

Challenges of Excise Tax Reform in Myanmar; Illegal Alcohol
Market and Method of Charging on Alcoholic Beverages



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ปัญหาการปฏิรูปภาษีสรรพสามิตในสาธารณรัฐแห่งสหภาพเมียนมา:
ศึกษากรณีตลาดของสินค้าผิดกฎหมายและวิธีการเก็บภาษีสรรพสามิตเครื่องดื่มแอลกอฮอล์



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ปีการศึกษา 2562
ลิขสิทธิ์ของจุฬาลงกรณ์มหาวิทยาลัย

Thesis Title Challenges of Excise Tax Reform in Myanmar; Illegal Alcohol Market and Method of Charging on Alcoholic Beverages
By Mrs. Ngu wah Maung
Field of Study Business Law
Thesis Advisor Associate Professor AUA-AREE ENGCHANIL, Ph.D.

Accepted by the Faculty of Law, Chulalongkorn University in Partial Fulfillment of the Requirement for the Master of Laws

..... Dean of the Faculty of Law
(Assistant Professor Pareena Srivanit, Ph.D.)

THESIS COMMITTEE

..... Chairman
(PRAPAS KONGIED)
..... Thesis Advisor
(Associate Professor AUA-AREE ENGCHANIL, Ph.D.)
..... Examiner
(Zeya Kyi Nyunt)



จุฬาลงกรณ์มหาวิทยาลัย
CHULALONGKORN UNIVERSITY

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ปีการศึกษา 2562

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Myanmar excise tax system is started from the British colonial regime. Excise tax system of Myanmar is complex and different from the other country. Myanmar excise tax system was reformed in several times. Before 2016, alcohol tax was collected as commercial tax. In 2016, the Specific Goods Tax Law was enacted and excise tax for alcoholic beverages has been named as specific goods tax under this law. According to this law excise tax was collected as specific goods tax. Reducing the alcohol consumption is one of the purposes of this law. This thesis analyses weaknesses of Myanmar excise tax system through comparative studying of Thailand and the Philippines excise tax system and tax laws.

The Myanmar Government restricts alcohol importation to reduce alcohol consumption. It only allows for duty-free shops and hotels. However, foreign alcoholic beverages can be easily bought even in department stores in Myanmar. Most of the alcoholic beverages are come from the illegal channels. Thailand and the Philippines also restricted alcohol importation to their countries. The United States complained to the World Trade Organization relating to these import restrictions.

Therefore, this thesis studies these two cases of alcohol importation. Moreover, causes and effects of illegal alcohol market are studied through several theories in order to find the way of minimizing the size of illegal alcohol market.

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Field of Study: Business Law

Student's Signature

Academic Year: 2019

Advisor's Signature

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.....

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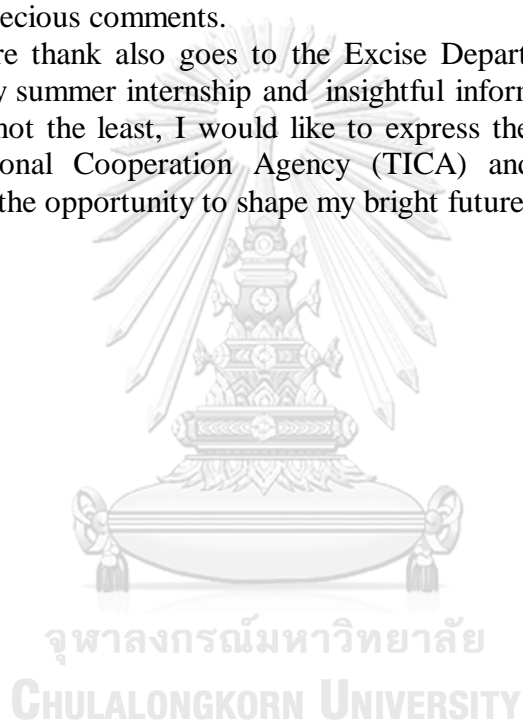


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Chapter I

Introduction

1.1 Background of the Research Study

Alcohol is condemned by many religions such as Buddhist, Hindus, and Muslims but it is consumed widely especially by men. Alcohol is also one of the most harmful substances in the world. It can damage not only to drinker but also to others. In Myanmar, the rate of alcohol consumption is increasing from day by day as a result health risks of chronic heavy drinking, social and economic burden, alcohol-related crimes, accident and many other alcohol-related problems are gradually increasing.

The government wants to discourage the rate of alcohol consumption. Therefore, the Ministry of Commerce issued the Notification No.8/2013 that it has restricted to import alcoholic beverages and cigarette. These products are allowed only for duty free shop and hotels but these products can be easily bought at any place in Myanmar. These items are illegally imported and most of them are from Thailand.

At the First Union Parliament, 13th regular session, Dr. Khin Shwe, Member of Myanmar Parliament pointed that “Most of tobacco and alcohol products around 90 % are imported by illegal trade so the government should prevent these illegal trades.”¹

According to the World Health Organization Data, there are 82 % of beer, 12 % of spirit and 6% of wine in Myanmar alcohol market.² There are nearly 30 different beer brands from China and Thailand illegally imported and sold in Myanmar.

¹ *Meeting Record of First Union Parliament of Myanmar, 13th Regular Session*, (Naypyitaw, Myanmar 2015).

² "https://www.who.int/substance_abuse/publications/global_alcohol_report/profiles/mmr.pdf."

According to 2016 statistic of Global research firm Euromonitor International, up to 30 percent of beer in the Myanmar market is illegal.

It is estimated that 80 % of beer is passing through the Thai border and 20 % is from the China. These illicit products are 30 % cheaper than legitimate alcohol and all of these are untaxed. At the same time domestic alcohol business pays tax upon raw material to produce alcoholic beverages and then they also pay excise tax on alcoholic beverages.

So, the legitimate alcohol businesses are difficult to compete with these illicit products and consumers more prefer cheaper alcoholic beverages.³ Myanmar government lost over K65 billion in 2016.⁴ Therefore, the government requires controlling the illegal alcohol market. This market arises through restriction of alcohol importation, tax evasion, and corruption.

In 2016, the government introduced the excise tax system in Myanmar by enacting the Specific Goods Tax Law. Excise tax is collected by the Internal Revenue Department in accordance with the Specific goods tax law and the Union Taxation Law. By these laws alcoholic beverages are levied excise tax by using the ad valorem tax system.

According to Section 11 Sub-section (a) of the Union Taxation Law, tax officer levies excise tax on alcohol depending upon the ex-factory price or market price for the domestic products and landed cost for import products.⁵ This provision is not clear and not specific. This is one of the opportunities for corruption and tax evasion and then the government cannot estimate correctly the amount of revenue they collect.

³ MIZZIMA News Journal, 21 November 2017

⁴ Myo Lwin, Myanmar Time, January 30, 2018

⁵ "Union Taxation Law," ed. Internal Revenue Department (Naypyitaw, Myanmar2018), Section 11 (a).

The tax rate is specified by the Union Taxation Law for every budget year so investors and taxpayers cannot predict tax rate. The foreign investors complain to the Myanmar Government as follows;

- Special goods tax (excise tax) for alcohol beverage should be levied by volume specific system.
- Due to the tax rate is annually specified by the Union Parliament of Myanmar, they cannot predict tax rate.
- The tax system is complex and not transparent.⁶

Myanmar's Internal Revenue Department has reformed the tax system in order to achieve the objectives. Objectives of tax reform are to maximize revenue, to broaden tax base, to improve taxpayers' compliance and to modernize tax administration. But there are many weaknesses and challenges to achieve these objectives especially lack of skillful human resource, infrastructure, and technology, insufficient information, high rate of corruption and complex and not transparent of tax law.⁷

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1.2 Research Objectives

This thesis will focus on Myanmar excise tax system to be more simple, transparent, predictable and effective. Thesis Objectives are as follow:

1. To be extract the Myanmar's tax system by changing of excise tax structure.
2. To support controlling the illegal alcohol market.

⁶ "The Complaint Letter from Heineken Myanmar Ltd and Carlsberg."

⁷ "Two Years Progressive Report of Ministry of Planning and Finance, Myanmar," (Ministry of Planning and Finance, Myanmar, 2017), Pg. 113. Pg.113

3. To figure out the way how to reduce alcohol consumption as far as possible.

1.3 Research Hypothesis

Myanmar excise tax system should be reformed in order to be more simplified, effective, transparent and predictable. Therefore, the Specific Goods Tax Law should be amended by changing of excise tax structure for alcoholic beverages.

1.4 The Scopes of the Research

1. This will examine the current Myanmar Excise System and how the Government of Myanmar should do to be a better situation for the people, the alcohol business sector and the government revenue.
2. This thesis will explore the enforcement of the Specific Goods Tax Law and the Union Taxation Law and the effect of tax system and tax rate to alcohol business.
3. Causes and effects of restriction of alcohol importation according to the Notification No.8/2013 issued by the Ministry of Commerce will be discussed.
4. This thesis will be Comparative study of some regional countries such as Thailand and the Philippines relating to excise tax regulations.

1.5 Research Methodology

In this research, the methods secondary data are used. For the secondary; the data from the annual report, academic journal or thesis and other sources that are considered as reliable sources has been used. the methods such as the case study, survey etc. will be used to collect some data and define the meanings and thoughts concerned with Myanmar Excise tax. Furthermore, for some data, the experiment, survey, history and case study will be conducted. The history and background for some data will be extracted from some annual reports and surveyed by using the official websites respectively. The research concerned with Excise tax regulation will be surveyed by using some links and some reports.

1. To take the documentary researches on excise tax regulation of Myanmar, Thailand, and the Philippines.
2. To make an interview with experts, officers and private sectors on the current situations, issues, problems relating to the excise tax on alcohol in Myanmar.
3. To take an analytical study on the causes of illegal alcohol business and its impact on legitimate alcohol business and government revenue in Myanmar and measurement to control it.
4. To systematically examine the effects of excise tax rate, tax structure and alcohol market upon the alcohol consumption.

1.6 The Advantages of the Research

1. The Myanmar excise tax system will be more transparent, simplify, efficient and predictable.
2. The government can also control corruption and the illegal market of alcohol by this way legitimate alcohol business may be stronger in the market. The government revenue may also increase through the excise tax.



Chapter II

Impact of Alcohol and The Best Way to Heal the Negative Externality

2.1 Alcohol Consumption and Its Related Issues

Drinking alcohol is one of the serious threats to public because it is a major cause of socially disorder conduct such as committing crimes, violence and abuse. So, alcohol has been considered as the cause of economic and social burden.⁸ The alcoholic person may suffer alcohol related-problems including both mental and social outcomes.⁹

Harmful use of alcohol is one of the most harmful factors to the global society by causing diseases and injuries. The harmful use of alcohol has many effects not only to drinker but also to others. Alcohol causes over 200 health problems, road traffic accidents and violence (abuse) respectively. Therefore, in many countries, the government tries to adopt the policy based on the strong evidences, strategies and researches, and then they try to implement the certain policy successfully in order to reduce impacts of alcohol consumption.¹⁰

2.1.1 Negative Effects of Alcohol Consumption

Alcoholic beverages are generally classified into three tiers.

Tier 1: beer, cider and ready-to-drink (RTD) alcohol products of similar alcohol content;

⁸ Kevin D. Shield Bundit Sornpaisarn, Esa Österberg, Jürgen Rehm, "Resource Tool on Alcohol Taxation and Pricing Policies," (2017). Pg.16

⁹ "Global Status Report on Alcohol and Health 2014," (Luxembourg: World Health Organization).pg.7

¹⁰ Bundit Sornpaisarn et al., *Resource Tool on Alcohol Taxation and Pricing Policies* (2017), Pg.V.

Tier 2: wine, liqueurs and lower-strength distilled spirits;

Tier 3: distilled spirits (including brandy, whisky, gin, vodka, rum, etc).¹¹

The consumer preference of alcoholic beverages is different so the impacts of alcohol-related issues are also not the same. Some researchers assumed that spirits consumers were more likely to be middle-aged and older, less educated, heavier drinkers and more aggressive and emotional than beer or wine drinkers. Beer drinkers or beer-and-spirits drinkers were younger and more alcohol-related problems than other drinkers. They might be more preferred to drink and drive than others so they involve in alcohol-related accidents.¹²

The young alcohol user (under 14 years of age) may suffer more impairment in health status and alcohol-related harm than another age group. Moreover, they have more risk of alcohol dependence and abuse at later ages. They can also be less handle by themselves while drunk.¹³

Harmful use of alcohol among women has been increasing steadily in conformity with the social changing in gender role and economic development. It becomes a major public health issue because it impacts not only health but also social consequences for new generations.¹⁴

Harmful use of alcohol causes more than 200 diseases and injuries. Globally, there are around 3.3 million people are dead due to the alcohol consumption for

¹¹ "Asean Excise Tax Reform: A Resource Manual," ed. Asia Pacific Tax Forum.pg.19

¹² Chong Hwan Son • Kudret Topyan, "The Effect of Alcoholic Beverage Excise Tax on Alcohol-Attributable Injury Mortalities," *Eur J Health Econ* (20 March 2010 2011).
<https://doi.org/10.1007/s10198-010-0231-9>. Pg.103

¹³ "Global Status Report on Alcohol and Health 2014." Pg.7

¹⁴ "Global Status Report on Alcohol and Health 2014." Pg.8

every year. About 5.9% of all deaths in the world concerns with alcohol consumption (7.6% for men and 4.0% for women).¹⁵

Cardiovascular diseases, injuries, gastrointestinal diseases and cancers have resulted from the alcohol consumptions. The highest proportions of death are come out from these chronic diseases and injuries. Cardiovascular diseases and injuries are the most common cause of deaths for women and men respectively. The worldwide burden of disease and injury with respect to alcohol in gender is different. Globally, there are 5.1% of total burden of alcohol-related disease and injury, 7.4% for men and 2.3% for women.¹⁶

2.1.2 Consumption of Unrecorded Alcoholic Beverages and Its Impacts

Unrecorded alcohol consumption is untaxed alcohol consumed in the country. These are produced, distributed and sold through the informal channels and including informally produced alcohol, smuggled alcohol, industrial or medical used alcohol and illegally imported alcohol.

24.8% of worldwide alcohol consumption is the form of unrecorded alcohol. In the South East Asia Region and the Eastern Mediterranean Region, there are more 50% of the total alcohol consumption is unrecorded alcohol consumption.

There are 26.4% of the worldwide unrecorded alcohol is consumed in WHO South East Asia Region but in the Eastern Mediterranean Region only 1.9% consumes because overall alcohol consumption is very low in this region.

¹⁵ "Global Status Report on Alcohol and Health 2014." Pg.48

¹⁶ "Global Status Report on Alcohol and Health 2014." Pg.8

Economic wealth can affect the form of alcohol such as only 8.5% of all alcohol consumption including unrecorded alcohol is consumed in high-income countries. In contrast, more than 40% of unrecorded alcohol is consumed in lower middle and low-income countries while unrecorded alcohol is normally cheaper than recorded ones.

There are different types of alcohol people consume- beer, wine, spirits and other forms of alcoholic beverages. 50.1% consumption of worldwide recorded alcohol is spirits, 34.8% is beer, only 8% is wine and 7.1% is other beverages are respectively consumed.¹⁷

The unrecorded alcohol has the following impacts in general,

1. These illegal and untaxed alcoholic beverages such as illegal production, counterfeiting or smuggling alcohol and homemade alcohol lead to loss of government revenue and to an uncompetitive market, as a result legitimate alcohol business. Moreover, the consumption may be misled as a product of illegal production.
2. Consumption of surrogate alcohol has health risks because of toxic denaturants.
3. Cross-border shopping or trade makes the barriers of national alcohol policy
4. the unrecorded alcohol may make hazard to the consumer being a lack of quality and safety control by the national government

High income countries consume legal alcohol more than low-income countries and consumption of unrecorded alcohol in rich countries is lower than the poor

¹⁷ Global status report on alcohol and health 2014. Pg.30

countries. In poor countries, whereas the total consumption is low, unrecorded consumption is high.¹⁸

The levels of illegal, counterfeit and untaxed alcohol mainly depend on the enforcement of government agencies.¹⁹ The government should aware of the outcome from the taxation and pricing policies such as substitution consumption of alcohol.

2.1.3 Social and Economic Costs of Harmful Use of Alcohol

Harmful use of alcohol has three significant social and economic costs on society. The first category is the direct economic costs of the consumption of alcoholic beverages. The operation costs of the institutions to response the societal problems are the direct economic costs which include multiple types of such as cost of health care services and cost of justice sector.

The second category of social costs means indirect costs. It comes out from loss of workforce productivity by premature pension or death, decreasing the ability of employee, decreased output and increasing unemployment. These indirect costs can affect largely to an entire community.

The third category is intangible costs which are come out by the drinkers, their families and the person who linked to the drinker. These above social and economic costs are linked to harmful use of alcohol. The harmful use of alcohol has many social and economic negative effects to individual and society as well.²⁰

¹⁸ Christopher Snowdon, "Drinking in the Shadow Economy," news release, October 2012. Pg.4

¹⁹ unrecorded and illicit alcohol

²⁰ Global status report on alcohol and health 2014. pg.17

The World Health Organization set up the following guiding principles for development and implementation of alcohol policies at all levels to minimize alcohol related harm by reducing the harmful use of alcohol.

Box 8. Guiding principles for development and implementation of alcohol policies at all levels (WHO, 2010a)

- (a) Public policies and interventions to prevent and reduce alcohol-related harm should be guided and formulated by public health interests and based on clear public health goals and the best available evidence.
- (b) Policies should be equitable and sensitive to national, religious and cultural contexts.
- (c) All involved parties have the responsibility to act in ways that do not undermine the implementation of public policies and interventions to prevent and reduce harmful use of alcohol.
- (d) Public health should be given proper deference in relation to competing interests and approaches that support that direction should be promoted.
- (e) Protection of populations at high risk of alcohol-attributable harm and those exposed to the effects of harmful drinking by others should be an integral part of policies addressing the harmful use of alcohol.
- (f) Individuals and families affected by the harmful use of alcohol should have access to affordable and effective prevention and care services.
- (g) Children, teenagers and adults who choose not to drink alcoholic beverages have the right to be supported in their non-drinking behavior and protected from pressures to drink.

- (h) Public policies and interventions to prevent and reduce alcohol-related harm should encompass all alcoholic beverages and surrogate alcohol.

Alcohol consumption and alcohol-related harm are much related to the economic development, culture, availability of alcohol and effectiveness of alcohol policies.²¹

2.1.4 Alcohol Consumption and Its Impacts in Myanmar

Alcohol, one of the dangerous substances, is harmful to human bodies not only physically but also mentally, and to society. Addiction to alcohol is getting more and more in every year. Alcohol can damage to brain, the person who drank alcohol cannot control his behavior as a result alcohol abuse becomes the very common problem. Although alcohol consumption has been banned in some religious and society such as Muslim and Buddhism the rate of alcoholics is significantly increasing.

Myanmar is one of the countries that discourage alcohol consumption. However, alcohol consumption is gradually increasing year by year and then the harmful of alcohol use is constantly arising. The consumption of alcohol both recorded and unrecorded alcohol in 2016 is significantly more than in 2010 as stated in the table below;

Table 1 Alcohol consumption in Myanmar and its harmful in 2010 and 2016

	2010	2016

²¹ "Global Status Report on Alcohol and Health 2014." Pg.18

Per capita consumption of recorded alcohol*	1.0	1.6
Per capita consumption of unrecorded alcohol*	1.9	3.2
Total alcohol per capita (15+) consumption drinkers only*	8.4	17.6
Alcohol use disorders	1.5	1.9
Alcohol dependence	0.7	0.7

*in liter per pure alcohol

(Source: Global status report on alcohol and health 2018.)

Alcohol can damage the human nervous system depending upon the amount of consumption, age of alcoholic and body weight. It can also be serious injuries due to uncontrivable situation resulted from alcohol. According to WHO's data, alcohol-related problems are positively associated with rate of alcohol consumption. The above table shows that the alcohol consumption in 2016 is increasing and the following table states that alcohol-related harmful is alcohol increasing.

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Table 2 Age-Standardized death rates (ASDR) and Alcohol-Attributable Fractions (AAF)

	ASDR*				AAF (%)			
	Male		Female		Male		Female	
	2012	2016	2012	2016	2012	2016	2012	2016
Liver cirrhosis	87.7	111.4	14.9	47.3	20.0	57.7	29.2	31.2

Road traffic	22.9	26.3	13.8	25.9	0.5	22.7	0.0	13.1
injuries								

***per 100,000 population (15+)**

(Source: Global status report on alcohol and health 2018.)

Therefore, the government should formulate effective mechanism to reduce the alcohol-related harmful by controlling the consumption of alcohol.

2.2 Effect of Alcohol Market on Alcohol Consumption

There are three market structures: monopoly, oligopoly and competitive markets. In the monopoly market, there has only one producer or retailer who supplies market. There are a small number of producers or retailers in an oligopoly market. A competitive market has an extensive number of producers and retailers; therefore no one can control the market price. In many countries, however, alcohol markets are not competitive and most are oligopoly market or monopolies that are controlled by the government through the state-owned factories.

Producers in monopoly and oligopoly markets are known as “price-makers” or “price-making firms”; they can determine the market price by control market supply. The price-makers can adjust their products’ qualities, quantities and prices because they supply the entire market.

In contrast, producers in competitive markets are known as “price-takers” or “price-taking firms”, they cannot influence market price because there are large number of producers and retailer and then their products can be easily substituted. A

producer will be lost when the production cost is more than the market price. In this situation, a producer will cease production. On the other hand, a producer will raise production if the production cost is less than the market price. Therefore, the amount of production for price takers depends on the market price of alcoholic beverages.²²

Alcohol is so addictive that current consumption effect on the future. It means that price of alcohol increase, future consumption will decrease. Whereas the high rate of alcohol tax can affect on the current and future alcohol consumption, it can also reduce the government revenue. However, excise tax can prevent alcohol related harm. While policies reduced alcohol consumption can prevent in short-term, policies prevented drinking initiation are long-term. According to the study of Sornpaisarn and colleagues, from 2001 to 2011, 10% increasing of the inflation-adjusted tax rate of the total alcohol market could reduce 4.3% of lifetime drinking among Thai people between 15 and 24 years.²³

Black market is connected with high tax rate, low tax moral and corruption. The size of black market becomes smaller when the government and its staffs are faith. Moreover, political stability, strong institutions combined with modern tax system and rule of law also effect on the black market. Unofficial economies have large in Latin American and former Soviet countries because of the indiscriminate regulatory system. Illegal alcohol is one of the small parts of the black market. The booming of corruption, weak institution, burden of regulations and taxations make black market become growing.²⁴

²² Kevin D. Shield Bundit Sornpaisarn, Esa Österberg, Jürgen Rehm, *Resource tool on alcohol taxation and pricing policies*, (2017) pg.24

²³ Kevin D. Shield Bundit Sornpaisarn, Esa Österberg, Jürgen Rehm, *Resource tool on alcohol taxation and pricing policies*, (2017) Bundit Sornpaisarn. Pg.12

²⁴ Snowdon. Pg.4

2.2.1 Causes of Blooming the Black Market and Restriction of Alcohol Importation in Myanmar

Black market the place in which goods and services are sold in illegal way. In the other word, illegal goods and services are traded in black market.²⁵ Black market is also known as black economy, shadow economy or underground economy. Alcohol is also traded in black market.²⁶

Black market makes unfair economy. It has no doubt that the products in black market is cheaper than the products in official market because there is no tax in black economy. When black market becomes large, market competition will be damaged.²⁷

Black market can also distort measurement of economic indicators. This distortion is more significant at the time of black market exist largely. As a result, government can set up wrong policy by using these incorrect economic indicators. The size of black market is bigger, the effect become more.²⁸ Taxes, insufficient penalty, morality of tax inspector and taxpayers, high compliance cost and prohibitions are the factors of causing the black market.

High tax rate and non-transparent tax system can lead to tax evasion. The higher tax rate, the more taxpayer evade tax. Taxpayers will use non-official and unreported transaction in order to evade tax. When taxpayers take more effort to evade tax, tax administrator also make more effort to comply tax obligation by taxpayers. When untaxed activities are increasing, the size of black market become

²⁵ Eukeria Mashiri and Favourate Y %J World Customs Journal Sebele-Mpofu, "Illicit Trade, Economic Growth and the Role of Customs: A Literature Review," 9, no. 2 (2015).

²⁶ "Black Market, Black Economy, Grey Market, Gray Market," Novemver 23, 2010, accessed August 17, 2019, <https://www.economywatch.com/market/market-types/black-market.html>.

²⁷ Vito %J Edited Lecture. Brazilian Institute of Ethics Tanzi, "The Shadow Economy, Its Causes and Its Consequences," (2002). Pg. 10

²⁸ . Pg. 11

larger at the same time. In generally, black market exists alongside with official market. Capacity and quality of tax administration is very important in every change or specification of tax rate.

The activities of black market can be limited by the efficient, well-motivated, well-functioning and well-funded tax administration. On the other hand, the effective and well-organized tax agencies are the main player to control the black market.

Penalty is also one of the crucial things to suppress black market. According to theory, efficient of penalty is adversely connected to size of tax evader. On the ground situation, however, these penalties are only on paper when penalty is quite high, especially at the time of justice is insufficient and corruption exist. Therefore, high penalty is not adequate to erode black market.

Morality of tax inspector and taxpayers is one of the issues of forcing black market. Taxpayers can minimize the cost when tax inspector corrupt. Some taxpayers choose low cost option by giving bribing.

High compliance cost also pushes the growing of black-market development. Complicated procedure and lack of e-filing system make waste of time and money of taxpayers. At that time taxpayers become choose informal market.²⁹ Tax knowledge is also important in increasing of taxpayers' compliance. The government need to awareness to provide education of tax system, tax laws, regulations and procedure to the public on the other hand to taxpayers,³⁰

The last factor of emergence of black market is prohibition. Some commodities or services are prohibited or restricted in some countries even though

²⁹ . Pg. 7

³⁰ Zainol Bidin and Perabavathi Sinnasamy, "Excise Duty Compliance Behaviour in Malaysia," *International Journal of Accounting, Finance and Business* Volume: 3 no. Issues: 13 [September, 2018] (15 October 2018). Pg. 109

these are allowed in other countries such as prostitution. When these commodities and services are highly demanded, providers carry out through illegal transaction. The more commodities are demanded, the more profit they earn. Therefore, prohibition can also push in growing of black market.³¹

In 2013, the Ministry of Commerce of Myanmar had restricted the importation of alcoholic beverages by issuing the Notification No. 8/2013 in accordance with the Myanmar Import and Export Law. Foreign liquors are imported only for selling at hotels and duty-free shops. However, these foreign liquors are selling at the local liquor stores, supermarkets and grocery stores.

Even though the Ministry of Commerce restricts the importation of alcoholic beverages, the General Administration Department issue the sale license for these foreign liquors. According to the speech of Dr. Khin Shwe, the member of Parliament, around 90% of alcoholic beverages are illegally imported. Moreover, the Global Research Firm Euremonitor Internal also stated, up to 30 percent of beer in the Myanmar market is illegal and 80% of these are imported from Thailand and 20 % are from China.

2.3 Taxing Policies to Reduce Alcohol Consumption

The international organizations, the United Nations and the WHO attempt to response the impact of harmful use of alcohol. The World Health Assembly accepted a resolution of WHO's "Global Strategy to reduce the harmful use of alcohol". In this resolution, WHO impels countries to adopt the national action plan in order to

³¹ Tanzi. Pg, 8

response the non-communicable diseases (NCDs) caused by the harmful use of alcohol.

The pricing policy is one of the crucial aspects recommended for government to reduce the harmful use of alcohol. Imposing the excise tax on alcoholic beverages is one of the most effective options to intervene by the government.³²

2.3.1 The Definition of Excise Tax?

Excise tax is indirect tax imposed on the consumption of specified goods and services which may have disadvantages to health, moral and environment.³³ Generally, excise tax has three main classes; the traditional and oldest excise levied upon alcoholic beverages and tobacco products, the excise imposed on petroleum products and luxuries excise tax.³⁴

Excise taxes used to be little attention in the tax policies but in recent years, it has changed by arising awareness of the impaired health effect of alcohol and tobacco and environmental problems caused by the increasing traffic. And then attention has been taken into account upon the luxury goods.

Excises were imposed on tea, liquor, fish and reeds used for fuel and thatching in early the Han dynasty (207 B.C.- A.D. 220) in China. Some experts assume that the word excise derives from the Middle Dutch *exijis* modified the old French 'assise' means that session, settlement, or assessment. Some suppose that could also be derived from the Latin word 'excisere' denote to carve, to cut out.³⁵

³² Bundit Sornpaisarn. Pg. V

³³ Annual Report 2016. 2016(The Excise Department, Thailand):140 pg.26

³⁴ John F. Due, ed., *Excise Tax* (1994, february). Pg.3

³⁵ Ben J.M. Terra, "Tax Law Design and Drafting," news release, 1996. Pg.2

According to Cnossen, "broadly speaking, the distinguishing features of excise taxation are selectivity in coverage, discrimination in intent, and some form of quantitative measurement in determining tax liability." Cnossen classifies excise as follow:

1. Limited excise systems are traditional excise goods such as tobacco product, alcoholic beverages, and petroleum products, motor vehicles and various forms of entertainment. In this system excisable goods are not exceeded 10 to 15 commodity groups.
2. Intermediate excise systems comprise between 15 and 30 commodity groups.
3. Extended excise systems comprise more than 30 commodity groups covering almost the whole production activities of the country.³⁶

Taxation and pricing policies should have the ability to;

- (1) generate tax revenue,
- (2) reduce alcohol consumption and associated harms (covering both externalities and internalities) among various groups including young people and heavy drinkers, and
- (3) prevent the initiation of drinking. The prevention of the initiation of drinking alcohol is the best strategy for low-and-middle income countries with a high prevalence of lifetime abstainers.³⁷

Traditionally, apart from the revenue purpose, excise tax has three economic justifications. The first one is also known as Ramsey Rule, excise taxation depends on

³⁶ . Pg.3

³⁷ Kevin D. Shield Bundit Sornpaisarn, Esa Österberg, Jürgen Rehm, *Resource tool on alcohol taxation and pricing policies*, (2017) pg.X

elastic demand of taxing commodities such as alcohol and tobacco are highly inelastic demand. Even though price is rise due to the excise tax, the demand of these commodities will not change very much. Traditionally believe that it can minimize the excess burden of taxation and social cost.

The second justification is based on the concept of user fee that service user only pay tax such as providing the alcohol treatment center, cancer research center and so on. The third rationale is the assuming of the government and politician that it needs to repair.³⁸

The main sources of excise revenue are tobacco, alcohol, petrol and motor vehicles because these commodities are simple to identify, the amount of consumption is high and high elasticity of price.

Traditionally, alcohol is such inelastic product that government can impose high tax rate and have generated more excise tax revenue. Excise tax revenue is major source for some countries. For instance, during the 1910s in the United States and some European Countries excise tax revenue generated from alcoholic beverages was over one-third of total tax revenue. The revenue generated from alcohol excise tax for developing countries is also significant such as in the 1980s, there was 3.2 %, 26.5 %, 19.1% and over 10 % for Tanzi, Burundi, Rwanda and Zambia respectively.

Public health purpose of alcohol excise taxation is to heal the negative externalities by charging consumers or producers for additional cost resulting from the alcohol-related harm. Moreover, excise taxation on alcohol also aims to reduce the rate of heavy drinking by preventing of drinking initiation among young people.³⁹

³⁸ Due JF, editor. Excise Tax 1994, february. Pg.3

³⁹ Sally Wallace Richard M. Bird, "Taxing Alcohol in Africa: Reflections and Updates," (2010). Pg. XI

Even though government intends to reduce consumption of alcohol, there has a controversial question that alcohol taxation and pricing policies can reduce alcohol consumption or not. A consumer could substitute expensive alcohol to cheaper ones and shift taxed alcohol to untaxed alcohol as well. The consumer could also decide to substitute rather than reduce their drinking. Therefore, the government should consider possibilities of alcohol substitution to reduce the rate of both recorded and unrecorded consumption.⁴⁰

2.3.2 Excise Tax Method and Tax Base

There are three methods in the excise tax system;

- (1) ad valorem taxation,
- (2) specific taxation and
- (3) unitary taxation.

Ad valorem taxation bases on the price of product. In ad valorem taxation, if the tax rate increases, there is no change on the amount of ethanol and perceived qualities value.⁴¹ It is more appropriate for developing countries with high inflation because it protects tax base from inflation. When the price increase, the tax rate will constantly be rise.⁴²

Although the price of alcoholic beverage per unit of ethanol increase after imposed the tax, the value of the product remains the same. Therefore, the consumption of alcoholic beverage will decrease. In the long-run However, in

⁴⁰ Bundit Sornpaisarn. Pg.35

⁴¹ . Pg.35

⁴² Due. Pg.21

oligopoly or monopoly market, alcohol business uses to adjust to reduce the tax burden.,

The producer will reduce the price and tax burden by reducing the value of perceived qualities such as packaging quality or brewing period. As a result, in long term, the alcohol prices will decrease. Under the ad valorem taxation, the producers produce the alcohol beverages with the high content of ethanol in order to reduce the value of the perceived qualities per unit of ethanol.⁴³

Specific taxation is calculated depending on the amount of ethanol contained in alcoholic beverages rather than based on the cost of products. Specific taxation discourages the production of alcohol beverage with the high level of ethanol and it can lead to producing the beverage with low ethanol content. Specific taxation can also reduce total alcohol consumption in oligopoly or monopoly markets because it encourages high beverage price per unit of ethanol (BPPE).

Tax revenue can increase because the proportion of total alcohol consumption reduction is less than the proportion of alcohol price acceleration.⁴⁴ Specific rate may be better if tax administrative capacities are limited because there is no need to determine the value of product, to check reported value to charge excise tax. So there is no problem relating to valuation of domestic goods and imports.⁴⁵

Unitary taxation calculates depending on the volume of beverage rather than volume of ethanol. This type of taxation is used for alcohol beverages which are difficult to identify the exact ethanol concentration for example wine. It is similar to the ad valorem taxation, although tax rate of beverage increase, the amount of ethanol

⁴³ Bundit Sornpaisarn. Pg.33

⁴⁴ . Pg.34

⁴⁵ Due. Pg.19

and the value of the perceived qualities do not change. It cannot reduce alcohol consumption likewise in ad valorem taxation; the producer will produce the alcoholic beverage with high alcohol.

Tax base is used in calculation of tax. Tax base of specific taxation is based on the amount of ethanol contained on alcohol beverage, ad valorem is on the price of alcoholic beverage and unitary taxation is calculating base on the total volume of alcoholic beverage.⁴⁶

Among these taxations, ad valorem tax base is more complex. First, the ad valorem tax is calculated upon a percentage of the retail price or ex-factory price. Ex-factory is also known as producer price which consist of the production cost and producer profit. In retail price consist of the producer price, retailer cost and profit and other types of tax. Second, the ad valorem is calculated in from of inclusive and exclusive tax rates. In the inclusive tax rate, tax amount to be charged is already included, whereas the exclusive tax rate does not include tax.

Combination taxation is charged by combining two or more of the tax methods. First combination taxation is calculating by combining specific taxation and ad valorem taxation. Second combination is with specific and ad valorem taxation methods calculate tax choosing higher tax rate from specific and ad valorem tax rate.

In Specific excise taxation method, both rich and poor alcohol consumers must pay the same amount excise of tax, if they consume different price of alcoholic beverages with the same ethanol content. Therefore, the poor pay more proportion of

⁴⁶ Bundit Sornpaisarn. Pg.34

their income, so specific taxation is specified as a regressive tax. The mission of alcohol excise tax is to consider who is more hurt or damage but not who pay more.⁴⁷

Table 3 Pros and cons of three excise tax methods

Method of tax	Tax base	Consumption	Related harm	Tax revenue	Remark
Specific taxation	Base on the percentage of ethanol	Reduce consumption	Reduce related-harm	Increase tax revenue	<ul style="list-style-type: none"> • May promote low alcohol content beverage • May prevent drinking initiation
Ad valorem taxation	Base on the price of alcohol beverages	Increase consumption	Cannot reduce related-harm	Increase tax revenue	May promote low cost alcohol beverage (or) high content of alcohol
Unitary taxation	Base on the volume of alcohol beverages	May increase consumption	Cannot reduce related-harm	Increase tax revenue	May promote cheap high alcohol content

2.3.3 Excise Tax Administration and Its Challenges

Excise tax is simple to administer compare with another form of taxation. Government use excise tax as a tool to curb negative externalities for the public because it can adjust between the taking for leisure and the consumption of alcohol.⁴⁸

Tax administration is very important for increasing revenue and also for tax policy implementation. Tax administration plays in a vital role to evaluate whether the tax system is effective or not. Tax specialists in developing countries strongly believe that “tax policy change without administrative change is nothing”.

The poor tax administration may collect a large amount of revenue from easy to tax sector but it cannot enforce effectively on the business sector and tax professionals. Therefore, effective tax administration cannot be determined by depending on the amount of revenue only. It can be measured through the size of compliance gap.⁴⁹

An effective administration collects the specific tax amount without delay and with minimum cost. The main responsibilities of tax administration are:

1. Facilitate and encourage voluntary compliance by taxpayers with the country's tax laws;
2. Administer the tax laws fairly and impartially;
3. Minimize the cost and burden on taxpayers to comply with their tax obligations;
4. Monitor compliance;
5. Enforce the country's tax laws in cases of non-compliance;

⁴⁸ .pg.14

⁴⁹ Richard M. Bird and Milka Casanegra de Jantscher, "Improving Tax Administration in Developing Countries," no. International Monetary Funds (1992). Pg.1

6. Use its resources efficiently and effectively; and
7. Ensure tax officials perform their functions with integrity and honesty.⁵⁰

Excise tax administration has many challenges such as strengthen organization and management, control tax evasion, improve tax collection and reduce the compliance gap. The biggest challenge of tax administration is high voluntary compliance and it can be improved by tax facilitation of tax service and education programs and minimization of tax burden.⁵¹

2.3.1.1 Tax Evasion and Avoidance

Effective and efficient tax administration is very important. The considering the effective and efficient tax administration is based on the compliance of taxpayers and lowering administrative cost when collecting the revenue respectively. Sound technical capacity of the administrative agency and well-designed tax system are the requirements of effective and efficient tax administration.⁵²

One of the challenges of tax administration is tax avoidance and tax evasion. Tax avoidance is a legal way to getting benefit from the loophole of tax laws by reducing tax burden. Tax evasion is illegal activity to avoid tax payment. Tax avoidance can be done by both consumers and producers such as the consumers buy products from duty-free shop or lower tax jurisdiction and carry across territory. Tax avoidance that performed by producers is more complicated such as they change the

⁵⁰ Arturo Jacobs, *Detailed Guidelines for Improved Tax Administration in Latin America and the Caribbean*.

⁵¹ *Short*. Pg. XII

⁵² Bundit Sornpaisarn. Pg.55

characteristics of the product such alcohol concentration and packaging, and tax avoidance by using way of transfer pricing.

Tax evasion is made by the alcohol importers and domestic producers by misrepresenting their true economic performances to reduce the tax amount they have to charge. For example, alcohol importers and domestic producers may make misdeclaration intent to evade customs duties and excise taxes respectively.

If the tax structure is so complex, the opportunities to avoid tax increase. The simple excise tax structure can reduce the tax avoidance and can generate more tax revenue. The government needs to prevent or suppress tax avoidance and tax evasion when tax administrative agencies implement taxation and pricing policies.

The efficacy of tax administration is supported on the ability of tax administrators. The ability of tax administrator is depending upon the monitoring and enhancement of tax compliance and generates greater revenues by suppressing tax avoidance and tax evasion.⁵³

The punishment of tax evaders is not the objective of tax administration. The voluntary compliance is the key factor of tax administration in developing countries with the high level of noncompliance. The main objective is to advance tax compliance voluntarily. Tax compliance can be advanced by effective tax administration.⁵⁴

⁵³ .pg.56

⁵⁴ Linnea Mills, "Barriers to Increasing Tax Revenue in Developing Countries," in *Helpdesk Report (K4D - Knowledge, evidence and learn for development, 8.3.2017)*. pg.8

2.3.2.2 Rule of Law and Tax Administration

In many countries, the government makes the tax reform in order to be effective and efficient tax administration. The first need of successful reform of tax administration is simplification of tax system. The second ingredient of successful reform of tax administration is strategy that adaptable to the certain country and clearly assigns priorities to be performed. There is no single strategy that appropriates for all countries.

The third justification is a strong commitment to reform by making policy and managerial levels. The most simplified system with best strategy will fail if there is no political will and implementation. Tax compliance has been reflected in effective tax administration and taxpayers' attitudes.

Good tax administration should be effective and efficient. Effective tax administration stands for high compliance by taxpayers and efficient is low administrative cost. It also requires strong technical capacity by tax administrative agency and a well-designed tax. Tax administrative agency should take care of alcohol market conditions and other conditions that effect to the consumption.⁵⁵

Tax administration must be simplification to reduce compliance gap and cost. In order to be simplification, internal rules, regulations and procedures need to be easy to understand and low number of forms. The provisions of law are implemented through the tax administration by collection taxes. The main task of tax administration is to

⁵⁵ Jantscher. Pg.4

levy and collect tax in accordance with law. The main tasks of tax administration need to be defined clearly and transparent to the stakeholders.⁵⁶

Tax administrative agencies perform the following measurement in accordance with their domestic tax laws:

1. Registration process to get a license for production, distribution and sales
2. Monitoring process over local production and import to reduce compliance gap
3. Affixing the excise stamps upon alcohol products.
4. Charging excise tax upon the alcoholic beverages

The symbol of well-designed tax system is simplification and unification. The ability is to generate revenue and reduce alcohol consumption and related harms and prevent initiation drinking especially for young people.

The following steps support to become the best design. Firstly, the goals of taxation and pricing policy should be to generate revenue, to reduce alcohol consumption and related harms, and to prevent initiation of alcohol drinking. Secondly, the taxation method should be selected in order to attain the goals. Third, the uniform tax rate system or the little categories of alcoholic beverages should be imposed to minimize complexity of differential tax rate.⁵⁷

2.3.3.3 Infrastructure and Human Resources

Lack of modern infrastructure and skilled human resource make constraint to the tax administration of the developing countries. Education and training programs

⁵⁶ Victor van Kommer Matthijs Allink, *Handbook for Tax Administrations* (The Netherlands: Inter-American Center of Tax Administrations, July 2000). Pg.163

⁵⁷ Bundit Sornpaisarn. Pg.56

for capacity building of staff and modern infrastructure help to increase the amount of revenue collected and improve the effective tax administration.

One of the serious problems to improve tax administration and increase tax revenue in developing countries is the drain of skilled staff away from the tax administration agency. Effective excise tax administration needs to well integrate between taxpayers and tax administration agency.

The enforced compliance of poor tax administration is performed by the excise officers through imposing physical control over the production process. Sometimes, the cost of physical control rise because of the corruption of excise officers. Therefore, in some countries such as India, excise officers are transferred frequently to different locations and supervisors check frequently and surprisingly. By this way, the corruption and fraud by excise officers can be minimized.

2.3.4 Effect of Excise Tax on Alcohol Consumption in Myanmar

Excise taxes on all kinds of alcoholic beverages were same rate before 2015 and hence the tax burden would be equal if the price of the product was not different. However, after 2016 and later the tax burden of different alcoholic beverages was not the same. Although excise tax burden on spirit is generally around 22.5 % of the price per liter, tax burden on beer is about 60% of the price, and wine is around 21%.

Even though prices of spirit and beer are same, excise tax burden of each beverage would be different. Nevertheless, ethanol content of beer is less than spirit; excise tax amount upon beer is higher. In this situation, beer price might be higher than spirit after tax so alcohol consumer will shift to the cheaper spirit.

By comparing the World Health Organization's data, type of alcohol consumption in Myanmar has changed in 2016. In 2010, beer market is the biggest in the alcohol market share and it owned about 82% of the alcohol market but in 2016 market share of beer is dramatically decrease to 22%. The consumption of spirit is largely changed from 12 % to 68 % of the alcohol market share.

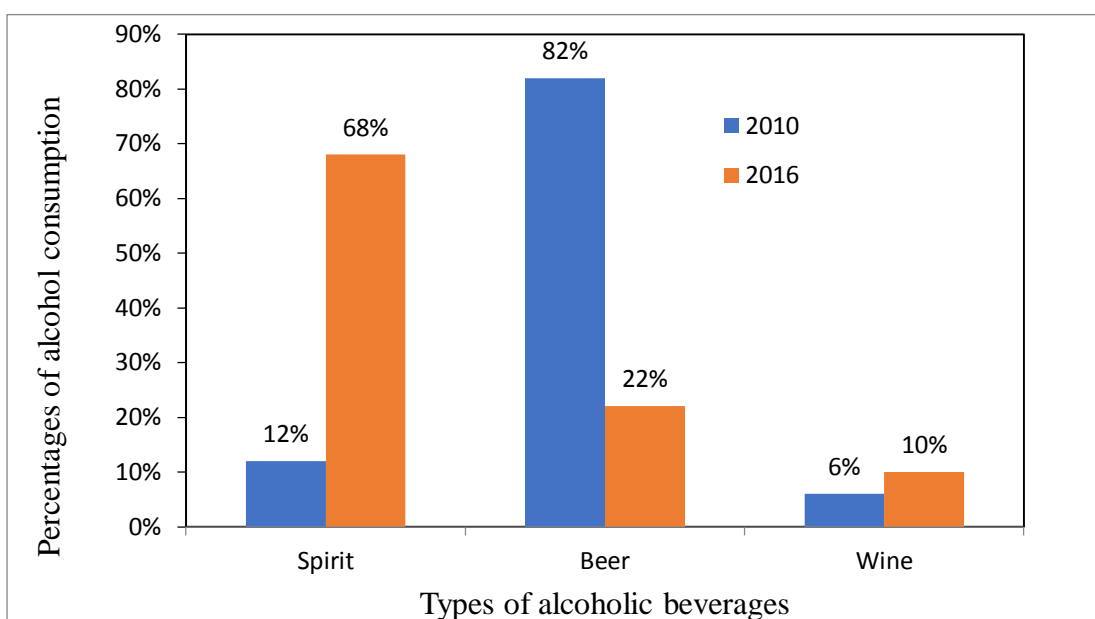


Figure 1 Recorded alcohol per capita (15+) consumption (in liter of pure alcohol) by types of alcoholic beverage (Source: Governing agencies and tax method of ASEAN countries)

Moreover, unrecorded alcohol per capita consumption in 2010 is 1.9 liter and in 2016 is 3.2, therefore, consumption of unrecorded alcohol consumption also increases in 2016.

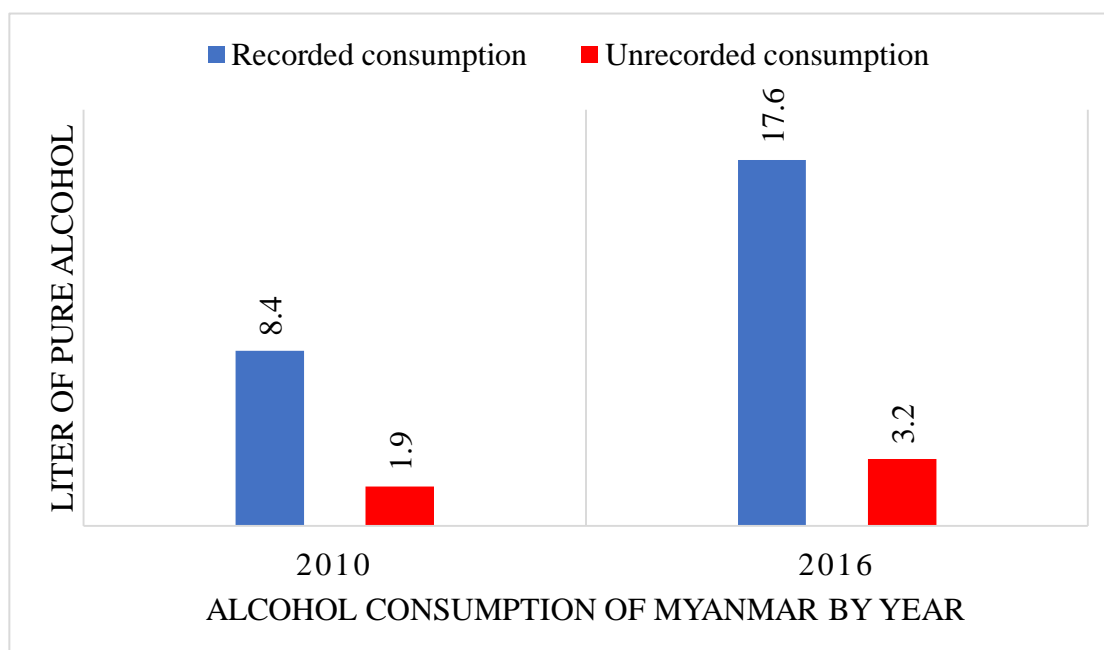


Figure 2: Comparison of alcohol consumption in 2010 and 2016 (source: Global status report on alcohol and health 2018)

Consumption of unrecorded alcohol is more dangerous than recorded alcohol and then it can also be damage to the legitimate alcohol business because these untaxed alcohols are generally cheaper than taxed alcohol. Hence, the government should formulate the good excise tax system in order to heal the negative effect of alcohol consumption and alcohol business.

2.4 ASEAN Economic Community and Excise Tax Reform among ASEAN Countries

In 2007, the ASEAN Economic Community Blueprint was laid down as a road map to implement ASEAN Economic Community (AEC) and the main characteristic of AEC are as follows:

- “A single market and production base;”

- “A highly competitive region;”
- “A region of equitable economic development;” and
- “A region fully integrated into the global economy.”

The most of products will be traded with zero custom duties and non-tariff measures within the single market and production base.⁵⁸ Although AEC Blueprint will set up a single market by creation of free flow of goods, the limited flow of excisable goods will be remained by the member countries because these goods have been excluded from the tariff reduction commitments of ASEAN Trade in Goods Agreement (ATIGA) and import duties will be charged continuously.⁵⁹

There are many differences among ASEAN country such as cultural, social and political situation and economic development as well. Excise tax plays as an important source for government revenue in some ASEAN countries such as around 21% in Lao PDR and Thailand, 19% in Cambodia, 8-10% in Indonesia, Malaysia, the Philippines and Vietnam. Hence, only one tax structure and rate cannot be applied in all ASEAN member countries. The coordination of tax policy is needed to be nondiscriminatory between domestic and import product from member countries.⁶⁰

Excise tax is not value added tax or sale tax. It is collected upon both domestic and imported products to reduce consumption of specific products. In many countries, term of excise tax is different known as consumption tax, special consumption tax, sin tax, special goods tax and so on. Moreover, the governing agencies and tax method are also different in different country.⁶¹ ASEAN countries are using one or more of

⁵⁸ Rob %J World Customs Journal Preece, "Excise Taxation of Key Commodities across South East Asia: A Comparative Analysis Ahead of the Asean Economic Community in 2015," 6, no. 1 (2012). Pg. 2

⁵⁹ *Asean Excise Tax Reform: A Resource Manual*, (International Tax and Investment Center), Pg 7.

⁶⁰ *Asean Excise Tax Reform: A Resource Manual, Short*, pg.8.

⁶¹ Preece.

the excise tax methods. The following table can show the excise tax method of the ASEAN countries.

Table 4 Governing agencies and tax method of ASEAN countries

No	Country	Governing Body	Tax method
1.	Brunei Darussalam	Custom and Excise Department	Unitary
2.	Cambodia	General Department of Customs & Excise	Ad valorem
3.	Indonesia	Fiscal Policy Office	Unitary
4.	Laos PDR	Tax Department	Ad valorem
5.	Malaysia	Customs & Excise Department	Specific, Unitary + Ad valorem
6.	Myanmar	Internal Revenue Department	Ad valorem
7.	Philippines	Bureau of Internal Revenue	Specific + Ad valorem
8.	Singapore	Inland Revenue Authority of Singapore.	Specific
9.	Thailand	Excise Department	Specific + Ad valorem
10.	Viet Nam	Tax Policy Department	Ad valorem

(Source: ASEAN Excise Tax Reform: A Resource Manual)

2.4.1 Illicit Trade and Tax Coordination of AEC

The primary objective of the excise tax is to discourage consumption of specific goods and services that have negative externality. However, the dramatically increasing of tax rate can cause the huge amount of illicit trade.⁶²

A simple, transparent and predictable excise taxation can make less administrative and compliance cost for government and business respectively and then it can limit tax avoidance and tax evasion opportunities.

Illicit trade has many impacts on economy and society. Firstly, government revenue can reduce by the erosion of tax base and then ability of tax authority can also be distorted in the formulation of economic development. Secondly, it can damage to job creation in the normal business and investment. Thirdly, organized crime and terrorism can be occurred and government can be extra cost to save their citizens from these crime and terrorism. Lastly, the illicit trade has negative impact upon the government's health objectives.⁶³

According to World Health Organization (WHO) data, almost 25% of world alcohol consumption comes from illicit trade or illegally produce. As for the ASEAN countries, over 90% of the total market of distilled spirits is untaxed alcohol beverage.

The governments need to cooperate with international level and stakeholders to be a balanced tax policy because it is one of the crucial steps in order to combat illicit trade. The immediately increasing of excise tax rate can force the emerging of illicit trade. Strong and stable tax environment is one of the anti-illicit strategy.

⁶² Victor %J International Monetary Found Thuronyi, Washington DC, "Tax Law Design and Drafting. Volume I," (1996).

⁶³ *Asean Excise Tax Reform: A Resource Manual, Short.*

ASEAN countries should implement effective rules and regulations and take effort to monitor the illicit trade. Furthermore, it also needs to coordinate in order to enforce across the region.

ASEAN countries can counter illicit trade by exchanging of illicit trade data because this process is one of the important parts in suppressing the illicit trade. Therefore, National and international cooperation is important to combat the illicit trade.⁶⁴ In AEC Blue Print 2025 B5 Taxation Cooperation para 35 (v) have been committed to perform excise tax cooperation as below:

“Explore the possibility of collaboration in excise taxation and information sharing among ASEAN Member States on common excisable products.”

Medium- and long-term excise tax policy is needed in the formulation of predictable and stable tax environment that makes high compliance rate and low administration costs. On the other hands, short-term tax policies and temporary tax laws can distort high compliance rates and then can be high administration cost for the tax agencies.⁶⁵ The government should practice the following key performance to achieve success alcohol excise tax system.

- Justification of excise tax policy

There are two conflict purposes in excise tax: to distort alcohol consumption and to get government revenue. The policy maker should consider current tax situation and regulatory environment.

- Simple classification of alcoholic beverages

Policymakers should classify alcoholic beverages depending upon alcohol strength to be fair and equal treatment.

⁶⁴ *Asean Excise Tax Reform: A Resource Manual, Short.*

⁶⁵

- Best practice of excise tax

Many scholars and policymakers believe that the specific tax method is the best practice and it is simpler and more transparent than other. Hence, method of excise tax on alcohol should transform gradually into specific tax.

- Transparent of tax base

The valuation process that are used in ad valorem tax method during excise tax reform period should be simple and transparent.

- Roadmap for tax reform

Policymaker should gradually reform the excise tax system in order to minimize tax shocks for tax authority, stakeholder and consumer. Alcohol excise tax system should be reformed by step by step, for example, from ad valorem to mixed system and mixed system to specific system.⁶⁶

International and ASEAN countries recognize that the specific excise tax method is the most suitable way for alcoholic beverages. Therefore, most of the excise tax reforms lead to transaction of specific tax. However, it is too dangerous to transform immediately from ad valorem to specific. It makes tax shock, lead to tax avoidance and emergence of illegal trade. The following figure shows the transformation toward greater use of specific through the ASEAN countries.⁶⁷

⁶⁶ *Asean Excise Tax Reform: A Resource Manual, Short, Pg.15.*

⁶⁷ *Asean Excise Tax Reform: A Resource Manual, Short.*

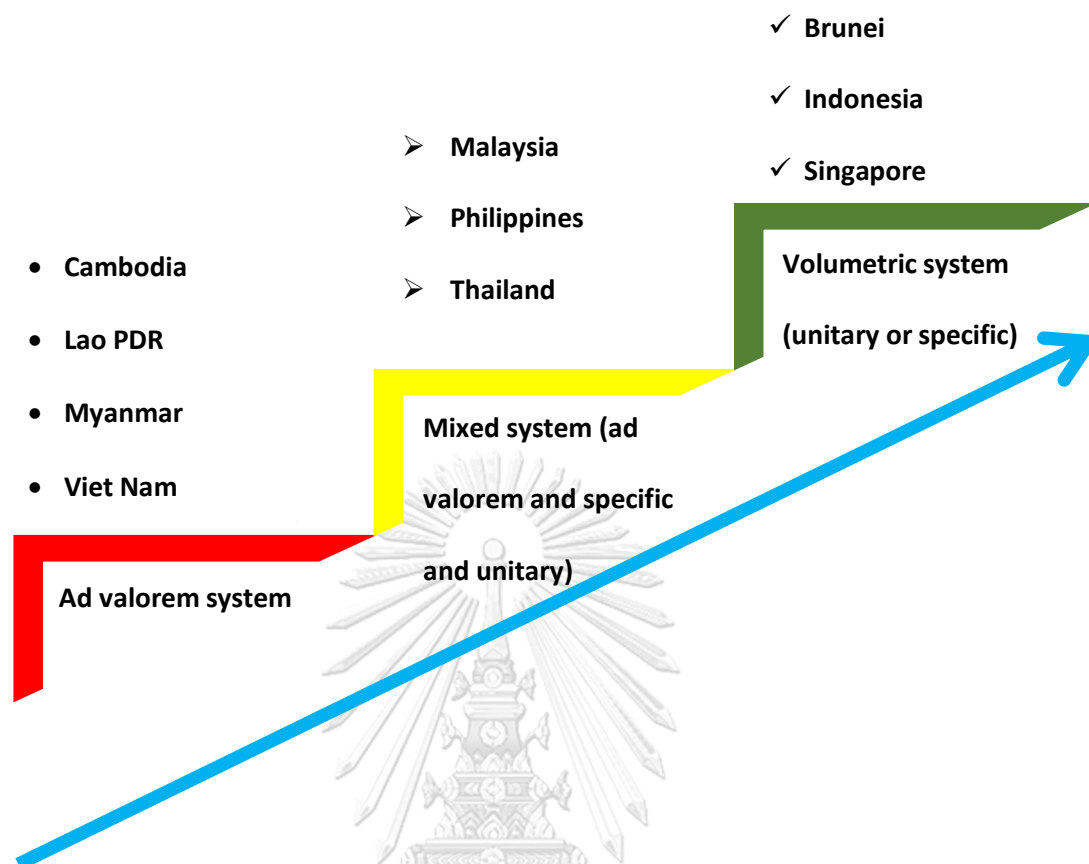


Figure 3 Transformation toward specific excise tax system among ASEAN countries

(Source: ASEAN Excise Tax Reform: A Resource Manual)

2.4.2 Tax Reform of some ASEAN Countries

In recent years some ASEAN countries have reform their excise tax system to formulate simpler and more transparent excise system.⁶⁸ If the tax system is transparent and predictable, taxpayers can get information clearly which are the excisable goods and also predict tax amount has to be paid. As a result, it can support effective tax administration and improve taxpayer's compliance, and facility and

⁶⁸ *Asean Excise Tax Reform: A Resource Manual, Short*, pg.18.

stability of economic environment. Moreover, it can support economic development because of confidence of investors being improved.⁶⁹

The Philippines and Thailand have long history and many experiences relating to excise tax system. Both the Philippines and Thailand have reformed excise tax system in 2012 and 2016 respectively. Moreover, these two countries use the mixed excise tax system among ASEAN countries. Therefore, this research study the Philippines and Thailand's excise tax system.

2.4.2.1 The Philippines Excise Tax Reform

In 2012, the Philippines had reformed the excise tax on alcohol and tobacco product by enacting the Act Restructuring the Excise Tax on Alcohol and Tobacco Products. The previous Philippines's excise tax structure was complex and inconsistent with GATT Article III:2. non-discrimination rule before December 2012.

While using the prior excise tax structure, excise tax on distilled spirits charged into four different bands within two main categories. In the category one there was one band and most of the products were produced locally. Excise tax for this category was lower than category two. Category two comprised four bands with higher excise tax rate and most are import products.

The Philippines enacted An Act Restructuring the Excise Tax on Alcohol to reform excise tax structure in 2012.⁷⁰ The main goals of this Act are: “(1) to further discourage smoking and drinking and promote public health and (2) to raise more money for the government's universal healthcare (UHC) and other welfare

⁶⁹ *Asean Excise Tax Reform: A Resource Manual, Short.*

⁷⁰ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds403_e.htm

programs".⁷¹ New excise tax structure includes only one category and this structure use maxed system with specific rate and ad valorem component.⁷² The Philippines intend to move toward a unitary or single tax structure.⁷³

2.4.2.2 Thailand Excise Tax Reform

In the previous years, Thailand Excise Taxation had referred 7 different Acts in practice including

- 1) Excise Tax Act B.E. 2527 (1984)
- 2) Excise Tax Code Act B.E. 2527 (1984)
- 3) Excise Tax Allocation Act B.E. 2527 (1984)
- 4) Liquor Act B.E. 2493 (1950)
- 5) Liquor Tax Allocation Act B.E. 2527 (1984)
- 6) Tobacco Act B.E. 2509 (1966)
- 7) Playing Cards Act B.E. 2486 (1943)

In 2017, the government reformed the excise tax system by enacting Excise Tax Act B.E. 2560 that combined with above 7 Acts. This Act has entered into forced on 16th September 2017. The purposes of the Excise Tax Reform are

- To combine all the related excise 7 acts.
- To modifying tax structure and clarifying some interpretations of the law to create the much simpler tax structure,
- To enhance fairness of tax collection, and

⁷¹ Assessment of the Sin Tax Reform Act of 2012 pg 1

⁷² Pg 20

⁷³ Assessment of the Sin Tax Reform Act of 2012 pg 1

- To increase transparent procedures and fairness between domestic producers and importers.

Under the previous Act, Liquor Act B.E. 2493 (1950), excise tax on alcoholic beverages was calculated by both specific rate and ad valorem rate and then taxpayer paid tax with higher tax burden. According to new Excise Tax Act B.E. 2560, excise tax is imposed by combining with both Ad-valorem and Specific rate based on Alcohol content.⁷⁴

In the old Act, tax base for domestic products is ex-factory price and for imported products is C.I.F. Under the Excise Tax Act B.E. 2560, tax base is also changed from ex-factory price to suggested retail price for both domestic and imported products.⁷⁵

Table 5 The key excise tax base and taxation methods reforms of Thailand

Key Reform	Former 7 relevant Act	Excise Tax Act B.E. 2560
Tax Base	Ex-factory price/ C.I.F/ Last Wholesale Price	Suggested retail price
Taxation Method	Ad valorem tax or Specific rate (higher tax burden is levied)	Mixed system combining with Ad valorem tax or Specific rate

⁷⁴ Section 16 of the Excise Tax Act B.E. 2560

⁷⁵ Section 17 of the Excise Tax Act B.E. 2560

Chapter III

Excise Tax System and Legal Framework of Thailand, the Philippines and Myanmar

3.1 Thailand Excise Tax Reform and Excise System

Thailand Excise Department is one of the tax collection agencies other than Revenue department which collects income tax and VAT as well as Customs department which collect customs duty. Among the 3 tax collection agencies, The Revenue department contribute the major part of the government revenue. The Excise target revenue plays an important role in the Thai Government revenue because the Excise Department has collected the second largest revenue for the Government. Especially, the AEC Agreements seem to continually reduce custom tariff rate. Besides, the Kingdom of Thailand tends to attract the Foreign Direct Investment by giving the corporate income tax incentives. Hence, the excise tax is possible to be the main income source of the Thai Government in the future.

3.1.1 Background and History of Excise Tax Reform in Thailand

Excise tax collection had been started in Thailand since early Ayuthaya period. In the reign of King Prasatthong, although Juridical Procedures Law provided to collect the liquor duty, it did not mention rate and method of excise tax collection. According to the archives, the liquor duty was collected one baht per distillery for one year in the King Narai the Great. The town without distillery, duty might be charged one baht per head. The rate was raised and the duty was also levied upon sellers.

Retailer paid liquor duty one baht per shop and wholesaler was levied one baht per jar. In 1885, the Internal Tax and Duty Act was announced to levied taxes on imported and domestic liquor with equal rate in order to generate the government revenue.⁷⁶

In 1909, the Liquor Department was administrated by the Director General of the Department of Opium and at the same time the Customs Department collected liquor taxes on import products. The government assigned all responsibilities concerned with liquor to the Customs Department because the government believed that the collection of tax by two different agencies was not appropriate. Therefore, the Customs Department was responsible to collect taxes both domestic and imported liquor.

According to the Royal Order issued in 1929, the Liquor Department had been transferred under Minister of Finance. In 1937, another royal order announced the Liquor Department has been merged with the Revenue Department and that period was only 10 months.⁷⁷

In 1931, the government hired an Englishman advisor Mr. W.D Reef to provide advice relating to liquor taxation. He recommended that other types of business should be taxed by the Liquor Department so the name of Liquor Department had been changed to the Excise Department by the royal commend announced in 1931. Excise and Opium Department was established under the royal decree in 1933. In this year, the Ministry and Department Restructure Act B.E. 2476

⁷⁶ <http://interweb.excise.go.th/contents.php?lang=en&m=2&sub=1#up>

⁷⁷ Thailand The Excise Department, "Annual Report 2016," (The Excise Department, Thailand, 2016).pg,28

was ratified and under this law Excise and Department renamed to the Excise Department.⁷⁸

In 1966, Thailand restricted the importation of cigarette under the Section 27 of the Tobacco Act, 1966. In this Section, Thailand provided as follow;

Section 27 “The importation or exportation of tobacco seeds, tobacco plants, tobacco leaves, plug tobacco, shredded tobacco and tobacco is prohibited except by license of the Director General of the Excise Department or a competent officer authorized by him.”

Thailand levied 60% excise tax on domestic product and 80 % for like imported product. And then, both domestic producers and importer must pay business tax about 1.5 % of retail selling price and municipal tax was 10 % of business tax. However, according to in Section 5 bis of the Tobacco Act, 1966, domestic tobacco manufacturers were exempted from business tax. Moreover, municipal tax was collected as a percentage of business tax therefore when business is exempted, municipal tax is also exempted automatically.

Under the Municipal Revenue Act of 1954, the municipal tax is collected as a percentage of the business tax, and products exempted from the business tax are also exempted from the municipal tax.⁷⁹

On 22 December 1989, the US complained to the WTO concerning with import restriction and internal tax. One of the arguments was that Thailand internal tax provisions are was not consistence with the GATT Article III (1) and (2) because

⁷⁸ <http://interweb.excise.go.th/contents.php?lang=en&m=2&sub=1#up>

⁷⁹ *Thailand - Restrictions on Importation of and Internal Taxes on Cigarettes*, Report of the Panel adopted on 7 November 1990 (DS10/R - 37S/200).

Thailand discriminated upon import product relating to internal tax. Article III (1) and (2) of the General Agreement on Tariff and trade mentioned as follows;

Article III. “National Treatment on Internal Taxation and Regulation

1. The products of the territory of any contracting party imported into the territory of any other contracting party shall be exempt from internal taxes and other internal charges of any kind in excess of those applied directly or indirectly to like products of national origin. Moreover, in cases in which there is no substantial domestic production of like products of national origin, no contracting party shall apply new or increased internal taxes on the products of the territories of other contracting parties for the purpose of affording protection to the production of directly competitive or substitutable products which are not similarly taxed; and existing internal taxes of this kind shall be subject to negotiation for their reduction or elimination.
2. The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favorable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution, or use. The provisions of this paragraph shall not prevent the application of differential transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.”

Moreover, the United States argued that relating to import restriction was not also justified with the Article XI 2 (c) of the GATT⁸⁰ because cigarette is neither agricultural nor fisheries product. Furthermore, it was not consistent with the General Exception: Article XX (1)(b),⁸¹ “necessary to protect human, animal or plant life or health.”⁸²

3.1.2 Legal framework of Thailand excise tax system

The Excise Department administers all matters relating to alcohol business such as granting production, importation, selling of alcoholic beverages and collecting excise tax on alcoholic beverages, in accordance with the Excise Act B.E. 2560.

3.1.2.1 Regulation for Production and Importation of Alcohol in Thailand

The Section 153 provided as: “Any person who intends to produce liquor or have in possession a distiller for producing liquor shall submit an application to the Director-General for permission and must comply with the rules, procedures and conditions prescribed in the Notification of the Director-General.

⁸⁰ CARIBBEAN BASIN ECONOMIC RECOVERY Act, *General Agreement on Tariffs and Trade* (1994), Article XI (2) (c).

“Article XI 2. The provisions of paragraph 1 of this Article shall not extend to the following:
(c) import restrictions on any agricultural or fisheries product, imported in any form, necessary to the enforcement of governmental measures which operate:”

⁸¹ , Article XX (1)(b).

“General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

1. (b) necessary to protect human, animal or plant life or health;”

⁸² *Thailand - Restrictions on Importation of and Internal Taxes on Cigarettes.*

The application for permission and the issuance of a permit under paragraph one shall be in accordance with the rules, procedures and conditions prescribed in the Ministerial Regulation.

A permit issued under this section shall be valid for three years as from the date on which permission is granted.”

According to this Section, the person who intends to produce alcohol in the Kingdom of Thailand may submit application to the Excise Department. If the Excise Department grants the permission to produce alcohol, the terms of this permit is only three years. If producer want to extend the life of permit, he may re-apply the application.

Section 154 and 155 provided for the import and sale permit for alcohol business as follow:

“**Section 154.** Any person who intends to import liquor into the Kingdom shall submit an application to the Director-General for permission.”

“**Section 155.** Any person who intends to sell liquor shall submit an application to the excise official for permission.”

The Excise Department grants permits to import or sell liquor in accordance with the Section 154 and 155 of the Excise Act B.E. 2560. Therefore, the people who want to import liquor to Thailand, or to sell within the territory of the country must submit application to the Excise Department to get these permits for alcoholic beverages. The life of this sale permit is one year and after one year the tax payer may resubmit for the permission to sell.

The Excise Department has been granted the power to issue permit for alcohol production, importation and selling in the Kingdom of Thailand by the Excise Act

B.E. 2560. Therefore, the government procedure concerning to alcohol business is easy to understand by the public sector and facilitate to do business.

3.1.2.2 Excise Tax method and Tax base for alcoholic beverages

By the quotation of Section 4 of the Excise Act B.E. 2560, Suggested retail price means that “the suggested retail price intended by an industrial operator or an importer to be a sale price for consumers in general”.⁸³ It encourages fairness in excise taxation between domestic and imported products. Moreover, this also helps to address the issue on fairness and transfer pricing.

“**Section 17.** Subject to section 22 paragraph one, section 23 paragraph one, section 29 and section 30, payment of tax on the basis of the value shall be made by reference to the following values.

(1) In the case of goods, reference shall be made to the suggested retail price, excluding the value added tax.

The suggested retail price shall be considered from costs of production, management costs and the standard profit, provided that it shall not be lower than the price set for sales to general end-users in a normal market, in accordance with the rules and procedures prescribed in the Ministerial Regulation.

In the case where the suggested retail price fails to correspond to the reality or fails to follow the market force or is unable to be ascertained in accordance with paragraph two, the Director-General shall have the power

⁸³ Section 4 of the Excise Tax Act B.E. 2560

to determine, by Notification, the suggested retail price to be referred to in the calculation of tax, provided that such determination shall be made by reference to the sale price or import price, in accordance with the rules and procedures prescribed in the Ministerial Regulation.”

According to Section 17, excise tax must be paid depend on the suggested retail price that suggested from taxpayer. The suggested retail price is considered by combing production cost, management cost and profit. This suggested retail price shall not be lower the price selling to end user. Government staff form the Excise Department makes market survey regularly to get the market price of excisable goods.

The government staff of the Excise Department collects data and makes market survey at least five of the following markets in order to determine mode price for each excisable product;

1. Department Store
2. Hypermarket
3. Supermarket
4. Convenience Store
5. Specialty Store
6. Grocery Store
7. Online Store
8. Restaurant

If the suggested retail price submitted from taxpayer is under 5 percent of actual retail price or under 15 percent of the highest retail price in the market,

taxpayer must pay excise tax upon the mode price determined by the Excise Department.

Section 16 of the new Excise Tax Act B.E. 2560 provided regarding with the new excise tax method as follow:

“**Section 16.** An industrial operator, an importer, a service place operator or any other person provided by this Act to be the person who has the duty to pay tax shall have the duty to pay tax on the basis of the value or the quantity of goods or services or on the basis of both the value and the quantity of such goods or services at the rates not exceeding those indicated in the Excise Tariff List annexed hereto as in force at the time when liability for tax payment arises.”

New tax system reduces tax burden on ad-valorem rate and increase burden on specific rate.

Table 6 Excise tariff rate for the alcohol beverages in Thailand.

Item	Conditions	Ad valorem (Suggested retail price)	Specific (THB/ Litre/100 degree)
Fermented Liquor			
Beer	Ceiling Rate	30	3000
	Effective tax rate	22	430
Wine and	Ceiling rate	30	3000

Item	Conditions	Ad valorem (Suggested retail price)	Specific (THB/ Litre/100 degree)
sparkling wine from grape	SRP< 1000 THB	0	1500
	SRP> 1000 THB	10	
Local fermented liquor	Fruit Wine		
	Ceiling rate	30	3000
	(1) Less than 7 degree with size not exceeding 330 ml	10	150
	(2) Other than (1)		
	(2.1) SRP< 1000 THB	0	900
	(2.2) SRP> 1000 THB	10	900
	Other fermented liquor	Ceiling Rate	30
	Effective tax rate	10	150
Distilled liquor			
White spirit	Ceiling Rate	30	1000
	Effective tax rate	2	155
Other Distilled	Ceiling Rate	30	1000

Item	Conditions	Ad valorem (Suggested retail price)	Specific (THB/ Litre/100 degree)
Liquor	Effective tax rate	20	255

(Source: Excise Tax Act B.E. 2560)

This table shows that the ceiling tax rates for fermented liquor such as beer and wine are of 30 percent of price of beverages and 3000 baht per liter for 100 degree of alcohol. As for the distilled liquor, excise tax is collected 30 percent of price of product and 1000 baht per liter for pure alcohol.

Ceiling rate means the highest tax rate to be collected in the future specified by the Excise Act, B.E. 2560. These tax rates are not still used in collecting excise tax because these rates are quite high and it is not convenience to use in current situation. Therefore, the Ministry of Finance issued the Ministerial Regulation to determine effective tax rate. Effective tax rate means the excise tax rate specified in the Ministerial Regulation issued by the Ministry of Finance in accordance with the Excise Act B.E.2560, in order to use as excise tariff rate in collecting excise taxation currently.

3.1.2.3 Excise Tax Responsibility

Even though excise tax is simple and no complexity than other tax, it has some problem relating to classification of excisable products and tax responsibility.

Generally speaking, excise tax responsibility starts when product is departed from factory and excise warehouse.⁸⁴ According to Section 21 of the Excise Tax Act, excise tax responsibility for domestic product starts when products are taken out of industrial establishment and excise warehouse. Excise tax and custom duty for imported products must be applicable at the same time.⁸⁵ Section 21 of the Excise Tax Act

Section 21, "Subject to section 22 paragraph two, section 23 paragraph two and section 24, liability for tax payment shall be as follows.

(1) in the case of goods produced in the Kingdom:

(a) If the goods are in an industrial establishment, liability for tax payment shall be deemed to accrue at the time when the goods are taken out of the industrial establishment, except the case where the goods are taken out of the industrial establishment for storage thereof in a bonded warehouse, a bonded warehouse under the law on customs, a duty-free zone or a free zone, provided that if the industrial operator or any person takes such goods for use within the industrial establishment, the act shall be deemed to be the act of taking the goods out of the industrial establishment.

(b) If the goods are stored in a bonded warehouse, a bonded warehouse under the law on customs, a duty-free zone or a free zone, liability for tax payment shall be deemed to accrue at the time when the goods are taken out of such bonded warehouse, bonded warehouse under the law on customs, duty-free zone or free zone, except the case where such goods are taken back for storage in the industrial establishment or storage in another bonded warehouse, bonded warehouse under the law on customs,

⁸⁴ Thuronyi, 246-63.

⁸⁵ "Thailand Excise Tax Act 2560," (2017), Section 21.

duty-free zone or free zone, provided that if any person takes such goods for use within a bonded warehouse, a bonded warehouse under the law on customs, a duty-free zone or a free zone, the act shall be deemed to be the act of taking the goods out of a bonded warehouse, a bonded warehouse under the law on customs, a duty-free zone or a free zone, as the case may be. In the case where liability for payment of value added tax in Chapter 4, Title 2, of the Revenue Code, whether in whole or in part, accrues before the goods are taken out of an industrial establishment, a bonded warehouse, a bonded warehouse under the law on customs, a duty-free zone or a free zone, liability for payment of the entire tax shall be deemed to accrue concurrently with the liability for payment of the value added tax.

(2) In the case of imported goods, liability for tax payment shall be deemed to accrue at the same time as that applicable to liability for payment of duties on imported items under the law on customs, except that in the case of goods imported for taking into a bonded warehouse under the law on customs, a duty-free zone or a free-trade zone, liability for tax payment shall be deemed to accrue at the time when the goods are taken out of such bonded warehouse under the law on customs, duty-free zone or free zone, provided that if the importer or any person takes such goods for use within a bonded warehouse under the law on customs, a duty-free zone or a free zone, the act shall be deemed to be the act of taking the goods out of a bonded warehouse under the law on customs, a duty-free zone or a free-trade zone, as the case may be.”

There are two kind of warehouse in Thailand namely custom warehouse and excise warehouse. Excise warehouse is administered by the Excise Department under the Excise Act. In Section 4 of the Excise Tax Act define as follow;

Section 4: “Bonded warehouse means a place, outside an industrial establishment, permitted under this Act to be used as a place for storing the goods while payment of tax thereon does not need to be made yet”⁸⁶

Excisable products are stored in excise warehouse and excise tax can be charged only at the time of leaving from this warehouse.

3.2 The Philippines Excise tax reform and Excise tax system

The Philippines used progressive tax system because of the Article VI, Section 28(1) of the Constitution of the Philippines. It is provided that “the rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation.” According to the progressive tax system, the consumer who has higher purchasing power must pay more tax. At the same time the poor consumer must pay less tax.

The Philippines levied excise tax on spirit by specifying into two tiers depending upon the usage of raw material rather than alcohol content or import and domestic product. However, most of the domestic products are produced from sugarcane. Furthermore, only a few import products are made with sugarcane. The Philippines imposed more tax rate on non-sugar based alcoholic beverages than sugar-based product.⁸⁷

In 2010, the United States was complaint to the WTO to establish penal which this excise tax structure violated the GATT Article III (2). Article III of the General Agreement on Tariffs and Trade (GATT) provides non discriminate provision.

⁸⁶ "Thailand Excise Tax Act 2560," Section 4.

⁸⁷ *Philippines – Taxes on Distilled Spirits* (2010), pg 1-9.

According to this Article, no member country can protect domestic products by discriminating to import products. On the other hand, imported products must be treated equally with domestic product.⁸⁸

In 2012, the Philippines amended the National Internal Revenue Code of 1997 by enacting the Act Restructuring the Excise Tax on Alcohol and Tobacco Products in order to reform the excise tax system on alcohol and tobacco. As discussed in chapter 2, the previous excise tax system of the Philippines was unfair and inconsistent with the GATT Articles.

3.2.1 Legal framework of the Philippines Excise tax system

The Philippine enacted an Act Restructuring the Excise Tax on Alcohol and Tobacco Products in order to minimize the negative externalities due to the consumption of alcohol and tobacco. Another objective of excise tax reform is to be positive impact on fiscal health.

The Philippines tax reform also intend to formulate simple excise tax on alcohol and tobacco products and to fix the following weaknesses:

- (a) To remove price and brand classification
- (b) To level the playing field
- (c) To adjust the tax rate to inflation.⁸⁹

3.2.2.1 Excise tax method

⁸⁸ Preece. Pg 74

⁸⁹ JR Bien Venido S. Oplas, "Assessment of the Sin Tax Rrform Act of 2012," (2018): pg 1-2.

In Section 1 Sub-section (c) the Act Restructuring the Excise Tax on Alcohol and Tobacco Products, The spirits of distilled spirits are defined as “the substance known as ethyl alcohol, ethanol or spirits of wine, including all dilutions, purifications and mixtures thereof, from whatever source, by whatever process produced, and shall include whisky, brandy, rum, gin and vodka, and other similar products or mixtures.”

If fortified wine is more than 25 % of alcohol by volume, it shall be taxed as distilled spirits.⁹⁰ Tax rate for distilled spirits are specified for respective years in the Section 141 of the National Internal Revenue Code of 1997 amended by the Act Restructuring the Excise Tax on Alcohol and Tobacco Products.

Section 141: “Distilled Spirits- In distilled Spirits, subject to the provisions of Section 133 of this Code, an excise tax shall be levied, assessed and collected based on the following schedules:

“(a) Effective on January 1, 2013

(1) An ad valorem tax equivalent to fifteen percent (15%) of the net retail price (excluding the excise tax and the value-added tax) per proof: and

(2) In addition to the ad valorem tax herein imposed, a specific tax of twenty pesos (P 20.00) per proof liter.

(b) Effective on January 1, 2015

(1) An ad valorem tax equivalent to fifteen percent (15%) of the net retail price (excluding the excise tax and the value-added tax) per proof: and

⁹⁰ "An Act Restructuring the Excise Tax on Alcohol and Tobacco Produces," (2012), Section 2. "Fortified wines containing more than twenty-five percent (25%) of alcohol by volume shall be taxed as distilled spirits. 'Fortified wines' shall mean natural wine to which distilled spirits are added to increase their alcohol strength"

(2) In addition to the ad valorem tax herein imposed, a specific tax of twenty pesos (P 20.00) per proof liter.

“(c) In addition to the ad valorem tax herein imposed, the specific tax rate of twenty pesos (P20.00) imposed under this Section shall be increased by four percent (4%) every year thereafter effective on January 1, 2016, through revenue regulations issued by the Secretary of Finance”

We can assume by considering the above provision that the Philippines utilize mixed excise tax system for distilled spirit. The excise tax rate on distilled spirit is predictable because of these provisions. In this situation proof liter is defined as follow:

“Proof Spirits is liquor containing one-half (1/2) of its volume of alcohol of a specific gravity of thousand nine hundred and thirty-nine ten thousandths (0.7939) at fifteen degrees centigrade (15 C). A ‘proof liter’ means a liter of proof spirits”⁹¹

According to these provisions, the Philippines use a “per proof liter” rather than “per liter of pure alcohol (LPA)” for specific excise tax upon spirit. This is different from generally practiced specific method of LPA. And then, the Philippines also use “Net Retail Price (NRP) per proof liter” for ad valorem excise tax. Although, we can analyze that the Philippines utilize a “mixed” excise tax for spirit, it can also be specified as a “quasi-specific” tax system.⁹²

The excise tax rate for wine are provided in Section 142 of the National Internal Revenue Code of 1997 as follows:

“SEC. 142 Wines- On wines, there shall be collected per liter of volume capacity effective on January 1, 2013, the following excise taxes;

⁹¹ "An Act Restructuring the Excise Tax on Alcohol and Tobacco Produces," Section 1 (c).

⁹² Pg 27 footnote 5

(a) Sparkling wines/ champagnes regardless of proof, if the net retail price per bottle of seven hundred fifty milliliter (750 ml.) volume capacity (excluding the excise tax and the value-added tax) is;

(1) Five hundred pesos (P 500.00) or less two hundred fifty pesos (P 250.00);

and

(2) More than five hundred pesos (P500.00)- Seven hundred pesos (P700.00)

(b) Still wines and carbonated wines containing fourteen percent (14%) of alcohol by volume or less, Thirty pesos (P 30.00); and

(c) Still wines and carbonated wines containing more than fourteen percent (14%) but not more than twenty-five percent (25%) of alcohol by volume, Sixty pesos (P 60.00).

The rates of tax imposed under this Section shall be increased by four percent (4%) every year thereafter effective on January 1, 2014, through revenue regulations issued by the Secretary of finance.

According to this provision, the excise tax rate for wine is divided into two main categories; wine and still wine. In the wine category has two tiers; the first tier is net retail price is not more than 250 pesos and the second tier is more than 250 pesos. Excise tax rate for first tier is 250 pesos and for the second tier is 700 pesos. Still wine also divided into two tiers. If the still wine and carbonated wine contain is not more than 14 % of alcohol by volume, it shall be taxed 30 pesos. While the alcohol by volume is between 14% and 25%, the excise tax is 60 pesos. These tax rates are only for 2013 and from 2014 tax rate will increase by 4% for every year.

Section 143 is the provision that concern with excise tax for fermented liquors such as beer, larger beer, ale, porter and other fermented liquors. According to Section

143, the Philippines use only ad valorem tax method for excise tax for beer fermented liquors. Meanwhile, beer that net retail price is not more than P 50.60/liter, the tax rates are 15 pesos in 2013,⁹³ 17 pesos in 2014,⁹⁴ 19 pesos in 2015,⁹⁵ 21 pesos in 2016⁹⁶ and 23.5 in 2017⁹⁷. If the beer price is more than P50.60, the tax rates are 20 pesos in 2013,⁹⁸ 21 pesos in 2014,⁹⁹ 22 pesos in 2015,¹⁰⁰ 23 pesos in 2016¹⁰¹ and 23.5 in 2017.¹⁰² From 2018, tax rate will increase by 4% for every year,¹⁰³ therefore taxpayer can predict tax rate.

⁹³ "An Act Restructuring the Excise Tax on Alcohol and Tobacco Produces," Section 3.

"Effective on January 1, 2013, (a) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is Fifth pesos and sixty centavos (P 50.60) or less, the tax shall be Fifteen pesos (P15.00) per liter"

⁹⁴ "An Act Restructuring the Excise Tax on Alcohol and Tobacco Produces." Section 3.

"Effective on January 1, 2014, (a) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is Fifth pesos and sixty centavos (P 50.60) or less, the tax shall be Seventeen pesos (P17.00) per liter"

⁹⁵ "An Act Restructuring the Excise Tax on Alcohol and Tobacco Produces."Section 3

"Effective on January 1, 2015, (a) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is Fifth pesos and sixty centavos (P 50.60) or less, the tax shall be Fifteen pesos (P19.00) per liter"

⁹⁶ "An Act Restructuring the Excise Tax on Alcohol and Tobacco Produces." Section 3

"Effective on January 1, 2016,(a) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is Fifth pesos and sixty centavos (P 50.60) or less, the tax shall be Fifteen pesos (P21.00) per liter"

⁹⁷ "An Act Restructuring the Excise Tax on Alcohol and Tobacco Produces."Section 3

"Effective on January 1, 2017, the tax on all fermented liquors shall be Twenty-three pesos and fifty centavos (23.50) per liter"

⁹⁸ "An Act Restructuring the Excise Tax on Alcohol and Tobacco Produces." Section 3

"Effective on January 1, 2013, (b)If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is more than Fifth pesos and sixty centavos (P 50.60), the tax shall be Twenty pesos (P20.00) per liter."

⁹⁹ "An Act Restructuring the Excise Tax on Alcohol and Tobacco Produces." Section 3

"Effective on January 1, 2014, (b)If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is more than Fifth pesos and sixty centavos (P 50.60), the tax shall be Twenty pesos (P21.00) per liter.

¹⁰⁰ "An Act Restructuring the Excise Tax on Alcohol and Tobacco Produces." Section 3

"Effective on January 1, 2015, (b) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is more than Fifth pesos and sixty centavos (P 50.60), the tax shall be Twenty pesos (P22.00) per liter.

¹⁰¹ "An Act Restructuring the Excise Tax on Alcohol and Tobacco Produces." Section 3

"Effective on January 1, 2016, (b) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is more than Fifth pesos and sixty centavos (P 50.60), the tax shall be Twenty pesos (P23.00) per liter."

¹⁰² "An Act Restructuring the Excise Tax on Alcohol and Tobacco Produces." Section 3

Section 141,142 and 143 of the National Revenue Code of 1997 were amended by the Act Restructuring the Excise Tax on Alcohol and Tobacco Products. According to Section 1, 2 and 3 of the Act Restructuring the Excise Tax on Alcohol and Tobacco Products, the Philippines practices mixed excise tax method that combine with ad valorem and specific tax system.

The Philippines excise tax system is easy to understand by the public and tax rates are also predictable. We can see the tax rate specified by this Act as follow:

Table 7 The Philippines Excise tax structure and tax rate on alcoholic Beverages

Product	Category	Unit	2013	2014	2015	2016	2017	2018
Spirit	Specific	P/Proof of Liter	20	20	20	Increase 4% annually		
	Ad valorem	NRP*	+15%	+15%	+20%	+20%	+20%	+20%
Wine	NRP* < P500	P/Liter vol	250	Specific rates increase 4% annually				
	NRP > P500		700					
Still	< 14%	P/Liter	30	Specific rates increase 4% annually				

“Effective on January 1, 2017, the tax on all fermented liquors shall be Twenty-three pesos and fifty centavos (23.50) per liter”

¹⁰³ "An Act Restructuring the Excise Tax on Alcohol and Tobacco Produces." Section 3

“The rates of tax imposed under this Section shall be increased by four percent (4%) every year thereafter effective on January 1, 2018, through revenue regulations issued by the Secretary of Finance.”

Product	Category	Unit	2013	2014	2015	2016	2017	2018
wine	alcohol	vol						
	> 14% < 25% alcohol		60					
Beer	< P 50.60	P/Liter	15	17	19	21	23.5	+4%/yr
	> P 50.60	vol	20	21	22	23	23.5	+4%/yr

*NRP = Net retail price excluded excise tax

(Source: Section 1-3 of the Act Restructuring the Excise Tax on Alcohol and Tobacco Products)

3.2.2.2 Excise Tax Base

In addition, ad valorem excise tax base for all sorts of alcoholic beverages is “Net Retail Price”. Net retail price is a price that are sold at least five major supermarkets within the territory of Metro Manila in which price VAT tax is excluded. As for the regional excise tax for alcoholic beverages is also calculated depending upon net retail price of five major supermarkets within the respective region and VAT tax and regional excise tax are also excluded.¹⁰⁴ In Section 141 (c)

¹⁰⁴ "An Act Restructuring the Excise Tax on Alcohol and Tobacco Produces," Section 1 (c).

that amended by the Act Restructuring the Tax on Alcohol and Tobacco Products provided as follow:

“Net retail price” shall mean the price at which the distilled spirits is sold on retail in at least five (5) major supermarkets in Metro Manila, excluding the amount intended to cover the applicable excise tax and the value-added tax. For distilled spirits which are marketed outside Metro Manila, the ‘net retail price’ shall mean the price at which the distilled spirits are sold in at least five (5) major supermarkets in the region excluding the amount intended to cover the applicable excise tax and the value-added tax.”¹⁰⁵

In the case of alcoholic beverage that is firstly introduced in the domestic market shall be taxed in accordance with suggested net retail price.¹⁰⁶ Suggested net retail price is the price that the importer or manufacturer intend to sell in the domestic market.¹⁰⁷ If the suggested retail price is 15% less than net retail price, the tax payer has the liable to pay tax over calculated amount on the differences of these two prices.¹⁰⁸

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CHULALONGKORN UNIVERSITY

¹⁰⁵ "An Act Restructuring the Excise Tax on Alcohol and Tobacco Produces," Section 1 (c).

¹⁰⁶ "An Act Restructuring the Excise Tax on Alcohol and Tobacco Produces." Section 1 (c) “Distilled spirits introduced in the domestic market after the effective of this Act shall be initially taxed according to their suggested net retail prices.”

Section 2 (c) “Sparkling wines/ Champagnes introduced in the domestic market after the effective of this Act shall be initially taxed according to their suggested net retail prices.”

Section 3(c) “Fermented liquors introduced in the domestic market after the effective of this Act shall be initially taxed according to their suggested net retail prices.”

¹⁰⁷ "An Act Restructuring the Excise Tax on Alcohol and Tobacco Produces." Section 1 (c) “Suggested net retail price shall mean the net retail price at which locally manufactured or imported distilled spirits are intended by the manufacturer of importer to be sold on retail in major supermarkets or retail outlets in Metro Manila for those with regional markets.”

¹⁰⁸ "An Act Restructuring the Excise Tax on Alcohol and Tobacco Produces." Section 1 (c) “Understatement of the suggested net retail price by as much as fifteen percent (15%) of the actual net retail price shall render the manufacturer or importer liable for additional excise tax equivalent to the tax due and difference between the understated suggested net retail price and the actual net retail price.”

The Bureau of Internal Revenue (BIR) determine the net retail price by doing market survey at the five major supermarket.¹⁰⁹ These major markets are the highest annual gross sale in respective region or Metro Manila specified by the National Statistics Office.¹¹⁰ We can see the determination process of the net retail price as follow;

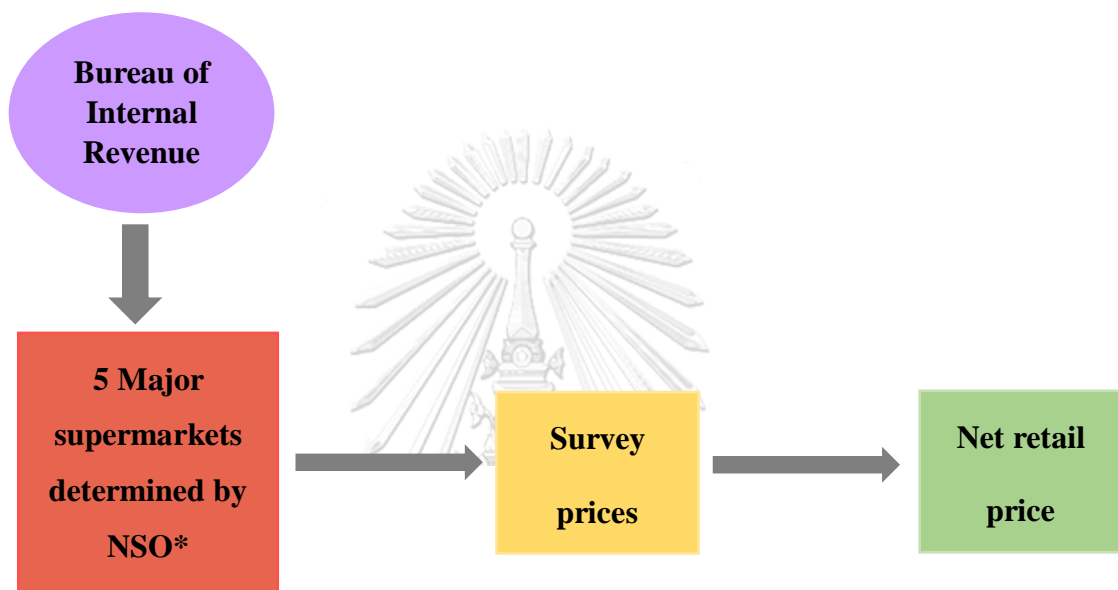


Figure 4 Determination process of the net retail price

(Source: The Act Restructuring the Excise Tax on Alcohol and Tobacco Products)

*NSO = National Statistic Office

3.3 Myanmar Excise Tax Reform and Excise Tax System

Generally speaking, Myanmar excise tax system has been started from the British colonial regime. From that period, political situation of Myanmar was not

¹⁰⁹ "An Act Restructuring the Excise Tax on Alcohol and Tobacco Produces." Section 1 (c) "the net retail price shall be determined by the Bureau of Internal Revenue (BIR) through a price survey under oath."

¹¹⁰ "An Act Restructuring the Excise Tax on Alcohol and Tobacco Produces." Section 1 (c) "Major supermarkets, as contemplated under this Act, shall be those with the highest annual gross sales in Metro Manila or the region, as the case may be, as determined by the National Statistics Office."

stable and ruled by the different governments. The administrative systems of the government were also change in every changes of the government. The excise tax administration was also frequently changed.

3.3.1 History and Evolution of Excise Tax Administration of Myanmar

The history of Myanmar excise tax system is long, complex and different from the other country. In 1884 under the British regime, the Excise Department was established and the Excise Commissioner was appointed in order to implement excise administration.¹¹¹ The Excise Department was under the administration of the Ministry of Finance and Revenue at that time.¹¹² In 1917, the Burma Excise Act was enacted and excise tax has two features; duty and license fees .

The Excise Department implemented Excise Policy in line with the Excise Administration. The preventive measure, inspection and prosecution of excise crime were carried out by the Excise Department.¹¹³

In 1972, excise administration mechanism was reformed. The Excise Department and the position of the Excise Commissioner were abolished. The Ministry of Finance and Revenue issued the notification no. 165/1972 relating to the excise tax administration and excise crime. The excise administration and excise tax collection were transferred to the Internal Revenue Department, and excise crime detection, investigation, seizure and prosecution were administered by the Police Force.

¹¹¹ U Kyaw (Aung Myat Kyaw), *Myanmar Excise Administration and Apply Excise Laws* (2011), Pg. 4.

¹¹² . Pg. 11

¹¹³ , Pg. 12.

In 1988, the State Peace and Development Council took the state power and reformed in many sectors. Excise administration was transferred to the General Administration Department under the Resolution of the State Peace and Development Council in 1989. The General Administration Department collect license fee as excise duty under the Burma Excise Act 1917. The definition of excisable products is not wide enough to cover the other products that are harmful to people, society and environment so government cannot collect tax over these products.

Section 1 of the Burma Excise Act (1917) has defined as follow:

“Excisable article means any alcoholic liquor of intoxicating drug as defined by or under this Act: and includes excisable goods;”¹¹⁴

“Excisable goods means the goods specified in Schedule II as being subject to duties of excise;”¹¹⁵

According to Schedule II, even though aerated water and syrup are also charged excise tax, definitions of excisable products is narrower than the definition universally accepted.

“Excise-revenue means revenue derived or derivable from any duty, fee, tax, composition, penalty, payment, or confiscation imposed or ordered under the provisions of this Act or of any other law for the time being in force relating to alcoholic liquor or intoxicating drugs: but does not include a fine imposed by a Court of law;”¹¹⁶

By considering above definition, excise revenue is the revenue that are collected only from the alcoholic liquor and intoxicating drugs. Therefore, the Burma

¹¹⁴ "The Burma Excise Act 1917," (1917), Section 1 (f).

¹¹⁵ "The Burma Excise Act 1917." Section 1 (ff)

¹¹⁶ "The Burma Excise Act 1917."Section 1 (h) of the Burma Excise Act 1917

Excise Act 1917 does not cover to the other substances that have negative externality as a result the excise tax over these substances could not be collected by this Act.

In 1976, the Goods and Services Tax Law (1976) was enacted and administered by the Internal Revenue Department. Alcoholic beverages and other specific commodities were taxed under the Table 11 of the Goods and Services Tax Law (1976). The Goods and Services Tax Law (1990) was substituted by the Commercial Tax Law in 1990. According to the Commercial Tax Law, Excisable products were charged commercial tax as specific commodities. Alcoholic beverages were taxed 50% commercial tax under the Table 6 of the Commercial Tax Law.

In 2008, the new constitution law of Myanmar was enacted to formulate democratic country. The first election was held during 70 years in Myanmar in 2010. the Military Government transferred the state power to the new elected government. The new government reformed in many sectors including tax system. The Internal Revenue Department had planned to modify indirect tax system. The modification of tax on excisable products is one part of tax reform.

There has constitutional constraint relating to excise tax because the General Administration Department collects license fee as the excise duty. According to the Section 231 Sub- section (a) of the Constitution of the Republic of the Union of Myanmar, excise revenue is collected by the Regions or States Government and it is also assigned to the regions or states budget.

Section 231 Sub-section (a) “The Union shall, with the exception of the taxes and revenues listed in Schedule Five to be collected by Regions or States, collect all other taxes and revenues in accord with the law and deposit them in the Union Fund.”

According to Section 231 Sub-section (a), Schedule Five of the Constitution Law, the excise revenue is assigned to the revenue of the Region and State Governments and the Union Government does not have the authority to collect the excise revenue and cannot get the revenue for the Union Government from this. Therefore, the Internal Revenue Department considered to collect tax on excisable products in different title rather than excise tax.

In 2016, the Specific Goods Tax Law has been enacted and excisable products are taxed as specific tax under this law. The purposes of specific tax are to increase the government revenue, to reform and modify indirect tax system and to reduce the consumption of specific goods. Therefore, the nature of specific tax is same with the nature of excise tax. Among these three purposes the government revenue is the crucial one because tax to GDP ratio of Myanmar is the lowest among the ASEAN Country.

After enacting the Specific Goods Tax Law, 17 kinds of excisable products are taxed under this law. Tax rates for these excisable products are specified by the Union Taxation Law that are enacted for every budget year.

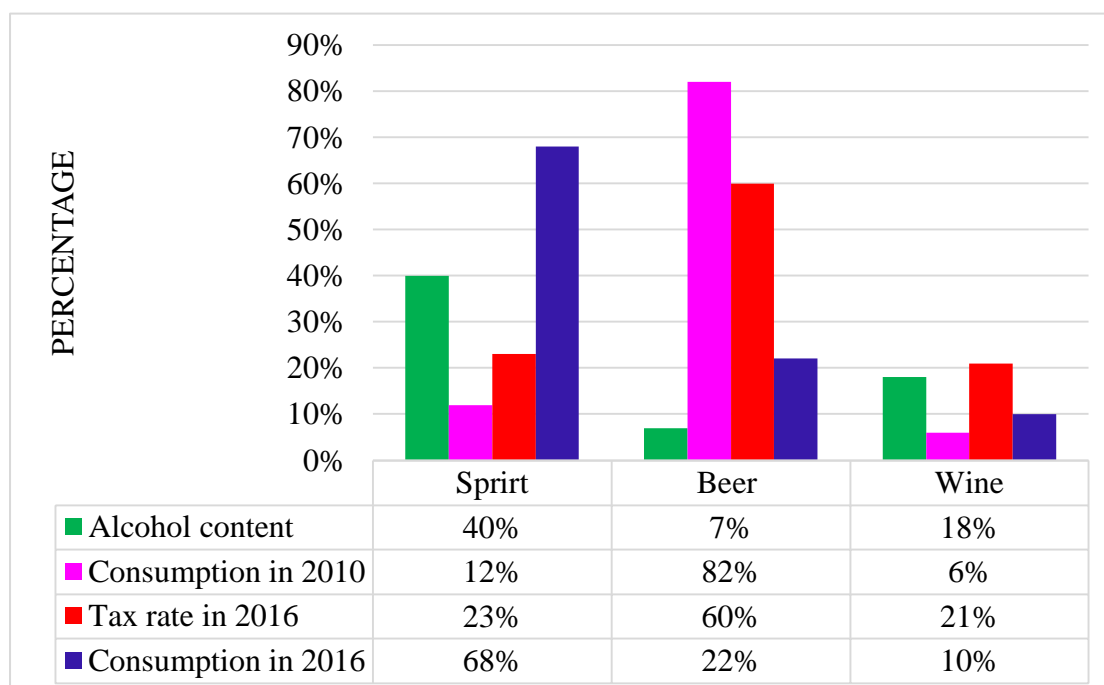


Figure 5: Effect of specific goods tax law in Myanmar

3.3.2 Legal framework of Myanmar Alcohol Business and Excise tax system

As mentioned above, license fee is collected as excise duty by the General Administration Department under the Burma Excise Act 1917, the tax for excisable products are imposed by the Internal Revenue Department and import and export matters of alcoholic beverages are administered by the Ministry of Commerce.

The government procedure related to alcohol industry is complicated and administrated by at least 3 government agencies and the related laws and regulations are as follows;

- (1) The Burma Excise Act
- (2) The Export and Import Law
- (3) The Specific Goods Tax Law
- (4) The Union Taxation Law

3.3.2.1 The Burma Excise Act

Myanmar was colonized by the British Empire from 1826 to 1947 and during this period the British Government passed many Acts and regulations. In 1917, the British Government enacted the Burma Excise Act, 1917 to administrate the matters relating to some excisable articles such as alcoholic liquor or intoxicating drug, within the territory of Burma (Myanmar). This Act had governed to the cases concerned with alcohol sale license, manufacturing license, import, export, and transport matters. The Burma Excise Act 1917 was amended in 2015.

The Burma Excise Act, 1917 is governed by the General Administration Department¹¹⁷. Section 6 of the Myanmar Excise Act had assigned the General Administration Department to regulate matters concerning with sale license for alcoholic beverages.

Section 6 of the Myanmar Excise Act: “The president of the Union may by notification

(a) appoint an officer, hereinafter referred to as the Excise Commissioner, who shall, subject to the orders of the President of the Union, have the control of the administration of the General Administration Department of the collection of the excise-revenue.

(b) appoint any person or officer other than the Collector the exercise all or any of the powers and to perform all or any of the duties of a Collector under this Act, either concurrently with, in subordination to or to the exclusion of the Collector, subject to such as the President of the Union may direct;”

According to Rule 3 of the 1917 Myanmar Excise Rule, this department has issued alcohol sale license for domestic and foreign liquor, and manufacturing license.¹¹⁸ Therefore the person who wants to sell alcohol within the territory of Myanmar, he needs to apply sale license at the General Administration Department.

Before 2013, around 2000 FL12 licenses were annually issued by the Yangon Regional General Administration Office for Yangon Region. FL 12 license is the license that is issued to the retailer in order to sell foreign alcoholic beverages in the certain region. The FL12 license holder must pay license fees about 1,500,000 kyats

¹¹⁷ Section 6 of the Burma Excise Act, 1917

¹¹⁸ Rule 3 of the Burma Excise Rules, 1917; “The collector may issue the licenses stated in attached table 2” there are 33 kinds of license issuing by the General Administration Department.

for every year. However, after 2013 issuing of FL12 license has been stopped and foreign alcoholic beverages cannot be sold in the country except at duty free shops and hotels. But the license fees for previous issued FL12 are still paid by the retailers to the government for every year.¹¹⁹

3.3.2.2 The Export and Import Law and Regulation

The Export and Import Law was enacted in 2012 by the Union Parliament. The export and import law administer to all matters relating to export and import of all commodities. The administrative agency of this law is the Department of Trade. Section 4 of the export import law provided as follow:

“Section 4. The ministry may carry out the following in respect of the matters of export and import- (d) issuing permit and determining conditions relating to permit for export and import goods;”

Therefore, the Department of Trade has the power to issue import and export permit in accordance with the export and import law Section 4 (d). The person who wants to import or export alcoholic beverages needs to apply for license at the Department of Trade under the Ministry of Commerce. However, the importation of alcoholic beverages had been restricted under the notification no 8/2013 issued by the Ministry of Commerce in 2013. Importation of foreign alcoholic beverages is permitted for only duty-free shops and hotels.

¹¹⁹ Myanmar times newspaper

This notification 8/2013 is only one page and 4 paragraphs and did not mention the purpose of the import restriction. Therefore, importers and retailers have argued that the government protects local alcohol business.

In 2015, the government deregulates importation of wine by the notification no 18/2015 issued by the Ministry of Commerce but foreign spirit and beer are still restricted. But these foreign alcoholic beverages are illegally imported around 30% of beer and 90% of foreign spirit come from the illicit trade. Therefore, the restriction is not the right way to protect the local alcohol business and government loss many revenues due to these untaxed products. Moreover, government should consider whether this import restriction is consistent with the GATT Article III.

3.3.2.3 The Specific Goods Tax Law and The Union Taxation Law

The Internal Revenue collect 5 kinds of taxes: commercial tax, income tax, specific goods tax, stamp duty and state lottery. The specific goods tax is third largest income source collected by the Internal Revenue Department.

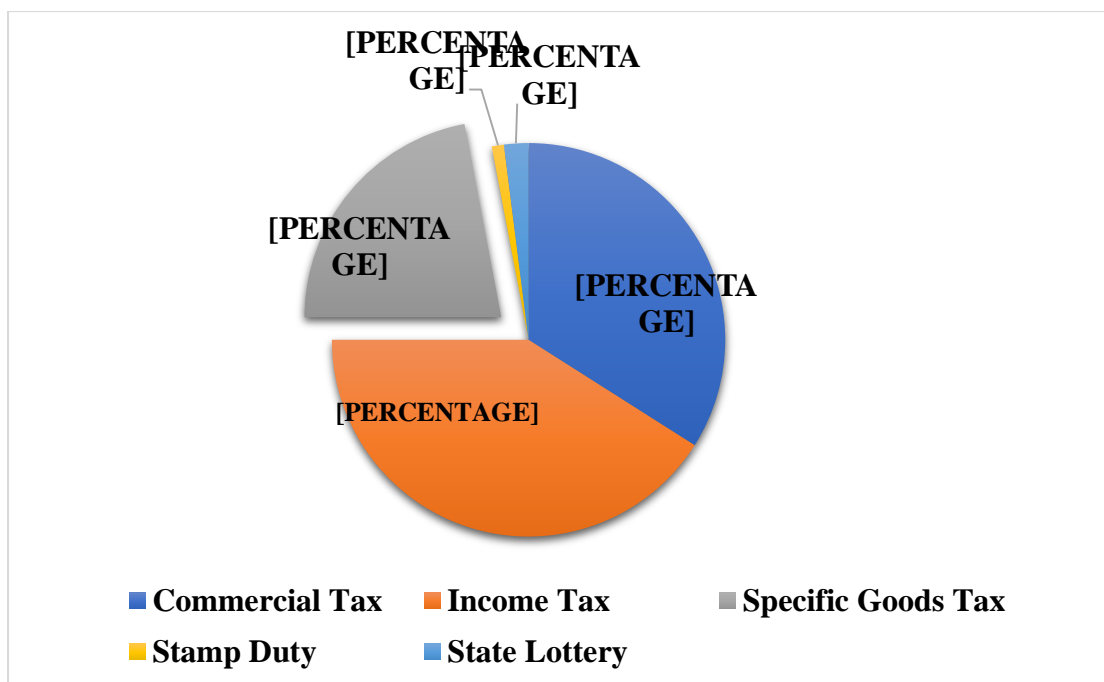


Figure 6 Percentages of Revenue collected by the Internal Revenue Department in 2017-2018 (Source: Statistics form the Internal Revenue Department)

Before 2016, liquor tax was collected with tax rate started from 50% to 200% on price of difference types of alcoholic beverages.¹²⁰ In 2016, the Union Parliament enacted the Specific Goods Tax Law to collect tax over the specific products such as liquor, tobacco, and petroleum, automobile and so on. The nature of special goods tax is similar to the excise or sin tax. Excise tax system was firstly introduced by enacting the Specific Goods Tax Law in Myanmar. Prior to this law, tax for alcohol and tobacco was collected as commercial tax with 50 to 200 % of price.

Both of these tax laws are governed by the Internal Revenue Department. The Specific Goods Tax Law concerns with the administrative procedure of excise tax. Even though the excisable goods are governed by the Specific Goods Tax Law, tax

¹²⁰ Section 11 (a) of the 2014 Union Taxation Law

rate for these goods are not specified in this law. Relating to the specification of tax rate (excise tax rate) are prescribed in Section 6 (a) of the Specific Goods Tax Law:

Section 6. (a) “For any year, the Union Taxation Law may prescribe for each financial year-

- (1) The payable tax for special goods can be specified, amended, appended and annulled.
- (2) Tax rates for calculation based on value, quantity, weight or any other measurement shall be set for special goods which are taxable.
- (3) The tax to be assessed on special goods and the tax rates shall be set for exporting.”

According to above provision, excisable products and tax rates are specified by the Union Taxation Law for every year. Furthermore, the Union Taxation Law is related to the Income Tax Law, the Commercial Tax Law. The tax rate for income tax rate and commercial tax rate are also specified by the Union Taxation Law. All of these taxation laws are administrated by the Internal Revenue Department. The Union Taxation Law is enacted by the Union Parliament for every budget year in order to fixed the tax rate for respective years.

3.3.2.3.1 Excise Tax method and Tax base for alcoholic beverages

Excise tax is collected as a specific goods tax with ad valorem tax method that base on the price of the product. As mentioned before, excise tax rates are provided in the Union Taxation Law for every budget year.¹²¹ In the Union Taxation Law, the

¹²¹ "Law Amending Specific Goods Tax Law," (2017). Section 7

excise tax for spirits and wine are provide into many tiers. However, beer excise tax for beer has no tier and tax rate is 60 % of price for all kinds of beer. According to Section 11 (a) of the Union Taxation Law, the tax rate and average percentage of excise tax burden over alcoholic beverages can be found in the following table:

Table 8 Excise Tax rates of the alcoholic Beverages

No.	Special Goods	Value tier	% of tax rate
1	Spirits	Sales price up to 29000 per liter	22.5% of the liter price (average rate)
		Sales price Ks 29001 and above per liter	60% of the liter price
2.	Beer	No tier	60 % of the price
3	Wine	Sales price up to 26000 per liter	21% of the liter price (average rate)
		Sales price Ks 26001 and above per liter	50% of the liter price

(Source: Section 11 (a) of the Union Taxation Law)

Myanmar excise tax system after passing the Specific Goods Tax Law, excise tax rates are specified into many layers depending upon the price of the product. The

percentages of excise tax paid by the taxpayers are also different by changing the price of each product. For example, we can see that percentages of excise tax are different when price of product change in the table below:

Table 9 Excise tax rate and tax burden for some alcoholic beverages

No.	Ad valorem tax rate	Price of product	Excise tax burden
(a)	Sales price up to Ks. 1000 per litre of alcohol must be charged 122 kyats for excise tax	1000 kyats	12.2%
(b)	Sales price from Ks. 1001 to 2000 per litre of alcohol must be charged 366 kyats for excise tax	1100 kyats	33.2%
		1500 kyats	24.4%
		2000 kyats	18.3%
(c)	Sales price from Ks. 2001 to 3000 per litre of alcohol must be charged 609 kyats for excise tax	2100 kyats	29%
		2500 kyats	24.3%
		3000 kyats	20.3%

(Source: Section 11 (a) of the Union Taxation Law)

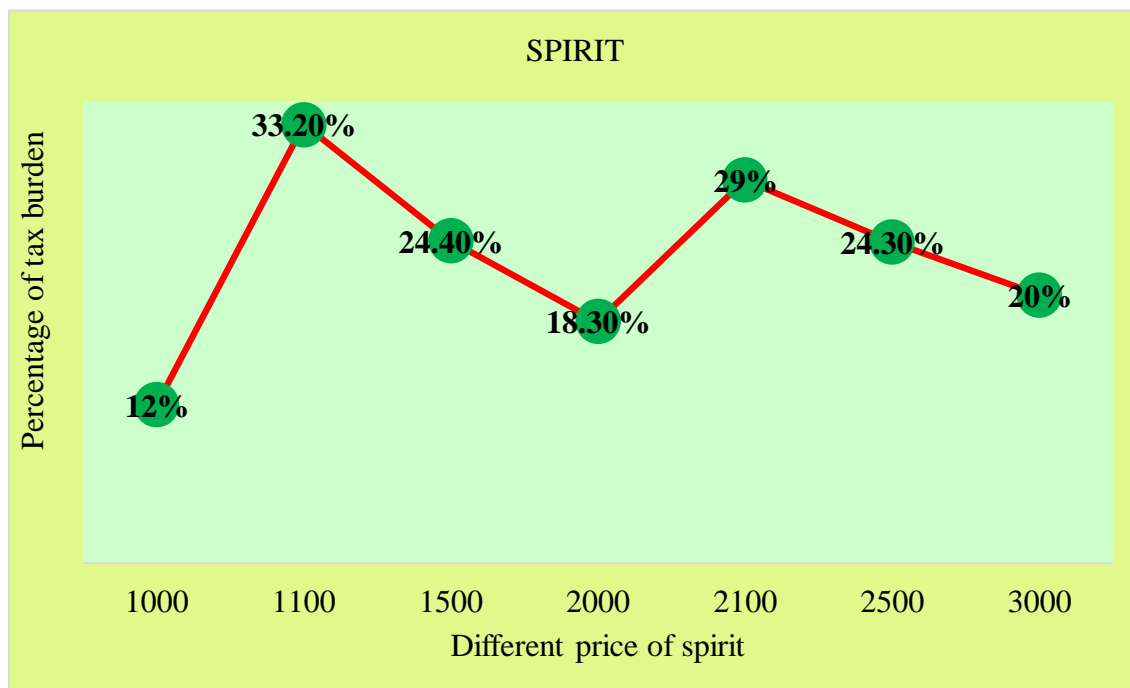


Figure 7 Unfair tax rate of Myanmar (source: Section 11 sub-section (b) of the Union Taxation)

In these table and chart, we can see the difference percentages of excise tax burden. This may cause unfair tax burden that tax payers have been charged. Therefore, the government of Myanmar should also consider how to correct this unfair tax burden of excise tax system.

Section 11 (a) of the Union Taxation Law provides with respect to tax base as follow:

Section 11 (a) “In respect of the specific goods in the following schedule, the specific goods tax shall be charged at the specified tax rates shown against them;

- (i) if the specific goods chargeable on the pricing tier are produced domestically, on the sale price mentioned by the factory, workshop or workplace, or the sale price estimated by the Director General and the

Management Committee of the Internal Revenue Department based on the market price, or whichever is higher;

- (ii) if the specific goods unspecified charging with the pricing tier, on the sale price specified by the Management Committee of the Internal Revenue Department;

(b) If the specific goods are imported into the country, the tax shall be paid on the landed costs.”

In the Union Taxation Law, spirit and wine are divided in many tiers depending on the price of the product but beer has no tier. Therefore, excise tax for spirit and wine is calculated in accordance with the provision of Section 11 (a) (i) and beer tax is calculated by the Section 11 (a) (ii).

Section 6 Sub- section (a) “For any year, the Union Taxation Law may prescribe for each financial year-

- (1) The Payable tax for specific goods can be specified, amended, appended and annulled.
- (2) Tax rates for calculation based on value, quantity, weight or any other measurement shall be set for specific goods which are taxable.
- (3) The tax to be assessed on specific goods and the tax rates shall be set for exporting.”

Section 6 Sub- section (b)

(1) Manufacturers and importers of specific goods shall apply to the Director General through the Township Revenue Officer so that he specifies the value class of special goods which are manufactured or imposed.

(3) The Director General shall specify the value class of specific goods for the relevant financial year as prescribed.

(4) For those specific goods whose value class is unspecified, the highest value class shall be used if the Director General does not specify another appropriate value class”

According to the Section 6 of the Specific Goods Tax Law, the tax rate and kinds of specific goods are prescribed in the Union Taxation Law for every budget year. The Director General of the Internal Revenue Department specifies the value class of specific goods depending upon the application of manufacturer or importer for each year.

3.3.2.3.2 Excise Tax responsibility

If the excisable product is imported or produced, the importer or manufacturer have the responsibility to pay excise tax for those products.¹²² Tax responsibility for import products starts at the date of custom clearance is performed, and for the domestic products starts at the date of selling or production. In section 7 (a) states about the tax responsibility as follows:

¹²²“Specific Goods Tax Law,” (2016). Section 5 “In respect of the specific goods chargeable to tax under section 4:

- (a) if imported,
 - (i) the importer shall pay specific goods tax;
- (ii) the Customs Department shall collect the tax to be paid under subsection (i) together with the customs duty as the manner of the collection of customs duty;
- (b) If manufactured in the country, the specific goods manufacturer shall pay tax;
- (c) If exported, the specific goods exporter shall pay tax.
- (d) If special goods for which no tax was paid are being kept, the keeper shall have to pay.”

Section 7 (a) “7. The tax rate of special goods assessable according to section (4) shall be calculated based on the value, quantity or weight of the goods or any other measurement on the following date -

(1) The date on which customs clearance for the special goods is performed if they are imported into the country or exported to a destination abroad;

(2) for special goods that are manufactured in the country:

(aa) the date on which they are sold if the special goods are of another type;

(bb) the date on which they are manufactured if the special goods are specified as attracting tax based on production in a notification by the Ministry;

(4) the date on which it is investigated whether, and discovered that, someone possesses special goods for which no tax was paid.”

Chapter IV

Analysis of Thailand, Philippines and Myanmar Excise Tax System

In this chapter will analysis the pros and cons of the Thailand, the Philippines and Myanmar base on the lesson getting form the previous chapters. I analysis the excise tax system of these three countries, and then I will propose the new excise model to reform Myanmar Excise Tax System and the way to minimize the illegal alcohol market in Myanmar.

4.1 Thailand Excise Tax System

From the point of social aspect Thailand excise tax structure utilize the mixed system; ad valorem and specific tax. Ad valorem taxation protects tax base from inflation because tax rate usually constantly rises with increasing the price of product. At the same time, the Specific tax rate can reduce the alcohol consumption as a result it can minimize the negative externalities such as alcohol-related harm, injury, crime and chronic diseases.

From the economic point of view, new excise tax system is not discriminate between domestic and imported products. Excise tax is calculated based on the suggested retail price for both domestic and import products. Import product and domestic product can compete each other in the market. So, Thailand excise tax system is consistence with the GATT Article III.

Same tax base can make equal tax burden between domestic and imported products; however, excise tax officers and staff need to know actual suggested retail

price. Therefore, they make market survey for every 3 months. It can be over work load to excise officers and staffs and may be extra cost for that survey.

In addition, suggested retail price is not producer price, it is only retailer price. Producer and manufacturer must pay tax depending upon the selling price of retailer to final consumer. When the retail price become high, they need to pay more tax although they do not get any profit from that price.

4.2 The Philippines Excise System

Although the Philippines excise tax system use the mixed system of specific tax and ad valorem tax, specific tax that the Philippines is not the same generally accepted specific tax. It can be said as a quasi-specific. In long term the Philippines intend to shift mixed system to unitary system. As mentioned in chapter 2, unitary tax cannot reduce the alcohol consumption effectively and then it can move consumer to consume cheaper alcohol with high alcohol content.

Excise tax is calculated based on the net retail price for ad valorem tax. Net retail price is determined by the Bureau of Internal Revenue based on the data providing by the National Statistic Office. One of the duties of National Statistic Office is to make the market survey for all commodities around the country to use in calculating of economic indicator. The government can minimize the administrative cost for doing market survey to get the net retail price by using these data from the National Statistic Office.

So, the Philippines excise tax rates are transparently provided in new excise tax reform law that the Philippines excise tax rate are predictable and sustainable. So, the tax payer can set the long-term plan for their business.

4.3 Myanmar Excise System

In Myanmar alcohol business is regulated by different three department as a result the government procedure for alcohol industry become complex and cannot be understand easily by the private sector.

Myanmar excise tax method is based on the ad valorem tax. Ad valorem tax can protect tax base from inflation, for example, when price of product is increase, tax amount will increase automatically. However, it cannot minimize alcohol consumption.

Myanmar excise tax system focus on the government revenue and collect upon the price of the product rather than alcohol content. Therefore, it may raise revenue but it cannot reduce alcohol consumption and related-harm. Excise tax rate is divided into sixteen layers depending upon price of product and it makes the difference percentage of tax burden. It makes Myanmar excise tax system become unfair.

Nowadays, specific tax method is generally accepted as the best way to reduce alcohol consumption. As discussed in chapter 2, excise tax should be reform gradually form ad valorem tax to specific tax to avoid tax shock.

If Myanmar government reform the excise tax system, there should be sustainable and long-term plan for minimize tax shock in order to be stable economic environment. Moreover, changing of tax rate for every budget year can disturb the stable economic

community. Tax payer cannot set long term for their business due to the unpredictable tax rate.

4.4 Propose model for Myanmar Excise Tax Reform

Some weakness of the Myanmar excise tax structure of alcohol are founded after analyzing the regulations relating to Myanmar alcohol business. The Myanmar Government can recover these weaknesses by learning form the experience of Thailand and the Philippines.

The main goal of the excise tax is to minimize the negative externalities so the government needs to focus to this point. Myanmar Government need to set up the medium- or long-term plan moving toward specific tax that is generally accepted as the best practice of excise tax gradually.

On the other point, tax system is directly connected to the business therefore the facilitate and transparent tax system is also important for legitimate alcohol business to become strong.

There have another point that Myanmar is one of the founder states of the World Trade Organization and also the ASEAN member country. As a result, rules and regulations for international transaction including tax regulations must be imply with the international standard and norm.

According to above reasons the Myanmar need to reform the following tax factors in order to formulate strong and effective excise tax system in Myanmar and to consistence with the international standard and norm.

(a) Tax Method

- (b) Tax Base
- (c) Tax Responsibility
- (d) Deregulation to import alcoholic beverages

4.4.1 Tax Method

There are three excise tax method as mentioned in chapter 2; ad valorem tax, unitary tax and specific. Ad valorem tax mainly focus on the revenue purpose and it is more suitable for the developing country with high inflation. The ad valorem is used in CLMV countries that are the least developed countries among ASEAN countries because government expenditure mainly depends on the tax revenue and tax base cannot be distorted by the inflation. Specific tax is globally accepted as the best method because it is mainly focus on the public health. Therefore, ASEAN countries intend to shift gradually to specific tax from ad valorem.

Thailand excise tax method is focus on both public health and fiscal health. There is no doubt that specific tax can reduce the alcohol consumption and ad valorem tax can protect tax base form inflation rate and then government revenue can increase from this. Moreover, we can assume that Thailand excise tax method moving forward to specific tax.

At the same time the Philippines intend to shift to unitary tax gradually because the Philippines excise tax method is mixed with ad valorem and quasi specific that is different from the specific tax generally accepted.

Myanmar needs to gradually reform excise tax to effectively reduce alcohol consumption. As I mentioned before specific tax is the best way for alcohol tax.

However, Myanmar government should not reform immediately from ad valorem tax to specific because it can create tax shock.

Hence, Myanmar have to utilize mixed system combined with ad valorem and specific tax that is used in Thailand. After that Myanmar should gradually move to specific that is the best practice of excise tax.

In Myanmar, there is one more issue relating to excise tax rate for spirit and wine which are specified in many tiers depending on the price of product in the Union Taxation Law. It becomes unfair tax burden and complex tax calculation.

In Thailand, only for specific tax rate for wine has two tiers depending on price. If price of wine is less than 1000-baht, taxpayer must pay 0% excise tax. If price is more than 1000-baht, tax rate is 10 % of the price. This tax rate is clear and easy to understand by the public.

So many tiers of alcoholic beverages make the unfair and complex excise tax system that this tier system should be removed in Myanmar excise tax system. And then Myanmar need to reform this tier system to Thailand's model.

4.4.2 Tax base

There are different kinds of excise tax base in ad valorem tax method such as ex-factory price, market price, suggested retail price, net retail price and so on. In Thailand, suggested retail price is used in calculation of excise tax. Thailand has Excise Department specifically to administer the matters relating to excisable products. Thailand's Excise Department make market survey for every three months in order to get the mood price for every excisable product.

In the Philippines, excise tax is collected by the Bureau of Tax Revenue and there is no specific excise department. The net retail price is used in calculating of excise tax. The net retail price is determined by the Bureau of Tax Revenue based on the data collected by the National Statistic Office. National Statistic Office make the market survey for every products in the Philippines market. Therefore, the Philippines can minimize administrative cost for determining the net retail price and can also reduce the work burden for tax administrative agency.

In Myanmar, there is no specific excise department and excise tax is collected by the Internal Revenue Department. In Myanmar, excise tax is calculated in accordance with the Section 11 (a) of the Union Taxation Law.

According to the provision of this section excise tax for domestic product is paid the higher value of the two prices: sale price determined by the Director General of the Internal Revenue Department based on the market price and sale price shown by the factory, work shop or work place.

For the imported product, excise tax is calculated based on the landed cost. We can see three different tax bases for alcoholic beverages which are sale price determined by the Internal Revenue Department, sale price shown by the taxpayers and landed cost. Tax base for alcoholic beverages is not clear and should clearly specify the tax base.

Table 10 Comparison of Excise Tax Base between Thailand, the Philippines and Myanmar

Country	Tax Base	Remarks
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Country	Tax Base	Remarks
Thailand	Suggested retail price	Tax amount for same product that paid by different taxpayer may be different because product price is suggested by the different taxpayer to calculate tax amount to paid.
The Philippines	Net retail price	Due to the determination of net retail price the Bureau of Tax Revenue, tax amount paid by the taxpayers are same within the respective region.
Myanmar	sale price determined by the Internal Revenue Department; sale price shown by the taxpayers (domestic product)	Tax base for domestic product is not specific as a result taxpayer may cannot predict tax amount that they have to paid. Moreover, taxpayers may show incorrect sale price to evade tax.
	landed cost (imported product)	

Myanmar should use net retail price as excise tax base for alcoholic beverage like in the Philippines. This system is suitable for Myanmar because the Central Statistical Organization (CSO) makes market survey for every product to use in calculation of economic indicator for Myanmar. Moreover, the Internal Revenue

Department also currently determine the sale price of alcoholic beverages. Therefore, the net retail price is suitable excise tax base for Myanmar.

4.4.3 Tax Responsibility

In Thailand, excise tax responsibility is generally started at the time of excisable goods are moved out of the industrial establishment for domestic product with the exception of moving to bonded warehouse in order to store in that warehouse. For the import product excise tax have to be paid at the same time of custom duties are paid with the exception of importation for the purpose of storage in the bonded warehouse.

There are two kinds of warehouse in Thailand; (1) custom warehouse that are administered by the Custom Department and (2) excise warehouse that are administered by the Excise Department.

In Myanmar, excise tax responsibility is started at the same time of custom duties are paid for import product. For the domestic product, excise tax responsibility is started on the day of selling the product. There can be conflict between taxpayers and tax inspector regarding to the time of selling. If Myanmar use the time of moving out of the industrial establishment as starting time of tax responsibility, the Internal Revenue Department can solve this conflict.

Therefore, I would like to propose the model of tax responsibility that are utilized in Thailand as the model for Myanmar.

4.4.4 The Weapons to Combat the Illegal Trade

According to the speech of Dr. Khin Shwe, Member of the Union Parliament, around 90 percent of foreign alcohol and tobacco are illegal products, and around 80 % are illegally imported from Thailand. There are some factors that cause illegal market such as prohibition, effective of penalty and tax rate.

Myanmar has restricted the alcohol importation since 2013 and this restriction is not consistent with the GATT Article XI 2 (c). During the previous years, the United States proceeded against Thailand because the restriction of alcohol importation. The United States argued that this restriction is not consistent with the GATT Article XI 2 (c). Therefore, Myanmar can also be proceeded over the restriction of alcohol importation. Furthermore, the restriction is also one of the factors of occurring illegal market. Hence, the government should deregulate this alcohol importation in order to consistence with the GATT Articles.

However, Myanmar Government need to consider about the negative externalities of alcohol at the time of deregulation of alcohol importation. According to World Health Organization's recommendation, product labelling on alcohol product is one of the effective ways to reduce the alcohol-related harm.

There are two options relating to product labelling; displaying list of ingredients and warning alcohol-related harm. These labelling must be clear and significant letter with Myanmar language and pictogram should also be used. The warning text should be relating to negative effect to pregnant woman and minor, drink driving, physical and mental health problems and so on.¹²³

¹²³ World Health Organization, "Alcohol Labelling a Discussion Document on Policy Options," (World Health Organization Regional Office for Europe 2017), Section 5 and 8.pg.1

The alcohol products without these labelling should not be allowed to import or produce. On the other hand, the products without labelling must be specified as illegal products. The Myanmar Government need to enacted new regulation for labelling on alcohol product. Only if the new regulation for product labelling on alcohol product is promulgated, alcohol importation should be deregulated.

The data from the World Bank prove that the labelling on cigarette is also effective in Myanmar. The rate of smoking is gradually decreasing in Myanmar year by year.¹²⁴ Therefore, we can assume that product labelling can be effective to consumer preference in Myanmar.

Another option to combat the illegal market is effective and efficient penalty as I discussed in Chapter 2. If any person imports the restricted product to Myanmar, he will be punished with the term of not exceeding 3 years imprisonment or fine or both.¹²⁵ The punishment for possession of untaxed products is the fine of 100 percent of the value of product in Myanmar.¹²⁶

According to Section 154 of the Excise Tax Act, Thailand, the permission from the Director General of the Excise Department is needed to import alcoholic beverages to Thailand.¹²⁷ If alcoholic beverages are imported without the permission of the Director General, this importer shall be punished for a term not exceeding six

¹²⁴ "Myanmar Smoking Rate 2000-2019," (Macrotrends LLC, 2019).

¹²⁵ "The Export and Export Law," ed. The Union Parliament of Myanmar (2012), Section 5 and 8.

Section 5 "No person shall export or import restricted, prohibited and banned goods."

Section 8 "Whoever violates the prohibition contained in section 5 or section 6, on conviction, shall be punished with imprisonment for a term not exceeding three years or with fine or with both."

¹²⁶ "Specific Goods Tax Law," (2016), Section 22 (c).

Section 22 "If any person who fails to perform any of the following without sufficient reason, the Township Revenue Officer shall direct him to pay fine, or to perform or perform for each type of default as follows:" (c) payment of 100 per cent of the value of untaxed specific goods on the possessor of such specific goods and confiscation of such specific goods;

¹²⁷ "Excise Tax Act 2560, Thailand ", (2017), Section 154.

Section 154 "Any person who intends to import liquor into the Kingdom shall submit an application to the Director-General for permission."

months imprisonment or fine not more than one hundred thousand Bath or both.¹²⁸ If the person possess untaxed products will be fined 2 to 10 times of tax that has to be paid. The punishment for the possession with the purpose of selling is the imprisonment with the not exceeding one month or 5 to 15 times of the tax that has to be paid.¹²⁹

Table 11 Comparison of punishment between Myanmar and Thailand

	Myanmar	Thailand
Punishment for import	3-year imprisonment or fine or both	Six-month imprisonment or fine (not more than one hundred thousand) or both
Punishment for possession of untaxed product	Fine (100% of the value of the product)	Fine (2 to 10 times of tax that has to be paid)
Punishment for possession of untaxed product for the purpose of selling		One-month imprisonment or fine (5 to 15 times of tax that has to be paid)

¹²⁸ "Excise Tax Act 2560, Thailand ", Section 195.

Section 195 "Any person who violates section 154 paragraph one, section 166 paragraph one or section 175 paragraph one shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred thousand Baht or to both."

¹²⁹ "Excise Tax Act 2560, Thailand ", Section 203 and Section 04.

Section 203 "Any person who does any of the following acts shall be liable to a fine of two times to ten times the amount of tax which is required to be paid or which is deficiently paid, provided that the fine shall not be lower than four hundred Baht: (1)having in possession goods on which tax has not been paid or has been deficiently paid unless:

Section 204 "Any person who does any of the following acts shall be liable to imprisonment for a term not exceeding one month or to a fine of five times to fifteen times the tax which is required to be paid or which is deficiently paid, provided that the fine shall not be lower than eight hundred Baht, or to both: (1) selling or having in possession for sale the goods on which tax has not been paid or has been deficiently paid unless:

According to above table, the punishment relating to importation and possession of untaxed product are not quite different with each country. However, in Myanmar, punishment for possession of untaxed product for selling should be strong enough to combat the illegal market.

Taxes can also affect to the illegal market. Myanmar need to compare with the Thailand excise tax on alcoholic beverages because around 80% of illegal foreign alcoholic beverages are imported from Thailand.

Myanmar should reform to mixed excise tax system that has been used in Thailand. Myanmar excise tax system has many tiers based on the price of spirit and wine. This tier system is needed to be changed because this makes the unfair tax rate. Moreover, specific goods tax rate for alcoholic beverages should also be comparable with Thailand excise tax rate. If Myanmar's tax rate is much higher than Thailand, importer will choose illegal channel. Therefore, Myanmar should use mixed excise method with the suitable tax rate.

Chapter V

Conclusions and Recommendations

5.1 Conclusions

From the previous chapters, we can say that both Thailand and the Philippines have many experiences through the long history relating to excise tax system. Both of their excise tax systems encourage fair competition between domestic and imported products. It also consistency with the WTO rule and international standard. Myanmar need to formulate the new excise tax system that can adjust health aspect and revenue purpose.

5.2 Recommendations

Myanmar excise tax system should be reformed by changing ad valorem tax method to the mixed system by combination of ad valorem and specific system. Because the mixed system that Thailand utilized is more appropriate for both public health purpose and revenue purpose and then it is suitable for the countries that have high inflation rate. However, in Thailand, excise tax is collected upon the suggested retail price.

Thailand Excise Department makes market survey for every three months to get actual retail price. If Myanmar excise tax base is changed to suggested retail price, there might be difficulties for Myanmar because there is very limited human resource in Internal Revenue Department. And then, the making of market survey process may be more administrative cost.

If net retail price is used as the tax base for alcoholic beverages, it may be more appropriate than suggested price. In Philippines, the net retail price is determined by the Bureau of Internal Revenue depending upon the data getting from the National Statistic Office. Taxpayers must pay tax by calculating depending upon the net retail price that are specified by the Bureau of Internal Revenue.

In Myanmar, the Central Statistical Office makes the market survey for every commodity around the country. If the Internal Revenue Department use the data that are surveyed by the Central Statistical Office, it can minimize administrative cost for determining the retail price as the way Philippines using.

Notwithstanding the government reform the excise method, this cannot be affected to the illegal alcohol. Because excise tax method is not the key factor of illegal trade and the main factors is the restriction of alcohol importation.

Myanmar have to deregulate the importation of alcoholic beverages in order to consistence with the GATT Article III.

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VITA

NAME Ngu Wah Maung

DATE OF BIRTH 13 May 1988

PLACE OF BIRTH Tharsi, Myanmar

INSTITUTIONS ATTENDED LL.M. (Business Law) International Program, Faculty of Law, Chulalongkorn University

HOME ADDRESS 521/3-4 Soi Sriyauthaya 2-4, Sruayauthaya Road, Prayatai District, Rajthavee, Bangkok 10400



จุฬาลงกรณ์มหาวิทยาลัย
CHULALONGKORN UNIVERSITY