income was long recognized as a proper source of revenue for charitable and educational organizations and was not likely to cause competitive problems for taxable businesses.<sup>110</sup>

As mentioned above, nonprofit organizations are recognized as tax exempt from charitable or exempt purposes under the Revenue Code. Unrelated business income is derived from trade or business that is not substantially related to the charitable, educational, or other purpose which is the basis for exempt purposes if the organizations have \$1,000 or more of unrelated business income.<sup>111</sup> Such organizations must declare those incomes and file a form to pay tax. A calculation should be done of unrelated business taxable income,<sup>112</sup> gross income derived from any unrelated trade or business

---

<sup>105</sup> Fishman, *supra* note 13, at 376.

<sup>106</sup> Department of Treasury, *supra* note 14, at 4.

<sup>107</sup> Internal Revenue Code, section 512 (b)(1)-(5).

<sup>108</sup> Department of Treasury, *supra* note 14, at 7.

<sup>109</sup> Fishman, *supra* note 13, at 370.

<sup>110</sup> *Id.*

<sup>111</sup> Department of Treasury, *supra* note 14, at 7.

<sup>112</sup> Fishman, *supra* note 13, at 376.

less allocable deductions for business expenses, losses, depreciation and other items “directly connected” with the unrelated business.<sup>113</sup>

#### 3.1.4.4 Charitable contributions

For the charitable contributions under the United States law, income tax deductions were enacted in 1917 as part of a tax bill.

Contributions to exempt organizations can be deductible. The various types of percentage of limitations are based on the purpose of the decision an individual taxpayer’s income tax charitable deduction. The basic percentage limitations depend on the types of organizations receiving the donation. The table below shows sources of charitable giving in the United States. Most of the donations come from individuals.

**Table 3.4: Sources of Charitable Giving in the United States**

<b>Sources of Charitable Giving, 2013</b>		
<b>Source</b>	<b>Amount (in Billions) of Dollars</b>	<b>Percentage of Total</b>
Individuals	\$240.60	71.8
Foundations	48.96	14.6
Bequest	27.73	8.3
Corporations	17.88	5.3
<b>TOTAL</b>	<b>\$335.17</b>	<b>100%</b>

The basic limitations are 50 percent and 30 percent of “adjusted gross income”. 50 percent has been applied to the preferred group – including schools, hospitals,

<sup>113</sup> Fishman, *supra* note 13, at 377.



churches, medical research organizations, government entities, publicly supported charities and certain operating and supporting foundations. The second, 30 percent limitation is applied to private foundations. The reason why the United States imposes different limitation among them is because the authorities may believe that the 50 percent limitation group is able to support the public interest better than the 30 percent limitation group as private foundations.<sup>114</sup>

For individuals, they can be deductible for charitable contributions limited to 20 percent but not exceeding 50 percent of adjusted gross income (AGI) if it is to a qualified organization as follows:

1. Churches and conventions or associations of churches.
2. Educational organizations with a regular faculty and curriculum that normally have a regularly enrolled student body attending classes on site.
3. Hospitals and certain medical research organizations associated with these hospitals.
4. Organizations that are operated only to receive, hold, invest, and administer property and to make expenditures to or for the benefit of state and municipal colleges and universities and that normally receive substantial support from the United States or any state or their political subdivisions, or from the general public.
5. The United States or any state, the District of Columbia, a U.S. possession (including Puerto Rico), a political subdivision of a state or U.S. possession, or an Indian tribal government or any of its subdivisions that perform substantial government functions.
6. Publicly supported charities, defined earlier under *Qualified Conservation Contribution*.
7. Organizations that may not qualify as “publicly supported” but that meet other tests showing they respond to the needs of the general public, not a

---

<sup>114</sup> Fishman, *supra* note 13, at 592.

limited number of donors or other persons. They must normally receive more than one third of their support either from organizations described in (1) through (6), or from persons other than “disqualified persons.”

8. Most organizations operated or controlled by, and operated for the benefit of, those organizations described in (1) through (7).
9. Private operating foundations.
10. Private non operating foundations that make qualifying distributions of 100% of contributions within 212 months following the year they receive the contribution. A deduction for charitable contributions to any of these private non operating foundations must be supported by evidence from the foundation confirming it made the qualifying distributions timely. Attach a copy of this supporting data to your tax return.
11. A private foundation whose contributions are pooled into a common fund, if the foundation would be described in (8) but for the rights of substantial contributors to name the public charities that receive contributions from the fund. The foundation must distribute the common fund's income within 212 months following the tax year in which it was realized and must distribute the corpus not later than 1 year after the donor's death (or after the death of the donor's surviving spouse if the spouse can name the recipients of the corpus).

In some cases, for individuals, 30 percent and 50 percent will be applied based on categories of organizations.<sup>115</sup> For the corporation, they can be deductible at 10% of AGI. Moreover, individuals can carry over any contributions they cannot deduct in the current year because they went over the AGI limit. They may deduct the excess in each of the next 5 years until it is used up but not beyond that time. The total charitable

---

<sup>115</sup> Fishman, *supra* note 13, at 592.

contribution for the year which they carry over their contributions cannot be over 50% of their AGI for that year.<sup>116</sup>

For example, last year, you made cash contributions of \$11,000 to which the 50% limit applies, but because of the limit you deducted only \$10,000 and carried over \$1,000 to this year. This year, your AGI is \$20,000 and you made cash contributions of \$9,500 to which the 50% limit applies. You can deduct \$10,000 (50% of \$20,000) this year. Consequently, in addition to your contribution of \$9,500 for this year, you can deduct \$500 of your carryover contribution from last year. You can carry over the \$500 balance of your carry over from last year to next year.<sup>117</sup>In addition, contribution can be cash and noncash contributions such as capital gain property, ordinary income property.

**Table 3.5: Recipients of charitable giving in the United States**

<b>Recipients of charitable giving, 2013</b>		
<b>Recipient</b>	<b>Amount (in Billions) of Dollars</b>	<b>Percentage of Total</b>
Religion	105.53	32
Education	52.07	16
Foundations	35.74	11
Health	31.86	9
Human services	41.51	12
Public/society benefit	23.89	7
Arts, culture, humanities	16.66	5
Environment, animals	9.72	3
International affairs	14.93	4

<sup>116</sup> Department of the Treasury. “*Publication 526: Charitable Contributions, at 17.*” <https://www.irs.gov/pub/irs-pdf/p526.pdf> (accessed December 3, 2015).

<sup>117</sup> *Id.*, at 18.

Foundation grants to individuals	3.70	1
Unallocated giving	0.44	0
<b>TOTAL</b>	<b>335.17</b>	<b>100%</b>

### Filing requirements and Required Disclosures

Most exempt organizations are required to file various reports and their tax return to Internal Revenue Services (IRS). The purpose of filing is to examine the exempt organizations that are exempt from tax treatment and to make sure that they work for the public interest. Therefore, annually, they must submit the following documents during the accounting period;

- Annual information returns
- Unrelated business income tax return
- Employment tax returns
- Political organization income tax return
- Reporting requirements for political organization
- Donee information return
- Public Inspection of exemption applications, annual returns, and political organizations reporting forms
- Required disclosures
- Miscellaneous rules

Penalties will be issued if a tax exempt organization fails to file some of the above, for example, if it fails to file a form 990, the form for tax-exempt status, for three consecutive years, it will automatically lose its tax-exempt-status by operation of the law. If it loses tax-exempt status, it is required to file a corporation income tax return.<sup>118</sup>

---

<sup>118</sup> Department of the Treasury. “*Publication 557: Tax-Exempt Status for your Organization, at 12.*” <https://www.irs.gov/pub/irs-pdf/p557.pdf>, Jan 5, 2016.

## **3.2 Income Taxation on Nonprofit Organizations on the Law of Japan**

### **3.2.1 Introduction**

In Japan, there are no clear answers to the origin of nonprofit organizations. Many researchers, books and documentaries have tried to define nonprofit organizations. Since the nonprofit organizations law in Japan was enacted in 1998, the system reforms on the nonprofit sector have been advancing rapidly. Japan is one of the countries which recognizes the important role of nonprofit organizations because the nonprofit sector has mainly worked for the public interest.

In general, taxation on nonprofit organizations in Japan may be considered within the context of two major areas: charitable entities and charitable giving. Tax policies would be possibly recognized with rational and legitimate under the general circumstance. A wide range of nonprofit organizations is exempt from tax depending on the entities and the most benefit of the exemption is the corporation tax.

### **3.2.2 Background of Nonprofit Organizations**

In the past, public interest activities were mainly the duty of the public sector and not the private sector. The private sector was not expected to provide “public Interest” to communities until 1896. In 1896, the Civil Code introduced the new activities called “public interest corporation” which was under Article 34 of Civil Code.<sup>119</sup> Public Interest Corporation was permitted from the government agency to receive legal entity.

After World War II, a large number of special laws were adopted to expand the public interest entities, for example, the Religious Juridical Person Act (Act No. 126 of 1951) the School Education Act (Act No. 26 of 1947), the Private Schools Act (Act No. 270 of 1949) and the Medical Care Act (Act No. 205 of 1948). These entities were the public interest corporations engaged in the area of public interest. They are not associations and foundations. However, reform of public interest corporations occurred

---

<sup>119</sup> Tomoki Debari, *supra* note 64, at 139-150.

because they were inappropriately managed and discretion by government agencies, and society needs of several of public interest of organizations. Due to this, the Act on Promotion of Specified Non-Profit Activities (Act No. 7 of 1988) was enacted in 1988. This act created non-profit entities which were not under Article 34 of Civil Code or any existing laws.

These were the special laws. After their implementation, in 2006, new laws were enacted because of earlier inadequacies: the Act on General Incorporated Associations and General Incorporated Foundations (Act No. 48 of 2006) and the Act on Authorization of Public Interest Incorporated Associations and Public Interest Incorporated Foundations (Act No. 49 of 2006) were enacted. These became effective in December 2008 and did not replace the existing laws.<sup>120</sup>

In respect of charitable contributions, deductions for charitable giving had become important role for nonprofit sector which they operate philanthropic activities. Deductions for charitable giving can be overviewed in two aspects based on the legal person status.

Prior to 1962, deductions for individual charitable giving were provided for individual business taxpayers. Charitable contributions were deductible as an individual's business expenses. In 1962, a tax credit was provided for individual donations to qualifying contributions. Until 1967, deductions which are used at present have been imposed for those which are qualified contributions. Deductions for charitable contributions by corporates were first allowed in 1942<sup>121</sup> as expense deductions within a certain limit.<sup>122</sup>

According to Ishimura, under the existing corporation tax law, qualifying contributions are deductible contributions only up to a certain limit. Theoretical interpretations of the law argue that charitable contribution deductions should be allowed only when there is no direct and apparent quid pro quo of goods or services for the contributions.

---

<sup>120</sup> *Id.*, at 129-130.

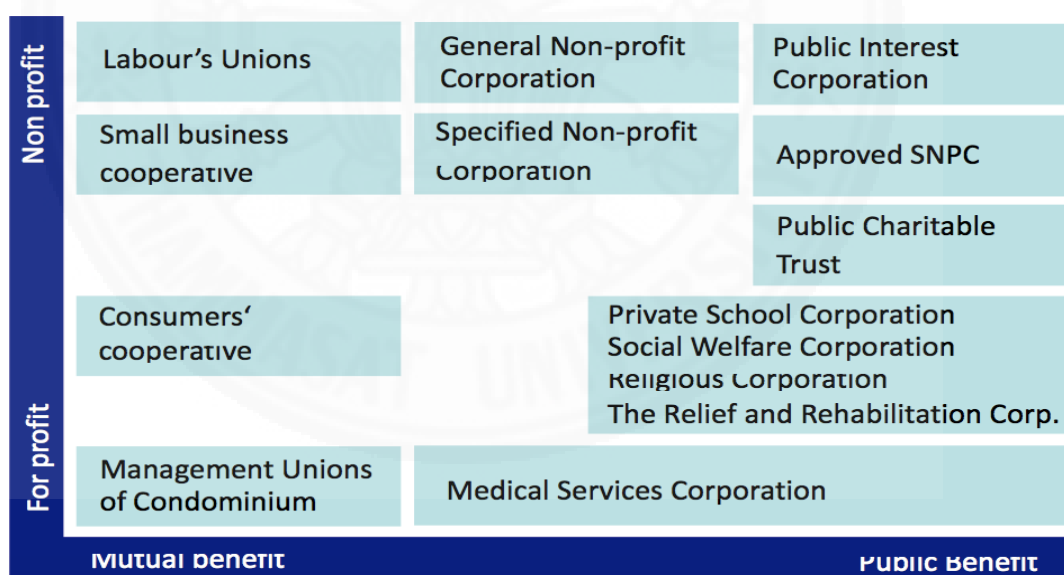
<sup>121</sup> Koji Ishimura. **An Agenda for revising the taxation of Philanthropy in Japan**, 9 (1994).

<sup>122</sup> *Id.*

### 3.2.3 Rules on Nonprofit Organizations

Because of these origins, the phrase nonprofit organization is equated with “nonprofit organization corporations” for many Japanese people, but this is only the narrowest understanding. A broader definition of nonprofit organization refers to civil society organizations and to different kinds of private, voluntary activities which take many corporate forms. On the one hand, it includes unincorporated citizen organizations that lack corporate status and often carry out activities<sup>123</sup> at the grassroots level, as well as neighbourhood and village associations, which have long existed in rural areas. On the other hand, it also includes public interest corporations (public interest foundations and public interest associations), which usually have a longer history and a larger regional scope than nonprofit organization corporations, as well as social welfare corporations, private school corporations, medical corporations, and religious corporations.<sup>124</sup>

**Figure 3.1: The Categories of Nonprofit Organizations in Japan**



<sup>123</sup> Japan NPO Center. “*Nonprofit Organizations*”

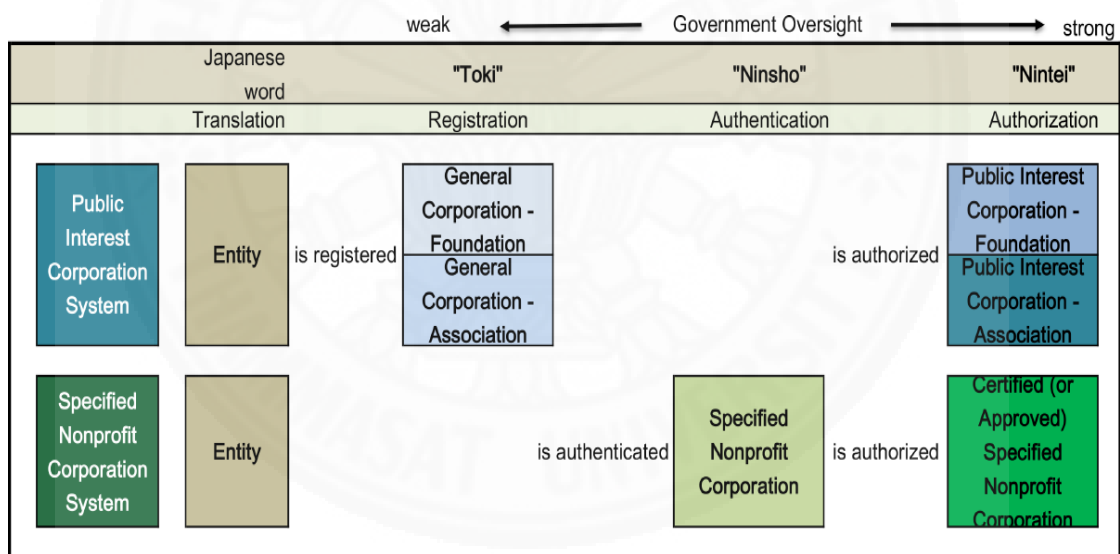
<http://www.jnpoc.ne.jp/en/nonprofits-in-japan/legal-framework/> (accessed December 24, 2015).

<sup>124</sup> *Id.*

According to information from the Japan NPO Center (JNPOC), nonprofit organizations are also under associations and foundations. There are various types of nonprofit organizations in Japan which register relevant legal forms.<sup>125</sup> The general principle is that nonprofit organizations operate for civil society. The benefits from these activities must not be shared with members. This is the universal concept for nonprofit organizations, as detailed earlier.

Therefore, the readers will notice that the universal concept of nonprofit organizations is prohibited from distributing their net earning regardless they obtain in terms of cash or property because nonprofit organizations are categorized for mainly public interests or charitable activities. They are similar to section 501(c)(3) of the Internal Revenue Code under the United States which impose the concept of nonprofit sector along with charitable activities.<sup>126</sup>

**Figure 3.2: Two-Stage System of Obtaining Donor Tax Deductions**



The main legal forms of nonprofit organization under Japanese law can be divided into four major types. The legal formations are dependent on the purpose they would like to conduct and the registry offices that certify them. Generally, they are

<sup>125</sup> Japan NPO Center, *supra* note 123.

<sup>126</sup> *Id.*



under the forms of associations and foundations. The types of nonprofit organizations are the following:

1. General Nonprofit Corporation (Associations and Foundations)

These are established as associations and foundations that are under the Act on General Incorporated Associations and General Incorporated Foundations issued in 2008. They are a general type of nonprofit organizations that were under the old article 34 of the Civil Code. People can found associations and foundations even if they do not operate them for the public interest.<sup>127</sup> They can conduct for-profit activities and make profits but they are prohibited from distributing any benefits to their members. Their activities cover scholarships, the arts, charity and the public interest.

2. Public Interest Corporation (Associations and Foundations)

These were established under the Act on Authorization of Public Interest Incorporated Associations and Foundations.<sup>128</sup> The law was effective from 2008 which receive to be “Public Interest status”. The lists of activities which are allowed are appended to the Authorization Act. They operate as not-for-profit and in the public interest.<sup>129</sup> The key criteria are the following:

1. the organization's public purpose activities shall fall under the categories specified by the law;
2. the operation of the organization shall be focused mainly on the pursuit of public purpose activities;
3. the organization shall be capable of undertaking proper accounting and managing its projects;

---

<sup>127</sup> Council of foundations. “*Foundation Basics*.” <http://www.cof.org/content/japan>, Dec 12, 2015.

<sup>128</sup> Jaco, “*The Japan Association of Charitable Organization, Charitable and Nonprofit Organization in Japan*.” [http://www.kohokyo.or.jp/english/eng\\_index.html](http://www.kohokyo.or.jp/english/eng_index.html) (accessed December 24, 2015).

<sup>129</sup> Department of the Treasury, *supra* note 117.

4. revenues earned from its public purpose activities shall not exceed the expenses for these activities;

5. the expenses for public purpose activities shall be more than half of its total expenses for overall activities;

6. the balance of the organization shall be expected not to exceed the designated amount; less than a third of the board members or auditors shall come from a given family or a given company;

7. the honorarium for the board members shall not be unfoundedly expensive;

8. the organization does not possess financial resources that would allow the organization to influence over other entities.<sup>130</sup>

The aim of a public interest corporation is to foster and ensure proper implementation of certified corporations, both foundations and associations. Because public interest corporations receive special privileges from their status and special tax privileges, they must be scrutinized by Registry offices. These qualifications are similar to Thai tax law that requires public charitable organizations to be certified by the Ministry of Finance. The regulation was imposed to make sure that money people donated would be spent for public purposes.

### 3. Specified Nonprofit Corporations (SNCs)

These were established under the Law to Promote Specified Nonprofit Activities (SNC Law) which were enacted in 1998 and amended in 2002 and 2003. Their purpose was to overcome the legal hurdles of creating public interest legal persons under section 34 of the Civil Code. Those activities promote health, education, community development, arts, culture, sports, disaster relief, etc.<sup>131</sup> The purpose is to promote the development of specified activities about 20 activities including promotion of human rights

---

<sup>130</sup> Debari, *supra* note 64, at 135.

<sup>131</sup> Jaco, *supra* note 127.

and peace in the form of volunteering and other activities freely performed by citizens to benefit society.

#### 4. Approved Specified Nonprofit Corporations.

Approved specified corporations (approved SNC), also called Certified NPO corporations,<sup>132</sup> were established under the Act on Promotion of Specified Nonprofit Activities.<sup>133</sup> Approved SNCs were developed from SNCs with the purpose of having approved status from prefectural government to obtain better tax treatment.

When comparing it with a public interest corporation, an approved SNC is rather similar. It is a noticeable feature that public interest corporation status is more popular. According to official figures, there are 9,253 public interest corporations (July 2014) while the number of approved SNCs is 870. In addition, public interest corporations receive better tax treatment than approved SNCs.

There are also other nonprofit organizations which have been established under the Special Law Arising Under Civil Code Article 34.<sup>134</sup> They are subjected to different rules depending on established law, such as social welfare organizations, educational organizations, religious corporations, medical corporations, relief and rehabilitation enterprises etc.<sup>135</sup> The table below shows the number of different legal forms in the nonprofit sector

---

<sup>132</sup> Jaco, *supra* note 126.

<sup>133</sup> Jaco, *supra* note 126.

<sup>134</sup> Civil Code Article 34 “Any association or foundation relating to any academic activities, art, charity, worship, religion, or other public interest which is not for profit may be established as a juridical person with the permission of the competent government agency.”

<sup>135</sup> Council of foundations. “Foundation Basics.” <http://www.cof.org/content/japan>, (accessed December 24, 2015).

**Table 3.6: The Numbers of Different Nonprofits in Japan.<sup>136</sup>**

<b>Status of Legal Entities</b>	<b>Number of existing entities</b>	<b>AS of</b>
Specified Nonprofit Corporation	50,273	July 2015
*Approved Specified Nonprofit Corporation (among Specified Nonprofit Corporation)	870	July 2015
Public Interest Corporation	9,253	July 2014
General Corporation	31,900	April 2014
Social Welfare Corporation	19,498	March 2012
Private School Corporation	5,543	May 2012
The Relief and Rehabilitation Corporation	165	October 2012
Religious Corporation	182,601	December 2008
Medical Corporation	47,825	March 2012

### **3.2.4 Rules on Income Taxation on Nonprofit Organizations**

In Japan, the taxation of nonprofit organizations or charitable organizations may be described in two major areas as mentioned above. First, tax treatment of “charitable entities” and second, tax treatment of charitable contribution. These two major areas

---

<sup>136</sup> Jaco, *supra* note 127.

have been examined for consideration of taxation of nonprofit organizations, including the United States and Thailand.

#### 3.2.4.1 Taxable person

Generally, nonprofit organizations in Japan are exempt from corporate income tax. However, they must be taxable on profit-making activities. This is the same as the United States where nonprofits must be taxable on profit-making activities as unrelated business income derived from non-charitable purposes.

Japanese domestic tax corporations are subjected to tax on worldwide income by their country while branches of foreign companies treat tax as income from sources within Japan.<sup>137</sup>

#### 3.2.4.2 Tax base and tax rate

In the past, income which nonprofit organizations derived from profitable activities would be taxed at a lower rate than business entities. For example, in 1990, the lower tax was 27 percent while the tax rate for business corporations was 37.5 percent.<sup>138</sup> However, at present, the same rate is applied to both nonprofit organizations and business corporations.<sup>139</sup>

The corporation tax rate in Japan is set at 25.5 percent of net profit. In addition, a small or medium sized company which is the company paid in capital at JYP 100 or less. They are taxable on first income of JPY 8 at 19 percent.<sup>140</sup>

Nonprofit organizations in Japan are exempt from taxation. They enjoy exempt status and must be taxable on profit-making activities mentioned above. Nonetheless,

---

<sup>137</sup> KPMG Tax Corporation. **Taxation in Japan 2014**, 1-2, (2014).

<sup>138</sup> Toshiyuki Kono. **The public Benefit Corporation and taxation in Japanese Law**, 59.

<sup>139</sup> Council of foundations. *“Foundation Basics.”*

[http://www.cof.org/content/japan#Tax\\_laws](http://www.cof.org/content/japan#Tax_laws) (accessed December 24, 2015).

<sup>140</sup> EY. **Corporate tax guild 2015**. 770 (2014).

for each type of nonprofit entity there exists different tax measures depending on authorities, they may be required some kinds of nonprofit organizations operating activities for public in different levels. Therefore, it will be helpful to explain the different rules of taxation in each nonprofit legal form

#### 1. General Nonprofit Corporation (Associations and Foundations)

A general nonprofit corporation must pay tax on income derived from profit-making activities stipulated under the corporate tax law at the same tax rate as business companies(25.5 percent).<sup>141</sup>

#### 2. Public Interest Corporation (Associations and Foundations)

A public interest corporation has exempt status regarding income from public interest except in the case of 34 profit activities.<sup>142</sup> Likewise, they enjoy tax benefits in respect of passive income such as interest, dividends and investment income.<sup>143</sup> Contributions to public interest associations and foundations are deductible.

#### 3. Specified Nonprofit Corporations (SNCs)

For tax treatment, SNCs must pay tax on revenue on 33 specific profit activities. The first 8 million yen is taxed at 22 percent. However, some of them are allowed to deduct up to 20 percent of income from profit-making activities. In addition, they must be at the normal tax rate.<sup>144</sup>

#### 4. Organizations Established under Special Law Arising Under Civil Code Article 34.

Organizations Established under Special Law Arising under Civil Code Article 34 obtain tax benefits for example, social welfare corporation, private school corporations and relief and rehabilitation enterprises can deduct the

---

<sup>141</sup> Japan NPO Center. “*Japan NPO.*” <http://www.jnpoc.ne.jp/en/nonprofits-in-japan/about-npo-law/> (accessed December 23, 2015).

<sup>142</sup> KPMG Tax Corporation, **Taxation in Japan 2015**, 2015, at 28.

<sup>143</sup> Council of foundations. “*Foundation Basics.*” <http://www.cof.org/content/japan> (accessed December 12, 2015).

<sup>144</sup> *Id.*

greater of 50 percent or 2 million yen of income earned from profit-making activities.

#### 5. Public Interest Legal Persons (PILPs)

In terms of tax treatment, PILPs pay on tax but tax is imposed on 34 types of profit earning business.<sup>145</sup> The tax rate for PILPs is at 22 percent and they are allowed to deduct up to 20 percent of income from profit-making activities if the funds are used to expand public interest activities.

Unlike such organizations, medical corporations are taxable on the corporate tax rate except to the extent they receive from medical fees from the social insurance system. In addition, if they are under a special medical corporation, they are taxed at 22 percent which is lower than the general corporate tax rate of 25.5 percent.

#### **3.2.4.2 Charitable Contribution to Nonprofit Organizations**

Similar to the United States and Thailand, deductions are permitted for contributions to charitable organizations that are established as corporations, foundations and associations, termed “qualified contributions”. The regulation to receive qualified contributions was mentioned above for the forms: public interest corporations and approved SNCs.

In Japan, the important role of individuals and corporates to assist people who may be suffering from a disaster or poverty-stricken conditions is recognized. The nonprofit sector may assist people in rural areas. This may be better than waiting for the government because it may take time to arrive while nonprofit organizations may be located in local area.

Contributions to nonprofit organizations in Japan can also be deductible. For individuals, they can deduct up to 40 percent of total income. For corporations, they can deduct if they contribute to a specified public interest at 3.125 percent of taxable income+0.1875% of paid-in capital and capital surplus per year. If it is above the limit, the excess amount is treated as ordinary donations at 0.625 percent of taxable income+0.0625 percent of paid-in capital and capital surplus per year.

---

<sup>145</sup>Jaco, *supra* note 126.

**Table 3.7: The Limit of Charitable Contributions in Japan**

<b>Donors</b>	<b>Limit of percentage</b>
Individuals	40 percent
Corporate	3.125 percent





## CHAPTER 4

### INCOME TAXATION PROBLEMS RELATED TO FOUNDATIONS AND ASSOCIATIONS IN THAILAND

#### 4.1 Introduction

In Thailand, nonprofit organizations are imposed by the Thai Civil and Commercial Code.<sup>146</sup> The code specifies the legal purposes and method of governance for nonprofit organizations.<sup>147</sup> It can be divided into two types of legal entities that are associations and foundations legally recognized and registered under the Thai Civil and Commercial Code. Other terms exist such as Chamber of commerce, Labor Union, Political Organization, International Organization etc. but they must register only one of two legally acceptable kinds.<sup>148</sup> In addition, there are other kinds of nonprofit organizations such as temples which currently are automatically given tax-exempt status on all income. At present, taxation on temples is a huge issue that should be considered in the future related to ensure that temples do not operate as commercial activities. This thesis is going to focus on foundations and associations.

According to information from the National Statistical Office, the number of nonprofit organizations established in Thailand is approximately 76,685 units. Most of them are religious organizations at 57.9 percent. While, social welfare service organization as nonprofit organization which derive most of income amount 98,800.4 million or 49.3 percent<sup>149</sup>

Associations and foundations are regarded as necessary institutes to directly and indirectly develop societies. As mentioned above, they are under the Thai Civil and

---

<sup>146</sup> The Thai Civil and Commercial Code, section 110 and section 78.

<sup>147</sup> Amara, *supra note*, at 66-68.

<sup>148</sup> National Statistical Office. "Statistic Schedules."

[http://service.nso.go.th/nso/nso\\_center/project/search\\_center/23project-th.htm](http://service.nso.go.th/nso/nso_center/project/search_center/23project-th.htm)  
(accessed December 24, 2015).

<sup>149</sup> *Id.*

Commercial Code which imposes the definitions of associations and foundations.<sup>150</sup> Moreover, it prescribes the procedures of registration, rights and duties and supervision of associations and foundations.

The roles of associations and foundations in Thailand are very essential. They encourage people to donate when the government is unable to help people who are poor, disabled or victims of disasters because the government sector may encounter too many obstacles in issuing regulations, as well as lacking budget and staff. This is especially the case as Thailand centralizes power within the government. It does not spend money in society. As a result, there is a gap between the central areas and the rural areas.<sup>151</sup>

Although associations and foundations are institutions which serve the public, tax policy extends over them in two ways: supportive aspect and supervision aspect. This is because, in fact, certain associations and foundations conduct profitable activities such as sale of goods, food and services to receive money back in commercial terms. In addition, those profits may not be used for charitable and public activities. Instead, it will be used for personal expenses of directors or unrelated business activities. Income tax measures on associations and foundations is significant because the government will also receive additional income from associations and foundations to develop the country. It also serve to control and examine the conduct of these organizations. Moreover, income tax measures can foster associations and foundations by allowing deductible contributions to qualified associations and foundations that operate for charitable activities. Therefore, in this chapter, the author is going to explain the general concept of associations and foundations which is an important part of nonprofit organizations in Thailand.

---

<sup>150</sup> The Thai Civil and Commercial Code, section 78 and section 110.

<sup>151</sup> Wiriya Narmsiripongpan, *supra* note 66, at 2.

## 4.2 Background of Associations and Foundations

The development of the nonprofit sector in Thailand can be studied from the historical period. Philanthropic activities in Thailand can be explained through many perspectives. This thesis will explain the development of philanthropic activities, starting with nonprofit organizations in Thailand and link it to taxation of nonprofit organizations. The readers will understand the big picture on nonprofit organizations and evolution of taxation law of nonprofit organizations and the reasons why nonprofit organizations should be improved from my study.

The historical aspect of nonprofit organizations has been referred since early Under the early Buddhist influence, during the Sukhothai, Ayuttaya and early Bangkok period, Buddhism played a key role for people, and for the cultural and political stability of the country.<sup>152</sup> This led to many kinds of philanthropic activities, for example, Buddhism activates make individuals to merit making at the temple. The temples were regarded as the centre of the community. They educated the locals, and provided recreational and community life. Boys were sent to learn at temples.

Buddhism came to Thailand in the Sukhothai period during which Buddhist monks came and spread the religion. The king followed Buddhism as an integral part of his rule. In the Ayuthaya period, both Buddhism and Brahminism were influences on society. The king was seen as divine and under the Devaraja concept monks and priests were regarded as having high status. People made merit at temples and sacred and profane aspects occur there. Therefore, philanthropy was a part of everyday life.<sup>153</sup>

In the period of King Rama V of Bangkok, the administration of the country was reformed. Education and health services were automatically established by the government. The role of the temple was reduced.<sup>154</sup>

Even though Thailand was never colonized, the impact of the West was influential because of contact with it since the Ayuthaya era with King Narai. Missionaries came to Siam and encouraged religious conversion. The benefit of the

---

<sup>152</sup> Amara, *supra* note, at 11-12.

<sup>153</sup> *Id.*, at 13.

<sup>154</sup> *Id.*

coming of missionaries was that they founded hospitals to assist people. Catholic missions as legal bodies were enacted in 1909 which allowed them to own land as long as they use them for particular purposes and spent money establishing churches, schools and quarters for priests. The Protestants followed the pattern of Catholic missionaries. They first came to Thailand in 1828. They operated clinics to treat deadly diseases of the time and established churches and schools, such as the Bangkok Christian Boys School in 1901.

Social heterogeneity is a factor related to philanthropy in Thailand. Formerly, until World War II, Thailand was a homogeneous country which consisted of Thai people only. Prime Minister Phibum then set out a nationalistic policy called *Rathaniyom*. This policy caused conflict among Thai and Non-Thai people. After the Phibun regime, Thai-Chinese relations gradually improved, especially since 1980 when the communist party in Thailand was eliminated. When capitalism came to Thailand, and the Thai government supported it, Chinese or Thais with Chinese ancestors cooperated to develop the businesses. Other groups in the country remained a minority and did not succeed economically and socially.<sup>155</sup>

The modernization of philanthropy emerged when the Civil and Commercial Code was introduced in 1925 during King Rama VI period. The Civil and Commercial Code included legal forms of philanthropic activity called foundations and associations. The benefits of the establishment of nonprofit organizations were that attempt to control nonprofit sector. This included registration, operation and termination of foundations and associations described by law.<sup>156</sup> The table below lists the number of nonprofit organizations existing in Thailand. Although most of them from the table are religious organizations, social welfare service organizations receive most of the income as nonprofit organizations.<sup>157</sup>

---

<sup>155</sup> *Id*, at 19.

<sup>156</sup> *Id*, at 38-39.

<sup>157</sup> National Statistical Office, *supra* note, at 147.

**Table 4.1: Number and Percentage of Non-Profit Organization by Type of Non-Profit Organization and Region, Whole Kingdom: 2012**

<b>Types of functions</b>	<b>Number (%)</b>	<b>Income (Million) (%)</b>
Social welfare service organization	24,090 (31.4%)	98,800.4 (49.3%)
Cremation welfare association	3,405 (4.4%)	48,026.4 (24.0%)
Trade association, Chamber of commerce	2,123 (2.8%)	4,571.1 (2.3%)
Employer association, labor association and labor union, government enterprise officer association	1,748 (2.3%)	789.9 (0.4%)
Religious organization	44,398 (57.9%)	27,215.2 (13.6%)
Political organization	57 (0.1%)	319.9 (0.1%)
International organization	83 (0.1%)	2,992.9 (1.5%)
Educational organization	763 (1.0%)	12,610 (6.3%)
Human health organization	18 (0%)	5,172.7 (2.5%)

In terms of tax treatment, the historical background of taxation on foundations and associations started from deductible expense from charitable contributions of donors in 1965 which entitled taxpayers who donate money to public charitable organizations which are prescribed by law to be deductible expense at 10 percent of the remaining amount after the deduction of expenses and allowances.<sup>158</sup> This regulation seems a good starting point to apply tax measures in order to support charitable organizations. Contributions restricted to charitable organizations were prescribed by law because the regulator might consider these public charitable organizations was proved by law. The law consisted of many conditions and those public charitable organizations really operated activities for the public interest so individuals donating to

<sup>158</sup> Sumet Sirikunchoat, *supra* note 11, at 81.

these kinds of charitable organizations can trust that their money would be spent on charitable activities.

In addition, this policy indirectly fostered foundation's activities because instead of direct payment from government, they can obtain from individuals so they had to adapt and operate well to make individuals trust them.

The regulation for being foundations or charitable organizations prescribed by law began on August 22, 1980 (2523 B.E.). The Minister of Finance issued notifications of public charitable organizations with five qualities<sup>159</sup>

1. The objectives of the foundation are exclusively for public charity in Thailand.
2. The revenues are not derived from a purchase or sale or from provision of services for a consideration in the ordinary course of business
3. The name of foundation is not the name and/or surname or full name of living person.
4. The expenditure was made for public charity in the amount less than 65 percent of the total expenditure of each of accounting periods.
5. A foundation must be established at least three years<sup>160</sup>

Initially, foundations and associations was excluded from income taxations (both personal income tax and corporate tax) because they were not under any tax unit in Thai Revenue Code. Until 1982 (2525 B.E.), foundations and associations have been imposed to be taxable in the accounting period of 1983 (2526 B.E.) except the foundations and associations prescribed by the Minister of Finance under section 47 (7) (b) of the Thai Revenue Code.<sup>161</sup>

Foundations and associations must be taxable on gross income before deduction of any expenses at a tax rate of 5 percent except income from trade or business activities

---

<sup>159</sup> *Id.*

<sup>160</sup> Sumet Sirikunchoat, *supra* note 11, at 81.

<sup>161</sup> The Thai Revenue Code, section 47 (7)(b).

at 1 percent. Afterwards, tax rate has been increased from 5 percent to 10 percent<sup>162</sup> and 1 percent from income derived from trade or business activities to 2 percent.

Yet, some types of income have been exempt from taxation such as registration fees or maintenance fees from members' cash or assets received from donations, and cash or assets received as gifts.<sup>163</sup>

### **4.3 Rules on Associations and Foundations**

Under Thai Law, nonprofit organizations are established under the Thai Civil and Commercial Code<sup>164</sup> which is based on the Roman law system but there are some nonprofit organizations established under specified law such as labor unions. This thesis will focus on nonprofit organizations established under the Thai Civil and Commercial Code. There are two types of legal entities of nonprofit organizations called foundations and associations. However, other terms exist such as Human health organizations which if they would like to acquire legal status, they must register under those two legally acceptable terms. For non-registered organizations, they may or may not be recognized by the government depending on their missions.

#### **4.3.1 Definitions of Associations and Foundations**

It is very difficult to find an exact definition of nonprofit organizations in Thailand because there are no specified laws. The Office of the National Economic and Social Development Board states that: "Non-profit institutions are legal or social entities created for the purpose of producing goods and services whose status does not permit them to be a source of income, profit or other financial gain for the unit that

---

<sup>162</sup> Sumet Sirikunchoat, *supra note* 48, at cover page.

<sup>163</sup> The Thai Revenue Code, section 65 Bis (13).

<sup>164</sup> The Thai Civil and Commercial Code, section 78 and 110.



establish, control or finance them.<sup>165</sup>

According to Professor Amara Pongsapich, she defined that a “nonprofit sector” includes philanthropy, non-government and nonprofit organizations. It was agreed that the nonprofit sector embraces a vast collection of organizations that share five common features. The five key features of organizations in nonprofit sector are (1) formally (but not necessarily legally) constituted; (2) organizationally separate from government; (3) nonprofit-seeking; (4) self governing; and (5) voluntary to some significant degree.<sup>166</sup>

From the definitions above, a nonprofit organization is an entity which works for people and societies. It is separately established from government and has its own duties according to the purposes which are prescribed in the article.

Nonprofit organizations are possibly organizations in the form of associations and foundations operated for the public interest in the areas of philanthropy, economic and social development, health and social services, advocacy, and cultural and recreational activities.<sup>167</sup> The purposes of activities are not for commercial profit but to collect funds from donation, member fees, investments, training, etc.<sup>168</sup>

#### **4.3.2 General Rules of Associations and Foundations**

Foundations and associations are categorized as nonprofit organizations in Thailand. They are legal entities under the Thai Civil and Commercial Code. With

---

<sup>165</sup> Office of the National Economic and Social Development Board. “*Non-Profit Institutions Satellite Account of Thailand 2006-2008 Edition.*”

[http://www.nesdb.go.th/nesdb\\_en/ewt\\_dl\\_link.php?nid=4300](http://www.nesdb.go.th/nesdb_en/ewt_dl_link.php?nid=4300) (accessed December 24, 2015).

<sup>166</sup> Amara, *supra* note 23, at 1-2.

<sup>167</sup> DDI. “Definition of nonprofit organization in Thailand.”

<http://www.ddiworld.com/ddi/media/u-spark/definition-of-a-charitable-organization-thailand.pdf> (accessed December 24, 2015).

<sup>168</sup> Doing Business. “*Doing business without profit*”

<http://www.demandtounderstand.org/2014/12/> (accessed December 24, 2015).



reference to other term such as councils and leagues, if they desire to obtain legal status, they shall register under one of two acceptable types: foundations or associations.

As mentioned above, under Thai law, legal entities of nonprofit organizations are able to divided into two categories in accordance with the Thai Civil and Commercial Code: associations and foundations.

#### 4.3.2.1 Associations

Under Thai law, associations are prescribed under the Thai Civil and Commercial Code section 78 as follow:

Section 78. “An association created for conducting any activity which, according to its nature, is to be done continuously and collectively by persons other than that of sharing profits or incomes earned, must have its regulations and must be registered according to the provisions of this Code.”

From the above provision, the particularities of an association can be described as follows:<sup>169</sup>

1. Must be created to be an association by law as a juristic person;
  2. Contain the objectives to conduct any activities as
    - a. Being done continuously and
    - b. Collectively by persons other than sharing profits or incomes earned
  3. Must have
    - a. regulations and
    - b. registration according to the provision of Thai Civil and Commercial Code.
1. Must be created to be association by law as juristic person

An association must be registered in accordance with the legal provision so it is a juristic person by law. The purpose of an association is

---

<sup>169</sup> รัชฎา เจริญจำ. หลักกฎหมายว่าด้วย นิติบุคคล สมาคม มูลนิธิ. 109 (2540). (Rachata

Chareonchum. **Principle of a Juristic Person, foundation, association.** 109 (1997).

mainly to concentrate on public charities. In addition, an association has to conduct its business with a focus on public interest. Association founders have to make sure that associations they register are going to conduct such mutual or public activities.<sup>170</sup>

2. Contain the objectives to conduct any activities as
  - a. being done continuously and Collectively by persons
  - b. other than sharing profits or incomes earned

An association must be operated “continuously”. This means an association has to conduct its activities continuously. It may or may not operate any steps prescribed by provision so the association’s directors have to intentionally control the association to follow in accordance with its objectives.<sup>171</sup>

The word “collectively” means an association must contain members. It is unable to be operated by a single person; it must be conducted by a group of people who recognize among mutual benefits along with similar objectives.

Moreover, an association is not allowed to share profit or income with members and directors. According to such a condition, an association is not prohibited to operate any activities to earn revenues or profits but it is prohibited from distributing income or profits received from conducting the activities.<sup>172</sup>

The significant factor which should not prohibit association to receive income from conducting activities is that an association must spend money for the public benefit. If an association lacks money, its activities to assist society may fail. An association does not operate its commercial activities to become wealthy but to be able to spend its money to benefit society. However, income that an association receives cannot be distributed

---

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*, at 110.

<sup>172</sup> *Id.*, at 111.

to members or directors and such income has to be spent for the public benefit.

3. Must have

- a. regulations and
- b. registration according to the provision of Thai Civil and Commercial Code.

An association must have its regulations in order to express the association's objectives<sup>173</sup> and regulations will be the rule to carry on activities in the same way.

An example of an association in Thailand is the Nephrology Society of Thailand which conducts activities for the public interest. Its main purposes are to educate and share knowledge regarding kidney diseases for its members and other health professionals and to conduct research on kidney disease. It raises awareness among the public about the prevention and treatment of kidneys and kidney disease.<sup>174</sup>

Under the Thai Civil and Commercial Code, there are legal measures for controlling associations. The Minister of Interior has the power to appoint the Registrar and to issue Ministerial Regulations on the conduct of business of the association and its register.<sup>175</sup> Any person may inspect the documents relating to an association kept by the Registrar or request certified copies.<sup>176</sup>

---

<sup>173</sup> The Thai Civil and Commercial Code, section 79.

<sup>174</sup> The Nephrology Society of Thailand. "*The Official Website of The Nephrology Society of Thailand.*" <http://www.nephrothai.org/en2/home.php> (accessed February 22, 2016).

<sup>175</sup> The Thai Civil and Commercial Code, section 109.

<sup>176</sup> The Thai Civil and Commercial Code, section 108.

#### 4.3.2.2 Foundation

Another form of a nonprofit organization is a foundation. A foundation is set out under the Thai Civil and Commercial Code under section 110 as follows:

Section 110. “A foundation consists of property specially appropriated to public charity, religious, art, scientific, education or other purpose for the public benefit and not for sharing profit, and has been registered under the provisions of this Code.”<sup>177</sup>

From the above definition, a foundation consists of three elements as follows:

1. Providing property specially appropriated
2. Providing for the purpose of public charity, religious, art, scientific, education or other purpose for the public benefit
3. Not for sharing profit, and has been registered under the provisions of this Code

1. Providing property specially appropriated

A foundation is mainly regarded as properties provided for the public interest. A foundation does not have members and shareholders. However, it must have a committee to manage its activities and properties, for example, a foundation can be created in order to subsidize a student to study abroad. Money is provided from allocation of a foundation’s committee.

2. Providing the purpose of public charity, religious, art, scientific, education or other purpose for the public benefit

A registered foundation conducts its activities as a public charity. If foundation does not mainly operate for public charity purpose, the registrar will not allow it to be registered as one.<sup>178</sup>

---

<sup>177</sup> The Thai Civil and Commercial Code, section 110.

<sup>178</sup> Rachata Chareonchum, *supra* note 169, at 197.

Under a legal foundation provision, when a foundation is formed as a juristic person, it must set out its purpose in accordance with the law prescribed as follows:

1. Religious
2. Art
3. Scientific
4. Education
5. Other purposes for the public benefit such as the environment, human rights, animal protection and so on.

3. Not for sharing profits and has been registered under the provisions of this Code

The main objective of a foundation is to manage its properties and carry on activities for the benefit of society. When a foundation receives any income from its activities, it must spend it on the public, and committees are prohibited from taking a share of the profits in the same way as associations.

The reason why a foundation is not allowed to distribute profits to a committee is because this would reduce its properties and the foundation may have lost the mission to conduct its activities in the public interest. It protects committee to find the benefit from conducting foundation.

In terms of the legal control, the government shall have the power to control foundations according to the Thai Civil and Commercial Code as follows: “The registrar shall has the power to inspect, control and supervise the carrying on of activities of the foundation to be in conformity with the law and the regulations of the foundation.”<sup>179</sup> Any person may access documents relating to a foundation kept by the registrar or request certified copies.<sup>180</sup> The

---

<sup>179</sup> The Thai Civil and Commercial Code, section 128.

<sup>180</sup> The Thai Civil and Commercial Code, section 135.

Minister of Interior shall take charge of the execution of the provisions of this part and has the power to appoint the registrar and issue Ministerial Regulations on the conduct of business of the foundation and its register.<sup>181</sup> Moreover, foundations shall be removed from the system if an examination indicates the following: the objects of the foundation are contrary to the law; the foundation has conducted its business contrary to the law and good morals; its activities may endanger the public peace or national security; and the foundation cannot proceed in its activities for any reason whatsoever or has stopped doing business for more than two years.<sup>182</sup>

According to Supreme Court Judgment No. 3304/2532, a foundation was established for religious purposes but it insulted other religions, caused disorder, and protesters took to the streets to demonstrate. Therefore, the public prosecutor was able to file to dissolve the foundation because its activities were contrary to the law and good morals and endanger the public peace.<sup>183</sup>

In addition, the law prescribes dissolving a foundation if it cannot proceed in its activities and has done nothing for more than two years because if the foundation continues to exist, it may lead to misconduct by some people seeking to use the foundation's name in the wrong way.<sup>184</sup>

---

<sup>181</sup> The Thai Civil and Commercial Code, section 136.

<sup>182</sup> The Thai Civil and Commercial Code, section 131.

<sup>183</sup> อุดมศักดิ์ เย็นใจ. “มาตรการทางกฎหมายเกี่ยวกับการควบคุมกำกับดูแลและส่งเสริมมูลนิธิที่ดำเนินกิจการด้านสาธารณประโยชน์”. วิทยานิพนธ์มหาบัณฑิต คณะนิติศาสตร์ มหาวิทยาลัยธุรกิจบัณฑิต. 70 (2554). (Udomsak Yensai. “Legal Measures in terms of controlling and supporting foundations that carry on public benefit activities”. Master’s Thesis, Faculty of Law, Dhurakij Pundit University. 70 (2554).)

<sup>184</sup> Rachata Chareonchum, *supra* note 169, at 260.

#### 4.4 Rules on Income Taxation on Associations and Foundations

Formerly, foundations and associations were not considered for the collection of tax because they were not regarded as a tax unit for corporate income tax purposes. Taxation of foundations and associations was imposed in 1982 and implemented in the accounting period January 1, 1983. Almost all foundations and associations became obliged to pay corporate income tax except for ones prescribed by the Minister of Finance according to the Revenue Code.<sup>185</sup> Income taxation of foundations and associations under the Thai Revenue Code can be explained through the tax structure given below:

##### 4.4.1 Taxable person

###### 4.4.1.1 Foundations and associations registered under Thai Law

Nonprofit organizations are in the form of foundations and associations. Under Thai tax law, income taxation of associations and foundations have been prescribed under the Thai Revenue Code section 39 as follows:

Section 39 “A foundation or association carrying on revenue generating business, but does not include the foundation or association as prescribed by the Minister in accordance with Section 47 (7) (b).”

Associations and foundations that fall under the above provision must register under the Thai Civil and Commercial Code.<sup>186</sup> In addition, under Thai Tax law there are two types of nonprofit organizations.<sup>187</sup>

- 1) General foundations and associations

---

<sup>185</sup> Sumet Sirikunchoat, *supra* note 11, at 81.

<sup>186</sup> The Thai Civil and commercial code, section 78 and 110.

<sup>187</sup> จิระภา สุชีประเสริฐ. “ภาระหน้าที่การเสียภาษีของมูลนิธิหรือสมาคม.” *สรรพากรศาสตร์*. เล่มที่ 02 : 47, น. 50. (Jirapar Sukipraseard. “*Tax burdens of Foundations and Associations.*” *Sanpakornsarn*. No. 02 : 47, at 50. )

- 2) Foundations and associations prescribed by the Minister of Finance in accordance with Section 47 (7)(b) under Revenue Code

- 1) General foundations and associations

General nonprofit organizations take the form of associations and foundations registered under the Thai Civil and Commercial Code. When associations and foundations receive income from their activities, they must pay tax on that income.

- 2) Foundations and associations prescribed by the Minister of Finance in accordance with Section 47 (7)(b) under Revenue Code.

Foundations and associations may apply to be exempt nonprofit organizations if they meet the conditions prescribed by the Minister. These types of foundations and associations do not pay tax because they are tax-exempt associations and foundations. To be exempt associations and foundations, they must meet the following conditions:<sup>188</sup>

- (1) A foundation has been established for over than one year.
- (2) The revenues of the foundation have been appropriated for public charity in the amount less than 60 percent of the revenues in the past one accounting period or revenues only the outgrowth of foundation have been appropriate public charity less than 60 percent of outgrowth in the past one accounting period in case the organizing charter that the outgrowth that an expenditure can be made only out of the outgrowth except there has been necessity which require saving and accumulation of revenues for carrying out a project in accordance with the objectives of the foundation may be recognized as revenue or that an expenditure.
- (3) Foundation revenues are not derived from a purchase or sale or from provision of services for a consideration in the ordinary course of business, except the purchase or sale or provision of services in connection with religious, educational, clinical or social welfare affairs,

---

<sup>188</sup> Revenue Department, *supra* note 46.



provided that such revenues are not appropriated for other purposes. The expenditure of the foundation for the public charity comprised less than 75 percent of the total expenditure in the past three accounting periods

(4) The expenditure of the foundation for the public charity comprised less than 65 percent of the total expenditure in the past one accounting periods

(5) The expenditure of the foundation for public charity shall be spread generally over the registered objectives and its revenues are not derived from a purchase or sale or from provision of services for a consideration in the ordinary course of business, except the purchase or sale or provision of services in connection with religious, educational, clinical or social welfare affairs, provided that such revenues are not appropriated for other purposes.

#### **4.4.1.2 Foundations and associations registered under Foreign Law**

Under section 39 of the Thai Revenue Code, foundations and associations are not under the provision of “a foundation or association carrying on revenue generating business” because this provision is used for associations and foundations that are registered under Thai law of the Civil and Commercial Code. They are under section 39 of the Revenue Code as follows:

Section 39 “Company or juristic partnership” means a company or juristic partnership established under a Thai or foreign law, and shall include:

(1) A business operating in a commercial or profitable manner by a foreign government, organization of a foreign government or any other juristic person established under a foreign law”

Therefore, foreign nonprofit organizations are regarded as “any other juristic person established under a foreign law”.<sup>189190</sup>

#### 4.4.2 Tax base

##### 4.4.2.1 Foundations and associations registered under the Thai Civil and Commercial Law

###### 1) General foundations and associations

Generally, foundations and associations shall be taxable based on income as gross receipt. Thai Tax law requires foundations and associations to pay tax on income because commonly foundations and associations are nonprofit organizations and the authorities do not want foundations and associations to be conducted for incorrect purposes even though foundations and associations may not conduct commercial activities at all. In addition, they conduct activities for the public and society without making any profits. Therefore, it is not proper to collect tax on profits that are received from trade and business.

On the other hand, income taxation of foundations and associations on gross receipt may be criticized by some because they have expenses from operating the business and losses but are unable to deduct their expenses.

---

<sup>189</sup> The Thai Revenue Code, section 39.

<sup>190</sup> สมพงษ์ ตันติโรจนาวงศ์. “ปัญหาการเสียภาษีของมูลนิธิและสมาคมตามประมวลรัษฎากร”.

วิทยานิพนธ์นิติศาสตรมหาบัณฑิต, มหาวิทยาลัยรามคำแหง, 2546, น .88 (Sompong

Tuntirodjanawong. “*Problems related to taxation on foundations and association taxes under the Revenue Code*”. Master of Law Thesis, Ramkhamheng University, 2546, at 88.)

However, foundations and associations registered under the Thai Civil and Commercial Code are tax-exempt if they receive any income as follows:<sup>191</sup>

1. registration fees or maintenance fees from members;
2. cash or assets received as donations;
3. cash or assets received as gifts; and
4. Income from private school of associations or foundation which are not include income from tutorial school

2) Foundations and associations prescribed by the Minister of Finance in accordance with Section 47 (7)(b) under Revenue Code.

Foundations and associations prescribed by the Minister of Finance in accordance with section 47 (7)(b) of the Thai Revenue Code are tax-exempt from all income they receive. In legal terms, they are prohibited from operating commercial activities.

#### **4.4.2.2. Foundations and associations registered under foreign law**

Nonprofit organizations as foundations and associations registered under foreign law are regarded as “any other juristic person established under a foreign law” under the Thai Revenue Code section 39 because foundations and associations registered under a foreign law are not established under the Thai Civil and Commercial Code. According to Professor Chaiyasit, foundations and associations under a foreign law which receive income in Thailand must pay tax on income without deductions. Also, registered fees and maintenance fees will be exempt from taxation. On the other hand, foreign foundations and

---

<sup>191</sup> The Thai Revenue Code, section 65 Bis (13)

associations which conduct trade and business activities do not pay tax on income but they will pay tax on the net profit of such activities.<sup>192</sup>

#### 4.4.3 Tax Rate

##### 4.4.3.1 Associations and foundations registered under Thai Law

The tax rate for associations and foundations under Thai Tax Law is divided into two types: 1. Income from business, commerce, agriculture, industry, transport or any other activity and 2. any other income as follows:

1. Income from business, commerce, agriculture, industry, transport or any other activity which must pay tax on income before deduction of expenses at 2 percent.
2. Any other income other than above must pay tax on income before deduction of expenses at 10 percent.<sup>193</sup>

The table below shows the tax rate for income which foundations and associations receive from activities.

**Table 4.2: Tax rate of foundations and associations**

Categories of foundation and association's income	Tax rate (percent %)
Income from trade	2
Income from parking services	2
Income from sale of book	2

<sup>192</sup> ชัยสิทธิ์ ตราชูธรรม. คู่มือการศึกษาวิชากฎหมายอาญา. กรุงเทพฯ : สำนักอบรมศึกษา

กฎหมายแห่งเนติบัณฑิตสภา. 92-93 (2556). (Chaiyasit Trachutham. **Taxation Study Book**. Bangkok : Institute of Legal Education of Thai Bar. 92-93 (2556).)

<sup>193</sup> Sumet Sirikunchoat, *supra* note 48, at 259.

Income from sale of concert ticket	2
Income from rent	10
Income from loyalty fees	10
Income from interest	10
Income from dividend	10

The example of tax computation for associations and foundations

ABC foundation not prescribed by the Minister of Finance obtained income from operating as follows:

- |   |              |
|---|--------------|
| (1) Register fee                              | 50,000 Baht  |
| (2) Donations                                 | 120,000 Baht |
| (3) Income from bank interest                 | 10,000 Baht  |
| (4) Income form being agent                   | 20,000 Baht  |
| (5) Income from sale of books                 | 10,000 Baht  |
| (6) Income from rent                          | 20,000 Baht  |
| (7) Income from sale of food and<br>beverages | 60,000 Baht  |

As per the taxation of foundations, ABC foundation must pay tax on its gross receipt or net income with some income being exempt by law as follows:

- (1) Register fee and
- (2) donations exempt from tax computation
- (3) Income from bank interest

Tax rate at 10 percent (10,000 x 10%) =  
1,000 baht

## (4) Income from being agent

Tax rate at 10 percent (20,000 x 10%) =  
2,000 baht

## (5) Income from sale of books

Tax rate at 2 percent (10,000 x 2%) = 200  
baht

## (6) Income from rent

Tax rate at 10 percent (20,000 x 10%) =  
2,000 baht

## (8) Income from sale of food and beverages

Tax rate at 2 percent (60,000 x 2%) =  
1,200 baht

Therefore, in this period, ABC foundation must pay tax of 6,400 baht

#### 4.4.3.2 Foundations and associations registered under Foreign Law

Foundations and associations registered under foreign law are categorized under two types of activities. The first, for income sources from nonprofit making, they must pay tax on net income they receive from Thailand at 10 percent like Thai nonprofit organizations. For nonprofit organizations under foreign law which operate activities for profit, they must pay tax on their net profit at 20 percent in accordance with section 39 of the Thai Revenue Code as “other juristic person established under a foreign law”.<sup>194</sup>

---

<sup>194</sup> Sompong Tuntirodjanawon, *supra* note 190, at 89.

#### **4.4.4 Charitable Contributions to foundations and associations**

##### **4.4.4.1 Charitable Contributions by individuals**

For individuals, donations to associations and foundations that are prescribed by the minister of finance as public charitable organizations can be deductible up to 10 percent of income after standard deductions and allowances according to section 47 (7) of the Thai Revenue Code because the government has confirmed that such organizations mainly conduct charitable activities and distribute money to the public.

In some cases, charitable contributions to specific organizations or qualified project are able to have twice the amount of the actual donation made deducted<sup>195</sup> because these projects are potentially significant for society and make Thailand progress by incentivizing people to make donations but that do not exceed 10 percent of net profits.

##### **4.4.4.2 Charitable Contributions by corporations**

For corporation deduction, if the corporations donate money to associations and foundations, they can be deductible expenses at 2 percent under section 65 Ter (3) of Revenue Code. The associations and foundations are prescribed by the minister as public charitable institutions.

#### **4.5 Analyze Problems of Taxation on Foundations and Associations in Thailand**

In this part, the problems of income taxation on foundations and associations will be raised. Even if the foundations and associations exist for the purpose of

---

<sup>195</sup> Revenue Department. *“Tax Priviledge of Individual Donors”*

[http://www.rd.go.th/publish/fileadmin/user\\_upload/kormor/PIT.pdf](http://www.rd.go.th/publish/fileadmin/user_upload/kormor/PIT.pdf) (accessed December 12, 2015).

operating as charitable activities, they should be taxable if they obtain some categories of income. In 1982 (2525 B.E.), taxation of foundations and associations were imposed and this began in the accounting period of the year 1983 except for the foundations prescribed by the Minister of Finance.

Nowadays, people have recognized the significant roles of the nonprofit sector and also supported the activities of foundations and associations. The tax treatment factor is one of the factors which can propel foundations and associations. It is therefore useful to specify some problems of income taxation of foundations and associations which if they are properly amended will be beneficial for foundations and associations and help the government to control and examine them. The problems raised following are analyzed in terms of organizational forms and charitable contributions.

#### **4.5.1. Problems related to Income Tax computation and Organizational Features on Foundations and Associations**

##### **4.5.1.1 Tax base and tax rate of taxation on foundations and associations**

Under Thai tax law, associations and foundations pay tax at the rate of 10 percent or 2 percent on gross income (income before the deduction of any expenses).<sup>196</sup> Business corporations were given a reduced tax rate from 30 percent to 23 percent in 2011 and 20 percent in 2012 on net profit (income less expenses). Business corporations can be deductible expenses but associations and foundations cannot be deductible any expenses. This is unfair for associations and foundations because they may make a loss from their business activities or pay a lot of money for their activities.<sup>197</sup>

To understand the nature of foundation and association's activities, operating in any activities in business, daily life and charitable activities is unable to avoid expenses from doing any activities. Individuals and Companies can be deductible expenses from activities related to their own businesses. On the other hand, foundations and

---

<sup>196</sup> The Thai Revenue Code, Income Tax Rate Schedule.

<sup>197</sup> Sumet Sirikunchoat, *supra* note 11, at 84.



associations are taxable on gross income. This means that they cannot deduct any expenses which occurred from their own activities although they have possibly expenses from running on activities or loss may occur from employment or maintenance nonprofit organizations. They must pay tax although they have no ability to pay.

The Revenue Department's ruling no. 0811/10135 illustrates this situation. The hospital had the status of a foundation and it was making a loss from its operations. However, it was having to pay tax on gross income because it was unable to deduct expenses. This can be compared to the legal form of a company which pays tax based on net profit as well as enjoying deductible expenses. In addition, a company would be exempt from income tax were it to make a loss from operating its business as well as carrying forward its losses over the next 5 years.<sup>198</sup>

This situation was clearly unfair for this hospital operating as a foundation. It was unable to compete with hospitals operating as business entities because they could be deductible expenses and pay tax on net profit. Accordingly, if they lose, they did not have to pay tax. Moreover, the hospital operating as a foundation would receive lower fees than business-status hospitals because it did not have the objective of making a profit but it encouraged people to leave from disorder. Therefore, recently, income taxations on a foundation and association in aspect of tax based on gross income is unfair.

The question may be raised: what are the differences between nonprofit hospitals and for-profit hospitals? To qualify as a nonprofit hospital, it must be organized and operated exclusively for charitable purposes in the generally accepted legal sense. It may not be operated, directly or indirectly, for the benefits of private interests.

Although a for-profit hospital requires patients to pay medical fee and patients who cannot meet the financial requirements for admission are ordinarily referred to another hospital that does serve indigent patients, it is possible to qualify as a nonprofit organization if the class of people who receive benefits is not so small and it serves the

---

<sup>198</sup> Revenue Department, "*Thai Revenue Ruling No. 0811/10135.*"

<http://www.rd.go.th/publish/25254.0.html> (accessed April 12, 2016).

public rather than private interest. In addition, the hospital which qualifies for tax exemptions spends money to improve the quality of patient care, expand its facilities, and advance its medical training, education, and research programs so the hospital is operating in the exempt purposes.<sup>199</sup>

On the other hand, there are hospitals established for the private benefits of its owners, which use their control to restrict the number of doctors admitted to the medical staff and limit emergency room care and hospital admissions substantially to their own patients. This does not qualify as a nonprofit organization.<sup>200</sup>

In the United States, nonprofit organizations as tax exempt organizations are able to deduct expenses from profit-making activities on unrelated trade or business income. While in Japan, special nonprofit organizations can deduct expenses up to 20 percent of income from profit-making.

This shows that both the United States and Japan are concerned about this problem. Even if nonprofit organizations are dramatically not supported to operate profitable activities, they may operate them for existing and occur a loss. Thus, government has provided some measures of relief to nonprofit organizations.

In Japan, nonprofit organizations pay tax on net profit from profit-making income at 22 percent, a lower rate than corporations which pay at 25.5 percent.

#### **4.5.1.2 No measure to examine financial receipts of foundations and associations**

With reference to general foundations and associations in Thailand, they are not required to prove cash received. However, they must report cash they received from registration fees or maintenance fees from members, cash or assets received as donations and cash or assets received as gifts on annual income tax returns (PND 55). Such incomes that they fill in tax returns are not a guarantee that those will be the actual cash because foundations and associations are not required to file balance sheets and

---

<sup>199</sup> Fishman, *supra note* 13, at 83.

<sup>200</sup> *Id.*

financial statements of revenue and expenditure that have been certified by auditor.<sup>201</sup> The Revenue Department does not ensure that income reported in an annual income tax return is the actual amount or not. This loophole may cause tax avoidance from the person who would like to avoid tax payments in general foundations and associations. The Revenue Department may lose money from taxation in this way.

In contrast, foundations and associations prescribed by the minister of finance are not required to file annual income tax returns (PND 55) but they must file balance sheets and financial statements of revenue and expenditure duly certified by auditors, including a report on the operation of the business.<sup>202</sup>

The purpose of this process for foundations and associations as charitable organizations is so that the government can examine financial status of them. Although conditions of public charitable foundations and associations prescribed by the minister of finance are stricter than general foundations and associations, these charitable foundations and associations have some problems which will be described in next chapter.

#### **4.5.1.3 The problems of Notification of the Ministry of Finance on Income Tax and Value Added Tax (No. 531)**

Notification of Ministry of Finance on Income Tax and Value Added Tax (No. 531) was announced in order to prescribe public charitable organizations which qualify for tax-exempt status and deductible charitable contributions. However, there are some problems that exist in the regulations.

The first is that foundations and associations must have been established for at least one year if they require to apply tax-exempt status.<sup>203</sup> This clause has been imposed in situations when it was difficult to examine public charitable organizations. The problem is that when considering whether the foundations and associations should

---

<sup>201</sup> Ms. Tatsanasat. **Tax Audit Officer Professional Level**, The Area Revenue Branch Office 22, Bangkok, 20 April 2016.

<sup>202</sup> Revenue Department, *supra note 46*.

<sup>203</sup> *Id.*

be announced to be public charitable organizations, a period of only one year is difficult and too short to ensure that those organizations will exactly qualify to be public charitable organizations.

The second is that the restriction for foundations and associations to derive revenues from a purchase or sale or provision of services for a consideration in the ordinary course should be abolished.<sup>204</sup>

This clause has been imposed because public charitable organizations should conduct activities for the public interest more than the private interest. It may be considered a gap in the law if this law allows public charitable organizations to operate profitable activities. They should not operate profitable activities at all because they have more chance than general foundations and associations to receive from donations. However, this clause will obstruct public charitable organizations because they are unable to conduct business activities to obtain income except such organizations that operate the purchase or sale or provision of services in connection with religious, educational, clinical or social welfare affairs. As a result, they must wait for contributions from individuals or companies. This should not prevent them from operating because they have to spend money to carry out their charitable activities and at least 60 percent of the revenues must have been spent for public charity in the past three accounting periods.

Moreover, with reference to the universal concept of nonprofit organizations, a nonprofit organization is barred from distributing its net earnings but is not barred from making a profit. From this state, it is clearly that that only the distribution of the profits is prohibited.

Third, the clause which allows the minister of finance to deem any foundations and associations proper qualified as public charitable foundations may be the problem if the non-standardized charitable organizations apply this rule.<sup>205</sup> They will be tax-exempt organizations and receive incentive measures for donors who can show that their donation is a deductible donation.

---

<sup>204</sup> Revenue Department, *supra* note 46, clause 7(2).

<sup>205</sup> *Id.*, clause 10.

The strong points of this rule are that the minister of finance exercise his power to prescribed any public charitable organizations which need to encourage and support government policy. Providing incentives to charitable organizations encourages individuals and companies to donate money to them and discourages these organizations from waiting for money from the government.

On the other hand, the weak points of this clause still exist if this gap is used in the wrong way. This regulation potentially applies to some groups of people who found foundations and associations but do not really work for public charitable activities. It seems that the regulation is unable to be enforced because approval or disapproval depends on the minister of finance.<sup>206</sup> In addition, founders would like to acquire public charitable status for their organizations in order to gather money even though the money is not spent in this way and has been done just to avoid tax. It seems to be partial if some nonprofits receive tax-exempt status even if they do not qualify.<sup>207</sup> In addition, they may want to receive the benefits from the charitable contributions which donors are able to give as deductible expenses. Therefore, the authorities should weigh up the pros and cons of this regulation.

#### **4.5.1.4 Passive investment income should be exempt from taxation**

Passive investment income is revenue that the organizations earn even when they are not actively working.<sup>208</sup> Under Thai tax law, foundations and associations must be taxable on gross income which means all of income before the deduction of any expenses. Passive investment income such as interest, rent and royalties<sup>209</sup> is taxed at 10 percent on gross income.

---

<sup>206</sup> Sumet Sirikunchoat, *supra* note 11, at 86.

<sup>207</sup> *Id.*

<sup>208</sup> Steve Pavlina. “*What is the passive income*”  
<http://www.stevepavlina.com/blog/2012/04/what-is-passive-income/> (accessed December 13, 2015).

<sup>209</sup> Fishman, *supra* note 13, at 370.

Dividends derived from companies registered under Thai law shall be included as income, but only half of the amount received or company which holds shares in a limited company paying dividends at least 25 percent of voting shares and the limited company paying the dividends does not hold shares in the limited company receiving the dividends shall not include as income the dividends received.<sup>210</sup>

In fact, passive investment income such as rents from property, royalties, interest from bank accounts and dividends are incomes which do not occur from active operations. These kinds of income were recognized as proper sources of income for charitable organizations and were considered unlikely to cause competition problems. They should be excluded from tax law as taxable income.

Moreover, the Revenue Department's ruling No. 0702/4315 asserted that if a foundation had the objective of providing assistance to orphaned, poor and disabled children but was not prescribed by law as a public charitable organization, it must pay tax on its net income, such as interest and rent from property.

In the United States, passive income was recognized as income which is excluded from taxation when calculating unrelated business taxable income. Congress considered that these kinds of income will encourage and support nonprofit organizations.

## **4.5.2 Problems related to Charitable Contributions**

### **4.5.2.1 Charitable contribution measures are not enough to support foundations and associations**

Under Thai Tax law, individuals and corporations are allowed to contribute to nonprofit organizations, associations and foundations prescribed by the minister of finance. However, the amount of contribution has been only 10 percent maximum for individuals and 2 percent maximum for corporations.

---

<sup>210</sup> The Thai Revenue Code, section 65 bis (10).

These limits are rather small because contributions to associations and foundations directly would assist society to more efficiently support taxpayers who are interested in supporting communities and society.

Furthermore, according to the research of the Thailand Reform Committee, the nonprofit sector can assist the poor in rural areas more efficient and faster than the government sector because the government sector has to meet many conditions and its slow processes delay helping the poor.<sup>211</sup> In addition, in terms of controlling cash contributed to foundations and associations, in general, a donor is able to examine cash he donated from financial statement.

In an interview with Professor Wiriya Namsiripongpan who established the Universal Foundation for Persons with Disabilities, he stated that the way to control contributed cash received from donors would be for donors to examine money with bank accounts opened under a condition between donors and foundations and associations which receive cash from them. They could examine how that money received was spent. He raised the example of Universal Foundation for Persons with Disabilities. It obtained contributions from National Broadcasting and Telecommunications Commission (NBTC). NBTC required the foundation to open a specific bank account and transferred donations through this account and NBTC would check the way donations were spent.

This could reduce the gap between the higher income people and lower income people. This means that these forms of organizations could be seen as credible because they must operate within the rule of law strictly to make sure that their activities are in the public interest.

#### **4.5.2.2 Carry over Contributions to foundations and associations**

Under Thai Tax law, when individuals contribute donations to associations and foundations prescribed by the minister of finance, they are deductible from contributions at the rate 10 percent. If the actual amount of donations exceeds 10 percent in the current year, they are unable to carry over the rest of the amount to the

---

<sup>211</sup> Wiriya Namsiripongpan, *supra* note 66, at 16.

next year. This will not attract individuals to contribute large amounts of money to support the valuable project.<sup>212</sup> Under the United States tax law, the excess amount of charitable contributions of 50 percent limit may be carried over the five taxable years.<sup>213</sup>



---

<sup>212</sup> Department of the Treasury, *supra* note 114, at 17.

<sup>213</sup> Internal Revenue Code, section 170(d)(1)



## **CHAPTER 5**

### **CONCLUSIONS AND RECOMMENDATIONS**

#### **5.1 Conclusions**

Nonprofit organizations are regarded as those organizations which conduct their activities for charitable purposes other than generating profits. In general, the main principle of nonprofit organizations is that they are prohibited from distributing any profits to members, directors or officers. They work for societies and communities.

It is difficult to give the exact definition of nonprofit organization because there are various kinds and it depends on the policies of particular countries. As nonprofit organizations, they may receive tax benefits from government if they meet the conditions of their countries. These are: tax status – exempt and non-exempt status, tax base, tax rate and tax measures on charitable contributions.

In the United States, nonprofit organizations fall under section 501 (c) according to the Internal Revenue Code. They are probably tax-exempt organizations if they qualify. Although nonprofit organizations can have tax-exempt status, they may be required to pay tax if they derive income from “unrelated business income” of exempt purposes. Contributions to qualified organizations under section 501 (c)(3) are also deductible. Moreover, if the deduction from contribution exceeds the limit in the present year, it can be carried over for the next five years.

In Japan, nonprofit organizations can be formed in a variety of ways, such as associations and foundations, Public interest associations and foundations, special nonprofit organizations, organizations established under special law etc. Also, the main objectives of their activities are to serve public charities. Some kinds of nonprofit organizations are allowed to operate their business both for-profit and nonprofit but there are no rules about contributing profits to shareholders. For tax benefit, Japanese nonprofit organizations consist of various categories so taxation of nonprofit organizations may be complex.

Under Thai law, nonprofit organizations are mostly formed as associations and foundations. They are established under the Thai Civil and Commercial Code. Mainly,

associations and foundations conduct their activities for society and communities with a group of people. Any income they obtain cannot be distributed to members and they have to operate for the public interest. In addition, there are no legal forms of nonprofit entities that allow them to operate for profitable activities and non-profitable activities together. In terms of tax treatment, nonprofit organizations, both associations and foundations, are taxable on gross income (income before deductible expenses). They will receive tax-exempt status if they are certified as such by the authorities, that is, the minister of finance. Charitable contributions to associations and foundations prescribed by minister of finance can be tax deductible contributions.

## **5.2 Recommendations**

### **5.2.1 To propose to amend the rules related to income computation and organizational features on foundations and associations**

#### **5.2.1.1 Abolish foundation and association taxation on gross receipt**

Currently in Thailand, foundations and associations are taxable on gross income. Basing this on gross income is not the most favorable measure to encourage foundations and associations. Therefore, Thai tax law should be amended by abolishing the Income Tax Rates Schedule related to Tax from gross income before deduction of any expenses of associations or foundations which is not income under section 65 Bis (13) at 10 and 2 percent on gross receipt and add Tax Rates Schedule as follow:

“Tax from net profit of unrelated trade or business income at 20 percent”

In addition, Thai Revenue Code should amend section 65 Bis (13) as follow:

“Foundations and associations shall be exempt from taxation except income from net profit derived from unrelated trade or business income”

This clause is clearly sets out that all income which foundations and associations receive is exempt from taxation. However, in order to meet the conditions for nonprofit organizations as tax exempt status, they should not conduct big business. If they operate outside the charitable scope, tax will be taxable on such unrelated business income.

Under United States tax law, foundations and associations are tax exempt status and are taxable on unrelated business income at the corporate tax rate. To promote foundations and associations as nonprofit organizations, the Internal Revenue Code allows nonprofit organizations to apply for tax-exempt status.

According to Japanese tax law, in general, nonprofit organizations are exempt from corporate income tax. However, income from profit-making activities imposed under the corporation tax law means they pay tax at the same rate as a company.

#### **5.2.1.2 Impose the policy for examining financial statement of associations and foundations**

As general foundations and associations in Thailand which are taxable on gross income, they have just submitted annual income tax return for foundations and associations (PND55) but they are not required to submit financial statement (except public charitable organizations prescribed by the minister of finance) so the Revenue Department cannot examine such income they receive. As a result, to be tax-exempt, they must be required to submit income tax returns with financial statement to the Revenue Department. If they fail to do this, their tax-exempt status will be revoked.

Under United States tax law, nonprofit organization including foundations and associations must file annual information returns along with reports of cash received and make these available for public inspection if individuals request it. This method will allow donors to examine the expenditure of foundations and associations.

#### **5.2.1.3 Amend the Notification of the Ministry of Finance on Income Tax and Value Added Tax (No. 531)**

The Notification of the Ministry of Finance on Income Tax and Valued Added Tax (No. 531) should be amended as follows:

Firstly, the period of time established of at least only one year is too short to prove that foundations are charitable organizations. It should be kept in mind that these kind of organizations have tax-exempt status and donors can be deductible from contribution. The state must indirectly lose money from deductible donation policy. So,

this clause should be amended to make foundations be established for at least three years.

Secondly, the regulation should allow foundations prescribed by the minister of finance to derive revenues from a purchase or sale or provision of services in the ordinary course because sometimes foundations prescribed by law may need to spend money to pay for societies although they obtain money from donors but it is possible that such money may not enough to spent for charitable activities. In addition, such profitable activities should have their tax collected at the ordinary tax rate. As a result, it should allow the foundations prescribed by law or “public charitable activities” to conduct activities such as purchase or sale or provision of services.

In the United States, foundations have tax-exempt status. This does not prohibit them from conducting business activities. In fact, it allows foundations to conduct business activities but the business activities which are not related to charitable purpose must pay tax at corporate tax rate.

Thirdly, Notification of the Ministry of Finance on Income Tax and Value Added Tax (No. 531) should be used for only foundations and associations which qualify to receive tax-deductible gifts. It should not provide the power to Ministry of Finance to deem a proper foundation which the donor can be deductible donation because Foundations which mostly work for the public should be the ones that qualify for tax deductible gifts. Most of the revenues should be spent for charitable activities

#### **5.2.1.4 Exempt income taxation on passive investment income**

Passive investment income such as income from royalties (40 (3)), interest or dividends (40(4)) and income from rent (40(5)) are types of income that have no impact on competition. This thesis would like to recommend to the authorities that they should not be concerned that foundations will become organizations which investors will use as business entities from which they will obtain many benefits because foundations are under the control in terms of distribution of profit of the Civil and Commercial Code. Therefore, fees for royalties, interests, dividends and rent should be exempt from taxation.

In the United States, passive incomes are excluded from unrelated business taxable income<sup>214</sup> such as dividends, interest, annuities and other investment income.<sup>215</sup>

## **5.2.2 To propose to amend the rules related to charitable contributions**

### **5.2.2.1 Increase the limit of donations**

Under Thai tax law, contributions to associations and foundations as nonprofit organizations can be deductible with a low limit comparing to certain countries, the United States and Japan. For individuals, they can be deductible expenses at 10 percent from adjust gross income (AGI). For companies, they can be deductible expenses at 2 percent from their income

This is not sufficient for Thailand as a developing country because many people encounter hardship in many areas such as poverty, disability, unemployment so societal problems increasingly occur.<sup>216</sup> The government struggles to assist them on its own. The nonprofit sector should have a role to play in resolving these problems and nonprofit sector can directly assist them by distributing more. Section 47 (7) of the Revenue Code should be amended to increase the limit of contributions from 10 percent of individual income and section 65 ter (3) should be amended to increase the limit of donations public charitable organization prescribe by minister of finance which shall be deductible expenses in an amount not exceeding 2 percent of net profit.

In the United States, individuals can be deductible up to 50 percent of AGI while corporations that donate to nonprofit organizations can be deductible at 10 percent of adjust gross income (AGI).

---

<sup>214</sup> Internal Revenue Code, section 512 - Unrelated business taxable income (b)(1)-(5)

<sup>215</sup> Department of Treasury, *supra* note 14, at 7.

<sup>216</sup> Thai encyclopedias. "*The roles of associations and foundations.*"

<http://kanchanapisek.or.th/kp6/sub/book/book.php?book=12&chap=3&page=t12-3-infodetail09.htm> (accessed December 12, 2015).

Like Japan, individuals who donate to nonprofit organizations can be deductible up to 40 percent of total income. For companies, they can be deductible at 3.125 percent of taxable income. Therefore, I would like to propose that Thai Tax law should increase in the limitation of donations to associations and foundations that are certified by the minister of finance.

#### **5.2.2.2 Allow excess donations to be carried over to the next year**

Generally, contribution to associations and foundations can be deductible for both individuals and corporations under section 47 (7) and 65 ter (3) of the Thai Revenue Code. If individuals contribute a large amount of money for donations over 10 percent of their income in the current year, they are unable to carry over the excess amount of donations to the next year. Therefore, I would like to propose to add the clause in the Revenue Code which allows such excess amounts to be carried over for the next five years. In the United States, if individuals contribute money over a limit by law, they can carry it over to the next five years. This encourages individuals and corporations to donate to public interest.

## REFERENCES

### 1. Books and Book Articles

#### 1.1 English Books

- Amara Pongsapich. **Thailand Nonprofit and Social Development**. Bangkok: Chulalongkorn University, 1997.
- Claire Achermann. **Benefit corporations—a case study of the US and lessons for Australia**: Social Impact Hub, 2014.
- Emily Cohen. **Benefit Expenses: How the Benefit Corporation's Social Purpose Changes the Ordinary and Necessary**: 4 Wm. & Mary Bus. L. Rev. 269, 2013.
- EY. **World Wide Corporate Tax guide 2015**, 2014.
- Helmut K. Anheier. **Nonprofit Organizations: Theory, management, policy**. New York: Routledge, 2005.
- James J. Fishman. **Taxation on Nonprofit Organizations Cases and Materials**. Fourth Edition. New York: Foundation Press, 2015.
- Jirawan Phakdeebutra. **The Role of Nonprofit Organization to Develop Country: the classification of nonprofit organizations**. National Institute of Development Administration. 1996
- NBIS. **B Corporations, Benefit Corporations and Social Purpose Corporations: Launching a New Era of Impact-Driven Companies**: Network for Business innovation and Sustainability, 2012.
- The Japan Association of Charitable Organization. **Charitable and Non-profit Organization in Japan**. Bunkyo-ku : Hon-komagome, 2014.
- Tomoki Debari. **Charity Law Jurisdictional Comparison**. London: European Lawyer Series, 2012.

## 1.2 Thai Books

ชัยสิทธิ์ トラชูธรรม. **คู่มือการศึกษาวิชากฎหมายภาษีอากร**. กรุงเทพฯ : สำนักอบรมศึกษากฎหมาย  
แห่งเนติบัณฑิตสภา, 2556. (Chaiyasit Trachutham. **Taxation Study Book**.

Bangkok: Institute of Legal Education of Thai Bar, 2556.)

นิลุบล เลิศนุวัฒน์. **รายงานฉบับสมบูรณ์ Benefit Corporation: ลักษณะ ข้อพิจารณา และความเป็น  
ไปได้ในการปรับใช้ในประเทศไทย**, 2557. (Nilubol Lertnuwat. **Complete Report  
regarding Benefit Corporation: characteristic, considering point and a  
possibility of adaptation in Thailand**, 2557.)

ทิพย์ชนก รัตโนสถ. **คำอธิบายเรียงมาตรา กฎหมายลักษณะห้างหุ้นส่วนและบริษัท : โครงการ  
ตำราฯ**, 2556. (Thipchanok Rattanosot. **Partnership and Corporation Law  
Book**. Bangkok: Textbook Project, 2556.)

รชฎ เจริญจำ. **หลักกฎหมายว่าด้วย นิติบุคคล สมาคม มูลนิธิ**. เมษายน 2540, น. 260. (Rachata  
Chareonchum. **Principle of a Juristic Person, foundation, association**.  
April 1997, at 260.)

สมคิด บางโม. **ภาษีอากรธุรกิจ**. กรุงเทพฯ : วิทย์พัฒน์, 2557. (Somkit Bangmo. **Business  
Taxation**. Bangkok: Wittayapat, 2557.)

สุเมธ ศิริคุณโชติ. **ภาษีอากรตามประมวลรัษฎากร 2558**. กรุงเทพฯ : เรือนแก้วการพิมพ์, 2558.  
(Sumet Sirikunchoat. **Taxation under Thai Revenue Code 2558**. Bangkok:  
Ruenkaew Printing, 2558.)

อากรณ์ นารถดิลก. **ประมวลรัษฎากรพร้อมคำพิพากษาฎีกาโดยย่อและแนววินิจฉัยของกรม-  
สรรพากร**. กรุงเทพฯ : ห้างหุ้นส่วนสามัญ สำนักกฎหมายกฤตย์จตุธา, 2556. (Arpon



Narkdilok. **The Revenue Code with summary court cases and Revenue Department rulings.** Bangkok: Kritjutha Law Partnership, 2556.)

## 2. Thesis

สมพงษ์ ตันติโรจนาวงศ์. “ปัญหาการเสียภาษีของมูลนิธิและสมาคมตามประมวลรัษฎากร”.

วิทยานิพนธ์มหาบัณฑิต คณะนิติศาสตร์ มหาวิทยาลัยรามคำแหง, 2546. (Sompong

Tuntirodjanawong. “Problems related to taxation on foundations and

association taxes under the Revenue Code”. Master of Law Thesis, Faculty of

Law, Ramkhamheng University, 2546.)

อุดมศักดิ์ เย็นใส. “มาตรการทางกฎหมายเกี่ยวกับการควบคุมกำกับดูแลและส่งเสริมมูลนิธิที่ดำเนิน

กิจการด้านสาธารณประโยชน์”. วิทยานิพนธ์มหาบัณฑิต คณะนิติศาสตร์ มหาวิทยาลัยธุรกิจ

บัณฑิตย, 2554. (Udomsak Yensai. “Legal Measures in terms of controlling and

supporting foundations that carry on public benefit activities”. Master of Law

Thesis, Faculty of Law, Dhurakij Pundit University, 2554.)

## 3. Articles

จิระภา สุจิตประเสริฐ . “ภาระหน้าที่การเสียภาษีของมูลนิธิหรือสมาคม.” สรรพากรศาสตร์. เล่มที่ 2:

47. (Jirapar Sukipraseard. “Tax burdens of Foundations and Associations.”

Sanpakornsarn. No. 2: 47.)

ไพศาล ลิ้มสถิตย์. “ความสำคัญของกฎหมายส่งเสริมภาคประชาสังคม.” จุฬสารสมาคม-นิติศาสตร์

มหาวิทยาลัยธรรมศาสตร์. เล่มที่ 3: 2558. (Paisan Limsatid. “The importance of public society law.” Law Pamphlet of Thammasat University. No. 3: 2558.)

วิริยะ นามศิริพงศ์พันธุ์. “ปฏิรูปภาษี การคลังและงบประมาณ เพื่อลดความเหลื่อมล้ำและสร้างความ

เป็นธรรมในสังคม.” วารสารนิติศาสตร์. เล่มที่ 1: 2555. (Wiriya Narmsiripongpan.

*“Tax reformation, public finance and budget for a reduction of inequity and contributing fairness to societies.” Faculty of Law’s Journal. No. 1: 2555).*

สุเมธ ศิริคุณโชติ. “ภาษีเงินได้กับมูลนิธิและข้อคิดเห็นบางประการ.” สรรพากรสาส์น. เล่มที่ 4: 2528. (Sumet Sirikunchoat. “Taxable income of foundations and some suggestions.” Sanpakornsarn. No. 4: 2528(.

#### 4. Interviews

ศุภชัย บำรุงศรี. นักวิชาการสรรพากรชำนาญการพิเศษ. สำนักงานสรรพากรพื้นที่กรุงเทพมหานคร 22. 4 เมษายน 2559. (Supachai Bumrungsri. Revenue Technical Officer, Senior Professional Level. Area Revenue Office Bangkok 22. 4 April 2016.)

วิริยะ นามศิริพงศ์พันธุ์. ศาสตราจารย์ประจำคณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์. มหาวิทยาลัยธรรมศาสตร์. 9 เมษายน 2559. (Wiriya Narmsiripongpan. Professor of Faculty of Law, Thammasat University. Thammasat University. 9 April 2016)

#### 5. Electronic Medias

Andersantax. “*B In the Know: How Benefit Corporation Legislation is Changing the Business Landscape.*”  
<http://www.andersentax.com/publications/newsletter/february-2015/b-in-the-know-how-benefit-corporation-legislation-is-changing-the-business> (accessed December 3, 2015).

Arkansas Insurance. “*Chapter 75 Hospital And Medical Service Corporations.*”  
<http://www.insurance.arkansas.gov/PandC/Insurance%20Code%20&%20related%20chapters/Chapter%20751.htm> (accessed December 3, 2015).

Baanaree foundation. “Financial Statement of Baanaree foundation.”  
[http://www.baanaree.net/main/index.php?option=com\\_content&view=category&layout=blog&id=74&Itemid=178](http://www.baanaree.net/main/index.php?option=com_content&view=category&layout=blog&id=74&Itemid=178) (accessed June 5, 2016).

- Bangkok Business. “*Good points of social partnerships is to encourage each member to help each other and increase in effective.*”  
<http://www.bangkokbiznews.com/mobile/view/blog/577677> (accessed December 3, 2015).
- Benefit Corporations. “*The Latest Development In The Evolution Of Social Enterprise: Are They Worthy Of A Taxpayer Subsidy?.*”  
<http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1066&context=shlj>  
 (accessed January 6, 2016).
- Benefit Corporation. “*Model Benefit Corporation Legislation with Explanatory Comments.*”[http://benefitcorp.net/sites/default/files/documents/Model\\_Benefit\\_Corp\\_Legislation.pdf](http://benefitcorp.net/sites/default/files/documents/Model_Benefit_Corp_Legislation.pdf) (accessed December 3, 2015).
- Cornell. “*IRC Section 501 - Exemption from tax on corporations, certain trusts, etc.*”  
<https://www.law.cornell.edu/uscode/text/26/501> (accessed December 3, 2015).  
 Cornell. “*IRC Section 170 - Charitable, etc., contributions and gifts*”  
<https://www.law.cornell.edu/uscode/text/26/170> (accessed December 3, 2015).
- Council on Foundation. “*Tax on organization.*” <http://www.cof.org/content/japan#Types> (accessed December 3, 2015).
- Council of foundations. “*Foundation Basics.*” <http://www.cof.org/content/japan>  
 (accessed December 12, 2015).
- Department of the Treasury. “*Publication 557: Tax-Exempt Status for your Organization.*” <https://www.irs.gov/pub/irs-pdf/p557.pdf> (accessed January 5, 2016).
- Department of the Treasury. “*Publication 598: Tax on Unrelated Business Income of Exempt Organization.*” <https://www.irs.gov/pub/irs-pdf/p598.pdf> (accessed January 5, 2016).
- Department of the Treasury. “*Instructions for Form 1120.*” [www.irs.gov/pub/irs-pdf/i1120.pdf](http://www.irs.gov/pub/irs-pdf/i1120.pdf) (accessed January 4, 2016)
- Department of the Treasury. “*Publication 526: Charitable Contributions.*”  
<https://www.irs.gov/pub/irs-pdf/p526.pdf> (accessed December 3, 2015).
- Gene Bulmash. “*A Benefit Corporation Can Have a Positive Impact on the World -- and Still Make a Profit.*” <http://www.entrepreneur.com/article/252259>  
 (accessed December 3, 2015.)

- Grantspace. “*Knowledge Base.*” <http://grantspace.org/tools/knowledge-base/Funding-Resources/Foundations/private-foundations-vs-public-charities> (accessed December 3, 2015).
- Ibis. “*Internet Law - How does Japan Tax Domestic and Foreign Corporations?*” [https://www.ibls.com/internet\\_law\\_news\\_portal\\_view.aspx?s=latestnews&id=2322](https://www.ibls.com/internet_law_news_portal_view.aspx?s=latestnews&id=2322) (accessed December 3, 2015).
- Internal Revenue Services. “*Exemption Requirements - 501(c)(3) Organizations.*” <https://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exemption-Requirements-Section-501%28c%29%283%29-Organizations> (accessed December 3, 2015).
- Internal Revenue Services. “*Life Cycle of a Public Charity/Private Foundation.*” <https://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Life-Cycle-of-a-Public-Charity-Private-Foundation> (accessed December 3, 2015).
- Jaco. “*The Japan Association of Charitable Organization, Charitable and Nonprofit Organization in Japan.*” [http://www.kohokyo.or.jp/english/eng\\_index.html](http://www.kohokyo.or.jp/english/eng_index.html) (accessed December 13, 2015).
- Japan NPO Center. “*Japan NPO.*” <http://www.jnpoc.ne.jp/en/nonprofits-in-japan/about-npo-law/> (accessed December 23, 2015).
- Japan NPO Center. “*Nonprofit.*” <http://www.jnpoc.ne.jp/en/> (accessed December 3, 2015).
- JACO. “*Taxation for Public Interest Corporation and Approved Specified Nonprofit Corporation.*” [http://www.kohokyo.or.jp/english/eng\\_taxation.html](http://www.kohokyo.or.jp/english/eng_taxation.html) (accessed December 3, 2015).
- Japan NPO Center. “*About NPO Law in Japan.*” <http://www.jnpoc.ne.jp/en/nonprofits-in-japan/about-npo-law/> (accessed April 7, 2016).
- Metropolitan Waterworks Authority “*The Difference between Social Enterprise and Social Business.*” [http://www.mwa.co.th/ewt\\_w3c/ewt\\_news.php?nid=3523&filename=](http://www.mwa.co.th/ewt_w3c/ewt_news.php?nid=3523&filename=) (accessed December 3, 2015).
- Minton, “*Charity law*” <https://books.google.co.th/books?id=WcaMhh9Mav8C&pg=PA129&lpg=PA129&dq=public+interest+corporation+japan&source=bl&ots=by0qo5dys9&sig=ZoejHqbkKc6GP3i8zE3Ny8BJLS0&hl=th&sa=X&ved=>

0ahUKEwjIj\_O26rTJAhWPj44KHcUyC\_I4ChDoAQhSMAg#v=onepage&q=public%20interest%20corporation%20japan&f=false (accessed December 3, 2015).

Money. “*How Philanthropy Works.*” <http://money.howstuffworks.com/philanthropy3.htm> (accessed December 3, 2015).

Nonprofit quarterly. “Does My Nonprofit need to pay Tax? Understanding Unrelated Business Income Tax.” <https://nonprofitquarterly.org/2011/12/25/does-my-nonprofit-need-to-pay-tax-understanding-unrelated-business-income-tax/> (accessed June 13, 2016).

Peter Dobkin Hall. “*Historical Perspective on Nonprofit Organization.*” <http://www.hks.harvard.edu/fs/phall/Herman-CH1.pdf> (accessed December 3, 2015).

Public Interest Commission. “*Promoting public interest activities by private sector*” [https://www.koeki-info.go.jp/pictis\\_portal/other/pdf/ENGLISH.pdf](https://www.koeki-info.go.jp/pictis_portal/other/pdf/ENGLISH.pdf) (accessed June 20, 2016).

Revenue Department. “*Revenue Code.*” <http://www.rd.go.th/publish/37764.0.html#section65ter> (accessed December 3, 2015).

Revenue Department. “*Notification of The Ministry of Finance on Income Tax and Value Added Tax (No. 531): Rule on specifying public charity organizations or institutions, clinics and educational institutions under section 47(7)(b) of the Revenue Code and Section 3(4)(b) of the Royal Decree Issued under the Revenue Code Governing Exemption from Value Added Tax (No. 239) B.E. 2534 as amended by the Royal Decree Issued under the Revenue Code Governing Exemption from Value Added Tax (No. 254) B.E. 2535.*” <http://www.rd.go.th/publish/47182.0.html> (accessed November 24, 2015).

Securities and Exchange Commission, Thailand. “*Corporation Social Responsibility (CSR).*” [http://www.sec.or.th/TH/RaisingFunds/EquityDebt/Pages/link-Laws\\_Regulations/CSR.aspx](http://www.sec.or.th/TH/RaisingFunds/EquityDebt/Pages/link-Laws_Regulations/CSR.aspx) (accessed December 3, 2015).

Social Impact Hub. “*Benefit Corporation- a case study of the UD and lesson for Australia.*” <http://www.socialimpacthub.org/wp-content/uploads/2015/01/2014-B-Lab-Report.pdf> (accessed October 2015, 5).

United Nations. *“Handbook on Non-profit Institutions in the System of National Accounts, 2003, at 12.”*

[http://unstats.un.org/unsd/publication/seriesf/seriesf\\_91e.pdf](http://unstats.un.org/unsd/publication/seriesf/seriesf_91e.pdf) (accessed December 15, 2015).





**APPENDIX**

**PROVISIONS OF INCOME TAX LAW OF ASSOCIATIONS AND  
FOUNDATIONS IN THAILAND**

**Section 39** In this Chapter, unless the context otherwise requires:

**“Assessable income”** means income that is taxable under this Chapter. Such income also includes a property or any other benefit received which may be computed into a monetary value, any amount of tax paid by the payer of income or by any other person on behalf of a taxpayer and tax credit under Section 47 Bis.

**“Associated companies or juristic partnerships”** means two or more companies or juristic partnerships having relationship in any of the following manners:

- (1) More than one half of the same shareholders or partners in a juristic person constitutes more than a half of the number of the shareholders or partners in another juristic person;
- (2) The shareholders or partners holding more than fifty per cent of the value of the total capital of a juristic person are also the shareholders or partners holding more than fifty per cent of the value of the total capital of another juristic person;
- (3) A juristic person is a shareholder or partner holding more than fifty per cent of the value of the total capital of another juristic person;
- (4) Persons constituting more than one half of the number of the directors or partners controls the management of a juristic person are also directors or partners who controls the management of another juristic person.

**“Tax year”** means calendar year.

**“Listed company”** means a company listed in the Securities Exchange of Thailand.

**“Investment Management Company”** means a security company licensed to carry on business of investment management under the law governing the control of trading activities that affect public safety and welfare.

**“Mutual fund”** means a body of persons who participate in a fund that is established and operated by an investment management company for a project under the law governing the control of trading activities that affect public safety and welfare.

**“Finance company”** means a finance company or a credit foncier company established under the law governing the control of trading activities that affect public



safety and welfare.

**“Company or juristic partnership”** means a company or juristic partnership established under a Thai or foreign law, and shall include:

(1) A business operating in a commercial or profitable manner by a foreign government, organization of a foreign government or any other juristic person established under a foreign law;

(2) A joint venture, operating in a commercial or profitable manner, between a company or juristic partnership on one hand and companies, juristic partnerships, individuals, non-juristic body of persons, ordinary partnerships on the other hand;<sup>1</sup>

<sup>1</sup>R.D.No.10 Section 5 Bis

(3) A foundation or association carrying on revenue generating business, but does not include the foundation or association as prescribed by the Minister in accordance with Section 47 (7) (b).<sup>2</sup>

<sup>2</sup>R.D.No.10 Section 5 Novem

(4) Any juristic person as prescribed by the Director-General with an approval of the Minister and published in the Government Gazette.

**“Sale”** includes sale with right of redemption, exchange, gift, transfer of ownership or possessory right in an immovable property by any means, and whether with or without any consideration, but does not include:

(1) a sale, exchange, gift or transfer of ownership or possessory right in an immovable property to a government authority or a state enterprise that is not a company or juristic partnership under the rules, conditions and at the price or value prescribed by a royal decree.<sup>3</sup>

<sup>3</sup>R.D.No.121 R.CT.No.4/2526

(2) A transfer of ownership or possessory right in an immovable property to an heir by way of inheritance.

**“Sale price”** includes the price determined by an assessment official under Section 49 Bis.

**“Possessory right”** means possessory right in the holding of an immovable property.

**Section 47** For the assessable income under Section 40, after deduction of expenses under Section 42 bis - 46, the following allowances may be further deducted in order to relieve tax burden:

(7) After the deduction of the allowances under (1), (2), (3), (4), (5), or (6), the taxpayer may further deduct the following donation allowance in an amount actually donated but not exceeding 10 per cent of the remaining amount after the deduction of expenses and allowances:

- (a) Money donated to public hospitals and educational institutions,
- (b) Money donated to charity organizations, hospitals or educational institutions as prescribed by the Minister and published in the Royal Gazette.

**Section 65 Bis** The calculation of net profit and net loss under this Part shall follow the following conditions:

(13) A foundation or association which carries on business that produces revenue shall not include registration fees or maintenance fees from members, or cash or assets received as donations or gifts, whichever the case may be, in the calculation of his income.

**Section 65 Ter** The following items shall not be allowed as expenses in the calculation of net profits:

(3) Expense for personal, gift, or charitable purpose except expense for public charity, or for public benefit as the director-general prescribes with the approval of the minister, shall be deductible in an amount not exceeding 2% of net profit. Expense for education or sports as the director-general prescribes with the approval of the minister shall also be deductible in an amount not exceeding 2% of net profit.

ประกาศกระทรวงการคลังว่าด้วยภาษีเงินได้และภาษีมูลค่าเพิ่ม(ฉบับที่ ๕๓๑) เรื่อง  
 หลักเกณฑ์การพิจารณาประกาศกำหนดองค์การสถานสาธารณกุศล สถานพยาบาลและสถานศึกษา  
 ตามมาตรา ๔๗ (๗) แห่งประมวลรัษฎากร และมาตรา ๓ (๔) (ข) แห่ง พระราชกฤษฎีกา  
 ออกตามความในประมวลรัษฎากร ว่าด้วยการยกเว้นภาษีมูลค่าเพิ่ม (ฉบับที่ ๒๓๕) พ.ศ. ๒๕๓๔  
 ซึ่งแก้ไขเพิ่มเติมโดยพระราชกฤษฎีกาออกตามความใน ประมวลรัษฎากร  
 ว่าด้วยการยกเว้นภาษีมูลค่าเพิ่ม (ฉบับที่ ๒๕๔) พ.ศ. ๒๕๓๕

.....

ตามที่รัฐมนตรีว่าการกระทรวงการคลังมีอำนาจที่จะประกาศกำหนดองค์การ สถานสาธารณกุศล  
 สถานพยาบาล และ สถาน ศึกษา ตามมาตรา ๔๗(๗)(ข) แห่ง ประ ม ว ล รั ษ ฎ า ก ร  
 ซึ่งแก้ไขเพิ่มเติมโดยพระราชบัญญัติแก้ไขเพิ่มเติมประมวลรัษฎากร (ฉบับที่ ๑๕) พ.ศ. ๒๕๐๘  
 และมาตรา ๓ (๔) (ข) แห่งพระราชกฤษฎีกา ออกตามความในประมวลรัษฎากร  
 ว่าด้วยการยกเว้นภาษีมูลค่าเพิ่ม (ฉบับที่ ๒๓๕) พ.ศ. ๒๕๓๔ ซึ่งแก้ไขเพิ่มเติมโดยพระราชกฤษฎีกา  
 ออกตามความในประมวลรัษฎากร ว่าด้วยการยกเว้นภาษีมูลค่าเพิ่ม (ฉบับที่ ๒๕๔) พ.ศ. ๒๕๓๕  
 เพื่อความสะดวกและรวดเร็วและเป็นธรรมเนียมในการพิจารณากำหนดดังกล่าว  
 จึงปรับปรุงหลักเกณฑ์และคุณสมบัติของมูลนิธิหรือสมาคมที่จะพิจารณาประกาศกำหนดเป็นองค์ก  
 ารหรือสถานสาธารณกุศล ดังต่อไปนี้

ข้อ ๑ ให้ยกเลิกประกาศกระทรวงการคลัง ว่าด้วยภาษีเงินได้และภาษีมูลค่าเพิ่ม เรื่อง หลักเกณฑ์การ  
 พิจารณาประกาศกำหนดองค์การ สถานสาธารณกุศล สถานพยาบาล และสถานศึกษา ตามมาตรา  
 ๔๗ (๗) (ข) แห่งประมวลรัษฎากร และมาตรา ๓ (๔) (ข) แห่งพระราชกฤษฎีกา ออกตามความใน  
 ประมวลรัษฎากร ว่าด้วยการยกเว้นภาษีมูลค่าเพิ่ม (ฉบับที่ ๒๓๕) พ.ศ. ๒๕๓๔ ซึ่งแก้ไขเพิ่มเติม  
 โดยพระราชกฤษฎีกา ออกตามความในประมวลรัษฎากรว่าด้วยการยกเว้นภาษีมูลค่าเพิ่ม (ฉบับที่  
 ๒๕๔) พ.ศ. ๒๕๓๕ ลงวันที่ ๑๒ ตุลาคม พ.ศ. ๒๕๓๕

ข้อ ๒

“รายจ่ายเพื่อการกุศลสาธารณะ” หมายความว่า รายจ่ายเพื่อประโยชน์แก่สาธารณะในประเทศไทย  
 เช่น การสงเคราะห์ผู้ยากไร้ ผู้ด้อยโอกาส และหมายความรวมถึงรายจ่ายเพื่อการรณรงค์ ส่งเสริม

หรือปลูกจิตสำนึกต่อสังคม การศึกษา ศาสนา วัฒนธรรม สิ่งแวดล้อม และรายจ่ายเพื่อการสาธารณประโยชน์และรายจ่ายเพื่อการศึกษาและรายจ่ายเพื่อ การกีฬา ตามประกาศอธิบดีกรมสรรพากร เกี่ยวกับภาษีเงินได้ (ฉบับที่ ๔๔) เรื่อง กำหนดรายจ่ายเพื่อการสาธารณประโยชน์ รายจ่ายเพื่อการศึกษาและรายจ่ายเพื่อการศึกษา ตามมาตรา ๖๕ ตรี (๓) แห่งประมวลรัษฎากร ลงวันที่ ๙ กันยายน พ.ศ. ๒๕๓๕

ข้อ ๓ มุลินธิที่ประสงค์จะขอให้พิจารณาประกาศเป็นองค์การหรือสถานสาธารณกุศลจะต้อง มีฐานะเป็นนิติบุคคล และมีคำขอเป็นลายลักษณ์อักษรยื่นต่อกรมสรรพากรเพื่อพิจารณาเสนอกระทรวงการคลัง

ข้อ ๔ ชื่อมุลินธิจะต้องไม่เป็นชื่อการค้าหรือเครื่องหมายการค้า

ข้อ ๕ มุลินธิจะต้องมีวัตถุประสงค์เพื่อการกุศลสาธารณะในประเทศไทยเท่านั้นและจะต้องไม่มีวัตถุประสงค์ใดวัตถุประสงค์หนึ่งที่จะให้ประโยชน์เฉพาะแก่บุคคล คณะบุคคล หรือหน่วยงานใด หน่วยงานหนึ่งหรือเป็นส่วนใหญ่

ข้อ ๖ การดำเนินงานของมุลินธิต้องเป็นไปตามวัตถุประสงค์เท่านั้น และไม่มี การดำเนินงานของคณะกรรมการมุลินธิเพื่อหาประโยชน์ส่วนตัว และไม่มี การใช้ชื่อมุลินธิเพื่อหาประโยชน์ส่วนตัว

ข้อ ๗ กรมสรรพากรจะตรวจสอบเอกสารหลักฐานต่าง ๆ เกี่ยวกับการดำเนินงานของมุลินธินั้นก่อน เช่น งบดุลและบัญชีรายไ้รายจ่ายซึ่งมีผู้สอบบัญชีรับรองแล้ว โดยจะตรวจสอบย้อนหลังหนึ่งรอบระยะเวลาบัญชี ถ้าปรากฏดังต่อไปนี้ จะไม่ประกาศกำหนดให้เป็นองค์การหรือสถานสาธารณกุศล

(๑) รายไ้ของมุลินธิได้นำไปเป็นรายจ่ายเพื่อการกุศลสาธารณะน้อยกว่าร้อยละ ๖๐ ของ รายไ้ทั้งสิ้นในหนึ่งรอบระยะเวลาบัญชีที่แล้วมา หรือรายไ้เฉพาะดอกผลของมุลินธิได้นำไปเป็น รายจ่ายเพื่อการกุศลสาธารณะน้อยกว่าร้อยละ ๖๐ ของรายไ้ดอกผลในหนึ่งรอบระยะเวลาบัญชีที่ แล้วมากรณีตราสารจัดตั้งระบุว่า ให้นำดอกผลมาเป็นรายจ่ายเท่านั้น เว้นแต่กรณีมีเหตุจำเป็นต้อง เก็บสะสมรายไ้เพื่อดำเนินการตามโครงการตาม วัตถุประสงค์ของมุลินธิ

(๒) รายไ้ของมุลินธิจะต้องมิใช่เป็นการไ้มาจากการซื้อขายหรือการไ้ให้บริการโดย มีค่าตอบแทนเป็นปกติธุระ เว้นแต่การซื้อขายหรือการไ้ให้บริการนั้นเกี่ยวข้องกับการศาสนาการศึกษา การสถานพยาบาล หรือการสังคมสงเคราะห์ และไม่นำรายไ้ดังกล่าวไปจ่ายในทางอื่น

(๓) รายจ่ายของมุลินธิเป็นรายจ่ายเพื่อการกุศลสาธารณะน้อยกว่าร้อยละ ๖๕ ของรายจ่าย

ทั้งสิ้นในหนึ่งรอบระยะเวลาบัญชีที่แล้วมา

(๔) รายจ่ายเพื่อการกุศลสาธารณะของมูลนิธิต้องกระจายเป็นการทั่วไป

ข้อ ๘ มูลนิธิที่จัดตั้งขึ้นยังไม่ครบ ๑ ปี จะไม่พิจารณาประกาศให้

ข้อ ๙ องค์กร สถานสาธารณกุศล สถานพยาบาล หรือสถานศึกษาใดที่มีได้มีฐานะเป็นมูลนิธิจะไม่พิจารณาประกาศให้ เว้นแต่จะมีวัตถุประสงค์และการดำเนินงานเช่นเดียวกับมูลนิธิจะพิจารณาประกาศให้เป็นราย ๆ ไป ในหลักเกณฑ์เดียวกันหรือตามที่เห็นสมควร

ข้อ ๑๐ มูลนิธิ องค์กร สถานสาธารณกุศล สถานพยาบาล หรือสถานศึกษาใดที่ไม่เข้าหลักเกณฑ์ตามข้อ ๗ ถึงข้อ ๙ จะไม่ประกาศให้ เว้นแต่รัฐมนตรีว่าการกระทรวงการคลังจะพิจารณาเห็นสมควร

ข้อ ๑๑ มูลนิธิ องค์กร สถานสาธารณกุศล สถานพยาบาล หรือสถานศึกษา ที่ได้รับการประกาศให้เป็นองค์กรหรือสถานสาธารณกุศลแล้ว เว้นแต่สภากาชาดไทย วัดวาอาราม และสถานพยาบาลหรือสถานศึกษาขององค์กรของรัฐบาล จะต้องปฏิบัติตามต่อไปนี้

(๑) ใบรับที่ออกให้แก่บุคคล คณะบุคคล หรือหน่วยงานใดหน่วยงานหนึ่งซึ่งบริจาคเงินหรือทรัพย์สิน ให้ระบุลำดับที่ได้รับการประกาศด้วย

(๒) ส่งรายงานการประชุมใหญ่ งบดุลและบัญชีรายได้รายจ่าย พร้อมทั้งรายงานการดำเนินงานของกิจการสำหรับรอบระยะเวลาบัญชีที่ผ่านมาให้ กรมสรรพากรทราบภายใน ๑๕๐ วันนับแต่วันสิ้นรอบระยะเวลาบัญชี โดยยื่นผ่านสำนักงานสรรพากรพื้นที่ที่องค์กรหรือสถานสาธารณกุศลนั้นตั้งอยู่

ข้อ ๑๒ มูลนิธิ องค์กร สถานสาธารณกุศล สถานพยาบาล หรือสถานศึกษาที่ได้รับการประกาศให้เป็นองค์กรหรือสถานสาธารณกุศลแล้ว ให้สำนักงานสรรพากรภาคที่องค์กรหรือสถานสาธารณกุศลนั้นตั้งอยู่ ดำเนินการตรวจสอบเอกสาร หลักฐานเกี่ยวกับผลการดำเนินงาน หากปรากฏว่าผลการดำเนินงานเข้าลักษณะดังต่อไปนี้ โดยไม่มีเหตุอันสมควรให้แจ้งผลการตรวจสอบให้กรมสรรพากรทราบเพื่อพิจารณา เสนอกระทรวงการคลังเพิกถอนการประกาศต่อไป ทั้งนี้ ให้มีผลตั้งแต่นับรอบระยะเวลาบัญชีถัดจากรอบระยะเวลาบัญชีที่ประกาศเพิกถอนใน ราชกิจจานุเบกษาเป็นต้นไป

(๑) การดำเนินงานขององค์กรหรือสถานสาธารณกุศลไม่ตรงตามวัตถุประสงค์หรือมีการใช้

ข้อมูลนิติดำเนินการเพื่อหาประโยชน์ส่วนตัว

(๒) รายได้ขององค์กรหรือสถานสาธารณกุศลได้นำไปเป็นรายจ่ายเพื่อการกุศลสาธารณะน้อยกว่าร้อยละ ๖๐ ของรายได้ทั้งสิ้นในสามรอบระยะเวลาบัญชีที่แล้วมา หรือรายได้เฉพาะดอกผลขององค์กรหรือสถานสาธารณกุศลได้นำไปเป็นรายจ่ายเพื่อการกุศลสาธารณะน้อยกว่าร้อยละ ๖๐ ของรายได้ดอกผลในสามรอบระยะเวลาบัญชีที่แล้วมากรณีตราสารจัดตั้งระบุว่าให้นำดอกผลมาเป็นรายจ่ายเท่านั้น เว้นแต่กรณีมีเหตุจำเป็นต้องเก็บสะสมรายได้เพื่อดำเนินการตามโครงการตามวัตถุประสงค์ของมูลนิธิ

(๓) รายจ่ายขององค์กรหรือสถานสาธารณกุศลเป็นรายจ่ายเพื่อการกุศลสาธารณะน้อยกว่าร้อยละ ๖๕ ของรายจ่ายทั้งสิ้นในแต่ละรอบระยะเวลาบัญชีและรายจ่ายดังกล่าวได้นำไปเป็นรายจ่ายเพื่อการกุศลสาธารณะน้อยกว่าร้อยละ ๗๕ ของรายจ่ายทั้งสิ้นในสามรอบระยะเวลาบัญชีที่แล้วมา เว้นแต่กรณีมีเหตุอันสมควร

(๔) รายจ่ายเพื่อการกุศลสาธารณะขององค์กรหรือสถานสาธารณกุศลไม่กระจายเป็นการทั่วไป และรายได้ของมูลนิธิได้มาจากการซื้อขายหรือการให้บริการโดยมีค่าตอบแทนเป็นปกติธุระ เว้นแต่การซื้อขายหรือการให้บริการนั้นเกี่ยวข้องกับการศาสนา การศึกษา การสถานพยาบาล หรือการสังคมสงเคราะห์ และไม่นำรายได้ดังกล่าวไปจ่ายในทางอื่น

(๕) องค์กรหรือสถานสาธารณกุศลไม่ปฏิบัติตามข้อ ๑๑

ข้อ ๑๑ องค์กรหรือสถานสาธารณกุศลที่ถูกเพิกถอนการประกาศแล้ว หากประสงค์จะขอให้พิจารณาประกาศเป็นองค์กรหรือสถานสาธารณกุศลใหม่ สามารถยื่นคำขอได้เมื่อพ้นสามรอบระยะเวลาบัญชีนับแต่รอบระยะเวลาบัญชีถัด จากรอบระยะเวลาบัญชีที่ประกาศเพิกถอนในราชกิจจานุเบกษาเป็นต้นไป

ข้อ ๑๔ ประกาศนี้ให้ใช้บังคับตั้งแต่วันประกาศเป็นต้นไป

ประกาศ ณ วันที่ ๑๕ ตุลาคม พ.ศ. ๒๕๕๕

ทนุศักดิ์ เล็กอุทัย

รัฐมนตรีช่วยว่าการฯ ปฏิบัติราชการแทนรัฐมนตรีว่าการกระทรวงการคลัง

(ร.จ. ฉบับประกาศและงานทั่วไป เล่ม ๑๒๔ ตอนพิเศษ ๑๘๖ ง วันที่ ๑๒ ธันวาคม ๒๕๕๕)

## **BIOGRAPHY**

Name	MR. VIRIYA PONHEM
Date of Birth	March 13, 1989
Educational Attainment	2011: Bachelor of Laws, Thammasat University 2014: Master of Laws in Legal Institutions, University of Wisconsin-Madison
Work Position	Revenue Technical Officer The Revenue Department
Work Experiences	2015 - Present: Revenue Technical Officer The Revenue Department 2013 – 2014: Tax and Legal Officer KPMG Phoomchai Tax Ltd. 2012 – 2013: Tax and Legal Officer Deloitte Touche Tohmatsu Jaiyos Advisory Co., Ltd.

=