THE POSSIBILITY OF REFORMING THE VAT REGIME ON COSMETIC MEDICAL SERVICES IN THAILAND

BY

SIRIKORN WECHPAT

AN INDEPENDENT STUDY SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF
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ABSTRACT

Due to technological advancements in the medical field, medical services are no longer provided only for therapeutic purposes, maintenance or restoration of a patient's health, or treatment for diseases and illnesses, as they were in the past. They are now developed to serve as tools to enhance or improve one's appearance for the sole purpose of achieving his or her aesthetic desire. Currently, the cosmetic medical service has become a thriving industry in Thailand, with a growing number of medical facilities offering beauty services or cosmetic procedures for commercial and cosmetic reasons rather than for medical or public health purposes.

However, cosmetic medical services are considered one of the medical services under Section 81(1)(j) of the Revenue Code of Thailand due to the broad scope of the Value-added Tax (VAT) exemption for medical services. This not only causes difficulty and uncertainty in tax interpretations and compliances, but also deprives Thailand of the ability to collect VAT from such unnecessary medical services, which may lead Thailand to lose great opportunities in generating revenues.

Accordingly, this independent study suggests that cosmetic medical services performed primarily for aesthetic purposes or cosmetic reasons should be excluded from VAT relief and be subject to VAT at the standard rate instead. Therefore,

Section 81(1)(j) of the Revenue Code should be amended to limit the scope of VAT exemption on medical services, and secondary legislation should be enacted to serve as guidelines for tax enforcement and interpretation on applications of VAT on cosmetic medical services.

Keywords: Value-added Tax, VAT Exemption, Zero-rated VAT, Cosmetic Medical Services

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Sirikorn Wechpat

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Abbreviations	Terms
ATO	Australian Taxation Office
BAS	Business Activity Statement
BT	Business Tax
CJEU	Court of Justice of the European Union
DBD	Department of Business Development Ministry of Commerce
GDP	Gross Domestic Product
GST	Goods and Services Tax
GSTA	A New Tax System (Goods and Services Tax) Act 1999
IMF	International Monetary Fund
ISAPS	International Society of Aesthetic Plastic Surgery
MFA	Medical Facilities Act B.E.2541 (1998)
MPA	Medical Profession Act B.E.2525 (1982)
NTS	Nation Tax Services
OECD	Organization for Economic Co-operation and Development
TRC	Thai Revenue Code, B.E.2481 (1938)
TRD	Thai Revenue Department
VAT	Value-added Tax
VATA	Value-added Tax Act 1966 of the Republic of Korea
WHO	World Health Organization

CHAPTER 1
INTRODUCTION

1.1 Background of the Problems

Value-added Tax (VAT) is a general consumption tax that is indirectly collected on the value-added generated at each stage of the production and distribution of goods and services.[1] According to its broad base nature, VAT can cover almost every transaction related to the consumption of goods and services. As a result, VAT has become the main source of tax revenue for most countries, especially developing countries[2], including Thailand. In general, every country also uses VAT as an effective tool to shape the economy's direction and reduce social inequality. In other words, governments usually impose VAT on all goods and services to generate revenue for the country. However, VAT may have significant impacts on people's livelihoods, as the burdens are to be borne by final consumers.

Many countries, therefore, provide VAT exemptions and zero-rated VAT as tax relief measures to reduce the tax burden on low-income earners. In particular, goods and services that are necessary for day-to-day consumption, such as foodstuffs and agricultural products, are usually not subject to VAT. Similarly, most services relating to the public's interest, such as education services, domestic transportation services, and medical services, are deemed essential for living and are not subject to VAT as well. In this regard, the governments reduce the costs of specific goods and services to ease taxpayers' burdens and promote the well-being of all citizens.[3]

Since medical services play a crucial role in the public healthcare system and directly impact individuals' health, it is considered a fundamental human right for

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[1] Somchai Richupan, ภาษีมูลค่าเพิ่มสำหรับประเทศไทย (Phasii Mullakhapuem Sumrub Prated Thai) [Value Added Tax of Thailand] (3rd edn.; Thailand: บริษัท พิมพ์ดี จำกัด [Pimdee Co., Ltd.], 1990) 1.

[2] George E. Lent, 'Value-Added Tax in Developing Countries: What Are the Conditions for Successful Implementation?', Finance & Development, 0011/004 (1974) 35.

[3] Liam Ebrill et al., The Modern Vat (Washington D.C.: International Monetary Fund, 2001) 83-85.

every individual to have access to appropriate medical treatment. As such, every country is obligated to provide necessary medical services for its citizens.[4] Correspondingly, in Thailand, the Thai Constitution B.E. 2560 (2017) also grants all Thai citizens the right to the medical treatment. It is the responsibility of the state to implement policies, including tax measures, which ensures timely and efficient access to medical services for the public.[5] In this regard, the VAT exemption serves as regulatory tax relief measure that assists low-income earners in accessing medical treatment at a lower cost and removes barriers to accessing public health and incurring out-of-pocket expenses. As a result, Section 81(1)(j) of the Thai Revenue Code (TRC) provided that medical services provided by a medical facility under the medical facility law are to be exempted from VAT application.[6]

Nevertheless, the present social values of Thai people have significantly shifted from using medical services solely for curing illnesses and maintaining health to also include the improvement of appearances for cosmetic purposes. This emerging field is commonly known as cosmetic medical services or aesthetic medicine. The conservative perception that once viewed cosmetic surgery negatively has gradually faded, and cosmetic medical services have become more accepted and safer due to doctors' experiences, skills, and advancements in technologies.

Furthermore, there is a high demand for cosmetic procedures, as evidenced by the latest statistics collected by the International Society of Aesthetic Plastic Surgery (ISAPS). The data shows that in Thailand, there were a total of 123,228 cases of aesthetic procedures performed solely to improve a person's appearance in

[4] Tengiz Verulava, 'Access to Healthcare as a Fundamental Right or Privilege?', Siriraj Medical Journal, 73/October (2021) 721.

[5] Constitution of the Kingdom of Thailand, B.E.2560(2017), Sec 55

[6] Thai Revenue Code, B.E.2481(1938), Sec 81(1)(j)

2019. Among these cases, surgical procedures accounted for 92,597, while non-surgical procedures accounted for 30,631.[7]

Along with the current trend of beauty services in Thailand, many business operators in the medical field; namely, hospitals and clinics, are paying more attention to providing cosmetic medical services than they have done in the past. The expansion of this business is not limited to hospitals and clinics in urban areas, as many cosmetic clinics are now approaching department stores, community malls, or even stand-alone clinics. According to the Department of Business Development Ministry of Commerce (DBD), the market for this type of business is extremely large with a total registered capital of this type of business alone in 2020 is worth up to 5,003,000,000 baht, with a total annual income of up to 13,619,110,988.71 baht.[8]

Even though specialized medical clinics also include other medical clinics that do not carry out cosmetic related businesses, the top three specialized medical clinics with the highest annual income are Nitipon International Group Co., Ltd., with an income of 1,241,822,897 baht, followed by The Kenuique Medical Clinic Public Co., Ltd., with an income of 1,006,624,921 baht, and Master Style Co., Ltd. (Masterpiece Hospital) with an income of 614,152,753.75 baht.[9] They are the key players who dominate revenue contribution to the market, representing Thailand's biggest aesthetic companies by revenue, representing faster-growth industry. It is expected to provide remunerative opportunities for expansion of the business; hence, it demonstrates that specialized medical practice activities tend to increase rapidly.

Furthermore, an increase in demand for cosmetic procedures and technological advancements in the sector are factors that constantly drive the growth

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[7] International Society of Aesthetic Plastic Surgery, 'Isaps International Survey on Aesthetic/Cosmetic Procedures Performed in 2019', (International Society of Aesthetic Plastic Surgery, 2020) 30.

[8] Dbd Datawarehouse, 'ประเภทธุรกิจ: กิจกรรมคลินิคโรคเฉพาะทาง (Prapeth Thurakij: Kidjakum Clinic Chaprao Tang) [Types of Business: Specialized Clinic] ', <http://datawarehouse.dbd.go.th/business/overview/86202>, accessed Apr 4, 2021.

[9] Ibid.

of the market for cosmetic medical services. This can be seen from the median total revenues across this kind of business have a higher growth rate than the Gross Domestic Product (GDP) [10], even when the country's economy remains stagnant during the post outbreak of the Coronavirus pandemic or COVID-19.

However, according to the fact that such cosmetic medical services are considered as medical services provided by medical facilities, they are not subject to VAT under the Thai legal system. As a result, providing VAT exemption for cosmetic medical services may cause the following problematic issues:

Firstly, under the TRC, Section 81(1)(j) does not provide a specific definition or scope of medical services; rather, the law only requires that the service must be provided by a medical facility to be exempted from VAT. The lack of clear scope and definition of this section leads to the uncertainty in the interpretation of both government officials and business operators regarding whether cosmetic medical services should be considered medical services or other services that are subject to VAT. Due to this uncertainty, some business operators may have difficulty characterizing cosmetic medical services and distinguishing them from fundamental medical services. As a result, such business operators may struggle to comply with the tax law or become exposed to penalties for either overcharging or undercharging VAT to their consumers.

Secondly, providing VAT exemption for cosmetic medical services directly affects the collection of VAT, leading to potential revenue loss for Thailand. This loss occurs because cosmetic medicine is a thriving industry in the country, and Thailand has gained a strong reputation in the field of cosmetic procedures. The ISAPS ranked Thailand as the world’s eighth country with the highest number of cosmetic surgery procedures globally[11] and with the highest number of foreign patients coming to

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[10] Ibid.

[11] Thansettakij Multimedia, 'ศัลยกรรมไทย ไม่แพ้ชาติใด ทะยานติดtop10ของโลก (Sallayakum Thai Maipae Charddai Tayan Tid Top10 Khongloek) [Thai Plastic Surgery Ranked in Top10 World's Best Plastic Surgery]', <https://www.thansettakij.com/content/normal_news/415883>, accessed Apr 15, 2021.

Thailand for aesthetic medicine as well.[12] Moreover, consumers of cosmetic medical services include both Thai citizens and foreigners with relatively high purchasing power compared to consumers or patients of other medical services. As a result, exempting cosmetic medical services from VAT can significantly impact Thailand's potential income from this service, which generates extensive revenue for the country.

Thirdly, it may cause unfairness against other non-medical service providers. This is because the services of many non-medical service providers, such as spas and beauty institutions, are subject to VAT causing them to bear additional tax burdens while the nature of cosmetic medical service is also for beauty enhancement rather than medical necessity of therapeutic purposes. Accordingly, such cosmetic medical services can be perceived as providing services that are unnecessary. Furthermore, cosmetic medical services also engage in competitive activities similar to other non-medical service providers, such as promotions and giveaways. As a result of these activities, the business of cosmetic medical services is relatively similar to the business of other non-medical service providers. Exempting cosmetic medical services from VAT could create an imbalance in tax treatment, favoring cosmetic medical services over other non-medical service providers, which may cause unfairness in the market.

For these reasons, the author is interested in researching whether such cosmetic medical services should be subject to VAT or not by using a comparative law approach. This approach aims to gain a better and more precise understanding of the legal concept of VAT and good tax principles, as well as to be able to propose practical solutions for the issues raised above. Additionally, the author hopes this study will also be useful to the Thai Revenue Department (TRD) in developing appropriate tax measures to cope with the current situation and prevent Thailand from suffering further revenue losses in the future.

1.2 Objectives of the Study

This independent study has the following four objectives:

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[12] International Society of Aesthetic Plastic Surgery (n 7) 30.

(1) To study and determine whether cosmetic medical services provided by medical facilities should be subject to VAT and, if so, in what manner and to what extent.

(2) To study the rationale behind VAT exemption on cosmetic medical services provided by medical facilities under Thai laws, as well as the tax rulings or the TRD's interpretations, and to comprehend the problems and loopholes under Thai laws.

(3) To study the rationale behind Australia's Goods and Services Tax (GST) regime and the Republic of Korea's VAT regime, and their respective current legal frameworks governing tax collection on cosmetic medical services.

(4) To analyze pros and cons, synthesize lessons learned and propose suitable solutions for Thailand.

1.3 Research Methodology

The main research method used in this independent study is based on documentary research, which includes Thai and foreign textbooks, theories, statutory laws, practices, journals, theses, research articles, court judgments, publications by researching from the library and database systems on the internet network. Comparative studies will also be conducted to address the main research question whether Thailand should impose VAT on cosmetic medical services, and, if so, to what extent, The study also aims to propose possible solutions for developing VAT policies and regulatory frameworks in Thailand.

1.4 Hypothesis

Thailand loses a tremendous amount of revenue due to VAT exemption under Section 81(1)(j).[13] The broad definition of "medical service" under the TRC encompasses all medical treatments, including cosmetic procedures, as long as they

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[13] Thai Revenue Code, B.E.2481(1938), Sec 81(1)(j)

are provided by a medical facility, regardless of whether such services are not genuinely medical treatment, which is inconsistent with the rationale and principles of VAT exemption. Furthermore, in terms of income generation, it is contrary to good tax principles. Based on this assumption, this study argues that Thailand's VAT regime should be reformed to exclude cosmetic medical services from VAT relief. As a result of such reformation, Thailand would be able to collect VAT on cosmetic medical services, not only generating a significant amount of income for the country, but also promoting fairness among non-medical service providers and medical service providers.

1.5 Scope of the Study

This independent study aims to study Thailand's VAT regime on cosmetic medical services and the selected foreign countries: Australia and the Republic of Korea. It will mainly focus on VAT collection at the standard rate and tax relief measures; namely, tax exemption and zero-rated tax under Section 81(1)(j) of the TRC, A New Tax System (Goods and Services Tax) Act 1999 (GSTA), Subdivision 38-7(2) Health of Australia, and Article 26 of the Value-added Tax Act of the Republic of Korea (VATA).

1.6 Significance of the Study

Based on the comparative studies, this independent study could provide guidelines for improving the Thailand's VAT regime on cosmetic medical services. It demonstrates positive aspects of Australian and Korean laws that could be solutions to Thailand's problem. The study will also analyze issues that arise in the implementation of both countries' legislation to smooth out the implementation of a similar law in Thailand and enable the country to collect VAT on cosmetic medical services accurately and fairly. In addition, the implementation of such law will provide more clarity to taxpayers and taxable persons, allowing them to have a better understanding of their rights and obligations towards VAT remission. In turn, this will also encourage taxpayers and taxable persons to comply with the new tax law and result in the overall economic growth in the country .

1.7 Independent Study Structure and Outline

To achieve the objective of this independent study, this study is divided into six chapters. Chapter 1 provides an overview of the issues. Chapter 2 provides generally accepted theoretical backgrounds on VAT and cosmetic medical services to determine whether cosmetic medical services should be subject to VAT or not. Chapter 3 evaluates the problems of the Thailand's current VAT regimes and identifies specific provisions that prevent Thailand from collecting VAT on cosmetic medical services. Chapter 4 explores how selected foreign laws collect VAT on cosmetic medical services. Chapter 5 will analyze the problem of Thailand's current VAT regime on cosmetic medical services by comparing and using lessons learned from the foreign laws in order to propose possible solutions for Thailand. Lastly, Chapter 6 will be the conclusion and recommendations.

CHAPTER 2
THEORETICAL FOUNDATIONS OF GENERAL CONSUMPTION TAX ON COSMETIC MEDICAL SERVICES

Although general consumption taxes are globally attractive taxes for governments, they are considered regressive taxes, where burdens of which are imposed on final consumers, irrespective of their income. This characteristic of such taxes led to an imbalance of burden between the well-off and the poor. To address this imbalance, governments often offer tax exemptions or apply zero-rated tax for specific goods and services, which are critical to human basic needs. As previously mentioned in Chapter 1 on the background of the problems regarding cosmetic medical services, medical services are no longer limited to the treatment of diseases, but they are also considered as a tool to achieve aesthetic desires. Accordingly, it is debatable whether cosmetic medical services should be considered as a taxable service or not, which would impact the VAT collection on this kind of service. Therefore, it is necessary to understand the relevant principles and the nature of cosmetic medical services, including various arguments, to draw conclusions on whether cosmetic medical services should be subject to tax or not. To draw such conclusion, this chapter is composed of the following sections: (1) Background and Characteristics of Cosmetic Medical Services, (2) Indirect Taxation and Good Tax Principles, (3) Principles of General Consumption Tax and (4) For and Against Arguments for Imposing General Consumption Tax on Cosmetic Medical Services.

2.1 Background and Characteristics of Cosmetic Medical Services

Regardless of race or gender, humans of all ages are likely to be concerned about their appearances and wish to improve their version of beauty, as the desire for beauty in human nature has long existed since the creation of nature.[14] However, the definition of beauty perceived by individual may be different depending on ones' preferences, experiences, cultures, or even normalization of the society. Furthermore, the standard of beauty may change over time. For instance, in classical Greece, beauty was defined as perfection and harmonious proportions. As the renowned Greek philosopher, Plato regarded symmetry and proportion as aesthetic virtues.[15] While individuals in contemporary society are more likely to desire bodily thinness and a V-shaped face, the concept of beauty can vary greatly. In this regard, people may seek several ways to achieve such desired values, such as makeup, hairdressing, bodyweight training, and cosmetic surgery. Nonetheless, it is undeniable that one of the quickest and most efficient ways to permanently alter one's appearance is through cosmetic medical procedures.[16]

Cosmetic medical services, commonly known as aesthetic medicine, are a type of medical and health care service and a subset of a medical discipline that aims to improve or alter an individual's appearances including correcting a structural defect and removing a scar through the use of medical techniques: surgical and non-surgical procedures. Such procedures can be performed on most parts of a patient's body in order to achieve and fulfill the consumer's aesthetic desires and satisfactions.

2.1.1 Historical Development of Cosmetic Medical Services

According to studies, before the cosmetic medical service became a popular industry as it is today, it has been through a very long history, but the exact origin or its birthplace of is still unknown. Some may believe that the birth of cosmetic medicine dated back to ancient times; however, others consider the 19th century as

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[14] Nasrin Nejadsarvari et al., 'Medical Ethics in Plastic Surgery: A Mini Review', *Review Article,* 5/3 (2016) 207.

[15] Fernando Ortiz Monasterio, 'The Concept of Beauty in Different Cultures', in Nicolo Scuderi (ed.), *Interational Textbook of Aesthetic Surgery* (Switzerland: Springer International Publisg, 2016). 3.

[16] Sander L. Gliman, *Making the Body Beautiful: A Cultural History of Aesthetic Surgery* (1st edn.; United Kingdom: Princeton University Press, 1999) 3.

the beginning. In this regard, the following pieces of evidence will trace back and demonstrate how cosmetic medicine evolved into our medical fields:

In general, cosmetic medicine was developed from plastic and reconstructive surgery. In ancient times, all surgical procedures were primarily focused on reconstructive and therapeutic purposes. They were used to treat deep wounds resulting from accidents or to correct congenital anomalies.[17] Perhaps, some people might misunderstand that the term plastic surgery imply massive intervention of artificial substances; however, the term plastic in the ancient times has nothing to do with the plastic we know of today. The term "Plastic" is derived from a Greek term "Plastikos," which means to mold or to give form.[18] Thus, "Plastic Surgery" referred to the practice of molding, rectifying, and reconstructing parts of the body that have been damaged by diseases or injuries.

It can be said that India was the birthplace of plastic surgery as the oldest plastic surgery, which is the reconstruction of noses amputated by war and severe criminal punishment[19], was practiced in ancient India. Around 600BC, a Hindu physician, Sushruta, wrote a compendium of medical treatments and techniques including nose surgery.[20] He was the first person who described how to perform a nose surgery by using a piece of the skin from the forehead or cheek folded down. His method is categorized as reconstructive nose surgery, which was later published in the Gentleman's Weekly by a British surgeon, Joseph Costantine Carpue in 1794. This medical method and technique were later known as the "Indian method," and eventually spread throughout the West and the rest of the world.[21]

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[17] Nejadsarvari et al. (n 14) 208.

[18] A.B. Wallace, 'The History and Evolution of Plastic Surgery', *Res Medica Jouurnal of the Roya Medical Society,* 4/Spring (1965). 7.

[19] Nils Krueger et al., 'The History of Aesthetic Medicine and Surgery', *Journal of Drugs in Dermatology,* 12/7 (2013). 737.

[20] J P Bennett Frcs, 'Aspects of the History of Plastic Surgery since the 16th Century', *Journal of the Royal Society of Medicine,* 76 February (1983). 152.

[21] Ibid.

However, it was not until the 19th century that the plastic surgery, as we know it today, was done for the purpose of enhancing one's appearance or for cosmetic reasons, rather than for reconstructive or therapeutic purposes as it was in the past.[22] Particularly in the 1840s, surgeon Johan Friedrich Dieffenbach, a professor at the University of Belin, drew the line between reconstructive procedures and cosmetic procedures by assigning the term "rhinoplasty" for nose surgery performed solely for cosmetic reasons without any medical reasons involved.[23]

Around the late 19th century and the early 20th century, the knowledge and techniques of cosmetic medicine had been modified and adapted to be used on other parts of the body. For instance, in 1871, Tilbury Fox first described the use of 20% phenol as chemical peeling to lighten the facial and bodily skin.[24] Later, in 1897, Alfred Pousson performed breast reduction surgery for the first time. Whilst the first breast augmentation was performed by Vincent Czernt at the very end of the 19th century.[25] During the early 20th century, Charles Miller introduced certain cosmetic procedures including eyelid surgery, facelifts, and chin augmentation in 1907.[26] At this point, it can be seen that this was a period in which cosmetic medical services first gained its popularity, and many new cosmetic procedures surfaced.

In addition, between the outbreaks of the world wars I and II, a great number of soldiers and civilians were wounded and killed. This put doctors in a position that forced them to learn new surgical and non-surgical techniques at a faster pace to save lives, and also to improve the appearance the human body that had been wounded on the battlefield and by diseases. This was a big challenge for all the medical professions to rehabilitate them to an optimum degree. Consequently, this

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[22] Gliman (n 16) 3.

[23] Ibid. 12.

[24] Krueger et al. (n 19) 737.

[25] Ibid. 737.

[26] Ibid. 738.

might be one of the advances in medical practices that comes resulted from wartime. Such dynamic established many new and significant medical specialties.[27]

In the following years, after both world wars ended, the use of cosmetic procedures expanded beyond medical and reconstructive purposes. Such cosmetic procedures were introduced into the world of show business, with many Hollywood stars and celebrities seeking cosmetic medical services to improve their appearances. Additionally, magazines and newspapers began advertising successful plastic procedures, which increased their popularity and caused cosmetic procedure to play a significant role among those who desired to alter their physical appearances.[28] Furthermore, advancements in technology have accelerated the development of cosmetic procedures to an unprecedented height and brought in modern cosmetic medicine. Nowadays, most cosmetic procedures tend to be smaller or less invasive procedures with minimal risk for the patient, less downtime, but with highly satisfactory results.[29]

2.1.2 Types of Cosmetic Procedures

Turning to modern cosmetic medical services, there are a variety of cosmetic procedures available nowadays. The criteria for classifying such cosmetic procedures can be determined by the medical necessity, for the nature and the techniques used in the cosmetic procedures are as follows:

2.1.2.1 Under Medical Necessity Criteria

In the past, cosmetic medical services were one of the medical services employed in emergency situations where medical treatment was a necessity; however, in recent times, such services are increasingly used solely for cosmetic reasons and can be considered as elective medical procedures. The author has classified cosmetic medical services into two groups based on their medical necessity as follows:

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[27] Wallace (n 18) 10.

[28] Nejadsarvari et al. (n 14) 208.

[29] Krueger et al. (n 19) 740.

i. For Reconstructive and Therapeutic Purposes

In this case, the main reason for having a cosmetic procedure is because of disorder or defect of humans' body and organs caused by these two major factors:

i) Congenital Anomalies and Diseases Factors

Disorders and defects are caused by congenital anomalies considered as birth defects including cleft lip and palate, missing or extra organs, and fused fingers. Furthermore, several diseases and serious illnesses could arise after birth such as tumors, breast cancer, and skin cancer, etc. Therefore, medical professionals must carry out specific procedures, including plastic or reconstructive surgeries, to provide necessary medical treatment, address the disorders, and restore organ functionality as close to normal as possible.

Apart from that, disorders may also develop due to psychological factors or body dysmorphic disorder, where patients become preoccupied with their perceived appearance's defects.[30] In such instances, cosmetic medical procedures may also be necessary to alleviate the distress caused by these psychological issues.

ii) Accidents or Humans' Actions Factors

Moreover, certain disorders and defects can arise from accidents, natural disasters, or human activities, such as car accidents, injuries from sharp objects, severe burns, and scalds. Consequently, cosmetic procedures become essential for wound treatment and scar removal resulting from these factors. Even though the medical procedures being used to treat the patient may be related to cosmetic reasons as consequences after the treatment, the primary reason for such procedures is a medical necessity or a therapeutic remedy to restore both the patients' mental and physical well-being. These procedures are particularly employed in cases where patients have undergone traumatic experiences, and the lingering scars serve as painful reminders of these horrific events.

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[30] Nejadsarvari et al. (n 14) 209.

ii. For Cosmetic Purposes

In contrast to the reconstructive and therapeutic reasons, these cosmetic procedures are also known as elective procedures since they are neither essential, life-threatening, nor required for survival.[31] In other words, to undergo a cosmetic procedure, the service recipient's physical and mental health are required to be in a healthy or normal state at the least. This is to ensure that the patient is capable of fully deciding on or consenting to have cosmetic procedures with consciousness. On most occasion, there are two main reasons why people undergo cosmetic procedures for cosmetic purposes:

i) Dissatisfaction and Attractiveness Factors

The primary reason why people have cosmetic surgery arises from the individuals' dissatisfaction with the imperfections of their appearances.[32] In general, most people want to become more attractive or to be good-looking all the time, so they seek cosmetic procedures as the fastest means to achieve their aesthetic desires and to boost their confidence and self-esteem. Additionally, due to continuously increasing awareness of physical appearances among consumers, social media platforms such as Instagram, TikTok, and Snapchat play a very crucial role in shaping consumers' perception of their looks and creating comparisons between themselves and those influencers who are good-looking and attractive. Consequently, the use of social media is another factor leading consumers into having more cosmetic procedures.

ii) Financial and Economic Factors

Additionally, researchers have discovered another reason people undergo cosmetic procedures that is for monetary benefits as a self-investment, which provides them with significant opportunities in terms of career advancement as well as social acceptance. For example, it is undeniable that certain

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[31] Eva Marie T. Nejar, 'Feassibilitiey of Imposiing an Excise Tax on Cosmetic Procedures', *NTRC Tax Research Journal,* XXVI.4/July-August (2014). 1.

[32] Cressida J. Heyes, 'Cosmetic Surgery and the Televisual Makeover', *Feminist Media Studies,* 7 / 1 (2007). 18.

jobs require applicants to have pleasing appearances, and therefore, applicants for these jobs tend to undergo cosmetic surgery[33] with a belief that that such opportunities far outweigh the cost of cosmetic procedures.

2.1.2.2 Under Cosmetic Procedures' Natures and Techniques Criteria

Turning to another criteria, there are mainly four indications in cosmetic medicine based on the natures and techniques of the procedures as described below:[34]

(1) Surgical Procedures

The most traditional procedure begins with plastic surgery. It is the most common type of cosmetic procedure, which has been widely utilized for a considerable period due to its highly satisfying and dramatic outcomes. However, it is considered to be one of the most dangerous and painful procedures in comparison to other non-surgical procedures or minimally invasive procedures. Therefore, anesthesia and sedation are typically necessary during such procedures. Furthermore, the recovery period following plastic surgery tends to be lengthy. The main purpose of undergoing surgical procedures is to reconstruct or to reshape and resize the given areas of the body that a person is not satisfied with.

Plastic surgeries can be performed in almost every part of the human body as there are many types of surgical techniques depending on the areas and the needs of service recipients. In general, facial areas and body parts are the most common areas in which cosmetic procedures are performed. Several plastic

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[33] Nejadsarvari et al. (n 14) 209.

[34] Wasnoup Wachiramon and Poonkriat Suchonwanich, *Cosmetic Dermatology and Lasers* (Bangkok: Dermatology Departments of the Faculty of Medicine Ramathibodi Hospital, Mahidol University, 2018). 16-18.

surgeries could be performed on facial areas such as blepharoplasty[35], otoplasty[36], rhinoplasty[37], cheek and jaw surgery, chin augmentation, etc. Other areas of the body can be performed through surgical procedures including, but not limited to breast augmentation and reduction, liposuction[38], abdominoplasty[39], buttock augmentation, and even transsexual surgery.

Apart from the traditional surgery, there are several minimally invasive surgeries, which have emerged as a result of technological advancements. These procedures are designed to reduce the aggressiveness of the wounds compared to the traditional surgical procedures such as hair restoration[40], a non-surgical facelift, a non-surgical fat reduction, etc.

(2) Injection

An injection is a non-surgical procedure that involves the injection of medical-grade substances into various areas of the body to achieve desired results. For instance, substances like vitamins, fat, collagen, etc., can be injected into

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[35] Blepharoplasty, as known as eyelid surgery, can be performed on either the upper or lower eyelids or both, as well as the surrounding area of the eyes, to enhance the eyes' overall appearance and make them more cheerfully youthful and harmonious with the face.

[36] Otoplasty, commonly known as ear surgery, is a surgical procedure that can reshape including size and position or proportion of the ears, and also can reconstruct the missing parts of ears caused by congenital anomalies and injuries.

[37] Rhinoplasty, generally known as nose surgery or nose job, is a procedure that alter the external shape of the nose by increasing and reducing its size and removing a nasal tip in order to achieve facial harmony and can be performed to reconstruct nose injuries and correct breath difficulties.

[38] Lipoplasty, as known as liposuction, is a surgical procedure that involves the removal of unwanted fat deposits from a specific area in order to reshape, firm that part of the body resulting in an improved body contour and proportion and enhancing self-image.

[39] Abdminoplasty is tummy tuck surgery that aims to enhance the overall appearance of the abdominal area by removing unwanted excess fat and loose skin and firming up weakened muscles from pregnancy or weight reduction.

[40] Hair restoration, also known as hair transplantation, is a minimally invasive surgery that extracts healthy hair follicles from the donor area and transplants them to bald or thinning hair areas of the scalp in order to restore and stimulate hair growth.

the human body, but the most commonly used injectable substances in cosmetic medicine are Soft Tissue Fillers and Neuromodulators.[41] These injections are used to enhance and rejuvenate the appearance of specific facial features and muscles, providing a more youthful and refreshed look.

(3) Laser and Energy-Based Devices

Indeed, advancements in technology have led to the development of various medical devices for cosmetic procedures, with laser and energy-based devices being particularly prominent in dermatologic and cosmetology treatments. These devices offer highly effective solutions for a range of cosmetic concerns.

For instance, skin resurfacing laser is a procedure that utilizes light and ultrasound radiofrequency to address skin imperfections such as scars, blemishes, wrinkles, fine lines. They also help tighten skin pores and promote skin rejuvenation. The procedure stimulates the body's natural collagen production, leading to the growth of new skin cells while removing dead skin cells, resulting in a more youthful and refreshed appearance.

Hair removal laser is a non-invasive procedure that effectively removes unwanted hair from various areas of the body. The concentrated light targets and damages hair follicles, inhibiting or slowing down future hair growth. This procedure is widely used for hair removal purposes and can also be utilized to address concerns related to underarm sweating and undesirable body odor.

Overall, these laser and energy-based devices have become valuable tools in the field of cosmetic medicine, offering patients effective and efficient solutions for their cosmetic needs.

(4) Cosmeceutical Therapies

Besides the ongoing improvement of laser and energy-based devices, cosmeceutical therapies are another result of technological and scientific

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[41] Suntharin Sukkasem, 'Attitue Towards Facial Cosmetic Surgery and Factor Affecting Consumer Behevior Towards Facial Cosmetic Surgery among Young People Aged in Bangkok.', (Thammasat University, 2013). 14.

advancements that have become very popular these days. In general, cosmeceutical treatment is a non-invasive procedure that combines cosmetic medical grade products with new medical and cosmetic devices or other health care instruments and techniques to enhance one's appearance and to maintain healthy skin. In other words, it is a combination of medical and cosmetic services that offers a novel type of therapy with a pain level that can be easily tolerated, while also being one of the safest procedures available in the market.[42] These cosmeceutical procedures are including, but not limited to Mesotherapy[43], Dermabrasion and Microdermabrasion[44], HydraFacial[45], Chemical Peels[46], Micropigmentation[47], etc.

2.1.3 Types of Service Providers of Cosmetic Medical Services

Most cosmetic medical services are provided by private sectors, which can be divided into two main types of services providers, including medical and non-medical sectors.

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[42] Joy D. Wisniewski, Dana L. Ellis, and Mary P. Lupo, 'Fafial Rejuvenation: Combining Cosmeceutical with Cosmetic Procedures', *Cosmetic Dermatology,* 94/September 2014. 123.

[43] Mesotherapy is a minimally invasive technique that uses micro-injections of vitamins, antioxidant, mineral, plant extracts and other essences into subcutaneous fat for tightening and rejuvenating the skin.

[44] Dermabrasion and Microdermabrasion are the treatments that lightly rub your skin with an abrasive instrument, removing the thicker, or outer layer of the skin in order to smooth, rejuvenate, and stimulate the growth of new healthy skin.

[45] HydraFacial is a facial treatment that use a vortex swirling device to exfoliate, detox, and hydrate the skin, resulting in healthier skin.

[46] Chemical Peel is a use of a chemical resolution peeling the damaged outer layer of the skin in order to improve the appearance and texture of the skin to become smoothly and evenly toned.

[47] Micropigmentation is a permanent makeup technique that involves tattooing onto these common areas, such as the lips, eyebrows, and scalp, in order to change their shapes and appearance. Furthermore, it can be used to conceal any scars as well.

2.1.3.1 Non-Medical or Cosmetic Sectors

Operating a business in this line of service typically involves providing beauty and cosmetic services under the supervision of national authorities or the Ministry of Public Health of each country. This ensures that the services providers meet the standards that are safe and hygienic for consumers' health and will not cause any physical harm to consumers. [48]

However, due to the non-hazardous nature of such services, such as a health spa, a massage parlor, and a facility that provides weight loss services, the laws do not require these services to be performed by medical professionals. To illustrate, non-medical sectors cannot provide surgical procedures, but they can offer certain types of laser and cosmeceutical procedures like facial massage and cosmeceutical treatments, light chemical peels, and micro-pigmentation. These procedures are generally not specialties exclusive to the medical sector or physicians only; they can also be provided by other wellness and spa institutions, laser therapists, and other beauticians as well. However, because the scope of the provision of these beauty services is limited, and they cannot perform any medical practices such as surgical procedures, the process of obtaining authorization to operate these types of businesses is similar to that of any other business, as authorizations are granted by the Department of Business Development (DBD) of each country.

2.1.3.2 Medical Sectors

Apart from cosmetic sectors, another type of service provider or business operator is medical facilities. To establish this kind of business, a license to operate a medical facility from the Ministry of Public Health is required since the nature of the services under this type of business requires specialized medical knowledge. Therefore, they must be performed by or under the supervision of a licensed medical practitioner. Additionally, such providers must also adhere to medical ethics and professional standards, including country-specific regulations and qualifications for service providers. If the operations do not comply with the

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[48] Ladawadee Pattanaprasith, ' Legal Measures to Protect Consumer Rights Regarding Beauty Parlor and Sliming Services Center in Thailand', (Chulalongkorn University, 2013) 35-36.

professional standards, the medical practitioner will be held liable and subject to punishment as stipulated by the Medical Council of the country. [49]

For instance, in Australia and Thailand, cosmetic medicine is not recognized as a medical specialty, but rather a subspecialty that is usually practiced in the fields such as dermatology, plastic surgery, general practice, otolaryngology (ENT - ears, nose, and throat), and gynecology. Therefore, being qualified in any of the aforementioned specialties allows practitioners to perform cosmetic or aesthetic procedures as well. While Korean legislation restricts cosmetic procedures to only dermatologists and plastic surgeons who hold a specific medical tourism certificate for international patients[50], certain minimal invasive or non-invasive procedures, including injections and facial cosmeceutical treatments like facial massages can be performed by a registered nurse as they are minimally invasive procedures under the supervision of a licensed medical practitioner.

In Thailand, however, cosmetic surgeons must undergo at least five to seven years of the national training program in plastic and reconstructive surgery, which must be accredited by the Thai Board of Plastic and Reconstructive Surgery or Royal College of Surgeons of Thailand.[51]

Regarding clinical establishments, there are two main types of medical facilities that provide cosmetic medical services, distinguished by the nature of their business operations and management. The first type is a medical facility that admits patients for overnight stays, commonly known as a "Hospital." The second type

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[49] Ibid.

[50] Answer Plastic Surgery, 'Legal Information', <https://answerplasticsurgery.com/legal-information/#:~:text=Answer%20Plastic%20Surgery%20is%20an,doctor(s)%20and%20Dr.&text=Answer%20Plastic%20Surgery%20also%20has,allowed%20to%20take%20international%20patients.>, accessed July 29, 2021.

[51] Society of Plastic and Reconstructive Surgery Of Thailand, 'กว่า 400 สมาชิก มาตรฐานหนึ่งเดียว (Kaw 400 Samachick Madthatan Neung Deaw) [More Than 400 Members One High Standard]', <https://www.thprs.org/index>, accessed June 2, 2021.

is a medical facility that does not admit patients for overnight stays, referred to as a "Clinic".[52]

A hospital is a medical facility that allows for overnight admission and provides accommodations for convalescence, surgeries, and medical procedures. It typically includes both in-patient and out-patient services. To be classified as a hospital, it must consist of these types of medical specialties namely, Internal Medicine, Plastic Surgery, Pediatrics, Obstetrics, and Gynecology.[53] In this regard, both public and private hospitals have the capability to provide cosmetic medical services through their plastic surgery departments. However, in practice, public hospitals usually provide such services only when there is a medical necessity or for reconstructive and therapeutic purposes only. Most cosmetic procedures solely for cosmetic or aesthetic reasons are usually provided by private hospitals. Recently, many private hospitals have turned their focus to exclusively providing cosmetic medical services to establish themselves as specialized aesthetic hospitals such as Lelux Plastic Surgery Hospital, Yanhee Hospital, Skin Hospital (Asoke), and Bangmod Hospital, or even establishing cosmetic surgery departments in hospitals like Pride Clinic by Bumrungrad International Hospital.

In terms of small businesses, which are very popular these days, a clinic is a medical facility primarily designed to provide elective surgical and non-surgical cosmetic procedures to out-patients, with the expectation of a normal recovery process. In this light, cosmetic procedures can be provided by both primary care clinics and specialized clinics, especially dermatology clinics and specialized cosmetic clinics. Regarding primary care clinics, this type of clinic usually focuses on a wide range of general therapeutic and preventive healthcare services. While they may offer some cosmetic procedures, these treatments are usually less complex, such as injections and cosmeceutical procedures. On the other hand, specialized clinics are

[52] The Medical Facility Act, B.E. 2541(1998), Sec 14

[53] The Ministerial Regulation Prescribing Requirements of Medical Facilities and the Nature of Characteristics of Medical Services B.E. 2558 (2015), Sec 2

highly experienced and experts in dermatology and cosmetic medicine such as Meko Clinic, Nitipon Clinic, Rajdhavee Clinic, The Klinique, and Siam Laser Clinic.

2.1.4 Nature of Business Activities and Consumer Groups of Cosmetic Medical Services

2.1.4.1 Marketing Activities

As can be seen, the cosmetic medical industry is predominantly served by private medical facilities, which are experiencing rapid growth and increasingly profitable these days. As they constantly run their marketing campaigns, including promotional offers, discounted pricing packages, free trial treatments, and advertisements to maintain a competitive advantage over their competitors in the growing market. Such commercial characteristics distinguished these types of services from fundamental medical services.[54]

2.1.4.2 Consumer Groups

According to ISAPA's global statistics on cosmetic procedures, the most active age group for cosmetic medicine is currently between 19 to 65 years old, comprising of two age groups: 19 to 34 years old and 35 to 50 years old groups.[55] The younger group aims to beautify or enhance their facial features, while the older age group is more interested in overall rejuvenation procedures. Furthermore, in terms of gender, it can be found that the majority of consumers are women, accounting for approximately 86.9% of the current market share. Men represent around 13.1% of consumers seeking cosmetic medical services.[56] By demographic segmentation, both local and foreign consumers are the target group for the cosmetic medical services in which they are in the middle to high-income groups, owing to the high cost of these types of services.

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[54] Nejadsarvari et al. (n 14) 209.

[55] International Society of Aesthetic Plastic Surgery (n 7) 49.

[56] Ibid. 48.

2.2 Theoretical Foundations of General Consumption Taxes on Cosmetic Medical Services

Considering the aforementioned characteristics of cosmetic medical services, it is clear that cosmetic medical services are not regarded as fundamental medical services due to the different objectives where cosmetic medical services are usually provided solely for cosmetic purposes these days. And because there are no therapeutic, constrictive, and preventive purposes involved, they are not considered as medically necessary. As a result, many countries have begun to impose consumption taxes on these medical services to generate more revenue to cover more of the government's expenditures instead.

In this section, the author deems that it is necessary to understand the general concepts of indirect taxation, goods tax principles, and general consumption taxes to comprehend the rationale behind taxing cosmetic medical services.

2.2.1 Indirect Taxation

Taxation is a compulsory payment imposed by the governments[57] as a fiscal tool to generate revenue from their citizens. Although taxpayers may not directly benefit from the taxes they pay individually, taxation is essential to support the country's expenditures, especially for public purposes like rehabilitation, protection, and maintaining peace, as well as promoting overall well-being and development.[58] For example, the state allocates funds to provide essential services such as social security, education, and welfare that cannot be efficiently provided by the private sector. In addition, taxes have become crucial tools in creating equity through income distribution, controlling people’s consumption, and to shaping

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[57] Geoffrey Morse and David Williams, *Davies : Principles of Tax Law* (6th edn.; United Kingdom: Sweet & Maxwell Limited, 2008). 3.

[58] Supphalak Phinitphuwadon, กฎหมายภาษีอากร (*Kodmaii Phasii Arkorn) [Tax Law]* (5th edn, บริษัท สำนักพิมพ์วิญญูชน จำกัด [Winyuchon Publication House] 2020). 27.

economic direction and stability.[59] The state can implement tax measures to relieve the tax burden of the taxpayers or to encourage specific types of consumption that correspond to government policies.

In fact, there are several types of tax measures that governments may impose to collect revenue from their citizens. Direct taxes are levied directly from individuals or entities based on their income, profits, or wealth. Examples of direct taxes include personal income tax, corporate income tax, and property tax.

On the other hand, indirect taxes are not directly levied from the individual or entity that bears the economic burden of the tax. Instead, these taxes are imposed on the sale, production, consumption, or import of goods and services. The burden of the tax is ultimately passed on to the final consumer or purchaser of the goods or services, making it an indirect way of collecting revenue for the government. Common examples of indirect taxes are general consumption taxes such as Value-added Tax (VAT) and Goods and Services Tax (GST), as well as specific consumption taxes like customs duties and excise taxes.

2.2.1.1 Forward Tax-Shifting Principle

According to the forward tax-shifting principle, it is the mechanism under indirect tax that allows business operators and services providers to increase the prices of their goods or services to transfer the tax burden to the next level of the supply chain or ultimately to the final consumers. [60] This forward shifting of the tax is a common economic response by business operators and services providers to protect their profit margins and avoid absorbing the full impact of the tax increase. Furthermore, it is relatively easy to administer and collect, as the

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[59] Sumet Sirikunchoat, ภาษีอากร ตามประมวลรัษฎากร *2560 (Phasii Arkorn Tam Pramuen Ratsadakorn 2560) [Taxation According to Revenue Code 2017]* (2nd edn.; Thailand: หจก. เรือนแก้วการพิมพ์ [Ruenkaew Printing Limited Partnership], 2017). 2.

[60] Tudsanee Leungreungrong, ความรู้ทั่วไปกฎหมายภาษีอากร ตามประมวลรัษฎากร พ.ศ. *2562 (Kwarmroo Tuapai Kodmai Phasii Arkorn Tam Pramuan Ratsadakorn 2019) [General Concept of Taxation under Revenue Code 2019)* (5th edn.; Thailand: บริษัท กรุงสยาม พับลิชชิ่ง จำกัด [Krungsiam Publishing Co.,Ltd.], 2019). 4.

responsibility for collecting tax on behalf of the government falls on business operators and services providers rather than individual taxpayers. In other words, the mechanism facilitates and alleviates the burden of collecting such taxes on the Government.

At this point, the main difference between direct and indirect taxes is tax liability, as the direct tax does not allow a taxpayer to shift his tax burden to others; the tax burden falls on the same person. In contrast, the indirect tax, allows a taxable person to shift the burden of taxation to other taxpayers or final consumers. Aside from that, tax rate is another distinction between these two types of taxes, with progressive tax rates typically applied to direct taxes and regressive tax rates applied to indirect taxes.

In this regard, as the general consumption taxes are one of the indirect taxes applied to a comprehensive broad base with a constant lower tax rate that enables the government to generate substantial tax revenue with a minimal impact on taxpayers, as opposed to a higher income progressive taxe rate. Consequently, general consumption taxes, including VAT and GST, become another major source of tax revenue for many countries around the world.

2.2.2 Good Tax Principles

Taxation, in principle, must be statutory and not arbitrary, as it directly affects not only the economy but also the taxpayers' rights and obligations. Therefore, the principles of good taxation; by Adam Smith, a Scottish economic philosopher, must be considered. In this work *"The Wealth of Nations",* he wrote about the relationship between taxes and social structure. It became a sociological framework for taxation and guide policymakers in choosing appropriate tax systems that align with the existing administration, tax regime, and social structure of each country.[61] Additionally, his four fundamental principles of good taxation, which are tax certainty, tax equity, tax convenience, and tax efficiency, had been widely recognized in most countries. Later, as economic, and social conditions evolved, taxation became increasingly significant, and the principles of good taxation were developed as

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[61] Phinitphuwadon (n 58) 204.

necessity to increase people's willingness to pay taxes and improve the effectiveness of tax enforcement.[62]

However, since there are many aspects in goods tax principles depending on the area or kinds of taxes to comply with, this independent study aims to study on general consumption taxes, the author has chosen to only explain good tax principles relating to VAT and GST, which can be found below:

2.2.2.1 Tax Certainty

In terms of legal certainty, tax law should be undoubtedly clear. The definition and scope of the provisions must be sufficiently defined to avoid the need for further interpretation. Additionally, the language used must be easily understandable by the general public and set forth a clear step-by-step procedure for taxation. In other words, the clearer the provisions are, the less potential for disputes could occur. Principally, any legislation that can affect the rights and obligations of individuals must be very certain. In this sense, tax laws, being one of the laws that mostly impact individuals' rights and obligations, must be clear, unambiguous, rational, and not arbitrary.[63] For ease of understanding, the author divides tax certainty into the following aspects:

(1) Certainty of Incidence

Tax law should be certain in the light of tax units, which include taxpayers and taxable persons. This means that the law must specify who bears the tax burden or who is responsible for collecting and remitting taxes to the Revenue Department. Clear specification or response should facilitate both the tax units and the government or tax authorities, in terms of tax law interpretation. If the law clearly sets forth or defines the scope of responsible persons who are subject to tax laws, it may potentially reduce the problematic interpretation regarding tax obligations. However, when an additional interpretation is required, the officers shall

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[62] Sirikunchoat (n 59) 2.

[63] Phinitphuwadon (n 58) 204.

exercise their discretion to correctly interpret the law in accordance with its spirit to ensure justice for all parties involved, and not just for the benefits of the country. [64]

(2) Certainty of Liability

In addition to the certainty of incidence that enables us to determine who is legally bound by tax laws and is responsible for paying taxes, another certainty that tax law should have is the certainty of tax liability, which allows those who have a tax burden to be well informed of their tax obligation in the first place. In this sense, the state must clearly set forth the unambiguous rules regarding tax compliance, which includes the taxable amount, tax base, tax rate or any methods in tax processing; tax assessment methods and tax collection methods, which specify the due date, time, and place of tax payment so that taxpayers and taxable persons can prepare themselves to comply with the law and can calculate the taxable amount that they have to pay on a certain date, time or location properly.[65]

On the other hand, if such tax collection is inconsistent with the principle of certainty, it may cause inconvenience and trouble for both taxpayers and the government. [66] Even in the case of interpretation issues, when the law does not clearly define the scope of taxation, it may mislead the public and create problems with interpretation that lead to numerous tax disputes. This includes cases where the law defines the legal subject matter in a manner that is too broad. As a result of interpreting ambiguous or unclear provisions, taxpayers with equal or similar economic status may face disparate tax treatment; for example, some people may be required to pay more tax while others are only required to pay fewer taxes due to different discretion exercised by different officers based on their personal perspectives and experiences.

Furthermore, the situation could worsen if some officials exploit the ambiguity in interpreting the law in favor of taxpayers who provide them

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[64] Sarayuth Wuthyaporn, 'ความรู้ทั่วไปเกี่ยวกับกฎหมายภาษีอากร (Kwamroo Taupai Kiewkub Phasee Arkorn) [General Principle of Taxation]', ดุลพาห (*Dunlaphaha),* 3 (2005). 46-47.

[65] Morse and Williams, (n 57) 7.

[66] Richupan (n 1) 86.

with monetary and non-monetary benefits in exchange. In such cases, tax uncertainty can cause difficulties for officials to perform their work properly.[67] However, if the state provides a clear guideline that is easy to understand for the taxpayers to acknowledge their taxability and rights in the very first place, it may encourage taxpayers to be responsible for their tax burden, prevent officials from abusing their powers[68], and ensure that the state collects the maximum amount of tax possible.

2.2.2.2 Tax Equity

Generally, taxation must be fair and equal; otherwise, tax evasion would easily arise because, as without tax equity, there will be no voluntary cooperation from taxpayers. This lack of fairness can lead to numerous conflicts in society, particularly in terms of social inequality. Furthermore, this principle is not only ethically desirable, but it also helps reduce conflicts in society as well. Under this principle, it can be divided into two main parts:

(1) Principle of Absolute Equity

Under this principle, taxpayers must pay taxes equally. If the purpose of taxation is to support the government expenditures, the amount of money that each taxpayer needs to pay is equal to the total government expenditure divided by the number of taxpayers.[69] However, this approach does not take into account the ability to pay of each taxpayer, as some may have higher incomes while others have lower incomes. As a result, the tax burden can be disproportionately placed on low-income earners, potentially causing financial difficulties for them. In some cases, the amount of tax they have to pay may even exceed their income, leading to a financial crisis for certain taxpayers.

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[67] Sumet Sirikunchoat, ภาษีมูลค่าเพิ่ม : หลักการและหลักปฏิบัติในทางระหว่างประเทศ (Phasii Mullakhapuem : Lakkarn Lae Lakpatibut Nai Thang Rawang Prated) [Value Added Tax : Principle and International Tax Guidance] (1st edn.; Thailand: บริษัท สำนักพิมพ์วิญญูชน จำกัด [Winyuchon Publication House], 2016). 45.

[68] Sirikunchoat (n 59) 2.

[69]Somkid Bangmo, การภาษีอากรธุรกิจ(Karn Phasii Arkorn Thurakid)[Business Taxation] (Bangkok: บริษัท ซีเอ็ดยูเคชั่น จำกัด(มหาชน) [Se-education Pub Co.,Ltd], 2020). 11.

(2) Principle of Relative Equity

As mentioned above, to address the disadvantages of the principle of absolute equity, many tax regimes adopt the principle of relative equity, which consists of two main principles:

i) Ability to Pay Principle

Unlike the principle of absolute equity, the ability to pay principal concerns more about each taxpayer's ability to pay at the same amount of money based on a sacrifice basis[70], where fairness can exist in both horizontal and vertical equity. At this point, horizontal equity ensures that the same group of people with the same economic status receive the same tax treatment and are required to pay the same taxes. Whilst vertical equity, individuals with disparate economic status should be treated differently[71], the amount of tax and duty paid should vary according to a reasonable rate. However, determining the fair tax rate and each taxpayer's ability to pay is quite difficult in practice.

ii) Benefit Principle

According to this principle, consumers who benefit from the consumption of goods and services provided by public sectors are required to pay taxes on those goods and services. The acquisition of these goods and services is entirely voluntary. As a result, those who profit from consuming a large proportion of the goods and services produced by the state must pay a higher tax than those who consume less. In other words, the amount of tax due is proportional to the benefit derived from the consumption.

2.2.2.3 Tax Convenience

Taxation must prioritize taxpayer facilitation to the maximum extent possible, which can be achieved through user-friendly filing methods, efficient

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[70] Phinitphuwadon (n 58) 84.

[71] Oecd, 'Fundamental Principles of Taxation', Addressing the Tax Challenges of the Digital Economy (Paris: OECD Publishing, 2014b), Oecd, Addressing the Tax Challenges of the Digital Economy (Fundamental Principles of Taxation; Paris: OECD Publishing, 2014a), Oecd, 'Fundamental Principles of Taxation'. 31-32.

tax assessment procedures regarding time and date, and convenient payment options. These approaches should aim to minimize burdens for taxpayers, such as allowing them to file taxes online or through mobile applications instead of using a paper-based system. Moreover, tax laws should use plain and uncomplicated language that the public can easily understand, while adhering to the principle of tax certainty as well.[72]

2.2.2.4 Tax Efficiency

In this light, good taxation must be cost-effective, taking into account not only the cost of tax administration but also the cost of taxpayer compliance. Therefore, any taxation process or method must be as low-cost as possible[73] to avoid any unnecessary expenses for taxpayers. Because fees and taxpayer travel expenses, and other difficulties associated with tax payment can create additional burdens for taxpayers on top of the actual tax amount, which may discourage voluntary compliance. Consequently, the state must be concerned about the cost of the tax system as well as the burden placed on taxpayers to ensure the sustainability and benefit of both government and private sectors.

2.2.2.5 Tax Neutrality

Because taxation directly affects the price of goods and services, it is essential for taxation to be designed in a way that is neutral, minimizing unintended effects on taxpayers, and avoiding disruptions to the market mechanism.[74] In other words, good taxation should have no effect on or no distortion on decision making process of consumers in choosing to consume goods and services. It should not impact on the ability of competitiveness of goods and services providers as well. Therefore, it must take economic neutrality into account as much as possible. In this regard, the author would like to divide tax neutrality into two aspects: consumers and business operators, as shown below:

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[72] Phinitphuwadon (n 58) 86-90.

[73] Oecd (n 71) 30.

[74] Sirikunchoat (n 59) 2.

(1) Consumers' Aspect

In this light, imposing a tax on one product or service, but exempting tax of other goods or services that are the same type of goods and services and can be used interchangeably may cause problems in decision-making, which affects the behavior of consumers in purchasing goods and services. This may lead to a distinctive effect that does not incentivize consumers to consume goods and services that are subject to tax. Instead, it turns the consumers to consume other types of goods and services that can be substituted in which such decision may not be made with the consumers' true intention. Whereas economic principles, consumers' decisions about whether to consume or not to consume certain goods and services should be primarily based on market demand and supply, as well as consumer satisfaction.

(2) Business Operators' Aspect

As for business operators, it can be found that imposing a tax exemption on certain business activities may be construed as tax discrimination and may result in unfairness to other business activities that are not exempt. Since business operators who carry out any taxable activities may face the obstacles of trade competition, particularly for the price of the goods and services they provide. This may impact their decision on what types of business activities to undertake, as they might prefer not to carry out the business activities that they are interested in or skilled in simply because such activities are subject to taxes. Rather, they might prefer to conduct other business activities that are not subject to tax or are taxed at a reduced rate instead.

Simultaneously, in terms of business organizations, it can be found that imposing a tax on certain business entities that are distinct from another tax-exempt business entity causes the business operators to be excluded from the tax system and unable to audit such business entities. At this point, many business operators are likely to choose a form of establishment that will provide them with the most tax benefits, although it may not bring any economic benefits either way.

As previously mentioned, regarding the general principles of tax neutrality, it is commonly accepted that the state may use this non-neutral tax policy as a tool to achieve macro-level objectives regarding political and economic policies, such as imposing excise tax and general consumption taxes: VAT and GST on luxury goods and services, whilst providing tax-relief measures for consumers to access certain goods and services that are essential to the well-being and livelihood of the people. Moreover, it can be used to limit and control the consuming behavior of the people or even force them to choose the right or merit consumption of goods and services rather than demerit ones such as liquor, cigarette, tobacco, etc. for the sake of public health. Although such a tax measure may be a distortion of market mechanisms, it is acceptable globally. Still, the state should use such tax measures to a minimum to prevent the destruction of economic neutrality and deadweight loss.[75]

2.2.2.6 Tax Productivity

Since the economic role is becoming increasingly important for the government, it needs a lot of income to support the expenditures of the country. It is undeniable that whenever the government needs more money and collects additional taxes. It seems that the government puts more burden on taxpayers, and they are likely to avoid such tax liability. So, it is necessary to have a good tax system that can generate high income and is designed to cope with current economic situations or even in the future.

To illustrate, it must have a broad base tax system to cover a large number of taxpayers. At the same time, the amount of tax collected on each taxpayer must also be large without imposing a high tax rate, such as income tax, and goods and services tax levied on the unnecessary, which does not affect people's living, including working, consuming, and savings, etc. Furthermore, indirect taxes are the best income-generating tool because taxpayers rarely notice the tax they have to bear. This is quite opposite to direct taxes such as personal income tax and corporate

[75] Sirikunchoat (n 67) 45.

income tax where the taxpayers are aware that such income will be subject to taxation as it is the direct obligation of the taxpayer.[76]

2.2.3 General Principle of Good Tax Principles Regarding Value-added Tax and Goods and Services Tax

Value-added Tax (VAT) and Goods and Services Tax (GST) are taxes that many countries implement to reform their consumption-based tax regime. Both VAT and GST have essentially the same characteristics and key features, with the exception of having a different name and specific rules that each country applies to its tax regime.[77] Furthermore, the reasons for each country's implementation of VAT and GST may differ, the primary reason is to eliminate the cascade tax problems and the distortions of the market mechanism caused by the sales tax regime,[78] which had the same turnover tax characteristic that is taxed on every stage of production and distribution of goods and services. However, it did not allow for the deductibility of taxes paid on previous business acquisitions, resulting in the increasing price of such goods and services.

In other words, VAT and GST are one of the most common forms of general consumption tax. They are indirect taxes that collects the value-added at each stage of the supply chain, from the production of goods and services to their final sale to the consumers. At first, Maurice Lauré, a French economist and secretary of the General Tax Office (Direction générale des impôts), initially introduced the VAT into France in 1954.[79] Since then, many European Union (EU) member countries and several countries have widely recognized and gradually implemented VAT and GST into their

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[76] Phinitphuwadon (n 58) 80.

[77] Pramit Pratim Ghosh, 'Difference between Vat and Gst', <https://tallysolutions.com/gst/difference-between-vat-and-gst/#gref>, accessed Jan 22, 2022.

[78] Stephen Barkoczy, Foundations of Taxation Law (11th edn.; Melbourne Vic Australia: Oxford University Press Australia and New Zealand, 2019). 10-11.

[79] Ibid. 10.

tax regimes[80] because of the following functional key features and the underlying principles of VAT and GST:

2.2.3.1 Taxpayer and Taxable Person

Based on the forward tax shifting principle, general consumption taxes pass tax burden from the business operators to the next consumer. It is a form of tax administration that defines the duty of tax collection to business operators, allowing them to pass such tax burden on to their consumers.[81] Regarding this, the final consumer will be a taxpayer or the person responsible for VAT and GST, as they cannot pass the tax burden on to other consumers.[82]

On the other hand, a taxable person is the registered VAT or GST business operator, who does not have to bear the tax burden but is responsible for collecting taxes from consumers and remitting them to the state. Simultaneously, such taxable person also has the obligation to prepare and submit VAT or GST reports and related documents as required by law. This mechanism not only facilitates tax collection for the state but also assists the government in verifying and preventing tax evasion.

2.2.3.2 Tax Base

VAT and GST are broad-based consumption taxes where governments levy taxes on the expenditure of an individual for the domestic consumption of goods and services including any imported goods and services into the country. Unlike income taxes and property taxes, such general consumption taxes enable the state to comprehensively cover almost all taxpayers because this kind of tax is not based on the wealth or income of the taxpayers but rather on the proportion of the consumption.

Since consumption of goods and services depletes the country's resources, consumers who consume more should pay more taxes to the country in proportion to their consumption. Furthermore, consumption patterns can

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[80] Thomas Ecker, A Vat/Gst Model Convention (1st edn., 25: Ibfd, 2013) 28.

[81] Leungreungrong (n 60) 4.

[82] Ibid.

also reflect the well-being of the people in the country as well as their taxability. In this sense, the governments can observe people's behavior and use VAT as a tool for tax planning in the future, as well as a method of controlling and promoting consumption of the people.

2.2.3.3 Refundable Input Tax Credit System

As mentioned previously, the business operators can pass the tax burden to their consumers, VAT and GST regimes provide a tax credit system, enabling the registered VAT and GST business operators to claim their output tax levied from their consumers offsetting with input tax that they were charged by other operators on the purchases of any goods or services for supply goods and services thereof.

To illustrate, in each tax cycle, if the business operators received an amount of output tax greater than the input tax, they have to pay only the differences. On the other hand, if the input tax is greater than the output tax, the business operators are entitled to claim a tax refund or use the amount of refund as a tax credit for the deduction in the following month. In this regard, the tax credit system functions as one of the significant tools for the government to collect taxes by imposing the obligations to the business operators, which can reduce the cost of tax administration.

2.2.3.4 Calculation Methods

There are several ways to calculate the amount of value-added, but to make it easy to understand the author would like to prescribe only two main types of methods for calculating VAT and GST on a consumption base which are the accounting method requiring calculation and the tax credit or invoice method relying on evidence, which can be explained as follows:

(1) Accounting Method

Under the accounting method, the amount of value-added can be calculated by using equations; namely, subtraction and addition methods:

i) Addition Method

Both VAT and GST can be calculated by adding up the value of input and the profit of the business and multiplied by the tax rate; as a result, it is equal to the amount of value-added. Please note that it seems to be difficult to calculate by this method because the profit needs to be known first so that the value-added can be calculated.[83]

ii) Subtraction Method

Without knowing the business profit, this method allows us to determine the amount of value-added by offsetting the value of output taxes with the value of intermediate input taxes paid in business acquisition and multiplying by the applicable tax rate, which will be equal to the amount of value-added that must be paid.

(2) Tax Credit or Invoice Method

This method requires collecting tax receipts or tax invoices as evidence and is also known as the “Tax Invoice System.” In principle, every purchase must be supported by a receipt or tax invoice, indicating that the sale occurred, and the amount of VAT or GST collected. This enables taxpayers to self-regulate and balance one another in accordance with the self-enforcing principle. To illustrate, business operators require a large number of receipts or tax invoices for purchased items to reduce their tax ability. As the taxable amount of VAT and GST will be equal to the output tax subtracted by the input tax. Therefore, this approach assists governments in identifying the source of the VAT and GST and it is a way to prevent tax evasion by itself.[84]

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[83] Tipwimon Sanubon, 'Value Added Tax on Educational Services : A Comparative Study between Thailand Law and Australia Law', (Thammasat University, 2014). 37.

[84] Boontham Ratchrak, เศรษฐศาตร์ภาษีอากรไทย (Sedthasard Phasii Arkorn Thai) [the Economics of Thai Taxation] (1st edn.; Bangkok: สำนักพิมพ์มหาวิทยาลัยรามคำแหง [Ramkhamhaeng University Press], 2000). 119.

2.2.3.5 Tax Rate

The tax rate of VAT and GST can be imposed in two ways: the case of the single rate and the multiple rates. However, it is often preferred to have a single rate, excluding zero-rating, to simplify management for both government officials and business operators. Nevertheless, some countries may believe that having multiple tax rates provides an excellent opportunity to increase revenue. In this aspect, the governments will impose a standard rate for most goods and services, while providing a reduced tax rate on essential goods and services for daily consumption, particularly benefiting low-income earners. Conversely, an increased rate may be applied to certain unnecessary or extravagant goods and services.

2.2.3.6 Tax Relief

In principle, both VAT and GST are primarily aimed at generating revenue for the country by maintaining as much tax neutrality as possible. Therefore, tax relief measures should be provided only to the extent necessary as they can distort the market mechanism. However, it is undeniable that imposing taxes places a burden on individuals and business operators. Because collecting such general consumption taxes may not be appropriate circumstances, such as difficulty of tax compliance, high cost of collection, and inequity among some groups of people. The governments, therefore, may need to impose tax relief measures to alleviate such tax burden, which can be provided in the form of tax exemption and zero-rated tax as follows:

(1) Tax Exemption

When certain types of a good or services are exempt, no VAT and GST are payable,[85] which means that consumers are not required to pay tax on their consumption of such goods and services. Simultaneously, the business operators of such goods and services are not eligible to register for VAT and GST. As a result, such business operators are not required to collect VAT and GST on behalf of the government and are not required to submit any VAT and GST reports to the

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[85] Kathryn James, The Rise of the Value-Added Tax (New York: Cambridge University Press, 2015). 48.

government. In other words, it is a tax incentive designed to alleviate tax burdens through tax exemptions.

i) Objectives of tax Exemption

In principle, VAT and GST are primarily aimed at generating revenue for the country by maintaining as much tax neutrality as possible. Therefore, VAT and GST exemptions should be provided only to the extent necessary as such exemptions may damage the efficiency and neutrality of the tax regime[86] and distort the market mechanism. However, if the government deems it is appropriate to impose an exemption, it must be consistent with underlying good tax principles and economic objectives such as providing public goods and services throughout social welfares. At this point, each country may impose tax exemptions for different types of goods and services based on its specific needs and priorities, but primarily on the following objectives:[87]

a) Merit Objectives

In practice, governments must take the social constraints into account as well since both VAT and GST collection ultimately results in increased tax burdens for individuals. Since low-income earners may be impacted the most, they may struggle to afford essential goods or even access to services that are necessary for their living such as unprocessed foods, domestic transportation, education service, and health care. This is because such goods and services account for a significant portion of the expense for low-income earners. In this light, the government may need to impose VAT or GST exemptions to reduce the tax burden of those low-income earners. As a result, rather than for commercial purposes, certain types of goods and services serving public interests can be exempted from VAT and GST.[88]

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[86] Rita De La Feria and Richard Krever, 'Ending Vat Exemptions: Towards a Post-Modern Vat', VAT Exemtions: Consequences and Design Alternatives, Februray 1,2013 (2013). 4.

[87] Ibid. 11-33.

[88] Morse and Williams (n 57) 453-545.

b) Technical Objectives

Furthermore, providing VAT and GST exemption is to reduce the tax obligations among related entities; namely, the public sectors and the private sectors, including the business operators and their consumers. It lowers the overall cost of tax collection and simplifies tax administration. Especially in the case of small and medium-sized enterprises (SMEs), the government may find it difficult to collect taxes from them, which are dispersed all over the place and might not be worth the cost of tax administration for tax collection and assessment. At the same time, it lowers the cost of tax compliance for business operators; additionally, private individuals as consumers benefit from such tax exemptions by paying less because they do not have to pay tax.

In addition, because VAT and GST are levied on a consumption-type tax base, governments can use such tax exemptions to promote economic activities that are beneficial to the public as a whole, including but not limited to donations or charity for religion and non-profit organizations, artworks, books and newspapers for promoting cultural and historical aspects of the country. Furthermore, it can be used as another measure for the country to boost and promote international relationships by providing VAT and GST exemptions on goods imported by diplomatic officials.

Last but not least, tax exemptions become particularly important in cases where double taxation is more likely to occur, especially in certain types of services that are similar to labor[89], such as self-employed and professional services, including singers, actors, lawyers, auditors, researchers, and medical practitioners. These services are often challenging to track in terms of business costs, and tax exemption can help eliminate the issues related to double taxation in these sectors.

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[89] Richupan (n 1) 125.

ii) Consequences of Tax Exemption

In the light of tax exemption, certain types of goods and services are not completely free of VAT and GST due to a hidden tax as unclaimed input taxes on the cost of supply, which may be the reason certain countries, including Australia and New Zealand, refer tax exemptions as “Input Taxed Supplies.”[90]

To demonstrate, despite reducing the tax burden on final consumers as taxpayers, such tax exemption may result in business operators not being part of the VAT and GST system. Consequently, these business operators neither have to register nor collect VAT and GST from their consumers. Simultaneously, they are not entitled to claim their input tax, as they are not VAT and GST registrants; therefore, the business operators may have to bear the input tax burden.[91]

However, in reality, many business operators may view the tax burden as a cost of doing business. As a result, they often increase the prices of their goods and services, passing on the hidden tax to consumers in the end. In this regard, it becomes apparent that VAT exemption can only alleviate tax liability partially.

Moreover, the VAT and GST exemptions disrupt the cycle of the tax credit system due to the lack of non-input tax recoverable for business operators as well. Given these considerations, imposing VAT exemption on specific goods and services requires careful deliberation, ensuring that such exemptions are necessary and minimal. It is crucial to strike a balance between reducing tax burdens and maintaining an efficient tax credit system.

(2) Zero-rated Tax

In contrast to VAT and GST exemption, zero-rated VAT and zero-rated GST require business operators to be registered in the VAT and GST system, where they have both rights and obligations as VAT and GST registrants. In this regard, business operators still have to charge VAT and GST on their consumers for the supply of goods and services they provide, but at the rate of 0% instead of the standard or reduced rate.

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[90] James (n 85) 96.

[91] Richupan (n 1) 123.

i) Objectives of Zero-rated Tax

Commonly, many countries impose VAT and GST at the rate of 10% on specific goods and services that are sought to promote. Indeed, this type of tax rate was designed to ease the tax burden on exporters. To be clear, according to the territory principle of VAT, exporters could not refund any input tax in the past, so they had to bear the entire input tax burden, which resulted in widespread dissatisfaction and countervailing duty among countries. Therefore, in line with the destination principle, such zero-rated taxes were introduced to address these issues by allowing exporters, as VAT and GST registrants, to claim the input tax refunds, which lower the exporters' costs and encourage their ability on an international competitive edge.[92]

Later, zero-rated taxes have become another tax measure for governments to alleviate the tax burden on the low-income earners and the business operators who supply essential goods and services to the public such as education and healthcare services due to their capacity to claim tax credits. As a result, this kind of tax measure not only reduces the tax burden of business operators but also reduces the tax burden of consumers, as there is no hidden tax at all.

ii) Consequences of Zero-rated Tax

From the governments' perspectives, providing zero-rated tax may also affect the ability to generate revenue for the country. This is because the country would have to refund the amount of input tax to the business operators, resulting in a potential loss of income for the government. Not only would the country be unable to collect tax on certain goods and services, but the country would also lose income from such tax returns to business operators.

However, it is important to note that the zero-rated tax does not exclude business operators from the VAT and GST system. Instead, it requires them to be registered and file a VAT and GST report regularly. In this regard, this allows

[92] Morse and Williams (n 57) 448.

governments to audit and verify related transactions, potentially identifying additional sources of revenue.

On the other hand, for VAT and GST registrants, business operators can apply for a tax refund by submitting VAT and GST reports, which include tax invoices for the goods and services used in their business, as evidence for claiming input tax the following month. This indicates that neither business operators nor consumers bear any tax burden because this kind of tax rate eliminates a hidden tax on raw materials and each stage of production. Consequently, the cost of doing business on certain goods and services is cheaper, ultimately benefiting consumers.

2.3 For and Against Arguments on General Consumption Taxes on Cosmetic Medical Services

Health care and medical services are fundamental human needs, and the World Health Organization (WHO) requires all countries to provide an efficiently fundamental health care system, including medical services, welfare, and tax relief measures on such services, to eliminate barriers and allow anyone, regardless of race or economic status, to access public health more fairly.[93] In this regard, VAT and GST exemption, as well as zero-rated VAT and GST, are some of the tax relief measures that reduce the consumers' expense of health care and medical services and encourage them to seek necessary medical treatment without facing additional tax costs.

However, as previously mentioned, tax relief should be provided as minimally as possible as it can damage tax neutrality and the government's ability to collect effectively. Therefore, each country must carefully determine the extent or scope of tax relief for medical services, considering their specific needs and priorities, which may vary significantly from country to country depending on what each country deems necessary. In this regard, the WHO does not require all countries to provide tax

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[93] World Health Organization, 'Human Right and Health', <https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health>, accessed May 21, 2021.

relief for cosmetic medical services, as it is widely accepted that cosmetic medical services are distinct from fundamental medical treatments aimed at saving lives; rather, the WHO encourages all countries to increase funding for health by improving their tax collection efficiency.[94]

Based on international standards and best practices, the scope of the medical services of each country providing tax exemptions or zero-rated tax as aids for accessing public health is usually limited to fundamental medical services and healthcare prevention under therapeutic purposes.

Some countries may apply such tax reliefs within the scope similarly to their healthcare insurance schemes, as it is understood that any surgical and non-surgical procedure with mere aesthetic purpose is not considered or listed as medical treatments related to the illness, as the psychic aspect is not taken into the consideration.[95] As a result, such cosmetic procedures that are not having medical necessity are not covered by healthcare insurance scheme and cannot benefit from the tax relief.

While some countries may not rely on healthcare insurance coverage but a levy on their own tax authorities' interpretation and the court's decisions. Likewise, in most European countries, the exclusion of cosmetic reasons from the VAT exemptions is well accepted by the Court of Justice of the European Union (CJEU). Fundamentally, the CJEU ruled that most medical services are not subject to VAT as long as they are primarily intended to diagnose, treat, and cure diseases or health disorders.[96] In other words, medical services must be provided for therapeutic and

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[94] Sarah Russell, 'Who Urges All Countries to Strengthen Health Financing So More People Can Use Services', <https://www.who.int/news/item/10-12-2010-who-urges-all-countries-to-strengthen-health-financing-so-more-people-can-use-services>, accessed May 5, 2021.

[95] Comptafid Benelux Nv, 'Plastic Surgery No Longer Vat Exempt', <https://www.comptafid.be/files/news/03.2016/2016-03-11-e-plastic-surgery-no-longer-vat-exempt.pdf>, accessed May 10, 2021.

[96] Makesworth Accountants Co.Ltd., 'Decisions of the Court of Justice of the European Union (Cjeu) Regarding Vat on Medical Services', <https://makesworth.co.uk/decisions-of-the-court-of-justice-of-the-european-union-cjeu-regarding-vat-on-medical-services/>, accessed June 6, 2021.

preventive purposes to protect, maintain, and restore human health. In this regard, any cosmetic procedure performed for the aforementioned reasons is also VAT exempt. However, if such cosmetic procedures are provided exclusively for cosmetic purposes, they should be subject to VAT.

Furthermore, the CJEU also ruled about the determination of whether or not a cosmetic procedure seems to have done for a therapeutic purpose must be assessed by the medical professionals. As can be seen in the case of Skatteverket v. PFC Clinic AB[97], the court ruled that the patient's subjective perception of the need for plastic surgery is not a key factor in determining whether such services have therapeutic purposes and being exempted from VAT. Rather, the court emphasized that the need for such surgery must be assessed by medical professionals instead. If the medical professionals deem that treatment is performed for therapeutic or constructive purposes, it is not subject to VAT. In contrast, if the medical professionals deem that there is no medical necessity or cosmetic purposes, such procedure is subject to VAT.

Although it is internationally recognized that each country can limit its scope of exemption of VAT and GST, zero-rating VAT and GST, or even exclude cosmetic procedures from its tax relief, there were several arguments for and against the imposition of general consumption taxes on cosmetic medical services, depending on who would be favored or suffer from such imposition. In this case, the imposition of VAT and GST on cosmetic medical services will inevitably affect those involved in this industry, including the government sectors as the tax administrators and the private sectors, which are the service providers and the consumers.

To begin with the government's perspective, this type of taxation is directly beneficial to the state as it enables the government to levy tax on unnecessary medical services that have nothing to do with fundamental medicine as a basis for human needs because the nature and the characteristics of the cosmetic medical service are aimed at enhancing people's appearance to achieve with the consumers'

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[97] Court of Justice of the European Union, Skatteverket v. PFC Clinic AB (c91/12), March 21, 2013.

desire, which can be considered as individually subjective purposes. Instead, taxing cosmetic medical services can generate additional revenue to cover country's expenditures and to support or fund the healthcare programs, which is more consistent with the public good and public health objectives in general. Furthermore, in the light of the enforcement, it can be found that in the early stages of such VAT and GST imposition, there may lead to some uncertainties and difficulties, particularly connorers of tax interpretation and collection on these cosmetic medical services remaining challenges for tax administration. However, many countries have resolved such issues by laying out clear and directional guidelines or issuing regulations on this area.[98]

Turning to the perspective of the private sectors, the imposition of VAT and GST on cosmetic medical services would directly affect the service providers in this industry especially for medical sectors or medical practitioners rendering this kind of services. They may disagree with such tax imposition because it would increase the price of services proportionately to the tax rate, which will have a direct impact on their consumer base and, consequently, on their income. In this regard, the American Medical Association argued that this kind of tax may be discriminatory against women because the government seems to impose an additional burden on the consumers and opposed this kind of tax.[99] Furthermore, imposing this kind of tax may drive local consumers to seek cosmetic procedures in other countries where cosmetic procedures are tax-free.[100] On the other hand, non-medical sectors may be satisfied with this imposition of VAT and GST on the grounds that both VAT and GST must be neutral in its effects on taxable persons and applied equally to comparable goods and services to avoid distorted competition.[101]

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[98] Katja Ylämö, 'The Effect of Valued Added Tax Changes on Health Care Services ', (Unuversity of Applied Sciences, 2016). 28.

[99] J. James Rohack, 'A Dangerous Precedent: The Cosmetic Surgery Tax' (2011) 66 Annals of Plastic Surgery 109.

[100] Ylämö (n 98) 30.

[101] Ibid. 28.

After considering all the theoretical aspects of both VAT and GST, as well as the nature of cosmetic medical services, it is clear that many countries must provide tax relief for medical services for public health purposes, whereas the extent or scope of such tax relief may vary according to their government and economic policies. However, several countries considered cosmetic medical services to be non-essential medical services, which can be excluded from the tax relief. In this regard, the author believes that the benefits of imposing VAT and GST on cosmetic medical services far outweigh the negative impact on providing tax relief on cosmetic medical services because the Government can increase revenue by imposing a tax on cosmetic medical services without jeopardizing people's rights to fundamental medical services.

CHAPTER 3
THAILAND'S VAT REGIME ON COSMETIC MEDICAL SERVICES

After considering the fundamental concepts of VAT and the nature of cosmetic medical services, turning to the next point, this chapter covers the collection of VAT on cosmetic medical services under Thai law. First and foremost, this chapter will describe the tax structure in accordance with the Thai Revenue Code (TRC). Following that, we will go into the detail of current Thailand's VAT regimes on cosmetic medical services including the rulings of Thai Revenue Department (TRD).

3.1 Evolution of Thailand's VAT Regimes and Current VAT Framework

In 1992, VAT was first introduced into the Thailand's legal tax regime due to the impropriety and complexity of a tax based on the consumption called "Business Tax" (BT). At that time, the Thai economy was expanding so rapidly that the existing BT regime might not be suitable for such growth. As it has been found that the BT could lead to tax cascading issues, market distortion, and limitation of tax base coverage. As a result, it could adversely affect the ability to generate sufficient revenue of the country and was not conducive to future economic development. For these reasons, the Ministry of Finance abolished the BT regime and replaced with a VAT regime.[102] The implementation of this VAT regime has been considered to be one of the most significant changes to the Thai taxation regime. Such reform not only allows the taxation regime to be more in line with the current economic situation but also promotes exporting industry and the country's overall development.

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[102] Sirikunchoat (n 67) 11.

3.2 Thailand's VAT Structure

To be able to understand how the VAT regime works under Thai law, the VAT structure is provided below:

3.2.1 Taxpayer and Taxable Person

In principle, taxpayers of VAT are final consumers, who consume goods and services, which are subject to pay VAT.

Meanwhile, taxable persons are responsible persons who have an obligation to collect VAT from their consumers and remit to the revenue department or persons entitled to claim a tax credit in the case that the amount of input tax is greater than the output tax; namely,

(1) Business operators are persons who sell goods or provide services in a business or a professional manner regardless of compensation. At this point, the business operators refer to natural persons including individuals or groups of persons, and any legal entities, not limited to companies, partnerships, or state enterprises.

(2) Importers are business operators or other persons who bring goods into the kingdom for not only commercial purposes but also personal uses.

(3) Specific taxable persons required by law are local representatives of business operators outside Thailand who have an obligation to remit VAT on behalf of such business operators who conduct businesses by selling products or providing services in the kingdom of Thailand as usual.

3.2.2 Tax Base and Tax Rate

In general, VAT is a general broad-based tax designed to cover all taxable sales of goods and services. Therefore, the tax base of VAT in Thailand is based on the consumers' expenditure or the amount of income that the registered business operators received or expected to be received from the sales of goods and the provision of services that are subject to VAT. Besides, Thailand applies a single-rate VAT for all supplies of goods and the provisions of services, including importation.

At present, the applicable VAT rate is 7%. Generally, this standard VAT rate is already added to the price of most supplies of goods and the provisions of services.

3.2.3 Tax Liability

In Thailand, a business operator is required to register for VAT once the tax base or the business operator's income exceeds 1,800,000 baht per year; they are required to submit a VAT registration application (Form Phor.Por.(ภ.พ.)01) within 30 days from the day on which the business operator's income exceeds that amount. However, there is no minimum requirement for the business income, which means that even small business operators who receive less than 1,800,000 baht can register at VAT as well. Once they become a registered business operator, they have the obligation to collect VAT from their consumers and issue a tax invoice to their consumers. Besides, their VAT tax return (Form Phor.Por.(ภ.พ.)30) and payment must be filed and paid every month within 15 days of the following month.

3.2.4 VAT Exemption

VAT exemption is the exclusion of both taxpayers and taxable persons from VAT liability on specific goods and services, causing such business operators as the taxable person, being excluded from the VAT system and not being entitled to input VAT on the cost of supplies used in their business. The TRC provides several VAT exemptions for certain types of business activities, including the provision of sales and services, which can be divided into three main categories:[103]

3.2.4.1 VAT Exemption under Section 81

Section 81 of the TRC provides VAT exemptions on the specific provision of sales and services, which can be divided into three subsections. First, Section 81(1)[104] provides VAT exemption in the case of distribution of non-export

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[103] Chaiyasit Trachutham, คำสอนวิชากฎหมายภาษีอากร (Kumsorn Vicha Khodmai Phasii Arkorn) [Taxation Textbook] (12th edn.; Bangkok: Krungsiam Publishing Co.Ltd.). 671.

[104] Thai Revenue Code B.E.2481(1938), Sec 81 exempts sale of goods and provision of services not for export purposes from VAT as follows:

(a) sale of agricultural products;

goods or services such as sales of unprocessed agricultural products, newspapers, magazines and books, as well as the provisions of transportation, education and medical services. Please notice that Thai law also allows certain business operators prescribed in Section 81(1) from (a) to (f)[105] to register voluntarily at VAT. Apart from this, Section 81(2)[106] and Section 81(3)[107] also provide VAT exemptions for both importation and exportation of certain types of products.

In this study, the author wishes to focus only on the provision of medical services, which are exempt from VAT under Section 81(1)(j) of the TRC, which will be explained in detail in section 3.2.

(b) sale of alive or dead animals;

(j) provision of medical services of health institution under the law governing such health institution;

(k) provision of research or academic services as prescribed by the Director-General with the Minister's approval;

(l) provision of services of library, museum, zoo;

(m) provision of services under employment contract;

(n) provision of services on organizing amateur sports;

(o) provision of services by public entertainer as prescribed by the Director-General with the Minister's approval;

(p) provision of domestic transport;

(r) rental of immovable property;

(s) provision of services of local authority excluding commercial services of local authority or service generating income or benefit whether it is infrastructure business or not;

(t) sale of goods or provision of services of a ministry, department which remit all revenue to the state without deducting expenses;

(u) sale of goods or provision of services for the benefit of religions or public charity in Thailand and profits arising therefrom are not used for other purposes

(v) sale of goods or provision of services as prescribed by Royal Decree;

[105] Thai Revenue Code B.E.2481(1938), Sec 81/3

[106] Thai Revenue Code B.E.2481(1938), Sec 81(2)

[107] Thai Revenue Code B.E.2481(1938), Sec 81(3)

(1) VAT Exemption under Section 81/1

In the case of Section 81/1[108], the law concerns the ease of doing business and the tax burden of a small business. Therefore, the law provides tax relief for a small business under the condition that the income from such business is less than 1,800,000 baht per year. Even if the business operators conduct any business activities such as selling goods and providing services that are subject to VAT or outside the scope of VAT exemption under Section 81, they may obtain VAT exemption under this section.

(2) VAT Exemption under Royal Decree

In the event that the Government deems it necessary to grant VAT exemption for certain types of goods and services other than those prescribed in the TRC, Section 3(1)[109] empowers the Government to prescribe such exemption by issuing a Royal Decree.

3.3 Policy and Legal Framework of Thailand's VAT Regime on Cosmetic Medical Services

Medical services provided by medical facilities are essential to the livelihood and well-being of all people, and the country is required to provide efficient medical services through public or private hospitals and clinics. This is crucial to ensuring the overall public health and safety of the entire population, including legal residents. At the present, the Thai government has taken significant steps to strengthen its public health and social security system by focusing on establishing a health and social insurance system that adequately and equally covers all groups of population. Additionally, efforts are also being made to develop an efficient, modern, and internationally recognized public health system that incorporates both modern medicine and traditional Thai medicine.

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[108] Thai Revenue Code B.E.2481(1938), Sec 81/1

[109] Thai Revenue Code B.E.2481(1938), Sec 3 (1)

Additionally, a social health insurance system has been developed to cover all types of workers, especially informal workers, through the Universal Health Coverage Scheme (UHCS)[110], the Social Security Scheme[111], and the Civil Servant Medical Benefit Scheme,[112] as one of the financial aids enabling all people to access healthcare and medical services. Moreover, various measures are taken to promote health and hygiene for Thai people of all ages in order to reduce the number of chronic diseases[113] and prevent new or re-emerging diseases. [114]

In addition, Thailand provides tax relief in the form of the VAT exemption for medical services to reduce the tax burden associated with medical expenses and ensure that people in financial need can receive proper medical treatment for public health purposes, as described below:

3.3.1 VAT Exemption for Medical Services

Under the TRC, Section 81(1) provides VAT exemption for the supplies of goods and services as follows: (j) the provision of a medical service provided

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[110] The Universal Health Coverage Scheme (UHCS), also known as the 30 baht treats all decease or Gold Card Scheme, is the largest fund in Thailand, established in 2001 by the National Health Security Office (NHSO), that enables the general public to access medical care by paying only 30 baht per visit to a public hospital or a private hospital that participates in this health care program, with the Government covering the remaining costs.

[111] The Social Security Scheme is governed by the Social Security Office under the Ministry of Labor. This scheme is designed to assure the social welfare and health care benefit for the insured employees to relieve their difficulties. This scheme is a funded via a triangular contribution from the Government, employers, and employees. Insured workers may seek medical treatments at either public or private hospitals that participate in this program.

[112] The Civil Servant Medical Benefit Scheme was established to provide a medical welfare system and fund to civil servants and state enterprise employees, as well as their family members, in order for them to receive medical treatments at either public or private hospitals that participate in this program.

[113] Prayuth Chan-O-Cha, คำแถลงนโยบายของคณะรัฐมนตรี (Kum Talang Nayobuy Khong Rathamontree) [Policy Statement of the Council of Ministers] (Thailand: the Council of Ministers of Thailand, 2019). 23-24.

[114] Ibid. 63.

by a medical facility.[115] In this regard, it reduces the cost or expense of medical services so that people can afford and access health and medical services as consumers. At the same time, since medical facilities are not required to register in the VAT system, they cannot charge their customers VAT, and input taxes paid in connection with their supplies cannot be claimed.

3.3.1.1 Definition of Medical Services

Generally, in Thailand, almost every medical treatment provided by a medical facility under the medical facility laws is tax exempt. To illustrate, in order to be exempt under Thai law from VAT, there are two essential elements required as follows:

(1) It must be a medical service.

(2) Such provision of service is provided by a medical facility under the law of a medical facility.

Nevertheless, the TRC itself does not provide any definition of the medical service, we shall consider the term "medical service provided by a medical facility" in the context of the laws applicable to medical facilities, which are the Medical Facilities Act (MFA)[116] and the Medical Profession Act (MPA)[117], as well as other relevant ministerial regulations and notifications.

Under Section 4 of the MFA, the term "medical facility" refers to places, including a vehicle, where healing arts practices, as defined in the law on healing art practices, and medical profession practices, as defined in the law of the medical profession.[118] In conjunction with Section 4 of the MPA, it defines the term "medical profession" as the profession that performs the following procedures on

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[115] Thai Revenue Code B.E.2481(1938), Sec 81(1)(j)

[116] Please note that the Medical Facilities Act B.E.254(1998) governs the standard of operating a medical facility, including, permission and licensing and the duties and responsibility of the services providers.

[117] Please note that and the Medical Profession Act B.E.2525 (1982) governs the standard of the medical professionals, procedures, and the responsible duties of the medical profession.

[118] Medical Facilities Act, BE2541 (1998), Sec 4

human beings: examination, diagnosis, treatment, and prevention of disease; midwifery; and shall include any act of surgical procedure, the application of radiation, the injection of drugs or other substances, and the insertion of any substance into the body for therapeutic purposes, birth control, beautification, or physical fitness.[119]

In this regard, it can be concluded that any procedure performed on the human body by a qualified medical professional for reconstructive, therapeutic, or cosmetic purposes, if performed in a qualified medical facility, including a hospital or clinical license, is considered to be within the scope of medical services provided by a medical facility under Section 81(1)(j) and is not covered by VAT. Consequently, all medical services such as medical treatment, diagnosis, pre- and post-discharge medical consultations, meals, and room rentals for patients are excluded from VAT.

On the other hand, if medical facilities provide non-medical services such as the sale of supplementary foods and operate a business such as a hospital canteen for visitors or non-patients, these services are subject to VAT.[120] Or even in the case that the healthcare services are provided by institutions other than medical facilities, these services are also subject to a 7% VAT.

3.3.2 VAT Collection on Cosmetic Medical Services

Due to the fact that Thai law does not base the determination of which medical services and procedures are VAT exempt on the eligibility of healthcare insurance scheme as in other countries, but rather on the establishment of medical facilities to determine the medical VAT exemption therefrom. As a result, the scope of medical services under Thai law is quite broad and includes all types of medical practices and also cosmetic medical services. Furthermore, Section 81(1)(j) does not provide any exceptions or exclusions to limit the scope of medical services, which

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[119] Medical Profession Act B.E.2525 (1982), Sec 4

[120] Paijit Rojanawanich, คำอธิบายประมวลกรัฎากร เล่ม2 (Kham Athibai Pramuan Ratsadakorn Leam 2) [Guidance of Revenue Code Vol.2] (1st edn.; Thailand: บริษัท สามเจริญพาณิชย์ (กรุงเทพฯ) จำกัด [Samcharoen Panich (Bangkok) Co.,Ltd.], 2018). 4-122.

means that cosmetic medical services provided by licensed hospitals or clinics are also VAT exempt under Thai law.

3.3.2.1 Interpretation of Thai Revenue Department

In light of the tax interpretation, the TRD has also affirmed that all cosmetic procedures performed by a legitimate medical facility are not subject to VAT, and the revenue department continues to rely on the following tax ruling cases as precedents for the TDR's interpretation and ruling:

(1) Facial Cosmeceutical Treatment

As can be seen from the Revenue Ruling No. GorKor 0811/1047[121] regarding the VAT exemption of a skincare clinic. In this case, the company established a clinic in accordance with the law on a medical facility that provides skincare and cosmetic medical services. The clinic offered several types of cosmeceutical treatments and other relevant cosmetic procedures to patients, and these treatments were performed according to the doctor's examination, and the medicine and other skincare products were sold to the patients with a prescription from the doctor. At this point, the company would like to know whether or not it is required to collect VAT from its customers and remit it to the revenue department.

The TRD ruled that all income from such services provided by the company is considered income from the provision of medical services by a medical facility according to the law on a medical facility. Therefore, they are exempt from VAT under Section 81(1)(j) of the TRC. However, in this ruling, it was only decided that the services provided by the company as a registered medical facility fall under the scope of VAT exemptions, but no rules or criteria were set to determine whether such services qualify as medical treatment or not.

(2) Hair Transplantation

Moreover, in this case (Revenue Ruling No. GorKor 0702/697[122]), the company established a clinic in accordance with the law on a medical facility that provides treatment and counseling for patients with hair and scalp

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[121] Revenue Ruling No. GorKor 0811/1047 Dated 06/02/2544.

[122] Revenue Ruling No. GorKor 0702/697 Dated 07/09/2561.

problems, as well as hair transplantation services. Therefore, the company believed that it was required to register as a VAT registrant since hair transplantation services can be considered services other than medical treatment. Furthermore, the company also charged its customers VAT, remitted it to the TRD, and filed a VAT report to claim the deduction.

Unfortunately, the TRD decided that these services provided by the company as a medical facility fell within the scope of medical services provided by a medical facility, for which the company was not required to register at VAT and had no right to request the Director-General of the Revenue Department to register at VAT under Section 81/3 of the TRC. At this point, the company was not a VAT registrant under Thai law, so the company was not entitled to claim its input tax deduction and the company was fined for issuing tax invoices and collecting VAT from its customers without being entitled to do so.

3.3.3 Objectives and Policies Regarding VAT Exemption on Cosmetic Medical Services

Apart from providing accessible and affordable medical services for public health, Thailand's medical advancements over the past decade in terms of quality of medical services and alternative healthcare services at a reasonable price, as well as qualified medical professionals and the healthcare consultants, have led to an increasing demand for Thailand’s medical and wellness services from abroad. Therefore, since 2003, the Government has been promoting medical and wellness tourism on a global scale[123] to become one of the world's top destination countries and hubs for medical tourism in Asia. [124]

The cosmetic medical services, spa, and wellness services are ones of the healthcare services that the Government attempts to promote as the Ministry of Tourism and Sports of Thailand confirmed that the most common healthcare

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[123] Thailand Board Of Investment, 'Thailand Medical Destination Finding Wealth in Wellness', Thailand Investment Review, 30/May (2020). 3.

[124] Poonsuk Ninkitsaranont, 'ธุรกิจโรงพยาบาลเอกชน (Turakij Rongphayaban Aekkachon) [Private Hospital Business]', Krungsri Research 65 (2020). 4.

services for tourists are health checkups, dentistry, plastic surgery, and cosmetic medicine, especially anti-aging medicine or aesthetic medicine.[125]

Therefore, the Government has taken numerous measures to facilitate foreign tourists to seek medical services in Thailand, including the extension of long-term visas[126] and tax measures. In the light of tax measures, in 2009 Thailand introduced tax incentives in the form of excise tax exemptions for spa and wellness services to raise the competitiveness of Thai spa and wellness centers to the international levels; such a tax exemption can also attract tourists to travel to Thailand while promoting healthcare industry.[127]

However, it appears that the VAT exemption for cosmetic medical services is not intended to promote medical tourism, but rather is a byproduct of VAT exemption for medical services or the result of a public health necessity to ensure the accessibility of medical services, as Section 81(1)(j) of the TRC has never been updated or amended since the VAT was first introduced in 1991 by the Act Amending the Revenue Code (No. 30), B.E. 2534.[128] To date, it has been over three decades that Thailand has not had any specific tax regulations for cosmetic medical services to reflect the rapid technological development and advances in the medical field.

In this regard, it can be concluded that cosmetic medical services in Thailand are exempt from VAT as such services are provided by medical facilities and are considered as ones of medical services that fall within the scope of VAT exemptions under Section 81(1)(j). As a consequence, Thailand cannot levy VAT on such cosmetic services and may face difficulties of tax compliance, particularly in the case of tax uncertainty and tax inequity among taxable persons or even the inability to levy tax on such cosmetic services. Such loopholes of Thailand’s VAT regime on cosmetic medical services in more detail will be discussed in Chapter 5.

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[125] Ibid. 5.

[126] Ibid. 5.

[127] The Excise Department, 'Annual Report 2010', (Thailand: The Excise Department, 2010). 3.

[128] Act Amending the Revenue Code (No. 30), B.E. 2534 Royal Gazette No.108 Vol.201 Date 21 November B.E.2534 (1991) 31.

CHAPTER 4
FOREIGN GENERAL CONSUMPTION TAX REGIMES ON COSMETIC MEDICAL SERVICES

From the previous research on Thailand's VAT regime of cosmetic medical services, it is clearly shown that Thailand has not yet implemented VAT for cosmetic medical services, which seems to have a negative impact on the country. Therefore, this chapter examines how foreign countries impose taxes on cosmetic medical services, with the author attempting to examine the basic framework of the general consumption tax and related policies on cosmetic medical services in Australia and the Republic of Korea, which serve as examples of the model law under, which each regime will be discussed respectively.

4.1 Australia's GST Regime on Cosmetic Medical Services

Even though the general consumption tax under Australian law is the Goods and Services Tax (GST) Regime, unlike the Thai VAT Regime, this is not an obstacle to the study of the GST tax regime because the GST is an indirect tax levied on consumption and has a general tax structure and key features similar to those of the VAT regime. For this reason, the author has chosen to study the GST regime on cosmetic medical services in Australia, as this country has levied a tax on cosmetic medical services since the beginning of the GST implementation. Under Australian law, medical and healthcare services are exempt from GST. However, if the purpose of the medical services is mainly for cosmetic purposes, the GST exemption for cosmetic medical services is no longer applicable.

4.1.1 Evolution of Australia's GST Regime and Current GST Framework

In Australia, taxes are the main country's main source of revenue, collected from individuals, companies, and businesses located in Australia. In other words, individuals, companies, or businesses located in Australia are required to pay taxes to the local and federal governments so that the state can use those taxes to perform services that benefit the people of the country, such as basic welfare and education, national defense, including public health.

Australia enacted a New Tax System (Goods and Services Tax) Act 1999, hereinafter referred to as "GSTA," on 8 July 1999, to introduce the concept of VAT,[129] which became effective on 1 July of the following year.[130] Australia introduced the GST, an indirect consumption tax with a uniform tax rate of 10% on a broad base of goods and services,[131] replacing the wholesale tax (WST) or its sales tax that levied on a narrow base of goods at the wholesale level,[132] to eliminate the hidden taxes of the old WST[133] and to be consistent with the other countries' VAT approaches that levy taxes at each stage of production and distribution along the supply chain.

The Australian Taxation Office (ATO) is the government authority responsible for administering, collecting GST revenues on goods and services, and contributing to the development of tax policy. Businesses registered with the GST have an obligation to remit GST monthly or quarterly, depending on their registration status.

4.1.2 Australia's GST Structure

To understand how the GST regime works under Australian tax law, the GST structure is shown below:

4.1.2.1 Taxpayer and Taxable Person

A taxable person is a business operator who performs taxable supplies. It can be a natural person, a corporation, a public authority or an unincorporated association. They are required by law to be a business operator registered for GST or a taxable entity as soon as their turnover exceeds the threshold. In this regard, the registered business operator must collect the tax and issue a tax

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[129] James (n 85) 241.

[130] Alan Schenk, Victor Thuronyi, and Wei Cui, Value Added Tax : A Comparative Approach (New York: Cambridge University Press, 2015). 13.

[131] James (n 85) 248.

[132] Ibid. 242.

[133] Barkoczy (n 77) 11.

invoice for each purchase of taxable supplies. At the same time, their input taxes can be claimed.

4.1.2.2 Taxable Supply

The GST generally applies to all sales of goods and services, and the GSTA defines the scope of taxable supplies provided in the kingdom or with a connection to Australia by taxable persons who are both indirectly and directly involved in their business activities. To explain, supplies that are taxable under the GSTA must meet the following criteria:

(i) The sale of goods and the provision of services take place for monetary and non-monetary consideration and barter transactions.

(ii) The sale of goods and the provision of services are provided in Australia and connected with Australia, which includes importing goods and services.

(iii) The sale of goods and the provision of services are provided by business operators registered for GST or required to register for GST.

(iv) The sale of goods and the provision of services are regularly carried out in the course of a business activity or in the nature of trade.[134]

(v) The sale of goods and the provision of services must not be subject to the GST-free (Zero-rated GST) or input-taxed (GST exemption).

4.1.2.3 Tax Base and Tax Rate

The GST base in Australia is based on the sale of goods and services, including but not limited to advice, grant, transfer, and assignment. In addition, Australia imposes a single GST rate on all taxable supplies of goods and services, including imports. The GST rate is currently 10% and must be included in the price of goods sold to consumers.

4.1.2.4 Tax Liability

In Australia, a business operators are required to register for GST within 21 days if the business operator's tax base or income exceeds AUD 75,000

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[134] Philip Mccouat, Australian Master Gst Guide (15th edn.; Sydney: CCH Australia Limited, 2015). 40-41

and a non-profit organization earns more than AUD 150,000 in any 12-month period.[135] However, the law also provides an option for business operators who earn a lower income whether to register as registered business operators in order to receive a tax credit. In this case, the registered business operators must submit the registration form to the ATO or via the internet.[136]

Furthermore, the registered business operators are required to issue tax invoices for the taxable supplies they sold and prepare a business activity statement (BAS) showing GST payments and refunds, as well as submit monthly or quarterly taxes and tax reports online through the tax office's business portal, depending on the circumstances. To illustrate, business operators are generally required to remit GST and file reports on a quarterly basis.[137] Nevertheless, if the business's income exceeds AUD 20,000,000, if the business is conducted for less than three months, or even if the business has a non-compliance history, they are required to remit GST on a monthly basis instead.[138] Please note that business operators using quarterly periods may choose to submit their BAS or GST reports monthly as well, but they must use this monthly period for at least one year before changing to quarterly periods, while business operators who are required by law to use monthly periods are not permitted to use quarterly periods.

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[135] Australian Taxation Office, 'Registering for Gst', <https://www.ato.gov.au/Business/GST/Registering-for-GST/>, accessed Apirl 4, 2021 2021.

[136] The business operators may submit the Registration Form on https://www.ato.gov.au/general/online-services/businesses/.

[137] Please note that quarterly tax periods are taxed every three months and end on the last day of the following months: March, June, September, and December. Therefore, the deadlines for submitting GST payment and GST reports will be within the 28 days of April, July, October, and February.

[138] Please note that the GST payment and reports' submission deadline for monthly tax periods are within 28 days of the following month.

4.1.2.5 GST Exemption

Input taxed supply is a term used in Australia to refer to the GST exemption on certain supplies of goods and services that relieves business operators of the obligation to collect tax but does not allow them to recover input tax on the goods and services supplied, which includes financial services, residential rentals and premises, school tuckshops and canteens, and fund-raising events conducted by charitable institutions.

4.1.2.6 Zero-rated GST

Australia uses the term GST-free to refer to zero-rated GST on certain supplies of goods and services, whereby business operators cannot collect tax from their consumers but are entitled to claim input tax on the cost of production for their zero-rated GST supplies.

Goods and services that are considered as zero-rated GST supplies include, but are not limited to, the following:

(a) Unprocessed foods for human consumption
(b) Medical and healthcare services
(c) Educational services
(d) Activities of charities and related bodies
(e) International travel and transportation
(f) Sales of going concerns
(g) Certain transactions dealing with land
(h) Exporting goods and services
(i) Religious services

4.1.3 Policy and Legal Framework of Australia's GST Regime on Cosmetic Medical Services

Since a medical service is a component of fundamental human needs. As a result, Australia provides tax relief on most of medical and hospital care services, as well as health insurance[139] in the form of zero-rated GST, allowing people

[139] Pual Kenny, Australian Tax 2012 (1st edn.; Australia: LexisNexis Butterworths, 2012). 619.

to access healthcare services because the service prices become more affordable due to the absence of hidden input taxes. Nevertheless, this does not mean that all medical services would be subject to 0% GST. To determine whether the cosmetic medical service is zero-rated GST, one must consider the GSTA's subdivision 38-B and the ATO's interpretation guidance as detailed below:

4.1.3.1 Zero-rated GST for Medical Services

In principle, medical services are zero-rated GST supplies,[140] which means that the medical service providers are still in the GST system and entitled to claim an input tax credit for the supply of those services, but they are unable to charge GST on their customers for medical services, including hospital treatment, prescribed drugs, and medical devices.

(1) Definition of Medical Services

For tax purposes, the term "medical service" is defined under Section 195-1 of the GSTA[141] as a service that is eligible for coverage under healthcare insurance scheme. Alternatively, any service rendered by, or on behalf of a medical practitioner or an approved pathology practitioner must be generally accepted in the medical profession as being necessary for the appropriate treatment of the patient or the service recipient.

To be qualified as a medical service under Australian tax law, one of the following criteria must be met:

Firstly, it requires some medical benefits payable under the health insurance scheme, which requires the medical service to be provided by a

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[140] A New Tax System (Goods and Services Tax) Act 1999, Sec 38-7(1): A supply of a medical service is GST-free.

[141] A New Tax System (Goods and Services Tax) Act 1999, Sec 195-1: "medical service" means:

(a) a service for which medicare benefit is payable under Part II of the Health Insurance Act 1973; or

(b) any other service supplied by or on behalf of a medical practitioner or approved pathology practitioner that is generally accepted in the medical profession as being necessary for the appropriate treatment of the recipient of the supply.

general medical practitioner, and a patient as a service recipient to be an eligible person or a citizen to claim for healthcare expenses. In this case, common examples of medical services specified in the health insurance scheme include, but are not limited to, diagnosis and consultation with a general medical practitioner or specialist, ultrasound, magnetic resonance imaging or x-ray imaging, pathology, and therapeutic procedures such as anesthesia and surgery.[142]

Turning to the next criteria, other services that are not payable under the health insurance scheme can be considered as medical services if such services are performed by a medical practitioner or an assistant on behalf of the practitioner. The latter case may be eligible if the practitioner accepts full responsibility for the services or is involved in at least some parts of the services.[143] Additionally, this type of service must be a necessary and appropriate treatment as generally accepted by medical professionals, or other qualified medical practitioners would do the same.

To avoid potential issues of interpretation in practice, the ATO published a clear guideline in the form of a public ruling outlining how the law should be applied. As some borderline cases may cause difficulties for the business operators in complying with tax laws, the ATO interprets that the "appropriate treatment" for medical services must aim to preserve, restore, or improve the recipient's physical or psychological well-being, as well as prevent diseases,[144] which means that if the primary purpose of medical services is not to preserve the health of the person, the GST at the rate of 10% will no longer apply.

4.1.3.2 GST Collection for Cosmetic Medical Services

As previously mentioned, the Australian law does not provide tax relief for all kinds of medical services but rather excludes some treatments from zero-rated GST services as there are no medical benefits. In this sense, under Section

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[142] Mccouat (n 134) 418.

[143] Ibid. 418.

[144] ATO Public Ruling on GST Industry Issues – Health: Issue 1.a “Medical Services” QC16330

38-7(2), the law provides that the medical services carried out only for cosmetic reasons[145] are not considered as zero-rated GST services.

In the light of Section 38-7(2), the law requires the following three elements to be met before the standard GST rate will be applied on cosmetic medical services or such medical services are not zero-rated GST anymore:

(1) It must be a medical service.

(2) The service is mainly rendered for cosmetic purposes.

(3) The service does not have any medical benefit or medical necessity.

Therefore, if the above three major elements are fulfilled, the service recipient must pay GST at the standard rate. On the contrary, if such services are provided for medical reasons or the medical benefits are payable under the national health insurance scheme, such services will be considered fundamental medical services. At this point, it is not necessary to inquire whether the medical service is rendered for cosmetic purposes as that person receives the service as necessary and for medical benefits, which is subject to 0% GST.

(1) Definition and Scope of Cosmetic Reasons

Although the GSTA does not specify the definition of the term "cosmetic reasons" in the act itself, the ATO interprets the term "cosmetic" based on the ordinary meaning as to beautify by imparting or improving the beauty.[146]

Furthermore, the ATO considers that if the medical service is performed predominantly for the purpose of enhancement or improvement of the personal appearance of the service recipient such as face-lifting, double eyelid surgery, tattoo removal, injection of specified substances in the management of obesity, and

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[145] A New Tax System (Goods and Services Tax) Act 1999, Sec 38-7(2): However, a supply of a medical service is not GST-free under subsection (1) if:

(a) ... or;

(b) it is rendered for cosmetic reasons and is not a professional service for which medicare benefit is payable under Part II of the Health Insurance Act 1973.

[146] ATO Public Ruling on GST Industry Issues – Health: Issue 1.b., QC16330

Botox, which such procedures aim to beautify the service recipient's appearance without any medical benefit or necessity involved, it is presumed as a cosmetic reason. For instance, the objective of a Botox treatment is to eliminate frown lines and would likely be presumed as a cosmetic purpose.[147]

(2) Determination of Medical Service Rendered for Cosmetic Reasons

Nevertheless, the ATO ruled that whether the medical service is rendered for cosmetic purposes, it must be considered on a case-by-case basis.[148] The cosmetic medicine can be utilized for medical benefits and necessities as well. If the procedure to alter a person's appearance is performed because of disease, trauma, congenital deformity, or being injured by an accident, it is considered as medical rather than cosmetic reason under the following conditions:

(a) With psychiatrists' or psychologists' recommendations, a treatment is necessary or appropriate for a patient's psychological and psychiatric wellbeing; or

(b) Without psychiatrists' or psychologists' recommendations, a patient is under the age of 18 years old and a defect or a scar is clearly visible in an area of the body, which normally would not be clothed.

To illustrate, even the nature of rhinoplasty or a nose job is almost certainly cosmetic in nature. However, the ATO generally considers that if the service recipient wishes to have a prettier face without a psychiatrist's or a psychologist's recommendation, it is subject to the standard GST rate because it is considered purely cosmetic reason. While the procedure may be subject to 0% GST if it is performed to alleviate the patient's breathing difficulties or it is performed following an accident,[149] as it is deemed necessary and appropriate treatment for the patient. Another example, the ATO usually accepts that the skin grafting performed on

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[147] Mccouat (n 134) 419.

[148] ATO Public Ruling on GST Industry Issues – Health: Issue 1.b., QC16330

[149] Mccouat (n 134) 419.

a burn victim is deemed necessary and appropriate treatment for the patient as well.[150]

(3) GST Status for Related Services

In the Australian GST Regime, it is also concerned with the related services rendered for the patients' undergoing procedures for cosmetic reasons, which would be provided as below:

(a) Hospital Treatment Services

Due to the fact that certain cosmetic procedures may require a service recipient to be admitted to a hospital for recovery from such cosmetic performance, Section 38-20(2)[151] of the GSTA provides that if the hospital treatment is provided for or to the extent that directly relates to cosmetic reasons, it is not a zero-rated GST service. In this regard, the hospital treatment rendered for cosmetic reasons must be considered in the same way as the determination under Section 38-7 (2) as mentioned above.

Nevertheless, the ATO ruled in the republic ruling that if a service recipient of a cosmetic procedure develops an infection from the operation, separately charging the GST must be considered.[152] As hospital services become more closely related to the medical purposes; therefore, service providers must charge GST at the standard rate on the only portion of the period that is directly related to the cosmetic procedure, but does not include the period that patients get infected, as the admission will be charged at 0% GST. Additionally, if the infection occurs after the admission, and the service recipient is required to readmit to the hospital, the hospital services provided during this period will be regarded as a zero-rated GST service as they are not directly related to the cosmetic purpose.

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[150] ATO Public Ruling on GST Industry Issues – Health: Issue 1.b., QC16330

[151] A New Tax System (Goods and Services Tax) Act 1999, Sec 38-7(2): a supply of hospital treatment is not GST-free to the extent that it relates to a supply of a professional service that, because of subsection 38-7(2), is not GST-free.

[152] ATO Public Ruling on GST Industry Issues – Health: Issue 3.b.2., QC16330

(b) Pathology Test and X-ray Services

Before or during a cosmetic procedure, it may require some blood tests and x-ray films for the medical practitioner to prepare and to perform such cosmetic procedures properly. In this case, it is considered that such services are rendered for cosmetic reasons and are not a zero-rated GST service.[153]

(c) Anesthetic Services

Due to the fact that the provision of certain cosmetic medical procedures cannot be performed without anesthesia; therefore, the ATO ruled that the anesthesia provided as part of the procedure for cosmetic reasons will not be a zero-rated GST service.[154]

(d) Dental Services

According to the fact that dental services can be used for cosmetic reasons. However, dental services are recognized as other health services under Section 38-10,[155] which are zero-rated GST services. However, such provision does not provide any exceptional cause to exclude dental services for cosmetic reasons from a zero-rated GST service. In this regard, the business operators cannot charge the GST on cosmetic dental services.

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[153] ATO Public Ruling on GST Industry Issues – Health: Issue 1.a.10., QC16330

[154] ATO Public Ruling on GST Industry Issues – Health: Issue 1.b.2., QC16330

[155] A New Tax System (Goods and Services Tax) Act, Sec 38-10 (1) A supply is GST-free if:

(a) it is a service of a kind specified in the table in this subsection or of a kind specified in the regulations; and

(b) the supplier is a recognized professional in relation to the supply of services of that kind; and

(c) the supply would generally be accepted, in the profession associated with supplying services of that kind, as being necessary for the appropriate treatment of the * recipient of the supply.

Health services Item (6): Dental Service

(4) Invoice and Monitoring

In general, medical service providers are required to be registered for GST, which makes all the providers be in the GST system and the Government can track and audit their business activities from the BAS of the service providers on a monthly or quarterly basis. Therefore, if the service providers render any medical services for cosmetic reasons, they must charge GST on their customers and issue tax invoices for such taxable cosmetic procedures.

Please note that when a business operator provides both taxable and zero-rated GST services, the business operator is required to report on which portion of the sale is 0% GST or taxable services.[156] For example, if Clinic A provides a Botox injection to Miss B for purely cosmetic reasons at $110 including GST, and a nasal reconstruction to be able to breathe at $1,000 with zero-rated GST, Clinic A must state in its invoice and a BAS or GST report that:

Table 1: an example of GST collection on both taxable and zero-rated GST services[157]

Types of Procedures	Price (1)	Tax Rate (2)	Tax to Pay (1)x(2)	Gross Price
Botox injection for a cosmetic purpose (standard rate)	$100	10%	$10	$110
Nose surgery for a breathing improvement or reconstructive purpose (0%)	$1,000	0%	$0	$1,000
		Total Amount	$10	$1,110

In this case, the amount of GST payable of Clinic A is limited to $10 on the Botox injection as the taxable service, while the nose surgery's input

156 Mccouat (n 134) 418.

157 Table compiled by the author.

taxes can be claimed. Furthermore, the ATO also suggests that the business operators keep the record of the proportion basis for taxable or non-taxable supplies as proof for tax audit purposes or just in case that the ATO needs to review.[158]

4.1.3.3 Objectives and Policies of GST Collection for Cosmetic Medical Services

The reason that explains why the Australian Government excluded the cosmetic medical services from the zero-rated GST services at the very first place when the GSTA came into force is that the Australian Government considered cosmetic medical services as unnecessary services.

To illustrate, since medical services have been tax exempt for a very long time since Australia's indirect sales tax regime or the old WST,[159] the Government had encouraged people, particularly low-income earners, to have access to public health or receive medical treatment promptly. At that wartime, the Australian Government did not exclude any cosmetic procedures since those cosmetic medical services were used for medical necessity to recover and improve the appearances of all soldiers and wounded people.

Later on, when the Australian Government reformed its indirect tax regime and replaced it with the new goods and services tax, or the GST regime, medical services were added to the original list of zero-rated supplies, which included health and medical supplies, educational supplies, childcare, religious services, and charitable activities.[160] Nevertheless, during the legislation process, the Australian Government concerned about the inappropriateness of some goods and services that are considered luxury and unnecessary. Therefore, providing medical services for beautification or cosmetic medical services is one of those unnecessary services, so it was excluded from the zero-rated GST supplies when the GSTA came into force.

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[158] Goods and Services Tax Ruling: GSTR 2001/8 para 27

[159] Julie P. Smith, 'Is the Only Good Tax an Old Tax? A Historical Perspective on the Gst Debate', Discussion Papers, 398/March 1999 (1999). 12-13.

[160] James (n 85) 287.

In this regard, the Government considered that it is important to distinguish between a medical facility that provides a service and the service itself, as the medical facilities may exploit the scope of the services by providing services in areas that should not be given zero-rated GST treatment.[161]

4.2 The Republic of Korea's VAT Regime on Cosmetic Medical Service

Although the Republic of Korea is one of the best world's destinations for undergoing plastic procedures, this country imposes VAT on certain cosmetic medical services if such procedures are in the list of cosmetic procedures prescribed by laws. The author; therefore, deems that it is interesting to examine and explore how the Republic of Korea imposes VAT on the cosmetic medical services with a large number of both local and international customers coming to undergo cosmetic procedures.

4.2.1 Evolution of The Republic of Korea's VAT Regime and Current VAT Framework

In late 1976, the concept of VAT was first introduced into the Republic of Korea to replace the complex traditional indirect tax regime, including a cascade-type business tax, in order to simplify tax administration, promote exportation and capital investment, and maintain neutrality of indirect taxes.[162] As a result, the Republic of Korea enacted the Value-added Tax Act 1966 (VATA), which became effective on July 1, 1977[163], under the support of the International Monetary Fund (IMF), making the Republic of Korea the first Asian country that fully implements VAT.[164]

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[161] The Treasury of Australain Government, 'The Report of the Tax Consultative Committee', Chapter 4: Health (Australai: The Treasury of Australain Government).

[162] Lee-Jay Cho and Yoon Hyung Kim, Korea's Political Economy (1st edn., An Institutional Perspective; New York: Routledge, 2018). 193.

[163] Ministry of Strategy and Finance Of Korea, 2012 Korean Taxation (The Republic of South Korea: Ministry of Strategy and Finance of Korea, 2012). 7.

[164] Sirikunchoat (n 67) 12.

Consequently, VAT became the country's major source of revenue.[165] Apart from the VATA, which is the primary legislation that established taxpayer rights and obligations, the Enforcement Decree of The VATA is the secondary legislation enacted by the administration that prescribes and specifies additional details of the VATA to facilitate VAT collection for tax purposes.

Furthermore, the organization that is responsible for the administration of VAT collection of the Republic of Korea is the National Tax Service (NTS). This independent entity was established by the Ministry of Finance in 1966.[166] The main incumbencies of NTS are planning coordinating tax policies, managing tax information systems and taxpayers, providing tax consulting services and collecting tax.

4.2.2 The Republic of Korea's VAT Structure

To be able to understand the how VAT regime works under Korean law, the VAT structure is provided below:

4.2.2.1 Taxpayer and Taxable Person

A taxable person[167] is a person who supplies goods and services for the course of business regardless of profit, which includes an individual, a corporate entity, a national and local government authority, and an unincorporated association or foundation, as well as an organization. Furthermore, a taxable person is required to be a registered business operator that collects VAT on its taxable goods and services they supply from its consumers. Likewise, it also has the right to refund any input tax paid on its business costs.

4.2.2.2 Taxable Supply

In principle, VAT is levied on almost all sales of goods and the provision of services. In addition to VAT exemptions and Zero-rating VAT, the VATA imposes VAT on the supplies provided or imported into the Republic of Korea by taxable persons in connection with their business, both indirectly and directly. In other

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[165] Ilho Yoo, 'Experience with Tax Reform in the Republic of Korea', Asia Pacific Development Journal, 7/2 (2000). 86-87.

[166] Ministry of Strategy and Finance Of Korea (n 163) 7.

[167] Value-Added Tax Act 1996 of the Republic of Korea, Sec 3

words, supplies of goods and services shall be considered as taxable supplies if they meet the following four criteria:

(i) The sale of goods and the provision of services are for monetary and non-monetary consideration.

(ii) The sale of goods and the provision of services are provided or imported within the Republic of Korea.

(iii) The sale of goods and the provision of services are provided by registered VAT business operators.

(iv) The sale of goods and the provision of services are regularly carried out in the course of a business activity.

4.2.2.3 Tax Base and Tax Rate

Based on a consumption-based tax, the tax base of VAT is the expenditure tax base that relies on the revenue amount from sales of goods, provision of services, and exchanges of goods or services that include VAT. Furthermore, the Republic of Korea imposes a single tax rate of 10%[168], which applies to all kinds of goods and services.

4.2.2.4 Tax Liability

Because the VATA does not require a minimum registration threshold, almost all taxable supply operators are required to register as registered business operators. In this regard, the law provides a simplified VAT system for small business operators and a general VAT system for the general taxable persons.

To begin with the general VAT system, the general taxable persons are the persons who receive more than 48,000,000 won; therefore, they have an obligation to file the registration application to the NTS or the district Tax office where such business is located within 20 days after the business's commencement date. In addition, they required to collect tax from their consumers on the taxable supplies and issue a full tax invoice for every purchase. In addition, they must prepare a list of total tax invoices, composing of the list of total tax invoices by the consumers

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[168] Value-Added Tax Act 1996 of the Republic of Korea, Art 30

(output tax report) and the list of total tax invoices by the sellers (input tax report) during the tax period[169] and submit the tax reports with payment to NTS within 25 days of the following month.

While the simplified taxable persons are the business operators who receive income from the taxable business less than 48,000,000 won per year; therefore, they have an obligation in a relatively simple procedure compared to the general taxable persons. In other words, they must also register their businesses into the tax system to collect VAT, but they must issue receipts instead of the tax invoices to their consumers and prepare the list of total tax invoices for the tax period[170] to be remitted to the NTS within 25 days of the following month. However, if the revenue of the simplified taxable persons is less than 24,000,000 won, the obligation of tax payment for the tax period is exempt.

4.2.2.5 VAT Exemption

The VATA exempts certain supplies of goods and services, which relieves business operators of the obligation to register and collect tax, but does not allow them to refund the input tax paid for their businesses. The following supplies of goods and services are VAT exempt:[171]

(a) Unprocessed foods, agricultural products, and marine products
(b) Briquettes and anthracite coal
(c) Water supply
(d) Sanitary products
(e) Medical and healthcare services including blood and veterinary services
(f) Educational Services
(g) Domestic transportation

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[169] The tax period for the general taxable person is divided into two periods: the first is from January 1 to June 30 and the second is from July 1 to December 31.

[170] The tax period for the simplified taxable person is January 1 to December 31.

[171] Value-Added Tax Act 1996 of the Republic of Korea, Art 26

(h) Book and book-lending services, magazines, and newspaper
(i) Finance and insurance services
(j) Hose rental services
(k) Independent personal services such as lawyers
(l) Land

4.2.3 Policy and Legal Framework of The Republic of Korea's VAT on Cosmetic Medical Services

In the same line as other counties, Korean law also exempts medical services and healthcare services to prevail public health and encourage people, especially a low-incomer, to be able to access public health[172] and reduce inequalities in the healthcare system.[173]

4.2.3.1 VAT Exemption for Medical Services

In general, almost all health and medical services in Korea are exempted from VAT, which means that the medical service providers are not in the VAT system, and are not allowed to be registered as VAT registrants, so they cannot claim any input taxes in relation to their supplies and cannot charge VAT on their customers for the medical and health services.

Under Article 26(1)5, the law exempts medical and health services, including blood and veterinary services.[174] Although the act itself does not specify the definition of medical services, the law limits the scope of the VAT exemption on the medical and healthcare services in the enforcement decree of the VATA, which will be described below:

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[172] Soonman Kwon, Tae-Jin Lee, and Chang-Yup Kim, 'Republic of Korea Health System Review', Health Systems in Transition, 5/4/2015 (2015) 14.

[173] Ibid. 21.

[174] Value Added-Tax Act, Art 26 (1) 5: A supply of medical and health services (including veterinary services) prescribed by Presidential Decree, and blood shall be exempt from VAT.

(1) Definition of Medical Services

Under Article 35 of the Enforcement Decree,[175] medical and health services that are exempted from VAT must be provided by medical facilities and practitioners under the Medical Service Act, which includes medical practitioners, including doctors, dentists, midwives, and nurses.

Moreover, it must be a service for which the healthcare benefit is payable under the national healthcare insurance scheme. In this regard, it is worth mentioning the main purpose of the national insurance act as it aims to promote and ensure its citizens' health quality by providing insurance benefits to be claimed if the medical services are provided to prevent, diagnose, treat and rehabilitate from the disease and injury, as well as to improve health.[176] In this case, if the medical services are provided for the above purposes, such medical services, including the supply of medicine and medical materials, hospitalization, and other supplies in relation to that medical services will not be subject to VAT.

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[175] Enforcement Decree of Value-Added Tax Act, Art 35: Medical and health services referred to in Article 26 (1) 5 of the Act, mean the following services (including services provided by persons who have opened medical institutions or veterinary hospitals under the Medical Service Act or the Veterinarians Act):

1. Services provided by a physician, dentist, oriental medical doctor, midwife, or nurse under the Medical Service Act: Provided, That this shall exclude medical services not covered by any of the care benefits under Article 41 (4) of the National Health Insurance Act, as listed below:

(a) Plastic surgery (excluding the treatment of plastic surgery complications, reconstructive surgery of congenital malformations, and reconstructive surgery following tumor removal), such as double eyelid surgery, rhinoplasty, breast augmentation and reduction surgery (excluding breast reconstruction surgery following mastectomy for breast cancer), liposuction, face-lifting, face contouring, and cosmetic dental treatment (referring to tooth whitening, laminate and gingivoplasty), and orthognathic surgery (excluding orthognathic surgery following teeth straightening);

(b) Nevus pigmentosus, freckle, lentigo and chloasma treatment, acne treatment, hair removal, alopecia treatment, hair transplantation, tattooing, tattoo removal, piercing, lipolysis, skin regeneration, skin whitening, anti-aging, and pore tightening;

[176] National Health Insurance Act, Art 1

Nevertheless, the last part of Article 35(1) also provides a list of non-VAT exemptions on some certain procedures that are considered as non-medical care benefits under Article 41(4) the Health Insurance Act, the law requires that the medical treatments must aim to cure the ailments that cause difficulties for the patients.[177] As a result, certain non-essential or elective procedures have been excluded from VAT exemptions. Additionally, based on the nature of the list of procedures, it can be implied that Korean law aims to impose VAT on cosmetic procedures.

4.2.3.2 VAT Collection on Cosmetic Medical Services

As mentioned above, the Korean tax law imposes VAT at the standard rate by providing exclusions of several cosmetic procedures from VAT exemptions under Article 35(1)(a) and (b) in the Enforcement Decree. To illustrate, the Korean law divides the cosmetic medical procedures into surgical procedures, including minimally invasive surgery and non-surgical procedures as detailed below:

Subsection (a) provides a list of surgical and minimally invasive cosmetic procedures, which include, but not limited to, plastic surgery, double eyelid surgery, rhinoplasty, breast augmentation, reduction surgery, liposuction, face-lifting, face contouring, and cosmetic dental treatment, including tooth whitening, and orthognathic surgery. However, if cosmetic procedures are performed for reconstructive and therapeutic purposes in order to treat or remove congenital malformations, tumors, and diseases such as breast reconstruction after breast cancer surgery, those cosmetic procedures with medical benefits are not subject to VAT.

Meanwhile, subsection (b) specifies that several cosmetic non-surgical procedures such as treatment of acne, removal of pigments, freckle and lentigo, hair removal and hair transplantation, tattooing and tattoo removal, body piercing, lipolysis, skin regeneration and anti-aging treatment, skin whitening, and pore tightening, are subject to VAT. In the part of non-surgical procedures, the law does not

[177] National Health Insurance Act, Art 41 (4)

provide an exception for the medical benefit to be exempted from VAT, unlike Article 35(1)(a), as the Korean Government deems such procedures cosmetic in nature.

(1) Invoice and Monitoring

In this light, if medical facilities provide the cosmetic procedures listed above, they are required to be VAT registrants and are responsible for collecting VAT on such cosmetic procedures, issuing tax invoices to their customers, and remitting the VAT and tax reports to the NTS. In this regard, the medical facilities can provide cosmetic procedures for therapeutic purposes or without therapeutic purposes, in which the medical facilities are considered to provide both taxable and non-taxable supplies. Therefore, the medical facilities as taxable persons are required to charge VAT on their customers only for the taxable cosmetic procedures. At the same time, the medical facilities as service providers can claim a VAT credit only on the taxable supplies based on actual usage or *pro-rata* basis[178], which must be clearly stated in the VAT invoice and the VAT report that which services are taxable, and which are not. Lastly, medical facilities are also required to maintain accounting records of all transactions and keep them for the purpose of tax audit.[179]

(2) Tax Refund Scheme for Foreigners

Additionally, Korean laws[180] also provide a VAT refund scheme to attract foreign tourists to come and undergo cosmetic procedures in the Republic of Korea. In this regard, foreigners who undergo cosmetic procedures that are worth at least KRW 30,000 and performed by special medical facilities authorized and registered as medical facilities for attracting international customers will receive a tax refund document called a "certificate of selling medical services for overseas patients," issued by the medical facilities following the payment for cosmetic procedures. Within three months after the cosmetic procedures, the foreigners must submit the certificate and a "consent to collect use and disclose of personal information" document to the

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[178] Value-Added Tax Act 1996 of the Republic of Korea, Art 40

[179] Ministry of Economy and Finance Republic Of Korea, 2018 Korean Taxation (The Republic of Korea: Ministry of Economy and Finance of Korea, 2018). 164.

[180] Restriction of Special Taxation Act of 1998, Art 107-3

tax refund points, which are usually located at the airports, ports, and downtown refund centers, in order to be eligible to get a VAT refund before they leave the country. [181]

4.2.3.3 Objectives and Policies of VAT Collection on Cosmetic Medical Services

The Korean cosmetic medical industry plays an especially important role in the Republic of Korea's economic growth due to its well-known reputation for providing high-quality cosmetic medical services, which has made the Republic of Korea into the Mecca of plastic surgery in Asia by making people trust the standard and safety of Korean cosmetic medical services. As a result, cosmetic procedures are in high demand from both local and foreign consumers, which can generate a great amount of income for the nation. However, not until 1 July 2011, the cosmetic medical services had not been excluded from the medical services and had prevented the Republic of Korea from the opportunity to collect VAT on such unnecessary and blooming medical services as all medical services were tax-exempt in the past.[182]

In conjunction with it, the Republic of Korea was stuck in the financial crisis and many people were jobless at that time. In this regard, the country had to raise more revenue to fund and provide more welfare support. The Ministry of Strategy and Finance of the Republic of Korea came up with the idea of collecting VAT on non-essential plastic surgeries without any therapeutic purposes related, allowing the government sectors to generate more revenue to fund and provide financial support for other essential health promotion programs, such as the national health insurance scheme. Furthermore, the Ministry of Finance also affirmed that the

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[181] Korea Health Industry Development Institute, 'Cosmetic Surgery Tax Refund', <https://english.visitmedicalkorea.com/eng/support/cosmeticSurgeryTaxRefund.jsp>, accessed Sep 10, 2021.

[182] Jiso Yoon, Advocacy and Policymaking in South Korea: How the Legacy of State and Society Relationships Shapes Contemporary Public Policy (1st edn.; USA: University of New York Press, 2016). 50.

amendment of the VAT law was not contrary to the international healthcare standard or tax relief as most developed countries also imposed taxes on medical treatments performed for cosmetic purposes and not covered by insurance.[183]

Additionally, every five Korean women, there must be at least one person who has undergone cosmetic procedures, which is a significant number compared to the country's population,[184] implying that people may have a tendency to become addicted to such services, which could have a negative effect on public health in terms of the risks associated with cosmetic procedures and the development of a plastic surgery syndrome. The Korean Government recognized the importance of public health and used this tax measure as a tool to discourage and deter people from developing an unhealthy obsession with cosmetic procedures. [185]

At the beginning of the implementation of the VAT on cosmetic medical services, there were only five most common cosmetic procedures that were subject to 10% VAT, namely rhinoplasty, liposuction, facelifts, breast augmentation, and double-eyelid surgery.[186] Later in 2014, the Korean Government amended such provision to broaden the tax base or the scope of such cosmetic procedures to cover other surgical and non-surgical cosmetic procedures that should be subject to VAT, as well as to promote the tax efficiency to be able to cope with the new types of cosmetic procedures.

After the imposition of VAT on cosmetic procedures, the Korean Government also imposed the VAT refund scheme to promote medical tourism since such imposition of VAT decelerated the growth of cosmetic medical services

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[183] Jeyup S. Kwaak, 'Seoul Pledges Higher Taxes on Cosmetic Surgery', <https://www.wsj.com/articles/BL-KRTB-4544>, accessed Sep 10, 2021.

[184] Ibid.

[185] Ivy Cheng and Tiffany Ng, 'Research Report: Regulation of Aesthetic Practices in Selected Places', (Hongkong: Hong Kong Research Office, 2014). 22.

[186] Anonymous, 'South Korea to Tax Plastic Surgery', Bangkok Post <https://www.bangkokpost.com/world/363664/south-korea-to-tax-plastic-surgery#:~:text=The%20government%20plans%20to%20slap,the%20finance%20ministry%20said%20Thursday.>, accessed Sep 10, 2021.

both in domestic level and international level because foreign consumers preferred going to other countries where they did not have to pay tax. Furthermore, another reason behind the VAT refund scheme is to encourage medical facilities to enter the VAT system, as a large number of Korean facilities failed to register, collect, and report their taxes properly. At this point, the tax refund scheme for foreign tourists was designed to make the cosmetic medical service industry more transparent.[187] As previously mentioned, not all medical facilities can provide medical services to overseas patients; rather, Korean legislation requires special medical facilities to be authorized and registered as medical facilities only for overseas patients. By getting more overseas customers, this scheme requires the medical facilities to be VAT registrants, which are required to submit their output and input tax reports to the NTS and issue the certificate of selling medical services to the overseas patients. In this way, the Government can double-check how much the medical facilities earn in order to tax them accordingly.

In summary, this chapter highlighted the key features of Australian's GST regime and the Republic of Korea's VAT Regime on cosmetic medical services. It is obviously shown that both countries can collect VAT and GST on cosmetic medical services. Though Australia and the Republic of Korea use different tax measures or different criteria to consider whether this kind of cosmetic medical services should be taxable or not, they have excluded the cosmetic medical services from the scope of fundamental medical services, which is much clearer than Thailand's VAT provision for their more legal certainty, tax productivity, tax neutrality, and consistency of the tax principles. Thereby, the next chapter will indicate and emphasize the possible cause and problem of Thailand's VAT regime on cosmetic medical services through a comparative analysis.

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[187] Choi Sung-Jin, 'Kind Cut: Foreigners to Get Vat Refunds for Plastic Surgery', <http://www.koreatimes.co.kr/www/tech/2021/04/693_191677.html>, accessed Oct 10, 2021.

CHAPTER 5
ANALYSIS OF THE PROBLEMS OF VAT EXEMPTION ON COSMETIC MEDICAL SERVICES IN THAILAND AND LESSONS LEARNED FROM AUSTRALIA AND THE REPUBLIC OF KOREA

Since Thai government aims to promote public health, Thai law exempts medical services from VAT to raise public health accessibility and affordability by ensuring that all medical treatments are provided at a lower cost, while reducing the difficulties and costs associated with tax administration. In this light, it shows that Thailand has already complied with the international healthcare standard for providing sufficient tax reliefs to support healthcare services.

Therefore, Section 81(1)(j) is designed to be consistent with the tax equity principles as it can reduce the disparities between consumers with different economic statuses. As VAT is a board-based consumption tax levied on all goods and services in connection with a flat rate, it might not be fair for taxpayers or consumers who have low incomes to pay the same amount of taxes as those middle-to-high income earners in terms of the ability to pay, especially for the vertical equity. Therefore, the VAT exemption is necessary to provide relief and reduce the economic burden placed on those low-income taxpayers for certain types of essential goods and services. In this sense, patients, as the final consumers, can enjoy such tax relief on medical services as it reduces their medical expenses.

Furthermore, since medical services are extremely important for public health, taxing them may not be appropriate in terms of tax administration. As a necessary basic service with a large number of people receiving services daily, imposing taxes on medical services may be difficult for both operators, in terms of the cost of tax compliance, and the Government's ability, in terms of the audit of collected tax, which may not be worth the cost of maintaining a tax administration system. Therefore, providing VAT exemption on medical services is in the same line as the principles of tax convenience and tax efficiency.

However, providing tax relief may cause negative effects on the country and certain groups of business operators. To illustrate, the VAT exemption on cosmetic medical services is the result of the unclear scope of Thailand's VAT law and the difficulty of interpretation by the TRD. In this respect, the author would like first to demonstrate the loopholes of the Section 81(1)(j) in the context of such tax uncertainties, followed by its subsequences in terms of the country's inability to collect taxes on cosmetic medical services and taxable persons' inability to claim input tax credits, which would result in some disadvantages in trade competitiveness, particularly among the medical and non-medical sectors, and hidden tax under VAT exemption on medical services as follows:

5.1 Problem of Tax Uncertainty under Thai Law

Since Section 81(1)(j) of the TRC does not specify the definition of medical services for VAT exemption for tax purposes in the act itself, but the scope of medical services that are exempted from VAT must fall within the scope of the medical facilities laws, the scope of "medical services" for VAT exemption under Thai law is so broad that it encompasses all medical practices on the human body for either therapeutic or cosmetic purposes as long as such medical services are rendered by medical facilities. Furthermore, the law does not provide any exceptional cause for excluding cosmetic medical services from the scope or definition of medical services under VAT exemption.

It raises an issue in determining how far medical services should be exempted to what extent or which types of medical services will be exempted from VAT, especially for cosmetic medical services which have been excluded from VAT exemptions in many countries due to the lack of therapeutic purposes. At this point, it may cause some challenges for some medical facilities that provide only cosmetic procedures as service providers may be unsure whether their services are subject to VAT exemption or not.

In other words, Section 81(1)(j) remains uncertainty in terms of tax incidence and liability as service providers may not foresee their obligation, thus causing difficulties for them as taxable persons to comply with such tax law. As seen in the tax rulings, it can be implied that the business operators were not sure whether the cosmetic medical services they provided were subject to VAT or not which directly affected to their tax obligations.

Especially, in the instance of the hair transplant case,[188] the business operators acted in good faith and wished to comply with the law but was held liable for the penalty due to such unclear scope of the law. At this point, the TRD deemed that any provision of services provided by a medical facility shall be considered as medical services under the VAT exemption. This may not be justified for the business operator to be held liable because of their mistakes caused by the unambiguity of the law. This is totally in contrast with the tax certainty principle because tax law is supposed to be undoubtedly clear and unambiguous because it affects people's rights and obligations, and has sanctions for incompliance.

However, such broad scope of the VAT exemption on medical services still requires further interpretation by the TRD, which causes difficulties for the competent officials in exercising their discretion to interpret and draw conclusions from such unclear provisions as well. This is inconsistent with the characteristic of good taxation in terms of tax certainty principle as the definition and scope of the provisions must be sufficiently defined to avoid the need of further interpretation and to prevent tax disputes.

In addition, the ambiguousness of Section 81(1)(j) and the TRD's interpretations undermine tax collection and create inequality among service providers, which will be discussed in section 5.2 and 5.3, respectively.

[188] Revenue Ruling No. GorKor 0702/697 Dated 07/09/2561.

5.1.1 Comparison Among Problem of Tax Uncertainty under Foreign Laws

5.1.1.1 Under Australian Law

Medical services in Australia are zero-rated GST supplies under the GSTA's Section38-7(1), in which medical service providers will be in the GST system and entitled to claim an input tax credit. In this sense, it requires all business operators in the medical field to be registered in the GST system and requires them to prepare GST reports, and they are entitled to claim any input taxes paid in relation to acquisitions made in their businesses. In this regard, both consumers and this type of service provider can enjoy the tax benefit as there is no hidden tax in the price of the provision of medical and healthcare services.

In this light, the Australian laws provide a clear definition or scope of "medical services" under GSTA Section 195-1, which requires two criteria for medical services to be qualified as GST-free or zero-rated GST services: either having medical benefit payable under the Australian healthcare scheme or being recognized as a necessary and appropriate treatment generally accepted by medical professionals. At this point, ATO also ruled that "appropriate treatment" shall refer to any medical treatment that aims to restore, preserve, and improve the health and psychological well-being of the person.

Moreover, the Australian laws also limit the scope of medical services by excluding medical services for cosmetic reasons from the zero-rated GST services and imposing GST on such cosmetic medical services instead. Under Section 38-7(2), the law provides an exceptional cause to exclude medical services for purely cosmetic reasons from the medical services and hospital services. Furthermore, GSTA Section 38-20(2) also concerns about the GST status on other services related to cosmetic medical services or that are integral to the provision of cosmetic medical services such as anesthesia, pathology tests, and X-ray services. The law requires those related services to be eligible for taxation.

Apart from that, the Australian laws include subordinate legislation in terms of the ATO's public rulings as a guidance for the service providers in this cosmetic medical industry, which can increase its tax certainty and reduce the potential for interpretative issues in tax practice. At this point, this enables both business operators and consumers to know their rights and obligations in the first place, and encourages them to comply with the law, while the Government can also generate the revenue.

5.1.1.2 Under Korean Law

Similar to Thailand's VAT regime, Korean legislation, Article 26 (1) 5 of the VATA, offers the tax relief for medical services and health services in terms of VAT exemption to reduce the tax burden on all taxpayers.

However, the scope of the Republic of Korea's VAT exemption had been restricted to the extent that it was considered medically necessary by repealing the VAT exemption for cosmetic medical services in the middle of 2011. To illustrate, the Enforcement Decree of VATA Article 35 requires two criteria for "medical and health services" to be VAT exempt under the VATA: namely, medical and health services provided by a legal medical facility and falling within the scope of the healthcare insurance scheme coverage.

Likewise, the last part of Article 35(1) of the Enforcement Decree of VATA provides an exceptional clause or a list of surgical and non-surgical cosmetic procedures to exclude from VAT exemption. In this light, it will make both business operators and consumers acknowledge their rights and obligations in the very first place. As a result, it will create the consumers' voluntary payment as they have already known that it is their legal obligation to pay VAT, or they do not feel that they were charged arbitrarily. At the same time, the business operators can comply with the tax laws, which include the business VAT registration, tax payment, and VAT report submissions. Besides, to solve the problem of interpretation, the Korean provisions have placed the definition clearly to identify what are and are not eligible for taxation. Particularly, Korean laws have contained a list of taxable cosmetic procedures to reduce the interpretation problem that may cause controversies in practice.

5.1.2 Comparative Analysis

Due to the ambiguousness of Section 81(1)(j), it provides the VAT exemption in a very broad scope compared to the Korean and Australian laws.

As previously mentioned, Section 81(1)(j) provides a VAT exemption for medical services provided by medical facilities but does not specify the type and scope of the medical services to be exempted from VAT. As a result, the scope of medical services exempted from VAT under Thai law may include medical treatments as long as such treatments are provided by a medical facility.

While the Australian and Korean laws clearly define the scope and criteria of the medical services that fall under the scope of tax relief, not only the consideration required for the establishment of the medical facility rendered by the medical professionals, but the healthcare coverage under healthcare insurance schemes also used as one of the criteria for both countries to determine whether such medical services shall be subject to VAT and GST or not.

Furthermore, both Australian and Korean laws also have the exclusion clause that does not include cosmetic medical services from the scope of such tax relief. Regarding this, the scope of medical services under Australian and Korean laws is limited to fundamental medical treatments that are considered medically necessary only.

At this point, it is obvious that both Australian and Korean laws are clearer than the Thai provision in the terms of tax liability, defining precisely which medical services are exempted from VAT and which are taxable. This enables medical facilities, as taxable persons, to become aware of their rights and obligations in the first place, and they can prepare themselves to comply with the tax law and prevent themselves acting in good faith from being held liable by the unambiguity of the law. At the same time, consumers, as taxpayers who ultimately bear the tax burden, are expected to know which goods and services are taxable supplies so that they will not feel that they were taxed arbitrarily.

Apart from that, such unclearness of the TRC Section 81(1)(j) also affects how the TRD interprets and applies the laws. Whereas the Australian and

Korean laws also have clear legislations regulating this area. In other words, they have primary legislation; namely, GSTA and VATA, which set the scope of medical services under tax law, and secondary legislation; namely, the ATO public rulings and the Korean Enforcement Decree, to reduce interpretative issues and shape interpretation in the same direction according to the law's intended purposes, which creates more certainty in their legal systems.

Hence, the author found that Thailand needs to set a clear scope of the medical services that are exempted from VAT, which must be in accordance with the tax certainty principle. This is because, without tax certainty, taxable persons and voluntary willingness to pay of taxpayers may merely disappear. Additionally, it could avoid inconsistencies in interpretations between the taxpayers and the TRD, as well as among relevant authorities, or even prevent officials from exercising discretion contrary to the spirit of the law.

5.2 Problem of Inability in VAT Collection on Cosmetic Medical Services under Thai Law

As mentioned previously, due to the fact that the TRC Section 81(1)(j) remains unclear scope of medical services to be exempted from VAT, it is necessary to consider the TRD's interpretations regarding VAT exemptions on cosmetic medical services.

Apparently, the TRD determined that all types of cosmetic treatments should be presumed as medical services regardless of their medical necessity or therapeutic purpose as long as the provision of medical services is provided by medical facilities. In this respect, the TRD is likely to rely only on the establishment of a medical facility, which can be seen from the hair transparent and beauty clinic cases, where the business operators as medical professionals were confused whether their rendered cosmetic procedures or beauty services, such as hair transplant, facial moisturizer treatment, and so on, might be considered as other services than the medical services as there is no therapeutic purpose involved.

In this sense, it can be implied that if such cosmetic medical services are provided by a legal medical facility and that service provider has rendered such services to be in accordance with the medical facility standards required by law, such services will be exempted from VAT under Section 81(1)(j), regardless of medical necessity assessed by the medical professionals. In other words, the TRD exactly exercised their discretions as the law stipulated, without taking any therapeutic purpose or medical necessity into consideration at all.

Apart from that, the author also notices that such TRD’s interpretations may not be consistent with the national healthcare insurance scheme coverage, which must take Section 3 of the National Health Security Act B.E.2545 (2002) and Section 5 of the Board of National Health Security's Declaration of Types and Scope of Health Services, B.E. 2565 (2022) into consideration.

Under the National Health Security Act (NHSA), Section 3 defines “health services” as medical and public health services directly provided to a person for the purposes of health promotion, disease prevention, diagnosis, medical treatment and rehabilitation that are necessary for health livelihood and also defines “health service expense” as any expense incurred from the provision of healthcare services, which include health promotion and disease prevention, medical diagnosis, treatments and services, medicine and medical supplies, artificial organs and medical equipment, birth delivery, neonatal care, ambulance and emergency services, physical and psychological rehabilitation, and other necessary services.[189]

Furthermore, The Board of National Health Security's Declaration Regarding Types and Scope of Health Services, Section 5 does not allow any expense incurred by cosmetic procedures to be claimed unless there is a medical necessity involved.[190]

In this sense, most medical professionals generally agree that cosmetic medical services performed for non-therapeutic purposes fall outside the scope of

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[189] National Health Security Act B.E.2545 (2002), Sec 3

[190] The Board of National Health Security's Declaration Regarding Types and Scope of Health Services, B.E. 2565 (2022), Sec 5

necessary medical treatment and rehabilitation for health and livelihood,[191] the expense of cosmetic medical services is not eligible to be claimed under the Thai healthcare insurance scheme, which is totally contrary to the TRD interpretation, despite the fact that both taxation and the Thai healthcare insurance scheme are recognized as public fiscal tools for the Government and have direct impacts on the country's financial status.

Therefore, it can be implied that Thai law exempts unnecessarily expensive medical services for purely cosmetic reasons from VAT, which makes Thailand lose opportunity to collect VAT on such cosmetic medical services, which are elective medical treatments and most of cosmetic procedures are not directly related to therapeutic purposes. In other words, cosmetic medical services are typically beyond the scope of fundamental medical treatment and unrelated to public health, but tools for those people who wish to achieve their aesthetic desires and individual satisfaction. Therefore, such TRD's interpretation is relatively inconsistent with the main purpose or the spirit of tax law aiming to generate the maximum amount of revenues for the country.

Besides, as mentioned earlier in Chapter 3, Section 81(1)(j) of the TRC is relatively outdated because it has never been amended since the first VAT's implementation in 1991. Such VAT exemption may be unable to keep up with current innovation, technology, and economic situation, while the cosmetic medical services have grown into a thriving industry in Thailand and are now a part of the beauty trend. Thus, such VAT exemption may lead Thailand to an inability to collect taxes on unnecessary cosmetic medical services, resulting in a loss of revenue in the long run, which is contrary to the good tax principle, requiring tax law to be able to cope with current and future economic situations.

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[191] Health Intervention and Teachnology Assesssment Program, 'ความเป็นมาของกระบวนการสิทธิหลักประกันสุขภาพแห่งชาติของคนไทย (Kwam Penma Khong Krabounkarn Sitthi Lakprakan Heangchad Khong Konthai) [Deverlopment of Thai Universal Health Coverage Scheme]', <https://hitap-ucbp.mahafun.net/about/background.html>, accessed Oct 17, 2021.

5.2.1 Comparison Among Problem of Inability in Tax Collection under Foreign Laws

5.2.1.1 Under Australian Law

As a result of Australian tax certainty, proving a clear scope of medical services and imposing GST on cosmetic medical services under the GSTA Section 38-7(2), Australian tax law imposes GST on medical services if such services rendered mainly for cosmetic reasons, lack of medical necessity, or are not covered by the national healthcare insurance scheme. Furthermore, Section 38-20(2) and ATO public rulings also impose GST on other related services, such as hospital services, pathology test and x-rays services, and anesthetic services used as part of cosmetic procedures.

Regarding this, it enables Australia to collect taxes on unnecessary and luxury medical services. This allows Australia to avoid revenue losses from cosmetic services, which can be seen that Australian tax laws are well designed and able to cope with the changes in technology and circumstances, which is in the same line with the tax productivity principle. At the same time, such tax measures are also consistent with the principle of tax relief, which is to provide an exemption to the extent that is necessary only to achieve the main purpose of taxation, which is to maximize and generate revenue for the country.

However, the Australian laws does not only aim at generating revenue, but also concern about the tax burden of taxpayers, as seen from how the ATO interprets the law based on a case-by-case basis, in which the medical necessities, including age and psychological conditions of the patient, are taken into consideration for zero-rated GST thereof. To illustrate, the ATO deemed that cosmetic medical services may serve medical purposes if a psychiatrist or psychologist deems it necessary or appropriate for the patient's psychological and psychiatric well-being. Alternatively, a cosmetic medical service may be utilized without the recommendation of a psychiatrist or psychologist if the patient is under the age of 18 and the defect or scar is visibly apparent in an area of the body typically not covered by clothing.

Furthermore, the ATO also ruled if infections are developed from the cosmetic procedures, the GST would be applied only on the part that is directly related to cosmetic medical services. Regarding this, such interpretation is relatively reasonable and fair for the consumers as taxpayers because they will not feel that they were taxed arbitrarily, which may encourage consumers' willingness to voluntarily pay tax at the end.

Besides, since the Australian laws require the medical facilities to keep the medical prescriptions and psychiatrists' or psychologists' recommendations as evidence for the ATO for tax audit purposes, thereby reducing tax evasion and tax avoidance on such cosmetic medical services as well.

5.2.1.2 Under Korean Law

Because of the repeal of VAT exemption for cosmetic medical services in 2011, it enables the Republic of Korea to be able to generate more revenues from the non-essential medical services. Due to the Enforcement Decree of VATA Article 31(1)(a) and (b), the Korean laws impose VAT on a list of cosmetic medical procedures, in which subsection (a) imposing VAT on surgical procedures and subsection (b) imposing VAT on non-surgical or minimal invasive cosmetic procedures. Although the Korean laws provides the list of cosmetic procedures to be assumed as taxable services, Article 35(1) subsection (a) also provides an exclusion clause for the cosmetic surgical procedures rendered for reconstructive and therapeutic purposes to be exempted from VAT. In this regard, it can be seen that Korean tax laws are in the same line with the VAT exemption principles that the VAT exemption should be provided to the extent that the country deems necessary only. As a result, such tax revenue can be used to support the country's welfare expenditures, which is consistent with the main purpose of taxation.

Although this kind of tax measure may be considered as another major source of revenue for the country, it may indirectly affect the market of this industry. Most of the business operators in the cosmetic medical field have criticized that such tax measure may cause disruption or slowdown in the growth of such industry, particularly in terms of the 10% increase of service prices, which could make the cosmetic medical services in the Republic of Korea less attractive to both national and international patients, thereby reducing its international competitiveness[192] because consumers may prefer to travel to other countries that do not have this kind of tax measure instead. This is the reason why the Korean Government implemented the VAT refund scheme for foreign tourists to mitigate such losses and promote the medical tourism industry.

More specially, as a large number of Korean facilities failed to register, collect, and report their taxes properly, the VAT refund scheme was introduced to encourage medical facilities to enter into the VAT system. At this point, the tax refund scheme for foreign customers was designed to make the cosmetic medical service industry more transparent.[193]

As previously stated, not all medical facilities can provide medical services to overseas patients; rather, Korean legislation requires special medical facilities to be authorized and registered as medical facilities only for overseas patients. By getting more overseas customers, this scheme requires those medical facilities to be VAT registrants, required to submit their output and input tax reports to the NTS and issue the certificate of selling medical services for overseas patients. In this way, the Government can double-check how much they earn and tax them accordingly.

5.2.2 Comparative Analysis

As the primary purpose of taxation is to generate revenue for the country to fund public goods, any tax measure must be effective enough to serve as the main fiscal tool for the country. Nevertheless, the possible causes of the problem that make Thailand unable to collect VAT on cosmetic medical services are consisted of two main reasons: the problem of the tax interpretation by the TRD and the outdated provision of Section 81(1)(j).

To start with the problem of the TRD's interpretation, it can be seen that the VAT exemption for medical services under Thai law is provided and

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[192] Kwaak (n 183)

[193] Sung-Jin (n 187)

interpreted in a very broad scope, which is contrary to the principle of VAT exemption, as such exemption could result in neutrality and inability to collect taxes due to the fact that VAT is an indirect consumption tax supposed to apply to all goods and services. Additionally, the VAT exemption also disrupts the VAT tax credit cycle. Therefore, VAT exemption should be provided to a minimum or to the extent necessary to achieve the intended purpose of such tax relief. In this sense, the main objective of the VAT exemption on medical services is to eliminate the barrier to accessing the public health system. Patients have already suffered from illness or injury, so they should not have to bear the additional tax burden, thereby reducing the cost of medical expenses to become more affordable to provide fundamental medical treatments in a timely manner for all.

However, as shown in Chapter 2, when it comes to cosmetic medical services, most cosmetic medical services' patients are not ill or injured; rather, they are dissatisfied with their appearances and undergo cosmetic procedures solely for their aesthetic desires, not for therapeutic or medical reasons or public health purposes. In other words, cosmetic medical services are not considered fundamental medical treatments since they go far beyond the medical necessity for therapeutic purposes.

In this sense, both Australia and the Republic of Korea have differentiated cosmetic medical services from medical services, excluding such cosmetic medical services from their tax relief measures and, instead, imposing taxes on such services. The criteria of determination for the medical services of both countries are based on the qualification of service providers to be medical professionals and the eligible medical treatments covered by the healthcare insurance scheme. In this sense, it can be concluded that both countries adhere to this principle by taking medical necessity or therapeutic purposes into consideration to limit the extent of medical services to the extent that is necessary for public health purposes. As a result, the governments of both countries have an authority to tax these non-essential medical services and use such tax revenue to rehabilitate their countries and support social welfare expenditures.

While Thailand continues to provide VAT exemption for cosmetic medical services and does not exclude the cosmetic medical services from VAT exemption, it can be implied that the scope of VAT exemption on medical services under Thai law is quite broad, as the only criteria that the TRD relies on is the establishment of medical facilities which leads Thailand to lose an opportunity to tax unnecessary cosmetic services.

In this regard, the author believes that Thailand should reconsider the scope of its VAT exemption on medical services to be consistent with the VAT exemption principles, thereby restricting the scope of VAT exemption on medical services to the extent that is necessary for public health purposes through our healthcare insurance scheme as another criteria for determination. Thus, if the TRD bases its decision on these criteria, the author strongly believes that Thailand will be able to offer such VAT exemption to consumers as tax relief while also broadening the tax base for cosmetic medical services and preventing revenue loss without jeopardizing consumers' fundamental rights to medical treatments.

Another reason is that the inability to collect VAT on cosmetic medical services under Thai law is due to an outdated VAT provision. The subsection (j) of Section 81(1) remained unchanged since Thailand implemented VAT in 1991, due to the fact that the medical services in Thailand at that time, as a developing country, were not as advanced as today. As a result, the policymakers might overlook the possibility of using medical services solely for cosmetic purposes. So, the exemptions for medical services in Thailand were provided in an extremely broad scope, which made Thailand unable to keep up with or accommodate the latest advanced technology in the medical field, which is no longer limited to therapeutic purposes but is increasingly used for cosmetic purposes instead. However, providing the broad scope of the VAT exemption for medical services will adversely affect the revenue-generating ability of the country, which is against the tax productivity principle.

In comparison to the Korean law, the Republic of Korea was the first Asian country to implement VAT in 1976, although experiencing the same difficulties as Thailand in collecting taxes on this sort of medical service. Thus, the Republic of

Korea only began taxing these types of medical services in 2011 and amended the laws in the following years to modernize and expand the tax base to cope with new cosmetic procedures and generate additional revenue to assist the country recover from its financial crisis.

While Australia was the latest member of the organization for Economic Co-operation and Development (OECD) to implement GST in 2000,[194] it can be assumed that at that time, medical services were already being used for purely cosmetic reasons in Australia, and, as a result, cosmetic medical services were excluded from medical services under the Australian GST law in the first place, because the Australian laws were designed to safeguard the exploitation of the tax relief to be provided to the extent that it should not be given such tax benefit.

Regarding this, the foreign laws reflect that they are well-designed or amended to be consistent with both current and future economic situations, enabling those countries to cope with upcoming changes and developments.

In this regard, Thailand should take the tax productivity principle into account by reconsidering the loophole of this section to amend the law to be compatible with current situations and future occurrences. As a consequence, the government could broaden tax base and use this tax revenue to recover and support our public health welfare system, as well as the economic crisis damaged by the post pandemic of COVID-19. Otherwise, Thailand will continue to lose the opportunity to collect taxes on these increasingly popular and prominent cosmetic medical services in recent years.

Last but not least, under the Korean VAT tax refund scheme for foreign tourists, the author deems that this kind of tax measure may not be suitable for Thailand. Although such tax measures can be used as a tax-incentive tool to attract foreign tourists to visit Thailand, studies have revealed that the cost of cosmetic medical services in Thailand is relatively inexpensive compared to other countries.[195]

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[194] James (n 85) 241.

[195] Piyawan Prukprakarn, 'The Study of Consumer's Behavior and Perception toward Cosmetic Surgery in Thailand', (Thammasat University, 2016). 3.

In this light, the author strongly believes that even if Thailand imposes VAT on cosmetic medical services, it will not significantly affect the number of foreign customers because, even including 7% VAT, the cost of such medical services is still lower than in some countries, which does not reduce the competitive ability of those business operators on an international level and is not contrary to the Thai medical tourism policy either.

Moreover, if Thailand provides the VAT refund scheme, it may result in some revenue loss and may not be worth the administrative costs, which include additional tax compliance on the taxable person and the responsible officials, an expansion of tax refund centers, an establishment of a new system and protocol for providing the VAT refund scheme on these types of services. For these reasons, the author does not recommend adopting this tax refund measure, as it may conflict with taxation purposes.

5.3 Problem of Tax Inequity and Limitation of VAT Registration under Thai Law

Turning to another negative consequence of Thailand's VAT exemption, due to the commercial nature of cosmetic medical services, as discussed in Chapter 2, it may create inequity between medical and non-medical sectors as taxable persons if similar or comparable taxable persons receive different tax treatments.

To illustrate, certain cosmetic procedures, particularly non-surgical procedures, such as some laser and cosmeceutical therapies, can be performed by both medical and non-medical sectors. As such, the non-medical sectors are not qualified as a VAT exemption because beauty services are not provided by medical facilities; therefore, it is subject to VAT and requires a VAT registrant to comply with VAT obligations, including charging VAT on their consumers and monthly remitting that amount of VAT and VAT report to the revenue department to claim their input tax credit. In this regard, the non-medical sectors may have several tax obligations to comply with the law, which may cause a higher cost of tax compliance compared to the medical sectors.

While the medical sectors that perform cosmetic procedures are considered as medical services, they are exempted from the requirements of VAT compliance since they are not included in the VAT system under the law. Although Thai law provides an option for small and medium-sized enterprises (SMEs) to be eligible to register for VAT, this does not imply that all types of businesses can register. According to Section 81/3,[196] the right to register for certain types of businesses specified under Section 81 (1) (a) to (f) is limited to those businesses specified under Section 81 (1) (a) to (f). However, it does not include businesses specified under Section 81(g) to (v), as the majority of businesses are related to the well-being of the people, such as healthcare services, education, academic, art, and culture. [197]

In this regard, it means that business operators who provide medical services for cosmetic purposes are unable to be listed in the VAT system. As a result, they are unable to claim any input tax credits paid in the course of their business operations. At this point, medical sectors may be at a disadvantage, as providing such cosmetic medical services requires the use of advanced technology and medical devices, which makes the cost of services significantly expensive. However, the medical sectors as service providers are not permitted to claim any input taxes paid in connection with their operations, which has a negative impact on their cash flow and their ability to compete in the marketplace as well. Yet, according to good tax principles, taxation must be equal and fair. Otherwise, it would be impossible to create cooperation from all taxpayers. It means that all taxpayers or taxable persons should receive the same tax treatments.

5.3.1 Comparison Among Problem of Tax Inequity under Foreign Laws

5.3.1.1 Under Australian Law

As cosmetic medical services are excluded from the zero-rated GST supplies, the GST at the standard rate will apply to cosmetic medical services in the same way as other cosmetic services rendered by non-medical sectors.

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[196] Thai Revenue Code B.E.2481(1938), Sec 81/3

[197] Leungreungrong (n 60) 280.

Generally speaking, there is no disparity in the tax treatment of medical and non-medical service providers. However, there is still a different tax treatment among medical practitioners. It is noteworthy that while Australia imposes GST on cosmetic medical services and their other associated services, dentistry services are zero-rated GST services under GSTA Section 38-10 as there is no exclusion clause to exclude cosmetic dental services from zero-rated GST services. At this point, Australian academics have criticized that there is a disparate tax treatment for cosmetic services because dental services can be used to improve one's appearance as well.[198]

5.3.1.2 Under Korean Law

As the cosmetic medical services under the Korean laws are subject to VAT. In this sense, it allows all of the business operators in the cosmetic medical field to be able to register into the VAT system and claim any input tax paid on the acquisition of their businesses. In this sense, the medical sector, as a service provider rendering cosmetic services, does not have to bear the tax burden anymore and such cosmetic medical services will be taxed similarly to the non-medical cosmetic services such as wellness and spa institutions. In addition, the Korean laws provide the same tax treatment respectively to all types of medical sectors, including dental services, unlike the Australian laws. In this regard, the Korean laws provide the same tax treatment to all cosmetic services for both non-medical and medical sectors.

However, as the Republic of Korea's legislation provides a list of cosmetic procedures, it may cause unfairness among taxpayers, especially in the case of invasive procedures such as acne treatments, which are subject to VAT under Section 35(1)(b) of the Enforcement Decree. Even though such procedures serve certain therapeutic purposes, the law does not allow them to be exempted from VAT. In this regard, many Koreans express concern that this may not be fair and may

[198] Catherine Whitby, 'First Do No Harm: Gst and Health Care Services', Revenue Law Journal, 8/10 Revenue Law (2000). 135-136.

aggravate consumers suffering from skin diseases by forcing them to bear not only the medical costs, but also an extra tax burden.[199]

5.3.2 Comparative Analysis

Under the principle of tax equity, tax treatment should not be differently applied among those business operators with the same ability to pay because different tax treatments would adversely affect the voluntary to pay of the taxpayers or the consumers who bear the tax burden at the end and taxable persons or the business operators who are responsible for collecting VAT and GST from the consumers at each stage of production and distribution.

Due to the problem of the inequity that exists in Thailand, it can be found that such inequity raised among the medical and non-medical sectors as the taxable persons that receive different tax treatment, which may be more favorable to certain groups taxable persons. To demonstrate, the non-medical sectors, including but not limited to cosmetic centers, wellness, and spa institutions, are subject to VAT because they are not established in the form of medical facilities. In this sense, any services that they provide are taxed at the standard rate. Rather, the medical sectors, namely, hospitals and clinics, are not subject to VAT due to the establishment of medical facilities, which exempts them from VAT obligations. At the same time, it may affect their profitability as they could not claim their input taxes paid on the acquisition of their businesses. While the non-medical sectors must be responsible for VAT obligations in this sense, they might have to bear more of the burden of tax compliance. However, they may be at an advantage in terms of the prices of their services as they can set their prices lower as they can claim their input taxes.

In this regard, some may believe that they receive different tax treatment as they are different types of service providers. However, it is, of course, not as fair as it appears if we take the types of cosmetic procedures and the distinctive nature of cosmetic medical services into consideration. It can be found that the medical facility may provide some cosmetic procedures that are not required by law

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[199] Lee Yoo Eun, 'Have Acne? South Korea Will Tax Your Treatment', <https://globalvoices.org/2014/01/31/have-acne-south-korea-will-tax-your-treatment/>, accessed Aug 8, 2021.

to be performed by medical professionals, particularly non-surgical procedures such as lasers, micro-pigmentation, tattooing, and cosmeceutical therapies that can also be provided by the non-medical sectors as well. In other words, such cosmetic services can be considered as similar or substituted services provided by different sectors. Moreover, most of the cosmetic medical services are provided for commercial purposes as they run marketing promotions and advertisements to attract consumers, which is different from the nature of medical services provided for therapeutic purposes, but similar to the commercial nature of the non-medical sectors seeking to maximize profits. It can be seen that both non-medical and medical sectors are in the same group of enterprises with the same economic activities, and they should be taxed equally.

Whereas cosmetic services provided by medical and non-medical sectors will be subject to VAT at the standard rate if they are provided for purely cosmetic purposes under the Australian and Korean laws. As a result, those service providers receive the same tax treatment, which means that they have the same tax rights and obligations. However, it can be noticed that the Korean laws are fairer to taxable persons than the Australian laws because the Korean laws provide the same tax treatment to all types of medical professional services, including dental services provided for cosmetic reasons, while the dental services under the Australian laws can be provided purely for the cosmetic reason without being taxed.

In this respect, the author would like to suggest that Thailand differentiate cosmetic medical services from medical services and impose VAT on all types of cosmetic medical services like the Korean laws. This is to reduce unfair practices that could arise from the different tax treatments placed on such taxable persons. In addition, this would also automatically resolve the limitation of the VAT registration under Thai law.

Besides, imposing VAT on cosmetic medical services does not significantly affect the consumer rights of medical treatments. Even consumers are the most impacted stakeholders, they may have to pay higher costs for cosmetic medical services. However, most consumers of cosmetic medical services are middle-to-upper income earners who have a relatively high ability to spend. Furthermore, as VAT is an indirect consumption tax, of which added value is included in the prices of goods and services, so consumers are unlikely to notice and oppose paying such taxes on the goods and services that they are satisfied with.

However, the tax relief for medical services will be available to those who require medical treatment as long as there are some therapeutic purposes involved. In other words, if the cosmetic procedures are performed to maintain or restore a patient's health or to treat disease or illness, such cosmetic procedure will not be subject to VAT, and the patient, as a consumer, will not have to bear any tax burden on the medical treatment. Therefore, such an imposition of VAT on cosmetic medical services is not against the ability to pay principle under vertical tax equity.

Another result of these disparate tax treatments, Thailand's VAT exemption for cosmetic medical services is also considered to be contrary to the tax neutrality principle. To illustrate, if we consider the consumers' perspective, it is clear that the VAT exemption has a direct effect on the price of goods and services that influences consumer decisions and encourages them to consume cosmetic services provided by medical sectors, which are VAT exempt, rather than cosmetic services provided by non-medical sectors that are subject to VAT. Possibly, such decisions are not made with the consumers' true intentions but to save their money by choosing the substituted services instead. This affects the demand and supply of the cosmetic service market and is considered a market distortion as well.

Apart from that, in the business operators' perspective, the VAT exemption may have an impact on the business operators' decisions on their business organizations or establishment decisions, as most business operators always prefer the business entity structure that will provide them with the greatest tax benefits. In this case, the exemption of VAT for medical services may incentivize business operators in non-medical sectors to seek out or hire a medical professional to be a nominee in order to open or establish the simplest medical facility or a cosmetic clinic for them, as they will not have any obligations regarding VAT and the government will be unable to trace or audit any transaction or service they provide.

In this regard, the author deems that imposing VAT on cosmetic medical services could assist Thailand to minimize unintended effects for both taxpayers and taxable persons. As demonstrated by the selected foreign countries, all cosmetic services are taxed at the standard rate. This allows consumers to make their decisions according to their genuine satisfaction. Simultaneously, since both medical and non-medical sectors would have the same rights and obligations under tax law, business operators may be discouraged from engaging in business activities for which they are not competent and qualified. As a result, these could prevent distortion of the market mechanism's performance as well.

5.4 Problem of Hidden Tax under VAT Exemption for Medical Services under Thai Law

Providing VAT exemption for medical services may appear to reduce tax burden on medical expenses for patients as final consumers. However, it is important to note that there may still be hidden input VAT remaining within the cost of medical services, as the VAT exemption does not require the business operators to be registered in the VAT system. Therefore, they do not have both obligations and rights to claim any input taxes paid in relation to their business. Subsequently, business operators in the medical field, therefore, tend to increase the price of their goods and services in order to compensate for the non-deductible input tax, which such tax burden falls on the shoulders of the consumers in the end.

5.4.1 Comparison Among Problem of Hidden Tax under Exemption for Medical Services under Foreign Laws

5.4.1.1 Under Australian Law

In contrast to Thailand, Australia offers tax relief for healthcare and medical services through zero-rated GST which requires the service providers in the medical field to register into the GST system and fulfill certain obligations, such as charging GST at a rate of 0% to their consumers and preparing the GST report. However, they are also entitled to claim an input tax credit for acquisitions made in their business. As a result, this tax relief not only reduces the cost of business for service providers, but also allows consumers to enjoy tax benefit as there is no hidden tax in the price of the provision of medical and healthcare services.

5.4.1.2 Under Korean Law

Since the Korean law provides tax relief in the form of VAT exemption, similar to Thailand, the Republic of Korea also faces comparable challenges regarding hidden VAT costs within the price of the provision of medical services. Consequently, Korean business operators in the medical sectors might also adjust their prices upward to compensate for the non-deductible input tax. This, in turn, could shift the tax burden onto the consumers, as they end up shouldering the increased costs.

5.4.2 Comparative Analysis

At this point, even providing tax relief in the form of VAT or GST exemption may cause hidden tax problems, while zero-rated VAT or GST does not. Both tax exemption and zero-rated tax are used as tools for the government to achieve specific goals and purposes, in this case to make healthcare and medical services more affordable and accessible by reducing the tax burden on medical services. Both tax relief measures result in no VAT or GST being charged to the final consumer. However, they have distinct implications for business operators as taxable persons and the overall tax system. Therefore, it is necessary to comprehend the benefits and drawbacks of each tax relief measure.

To begin with, VAT and GST exemption, as implemented in Thailand and the Republic of Korea, providing tax exemption for medical services, which are essential to human needs, is aimed at making medical services more adequate, accessible, and affordable for the general population. Thus, this kind of tax relief measure could promote and improve the quality of the overall public health and well-being of the population. However, providing such tax exemption for medical services may have an impact on the Government's revenue generation, as the Government would be unable to collect VAT or GST on these services.

Nevertheless, VAT or GST exemption reduces the burden of tax administrative complexity and compliance for business operators, as they do not have to account for charging VAT and GST on their sales. However, the drawback of tax exemption causes a complete break in the VAT and GST cycles, especially for input tax credits, and the cost of VAT on inputs, such as medical equipment and supplies, would be borne by business operators in the medical field, potentially impacting their operating costs. However, the business operators usually increase their prices to compensate for those input tax costs, and consumers will have to bear such hidden taxes in the end.

In other words, the tax exemption can only provide the immediate relief to the patients as the final consumers because they are not charged such taxes on medical services. As a result, it can make healthcare more affordable and accessible by reducing the tax burden on medical expenses. However, as mentioned earlier, the consumer may have to bear the hidden tax that arises from the disruption of the tax credit cycle. This implies that this kind of tax relief measure can only partially reduce the tax burden for the patients as the final consumers of medical services.

The zero-rated VAT or GST approach implemented in Australia makes business operators or medical service providers register for VAT or GST, which allows them to claim input tax credits, reducing their overall business costs.

Despite applying VAT or GST on patients at the rate of 0%, medical service providers are allowed to reclaim the input taxes paid on their input costs related to providing medical services, including input tax on medical equipment, supplies, and other expenses necessary to deliver healthcare. Therefore, the medical service providers can lower their prices, which ultimately reduces the medical and healthcare expenses for patients as final consumers. At this point, it can be seen that this kind of tax relief measure eliminates the hidden tax problem by making neither business operators nor consumers bear any input tax burden.

However, zero-rated tax requires business operators to register and comply with tax obligations, which may impose administrative burdens for both business operators and the Government. Despite the fact that zero-rated VAT offers tax relief to patients, it may impact on revenue generation for the Government. This is because the Government is not only unable to collect VAT or GST, but also has to refund the amount of input tax to the business operators, potentially reducing the ability to generate income of the country and impacting funding for other public services. However, by requiring business operators to be in the VAT or GST system, the Government can transparently track and audit the sources of revenues and related transactions and ensure that the VAT and GST cycles are not disrupted.

After considering the foregoing, the author believes that Thailand should reconsider adopting a zero-rated tax as a tax relief measure for medical services. This approach can eliminate the hidden tax, making medical services completely free from taxes and reducing the cost of operation for business operators and the tax burden on patients as final consumers. However, when compared to tax exemptions, providing zero-rated taxes may have a negative impact on the Government's revenue generation. The Government shall prioritize and subsidize essential medical services in order to address the population's urgent health needs and improve overall public health.

To address this, the government may impose VAT or GST at the standard rate on cosmetic medical services in order to offset the amount of input tax that the business operators have refunded and take advantage of the zero-rated tax as a tool for tax auditing. Due to the fact that the implementation of zero-rated tax requires business operators to be registered in the VAT and GST systems and submit VAT or GST report to the Government on a monthly basis, the Government may cross-check the related transactions, potentially finding other additional sources of revenue. This transparency can contribute to reducing tax evasion and promoting tax compliance as well.

CHAPTER 6
CONCLUSION AND RECOMMENDATIONS

6.1 Conclusion

Currently, many countries have imposed their general consumption taxes on cosmetic medical services due to their distinctive characteristics, namely, non-medical necessity and the commercial nature of business activities, including marketing promotions and advertisements that differentiate these types of medical services from the fundamental ones. In conjunction with the tax exemption principles, VAT and GST, as broad-base consumption taxes, should be levied on all goods and services to preserve economic neutrality. Thus, VAT exemption must be limited to the extent necessary for livelihood and public purposes, in contrast to cosmetic medical services, which are not directly involved with public health purposes, but rather for individual satisfaction. Therefore, such cosmetic medical services are likely to be subject to VAT and GST in many countries.

Through this comparative study, it is also evident that Australia and the Republic of Korea both collect tax on cosmetic medical services by providing an exclusion clause that excludes such services from the scope of tax relief. Similarly, in order to consider whether such cosmetic medical services should be subject to VAT or not, both countries have established similar criteria; namely, the cosmetic medical services must be provided by qualified medical professionals and the eligible coverage of their healthcare insurance schemes, and they also provide the secondary laws to promote their effective tax enforcement and facilitate tax compliance and interpretation to be in the same direction.

Thailand, on the other hand, faces challenges in collecting VAT on cosmetic medical services because of the ambiguousness under Section 81(1)(j) of the TRC providing the VAT exemption for medical services in a very broad scope. As a result, the tax uncertainty complicates tax interpretation, tax compliance, and tax disputes for government officials, taxable persons, and taxpayers, creating an inequity between the medical and non-medical sectors as taxable persons. Furthermore, this provision has never been amended since it first came into force, which was a long time ago. Therefore, the Thai VAT provisions cannot cope with the current situation and social changes, resulting in revenue losses in the end.

6.2 Recommendations

However, the author is confident that these problems can be resolved if Thailand reconsiders to impose zero-rated VAT for medical services in order to eliminate the hidden tax issues and establish a clear scope of medical services under VAT relief in accordance with the principle of tax certainty. This will encourage voluntary tax compliance, while avoiding inconsistencies among taxpayers, taxable persons, and tax authorities.

Most importantly, Thailand should restrict the scope of tax relief on medical services to the extent required for public health purposes. This restriction must take the healthcare insurance coverage scheme into account when assessing which services or treatments are for purely cosmetic reasons. As a result, Thailand could still provide tax relief on medical services to patients as final consumers, while simultaneously expanding tax base for cosmetic medical services and preventing revenue losses without jeopardizing consumers' fundamental rights to medical treatments.

Therefore, the author deems that it is imperative for Thailand to reconsider the scope of medical services under VAT relief and reform its VAT regime on cosmetic medical services to enhance tax certainty, broaden tax bases, and promote tax equity and neutrality, specifically by providing VAT relief in the form of zero-rated VAT for medical services instead of VAT exemption, and imposing VAT on cosmetic medical services, which could be accomplished by amending and enacting relevant regulations to provide more details of the taxable cosmetic medical services and its effective tax enforcement as follows:

6.2.1 Providing Zero-rated VAT for Medical Services

First and foremost, since the medical service is one of human basis needs, the author suggests that Thailand provide VAT relief for medical services in form of zero-rated VAT instead of VAT exemption in order to make the provision of medical services totally free from VAT and eliminate the hidden input taxes that are usually included in medical expenses. As the primary objective of this tax relief is to enhance the accessibility and affordability of medical services, it will improve the overall health of the population and reduce healthcare disparities. Additionally, this proposal would alleviate the financial burden on individuals and promote more efficient and effective healthcare and medical services, ultimately benefiting the whole society.

Regarding this, the author found that Thailand should amend VAT laws by removing subsection (j) of VAT exemption under the TRC Section 81(1) and adding a new subsection to the current zero-rated VAT provision, which is the TRC Section 80/1, in order to provide zero-rated VAT for medical services. This amendment would effectively change the tax treatment on medical services and ensure that they are completely free from VAT.

6.2.2 Imposing VAT on Cosmetic Medical Services

Additionally, to impose VAT on cosmetic medical services, the law must establish the authority for collecting VAT on such non-essential medical services. The author, therefore, found it necessary for Thailand to amend Section 80/1 of the TRC by adding a new subsection and providing an exclusion clause for such provision to impose VAT on cosmetic medical services and limit the scope of medical services.

In this sense, the author chooses the Australian law as the model for empowering the Government to collect VAT on such cosmetic medical services because it is easier for all parties involved, especially consumers, business operators, and the government officials to understand and know their rights at the first place because the general principle and its exceptions of tax law will be consolidated in one place, minimizing inconveniences for those involved, as tax laws must be clear and simple as much as possible in order to create more certainty for Thailand’s VAT regime.

Thus, the author would like to offer the draft amendment of the TRC as follows:

Section 80/1 “Zero rate shall be used in value-added tax calculation for the following businesses:

*(7) provision of medical service by a medical facility under the governing law on the medical facility, but not including medical services rendered purely for cosmetic reasons that are not covered by any medical care benefit under national health security law, in accordance with the characteristics and conditions as prescribed by the Director-General.”[200]

At this point, the author believes that Thailand should provide additional secondary legislation to serve as a guideline for interpretation, which will be discussed in detail in the following section.

6.2.3 Providing Lists of Taxable Cosmetic Medical Procedures as Guidance for Tax Interpretation

Due to the fact that the boundaries between taxable cosmetic procedures and exempt medical treatments may be difficult to draw, which possibly leads to the interpretative issue, the author also suggests that, in respect of interpretation, Thailand should enact a specific legislation, which could be in the form of a notification of the Director-General of the Revenue Department regarding Value-added Tax on Cosmetic Medical Services under Section 80/1(7), in order to provide example lists of taxable cosmetic procedures and related services as part of such cosmetic procedures, prevent controversial discretion between the TRD officials and

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[200] Translated as:

มาตรา 80/1 “ให้ใช้อัตราภาษีร้อยละ 0 ในการคำนวณภาษีมูลค่าเพิ่มสำหรับการประกอบกิจการประเภทต่างๆ ดังต่อไปนี้

(7) การให้บริการรักษาพยาบาลของสถานพยาบาลตามกฎหมายว่าด้วยสถานพยาบาล แต่ไม่รวมถึงการให้บริการทางการแพทย์เพื่อเสริมความงามที่ไม่มีข้อบ่งชี้ทางการแพทย์และไม่สามารถเบิกจ่ายได้ตามกฎหมายว่าด้วยหลักประกันสุขภาพแห่งชาติโดยมีลักษณะและเงื่อนไขตามที่อธิบดีกำหนด”

both taxable persons and taxpayers, and to promote tax certainty to be in the same direction.

Regarding the lists of taxable cosmetic medical procedures, Thailand should impose VAT on all types of medical services, including cosmetic dental services, and adapt those lists of cosmetic procedures from the Korean laws by specifying that subsection (a) contains a list of surgical procedures and subsection (b) contains a list of non-surgical procedures, respectively, in accordance with the Korean Enforcement Decree, Article 35 (1) (a) and (b), and the author adds subsection (c) to contain a list of cosmetic dental procedures. However, it can be seen that Article 35(1)(b) of the Korean Enforcement Decree still has some inappropriateness in terms of placing an undue tax burden on consumers, particularly in the case of acne treatment. As a result, the author suggests that it would be more appropriate and reasonable for the consumer to provide them with an exceptional clause to alleviate the tax burden on those suffering from illnesses.

Hence, the author would like to offer the draft notification of the Director-General of the Revenue Department regarding Value-added Tax on Cosmetic Medical Services under Section 80/1(7), Article 1 as follows:

Article 1 "Cosmetic medical procedures provided by a medical facility are not VAT exempt as listed below:

(a) Plastic surgery or cosmetic surgery such as double eyelid surgery, rhinoplasty, breast augmentation and reduction, liposuction, face-lifting, and face contouring but not including the treatment of the plastic surgery complications or the reconstructive surgery of defects caused by congenital malformations, diseases, and accidence.

(b) Acne treatment but not including the treatments for severe inflammatory acne which is painful such as pustules, large pimples, and other server cases, skin regeneration. Including skin whitening, anti-aging, pore tightening, nevus pigments, chloasma and freckle treatment, hair removal, alopecia treatment, hair transplantation, tattooing or micro-pigmentation, tattoo removal, and lipolysis

(c) Cosmetic dental treatments, such as tooth whitening and gingivoplasty but not including reconstructive dental treatment for reconstructive purposes such as teeth straightening and orthognathic surgery following teeth straightening."[201]

Apart from that, since one cosmetic procedure may relate to a number of services, the author would like to recommend that Thailand provide the VAT status on related services associated with cosmetic medical services, similar to the Australian law, in order to avoid future interpretative issues by specifying in Article 2 of the notification. As such, the author would like to provide the following draft of Article 2 under the Notification of the Director-General of the Revenue Department regarding Value-added Tax on Cosmetic Medical Services under Section 80/1(7) as:

Article 2 "Cosmetic medical services include any related services such as pathology tests, x-ray services, and anesthetic services as part of the above listed cosmetic procedures under Article 1."[202]

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[201] Translated as:

ข้อ 1 "การให้บริการทางการแพทย์เพื่อเสริมความงามโดยสถานพยาบาลในกรณีดังต่อไปนี้ ไม่ได้รับยกเว้นภาษีมูลค่าเพิ่ม

(ก) การทำศัลยกรรมพลาสติกหรือศัลยกรรมเสริมความงาม เช่น การทำตาสองชั้น การเสริมจมูก การเสริมและลดขนาดหน้าอก การดูดไขมัน การดึงหน้า การปรับรูปหน้า แต่ไม่รวมถึงการรักษาภาวะแทรกซ้อนจากการทำศัลยกรรมดังกล่าว หรือ การทำศัลกรรมเพื่อเสริมสร้างเพื่อรักษาแก้ไขความบกพร่องที่อาจเกิดจากความพิการแต่กำเนิด โรคภัยไข้เจ็บ หรือจากการประสบอุบัติเหตุ

(ข) การรักษาสิว แต่ไม่รวมถึงกรณีการรักษาสิวที่มีการอักเสบที่ความรุนแรงและสร้างความเจ็บปวด เช่น ฝี สิวหัวช้าง เป็นต้น การฟื้นฟูบำรุงผิวพรรณ เช่น การทำให้ผิวขาวใส การต่อต้านริ้วรอยและกระชับรูขุมขน การรักษาสีผิวไม่สม่ำเสมอ ฝ้าและกระ การกำจัดขน การรักษาผมร่วง การปลูกผม การสักและการลบรอยสัก การสลายไขมัน

(ค) การทำทันตกรรมเพื่อความงาม เช่น การฟอกสีฟัน การตัดแต่งเหงือก และการผ่าตัดขากรรไกร แต่ไม่รวมถึงการทำทัตกรรมเพื่อแก้ไขโครงสร้างเช่นการจัดฟัน"

[202] Translated as:

ข้อ 2 "การให้บริการทางการแพทย์เพื่อเสริมความงาม หมายความรวมถึงการให้บริการอื่นที่เกี่ยวข้อง เช่น การทดสอบทางพยาธิวิทยา บริการเอ็กซเรย์ และบริการยาสลบ ซึ่งเป็นส่วนหนึ่งของการให้บริการทางการแพทย์เพื่อเสริมความงามตามข้อ 1"

Therefore, the service providers can anticipate their rights and obligations in the very first place when they provide such cosmetic procedures. They will be required to collect 7% VAT on taxable cosmetic medical services to their customers, as well as provide them with a VAT invoice. In this light, the service providers must keep their medical prescriptions as evidence for audit purposes by the TRD. At the same time, the TRD can recognize and estimate the income of such medical sectors as service providers through the VAT collection and the monthly VAT reports submitted by service providers. Consequently, this could be another measure for the TRD to verify that those service providers are complying with income tax laws as well.

At this point, if the proposed reform passes the legislative process, the author would like to suggest the TRD to organize seminars inviting all business operators in the cosmetic medical service industry to attend before the amendment and new legislation takes effect, to provide them with updated information regarding VAT collection on cosmetic medical services and to ensure that they have a firm grasp of the new tax practices and implications on medical services. Additionally, the TRD should publish a manual or guidelines to assist business operators who were unable to attend the seminar in person, for the sake of effective tax enforcement.

Regarding this, the author is of the firm belief that if Thailand were to impose VAT on cosmetic medical services at the standard rate through effective tax enforcement, it would assist the Government in generating the optimal revenue that could be used to fund and support other social welfare programs. Moreover, the benefits of such tax measure would outweigh any negative consequences for both the country and the cosmetic surgery industry.

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