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Two years of implementation

Revisiting the effects of Inheritance Tax Act 2016 (a comparative study of Thai, Japanese and Singaporean law)

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I INTRODUCTION

'Death tax' or as known in the legal world as 'inheritance tax' is one of the most controversial tax that is currently in force in several jurisdictions around the world – including Thailand. Several countries such as Singapore, has already decided to abolish inheritance tax whilst other countries such as Japan, has decided to increase its inheritance tax rate. Thailand itself has been on both ends of the extreme as it has abolished inheritance tax in 1943 after having implement it for 11 years since 1932, only to reintroduce it in 2016.

The introduction of the Inheritance Tax Act (Thailand) (the 'Act') in 2016 has led to several controversial issues such as the payment system or the possibility of double taxation. This article aims to address the key issues, ideas behind the implementation of Inheritance Tax Act, and to review the impacts after 2 years enforcement of the Inheritance Tax Act through analysis of the status quo of Thailand before and after the implementation of the Act. A comparative analysis between the approach that Singapore and Japan took to inheritance tax will also be explored in order to assess which approach would be beneficial for Thailand.

The article is divided in to five chapters. Chapter I is the introduction and lays out the structure of this article. Chapter II provides a historical background and overview of tax with a specific focus on inheritance tax. Chapter III focuses on Thailand's history of Inheritance Tax Act dating back to 1932, the status quo of Thai tax law prior to enforcement of inheritance tax, and benefits and consequences of such tax. Chapter IV reviews the impact of Inheritance Tax Act on Thailand after two years of implementation. Chapter V provides a comparative analysis of Thai inheritance law against Singapore's and Japan's and Chapter VI is the conclusion.

II HISTORICAL BACKGROUND OF INHERITANCE TAX

As inheritance tax is a subset of tax, in order to understand it, the general background and structure of tax must be clearly laid out and explained.

The very first thing that must be understood is the purpose that tax was created. The three main purposes for taxations are economic, societal and political.

The economic purpose for taxation is to serve as a method for government in order to retrieve payment for the benefits its citizens enjoy in the society.[1]

The societal purpose for taxation stems from the social inequality within a society. Thus, taxation would be a redistributive method, in an analogy akin to that of Robin Hood, where the rich would be taxed a higher rate in comparison to the poor and such revenue received from taxation would be used to improve the social welfare of a society as a whole so those who are less fortunate would be able to benefit or obtain welfare they would not normally be able to.[2]

Lastly, tax serves a political purpose as it is an essential factor in policymaking. One of the major policies that tax can be seen in is in regards of 'sinful' goods.[3] This is commonly in the form of excise tax or 'sin tax' where tax is imposed on certain goods which has negative impacts on health or welfare of society e.g. alcohol or cigarettes. In this case, a higher tax would be imposed on these 'sinful' items in order to increase its costs which will then deter the individuals from purchasing such items.

Once tax is imposed on society, there are three effects that takes place: distortion of economic decision, creates an 'income' and 'substitution' effect, and distorts the financial transaction behaviour of an individual. First, imposition of tax distorts economic decision of an individual. This due to the effect of tax creating a 'deadweight loss' within society[4] reflected in the difference between the tax-free products and the taxed products.[5] An example is where a person would not want to or may be deterred from spending their money due to tax imposed on products which makes the product more expensive and less attractive, it increases the production costs whilst reducing the output of products.[6]

Another effect of tax imposition is that it creates and income and substitution effect. Simply put, an individual would not want to spend their income on goods as much when the goods are more expensive due to tax being imposed on them along with the fact that your income will be taxed as well, effectively 'lowering' the amount of money you have – this is known as the income effect[7]. A theory interlinked with this is

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1 Avi-Yonah, Reuven S. 'The Three Goals of Taxation.' Tax L. Rev. 60, no. 1 (2006): 1-28.
2 Ibid 1
3 Satthavorasit Arthit,'Taxation: Principles & Policies' Thammasat LL.B. University August 2017,
4 Ibid
5 Investopedia, 'Deadweight Loss' (Investopedia) https://www.investopedia.com/terms/d/deadweight-loss-of-taxation.asp accessed 2 June 2018
6 The Economic Times, 'Definition of Deadweight Loss' (The Economic Times) https://economictimes.indiatimes.com/definition/deadweight-loss accessed 2 June 2018
7 Investopedia, 'Income Effect' (Investopedia) https://www.investopedia.com/terms/i/incomeeffect.asp accessed 3 June 2018

the substitution effect which states that as income decreases, individuals would switch to a less costly alternative.[8]

Lastly, tax can affect a person's financial transaction behaviour, for example, a person can either choose to put their savings in a bank or a fund but if they can receive a tax deduction from putting their savings in a fund, they would choose to put it in the fund rather than in a bank.[9]

Tax can be collected on an individual or unit basis. An individual basis means that the tax is calculated and collected on a basis of the individual's income alone. A unit basis[10] is when the tax is calculated on a group of individuals, the group of individuals would usually be a family unit where the husband and wife's income are added together and the tax is then calculated from their added income[11]. There are three types of tax rate that can be imposed: flat tax rate, lump sum tax rate or progressive tax rate. A flat tax rate[12] means that the same percentage is imposed on all individuals, regardless of their income of situation. A lump sum tax[13] rate imposes that all individuals pay the same 'lump' of tax at the very end, regardless of their income. Lastly a progressive tax rate[14] is where the tax imposed is dependent on the person's income, if a person earns higher income, they would fall in a higher tax band and would be imposed to a higher tax rate – this type of tax rate is seen to be most fair in terms of the rate imposed on society.

A. Inheritance Tax

The idea of tax is based on a person receiving social benefits and tax acting as a 'repayment' for such benefits. However, since inheritance tax is calculated based on the property of an individual, it can be argued that the government does not have a 'better right' over the property than the owner, and thus tax should not be levied upon the property.[15] This theory is based upon John Locke's idea that a right in a property exists before the creation of a state and that God has provided man with real rights over the property which he can put up against the government to claim better right over the property.[16]

On the other hand, Jeremy Bentham, a supporter of inheritance tax, believed in the idea of utilitarianism which meant the he rejected the idea of natural rights on property and advocated for governments to heavily regulate inheritance to provide the

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8 Investopedia, 'Substitution Effect' (Investopedia) https://www.investopedia.com/terms/s/substitution-effect.asp accessed 10 June 2018

9 Ibid 3

10 Ibid

11 Ibid

12 Jason Walker, 'Per Unit Tax' (Economic Classroom) https://econclassroom.com/?glossary=per-unit-tax accessed 10 June 2018

13 Jason Walker, 'Lump Sum Tax' (Economic Classroom) https://econclassroom.com/?glossary=lump-sum-tax accessed 10 June 2018

14 Investopedia, 'Progressive Tax' (Investopedia) https://www.investopedia.com/terms/p/progressivetax.aspaccessed 7 June 2018

15 David Parkins, 'A Hated but a Fair One' The Economist (23 November 2017)

16 Ibid

greatest benefit for society as a whole.[17] According to Bentham's theory, the government would have a better right over the property and could impose tax on it, thus resulting in inheritance tax.

Another point that needs to be distinguished is the types of inheritance tax. There are two types of inheritance tax, namely, estate tax and inheritance tax. Estate tax is tax imposed on the owner of the property and will be collected upon their death, the heir who receives the property is not taxed upon receiving the property as the property has already been taxed.[18] Inheritance tax is different from estate tax from the way the tax is imposed. Inheritance tax is imposed on the individual heirs once they receive the property.[19]

III THAILAND'S HISTORY ON INHERITANCE TAX

Inheritance tax has proven to be unpopular as seen in the abolishment of this type of tax in several jurisdictions. This opinion held to be true in Thailand when inheritance tax was first introduced in 1932 but was later abolished in 1943.[20] The reason that the Inheritance Tax Act of 1932 was repealed was due to three main reasons.[21] First, if inheritance tax was not in line with the Thai culture of preserving inheritance for the next generation, the mechanism of inheritance being used to deter people from keeping inheritance would thus not be effective in Thai society where keeping inheritance was ingrained in to the system. Second, the amount of inheritance tax that were collected was not a worthwhile use of manpower and costs for the Revenue Department. Lastly, the amount of tax collected was small in comparison to other types of tax and individuals were evading being taxed on their property.

After abolishment of inheritance tax in 1943, there has been no specific taxation on inheritance until implementation of Inheritance Act 2016. According to the Thai Revenue Code, section 39[22] defines 'assessable income' as "income also includes a property or any other benefit received which may be computed into a monetary value" and therefore, the inheritance received by the heirs could possibly be subsumed as an assessable income and taxed, even without the laws relating to inheritance tax. However, an exception to calculating tax as assessable income is found in section 42 (10)[23] where tax is exempted on money and property[24] which are received as inheritance or received by the child as income from their parents. Essentially, this means that inheritance is completely exempted from taxation.

17 Juan C. Antunez, ''Philosophical Arguments For and Against Estate Taxes' (Florida Probate & Trust Litigation Blog, 16 January 2007) www.flprobatelitigation.com/2007/01/articles/trust-and-estates-litigation-in-the-news/philosophical-arguments-for-and-against-estate-taxes/ accessed 26 June 2018

18 การวางแผนภาษี พระราชบัญญัติการรับมรดก (ตอนที่ 1) ผศ. ดุลยลักษณ์ ตราชูธรรม เอกสารภาษีอากร 42

19 Ibid

20 Dr. Thanatip pg. 128

21 Ibid

22 Thai Revenue Code section 39

23 Thai Revenue Code section 42(10)

24 พระราชบัญญัติ แก้ไขเพิ่มเติม (ฉบับที่ ๔๐) พ.ศ. ๒๕๕๘

Thus, the debate of whether inheritance tax should be implemented began. The main arguments to not implement inheritance relates to double taxation, its efficiency and method of payment.

A. Double Taxation (Economic Aspect):

Double taxation means imposing tax on the same tax base twice. Double taxation is broken down in to two kinds: juridical and economic. Juridical double taxation is where a person is taxed twice or more times by jurisdictions that have authorities to tax them whilst economic double taxation refers to taxing the same asset or income twice or more times.[25]

Economic double taxation can be inferred from section 40(8) as it is a 'catch-all' clause which allows all other types of assessable income to be subsumed under it, inheritance that is received could be subjected not only to the tax rate of Inheritance Tax Act but also to income tax under the Revenue Code. Essentially, this would result in the individual being taxed twice for the same 'income' (the inheritance), subjecting them to double taxation.

Juridical double taxation occurs from the lack of Double Taxation Agreement (DTA) that Thailand has with other countries that governs inheritance taxation. Double Taxation Agreement is agreement between countries in order to dictate which state has the right to tax the individual on different types of income.[26] Although Thailand has a total of 59 DTA with other states, they only cover income tax and do not govern inheritance tax. Additionally, 20 out of the 59 states that Thailand has entered in to a DTA with also imposes either estate and/or inheritance tax, thus subjecting individuals that have been taxed by the Inheritance Tax 2016 to also be taxed under another jurisdiction.[27]

B. Revenue Generation (Economic Aspect)

It is believed that inheritance tax would have the most effect on those which are of middle-class. This is because the lower class people would most likely not have property that would total to more than 100 million THB, thus meaning that they would not be subject to the Inheritance Tax Act and higher class people would have found ways to situate their property in countries that are likely to reduce their tax burden or have found ways to transfer the property without it getting taxed. Although the new inheritance tax law removes the loophole of escaping taxation by transferring property to another country, there has been no regulations published in conjunction with the Act to serve as a mechanism to tax the properties that are abroad. Additionally, as these group of people are the best-off in society there would be a minimal effect on them even if they have to pay a hefty inheritance tax, they will still be able to afford it.

Thus, the population that would be the effected the most would be the middle-income class as they are wealthy enough to have inheritance but could face the

25 Double Tax Agreement on the Estate, Inheritance and Gift Tax, Intouch Piyanawin p 42 Tax Talk

26 https://www.taxguideforstudents.org.uk/types-of-student/international-students/residence-and-domicile/what-is-a-double-taxation-agreement

27 Ibid 25

difficulty in paying for the inheritance tax imposed on them. This problem is especially accentuated when it comes to payment of the inheritance tax. Although Section 23 of the Act and the Royal Decree on Regulations, Procedure and Conditions inheritance tax instalment payment allows for the tax payer to pay tax in instalments, the heir can still face difficulty when paying it.[28] As inheritance tax imposes a flat tax rate and not a progressive tax rate like income tax, it would mean that heirs who may not be well-off would be taxed in a portion that is disproportionate to their status quo in society. The result of this would be the heir paying a tax sum higher than their ability, eventually it could mean that they would not be able to pay off this sum. It is also important to note that if the heir is not able to pay the tax in instalments within 2 years, they will be subjected to additional tax thus increasing their tax burden.[29]

On a higher-plane, as Thailand has several SMEs[30], the inheritance that the individual passes to their child would be the SME business. However, as stated above, if the heir does not have enough money to pay for the inheritance tax imposed on them, it would mean that they would have to sell the business in order to pay for the tax. This would result in a decrease of SMEs and could lead to an overall decrease of business growth and economy in Thailand.[31]

C. Income Disparity (Social/Political Aspect)

On the other hand, supporters of having inheritance tax argue that this type of tax would reduce the social injustice. This is especially the case in Thailand where the social income gap is clear, as stated by OECD, the income gap in Thailand has been increasing since 2014 as 80% of 7.1 million people in the country are living in poverty.[32] Considering that 20% of the citizens are living above poverty level and all have inheritance to pass on to their heirs, this would result in a high amount of revenue that can be collected by the government which can be used to redistribute to the poor.

Related to the point above, as the rich or the upper middle class are the only ones which have inheritance, especially immovable properties such as houses, lands and apartments, this would lead to an increase in the price of property. The reason for this is because the rich and upper middle class would be the ones who own majority of the property, thus they can monopolize the price of the property or rent. This would lead to scarcity of property and inflated price of property. Although Thailand has yet to encounter this problem (as land is still abundant), it could be occur in the foreseeable future as the population slowly increases.[33] As some heirs may not be able to pay for

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28 พระราชกฤษฎีกา กำหนดหลักเกณฑ์ วิธีการ และเงื่อนไข การผ่อนชำระภาษีการรับมรดก พ.ศ. ๒๕๕๘

29 Ibid

30 International Labour Organization, 'Small Medium Enterprises' (International Labour Organization) https://www.ilo.org/global/topics/employment-promotion/small-enterprises/lang--en/index.htm accessed 14 July 2018

31 ดร. ชนาธิป ชินะนาวิน "ภาษีมรดกและภาษีที่ดิน: ข้อดี ข้อเสียต่อสังคมไทย" วารสารบัณฑิตย์ (ม.ค.-มี.ค. 58) ; ผศ.ดร.ดวงมณี เลาวกุล "ภาษีที่ดินและมรดก: ใครมี ใครจ่าย ใครได้ประโยชน์" โครงการติดตามเศรษฐกิจไทย (ธันวาคม 2557)

32 Angel Gurría 'Globalisation, Inequality and Thailand 4.0' (OECD, 24 August 2017) http://www.oecd.org/countries/thailand/globalisation-inequality-and-thailand-4-0.htm accessed 14 July 2018

33 Will Huntton 'The Case for Keeping Inheritance Tax' (The Guardian, 7 October 2007) https://www.theguardian.com/commentisfree/2007/oct/07/comment.inheritancetax accessed 14 July 2018

the inheritance tax, they may have to sell their property which would result in more property within the market, effectively decreasing the property prices.

D . Government's reasoning

According to the Act, the reason that the government provided for implementing this law once again was in order to decrease the social disparity that was caused by the income gap. Although no clear political motives was stated or announced, it can be seen that implementing this Act would be in line with the junta government's goal of reducing the income gap in the next 20 years through several policies.[34] Thus, the Inheritance Tax Act can be seen to have an underlying political reason as a tool to assist their government in achieving their goal of reducing income gap within the country.

IV A CURRENT LOOK AT INHERITANCE TAX ACT

With the introduction of Inheritance Tax Act 2016, inheritance that exceeds an amount of 100 million THB will be subjected to a tax of 10%. As the government fears that individuals may find loophole and evade inheritance tax by transferring the property before their death or as gifts. However, the government has realized the existence of this loophole and in conjunction of implementing the Inheritance Tax Act 2016, there are also amendments to the types of income that can be exempted. This is through the parliament repealing section 42(10) of the Revenue Code and implementing section 42 (26) (27) and (28) which imposes 5% tax on individuals if they receive a gift of more than 20 million THB.[35]

In order to fully understand the effects of inheritance tax in Thailand, there must be a basic understanding of procedures in tax collection. According to the Inheritance Tax Act, the person who has the duty to pay the tax is the heir upon receiving the property after death of the owner.[36] Prior to enforcement of this Act, many individuals have transferred their properties to other jurisdictions in hope that they will be able to evade from tax or face less tax burden. However, under section 11 of the Act, heirs will be taxed upon nationality, resident and asset rule. Thus, even if the property is transferred to other jurisdictions, it will still be subjected to the Inheritance Tax Act 2016 under the nationality rule because as long as the individual is considered a natural or juristic person of Thai nationality by virtue of Thai law, they will be covered and subjected to this Act. Additionally, the resident and asset rule also governs individuals who own property in Thailand but do not hold Thai nationality. The resident rule states that if the person is a resident of Thailand, such person will be a subject of this Act, regardless of whether the property is in Thailand or not. The asset rule also covers persons who do not hold Thai nationality but receives the property in Thailand. As can be seen, the reason that the Act covers non-Thai nationals is in order to prevent any

34 Chatrudee Theparat 'NESDB promises to narrow income gap' (*Bangkokpost*, 27 March 2018) https://www.bangkokpost.com/business/news/1435638/nesdb-promises-to-narrow-income-gap accessed 14 July 2018

35 ผศ. ดุลยลักษณ์ ตราชูธรรม "การวางแผนภาษี พระราชบัญญัติการรับมรดก (ตอนที่ 1)" การวางแผนภาษี ฉบับ 34 (กันยายน 2559) เอกสารภาษีอากร 49

36 ดร. สุวรรณ วลัยเสถียร "ภาษีมรดก ตอนที่ 8 ภาษีมรดกในประเทศไทย" เอกสารภาษีอากร ฉบับ 34 (กันยายน 2559) 27

loopholes in the law, for example, transferring the property to a foreign holder who holds the property as an agent whilst the Thai national who is subjected to inheritance tax evades it.

A. Collection of Tax

According to section 17 of the Inheritance Act, it states that the heir must submit the form and pay within 150 days after receiving the inheritance that exceeds 100 million THB. However, if the inheritance is not divided yet, it does not fall within the scope of this specific Act because if it is not yet divided, it cannot be transferred to the heirs (the person who will be subject to this tax).[37]

Inheritance that is transferred prior to the implementation of this Act is not subject to taxation under it, even if the heir receives the inheritance after the date that the Act comes in to force (the government considers the act of transfer to consider whether or not the property is subjected to inheritance tax or not), this follows the primary principle of rule of law where law cannot be applied retrospectively.[38] Another interesting point to note is that legal spouse who receives the inheritance would not be subjected to inheritance tax. This is to reduce or avoid the possibility of 'double taxation' because the government foresees that, with the assumption the legal spouse passes away due to old age, the other legal spouse would most likely pass away within a few years after their legal spouse. Therefore, if the legal spouse is subjected to inheritance tax, then the inheritance would be taxed twice, once when it was transferred to the legal spouse and once more when the heir (most likely their child) receives the inheritance thus resulting in 'double taxation'.[39]

B. Taxed property

Under section 14 of the Inheritance Tax Act, properties that are subjected to tax are immoveable property, registered securities in the Securities Exchange of Thailand ('SET'), deposited money or money with similar properties, vehicles with registered evidence and other properties as declared by the notification of this Act.[40] From this context, moveable property will not be subjected to tax. This poses a problem where the owner of inheritance would find ways to convert their property from immovable property to movable property or not deposit their money in the bank in order to avoid tax. Thus, this remains as a loophole and problem in Thai inheritance tax.

C. Economic Aspect

From the 2016 report provided by the revenue department, no inheritance tax was collected.[41] However, this may be due to the fact that it was the first year that it was implemented and inheritance tax is only collectable upon transfer after death of an individual. Thus, a review or study after five years of implementation would provide a higher yield of result as regards of the amount of inheritance tax that is collected.

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37 Inheritance Tax Act 2016

38 Ibid n36

39 Ibid 38

40 ผศ.ดุลยลักษณ์ ตราชูธรรม "พระราชบัญญัติ ภาษีการรับมรดก (ตอนจบ)" การวางแผนภาษี ฉบับ 35 (ตุลาคม 2559) 35; As of 14 July 2018, there are no notification stating that other types of property will be subjected to tax

41 Revenue Department, Annual Report 2016 p 94

Therefore, as of now, it can be said that inheritance tax contributes significantly less towards the government revenue and does not fulfill its economic goals of generating revenue for the government (opposite what many supporters had predicted but this may be mainly due to its newness in implementation).

D. Political Aspect

In terms of political aspect, it must be assessed whether or not this Act has been in line with the government's social policy. According to Bangkokpost, as stated above, Thailand is striving to move towards Thailand 4.0 as well as to reduce the income gap within 20 years. Thus, in the political aspect, the idea behind Inheritance Tax Act is in line with the government aspect. However, it cannot be strictly said that the Act itself will aid the government endeavours as it has only been two years since the act has been implemented. A review in twenty years should be conducted in order to review the impact of this Act towards the government's policy in decreasing income gap. As of now, Thailand is still considered the third country in terms of countries with the highest income gap with India and Russia being the top two respectively.[42]

Another political aspect that inheritance law is supposed to assist in is the reduction of corruption.[43] The reason for this is because many politicians or government workers tend to conduct acts of corruption during their term in the office, however, when they pass away, their inheritance will have to be passed to their heir which will be subjected to inheritance tax. This is a way to gain back the state's property after the corruption has already occurred.

In light of this context, other laws have been implemented alongside Inheritance Tax Act in order to assist the government in achieving its goal. For example, the revenue code had been modified to catch gift tax, thus, eliminating one of the loopholes of the Act and there has also been a new tax rate for land tax which is stated to decrease the income gap as it imposes a higher tax on land providing the effect that the rich would start selling off their land or immovable property due to increased tax which would then decrease or prevent the price of land/immovable property to decrease.[44]

E. Social Aspect

In regards of the social aspect, it must be assessed whether there has been a change in the behaviours or morality of Thai people. Traditionally, Thai people are known by nature to save their inheritance to pass on to the next generation. Since the law has only been implemented for two years, it is hard to assess whether or not the behaviour of Thai people towards saving their property has changed or not. Even with the additional increase in tax on land law, the assessment of people's behaviour cannot be concluded within a short-time span of two years. However, from the assessment of

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42 'Thailand Third Most Unequal Country in the World' (Bangkokpost) https://www.bangkokpost.com/learning/advanced/1147468/thailand-third-most-unequal-country-in-world accessed 28 July 2018

43 นางสาวสุธิดา ถนอมจิตร "การจัดเก็บภาษีการรับมรดกของประเทศไทย : ศึกษากรณี ฐาน อัตราและมาตรการบรรเทาภาระภาษี" วิทยานิพนธ์ มหาวิยาลัยธรรมศาสตร์ 2558

44 Manager Online, "ภาษีที่ดินใหม่จุเปลี่ยนอสังหาฯ" Line Today (Bangkok 16 February 2018)

implementation of previous inheritance tax law, if there are loopholes within the law itself, it can be said that Thai people would still use those loopholes and would not change their own behaviour but merely find another way to evade or avoid tax.

F. Unfixed Issues:

According to several scholars, the Inheritance Tax Act 1932 was abolished due to the fact that the calculation of tax was hard and the tax itself was hard to collect, resulting in inefficiency as the officers were trying to collect tax that did not result in expected revenue for the government. With the new Inheritance Tax Act 2016, several loopholes are fixed.

First, the tax imposed is only inheritance tax and would be collected upon the transfer of inheritance after death of the owner – thus, this reduces the economical double taxation problem that occurred in the previous Act where the same property was taxed twice (as there were estate and inheritance tax).

Second, the previous Act did not include foreigners or individuals with property in foreign countries as taxable persons. As the current Act has included additional two taxable persons, it would likely increase the revenue generated from inheritance tax as more individuals are subjected to this tax (however, there are not enough evidence to support this yet).

Third, it was stated that the old Act had difficulty in calculating the taxed amount. However, the new Act is stated to provide a simpler and more efficient calculation, the tax officers are also given a time limit of 1 year and no longer than 3 years to determine the tax sum that the tax payer is subjected to[45] and also provides the method of calculation for each different types of property.

As stated above, double taxation is one of the economic problems that arise if inheritance tax is implemented. After two years of implementation, there has been no initiative or talk between Thailand and other member states to agree on terms within Double Taxation Agreement regarding inheritance tax, thus it can be assumed that this problem has been left unattended until present day.

Another problem that is unaddressed is the taxation of movable property (apart from registered vehicle and securities in the SET). Although moveable property may be seen as insignificant in comparison to deposited money or immovable property (e.g. land or building), as seen in Thai society where the sense of responsibility to pay for tax has not yet been instilled in our society[46], it can be predicted that many Thai individuals would convert their immovable property to immovable property or slowly withdraw money from their bank account in order to avoid inheritance tax being imposed on them.

45 Ibid 36
46 Ibid 43

G. Distribution of revenue from inheritance tax and additional policies

As stated above, many middle to upper-middle class income group may have a hard time when it comes to paying the inheritance tax as it is paid within a certain time frame as a bulk rather in instalments. The fact that these individuals may have to sell off their inheritance in order to pay for their tax could be seen as defeating the purpose of having inheritance. On the other hand, it can be seen as fulfilling the purpose of *distributing the income* and *lowering the social injustice* as the property would no longer be held by a certain group of people but rather would be available for the market thus resulting in reduced market price of land and property.

Other policies that have been implemented alongside inheritance tax in order to assist the purpose of it is the revision of the revenue code by introducing gift tax (subsumed under income tax). This cuts off the loophole of passing property as gifts and avoiding tax instead of upon death as inheritance ensuring that more tax can be collected from inheritance.

The government has also increased the money they provide to the poor (those who are receiving under 30,000 THB per year) from 200 to 500 THB,[47] however, there are no readily available data that provides information of where the government is receiving such money from (it can be assumed that the sum of money is taken from the government's revenue that is generated by tax but it cannot be strictly determined whether any of this sum is or will be taken from inheritance tax revenue). However, with the implementation of inheritance tax which has the purpose to reduce social income gap, it can be inferred that the government would use the revenue generated from this type of tax to supplement their policy in decreasing the income gap and essentially raise the sum they provide poor people each year.

V A COMPARISON BETWEEN SINGAPORE, JAPAN AND THAILAND

A. Singapore

As a small country that depended on investment and trade, and with limited amount of land, the choice to remove inheritance/estate tax in the country seemed like the right choice for Singapore.

The reason that Singapore abolished their inheritance tax are due to three main reasons. First, they believe that inheritance tax was a potential barrier for foreign investment because foreigners who owned land or property in the country would then be subjected to inheritance tax as well thus reducing the attractiveness of investment in Singapore. Second, this particular type of tax had started to become irrelevant within

47 ชญานิน ศาลายา, 'คนจนหมดประเทศ แต่ช่องว่าง ถมไม่เต็ม' (Bangkokbiznews, 31 January 2018) http://www.bangkokbiznews.com/blog/detail/643780 accessed 28 July 2018

the context of modern day Singapore as most of the wealth was not generated through holding of land but rather from the income that each Singaporeans had earn.[48]

Third, most Singaporeans felt that they have already worked very hard and paid their taxes.[49]

Essentially, this illustrates Singapore's focus on the economy rather than the social aspects of its country. This is likely due to the fact that most Singaporeans are rather well-off or are in the middle-class range (in comparison to a developing country such as Thailand), therefore, less focus can be put in reducing the income gap and in the country's growth instead.

B. Japan

Japan has had a long history of inheritance tax ever since 1905. Its inheritance tax type is similar to Thailand in that it is taxed upon transfer after death of the owner (inheritance tax and gift tax in order to fill in the loophole). As a country with limited living space, Japan has implemented a strict regime of inheritance tax in order to ensure that property is not held only by a certain group of people. In addition to this, as the inheritance tax law has been implemented for several years, it has gone through several progressive developments.

First, Japan has made sure that there are no loopholes in their inheritance tax system by enacting gift tax law so owners would still be subjected to tax if they transfer the property prior to their death. The gift tax rate is also relatively higher than the inheritance tax rate to deter people from transferring the property before their death. However, there is also a special gift tax rate in order to encourage transfer of property once the child becomes a sui juris and the parents are older than 60 years old, this special gift tax rate is lower than normal gift tax rate.[50]

Unlike Thailand's inheritance tax law which is limited in terms of property that is subject to tax, Japan has included tax on movable property and receivables as well. Therefore, when the government collects inheritance tax, the revenue generation is likely to be higher than compared to Thailand's due to a larger scope of property subjected to inheritance tax.

Additionally, the societal structure of Japan should be taken in to account. As Japan is an aging society, it is likely that a lot of inheritance can be collected in

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48 Average salary in Singapore is 58,266 USD in comparison with Thailand which has an average salary of 13,271 (442 USD). Additionally, most Singaporeans live above the poverty line whilst almost 90% of Thais are living in poverty, Payscale'Average Salary for Location: Singapore' (Payscale) https://www.payscale.com/research/SG/Location=Singapore/Salary
accessed 28 July 2018; Trading Economics 'Thailand Average Monthly Wages' (Trading Economics) https://tradingeconomics.com/thailand/wages accessed 28 July 2018)

49 Ghui, 'If Estate Tax is brought back in Budget 2018, why was it abolished without discussions in the first place?' (The Online Citizen, 30 January 2018) https://www.theonlinecitizen.com/2018/01/30/if-estate-tax-is-brought-back-in-budget-2018-why-was-it-abolished-without-discussions-in-the-first-place/ accessed 29 July 2018

50 สุเมธ ศิริคุณโชติ และ ภชิสา เขมวราภรณ์ "กฎหมายภาษีมรดกของประเทศญี่ปุ่น สุเมธ ศิริคุณโชติ และ ภชิสา เขมวราภรณ์" วารสารนิติศาสตร์ ธรรมศาสตร์ (มกราคม 2558) 148-174

comparison to income tax as most aged people are no longer working and would not have income that would be subject to personal income tax.

As an egalitarian state[51] and a country which is sensitive to the income gap[52], Japan strives to reduce its social injustice by taxing the rich and redistributing to the poor, it is said that an average rich Japanese family loses their inheritance within three generations. Japan's government revenue has risen by roughly 20 billion USD and roughly 0.5% of GDP suggesting that inheritance tax plays a large and important role within the Japanese economy in reducing the social income gap and also to aid in inflation.[53]

VI CONCLUSION

A. Thailand's Path

From the above assessment, there are obvious benefits for Thailand to have inheritance tax as it would generate additional revenue for the government which can in turn be used in line with the government policy to reduce the income gap and social injustice.

In order to determine whether Thailand should abolish or tighten its Inheritance Tax Act, the reasoning behind the Act must be assessed. First, the economic reasons to have inheritance tax is in order to generate revenue for the government as well as change the behaviour of Thai individuals towards holding property. Within the past two years, there has been no change in the economical behaviour of Thai individuals nor has any revenue been generated from the implementation of this new Act. Additionally, as Thailand is a developing country with roughly 10% of the country being considered as rich, it is likely that even after several years, the revenue generated from inheritance tax would be limited as there is a larger number of poor people (whom would not be subjected to inheritance tax) compared to the rich.

Second, the political reason to have this inheritance tax is to reduce corruption as well as to have a mechanism to serve the policy implemented by the government. From the assessment, corruption still exists in Thailand and has not yet subsided or changed. Regarding the government policy, although revenue from inheritance tax can be used to assist the governments' policy, as no revenue has yet been generated by this Act it cannot be clearly assessed whether inheritance tax would serve as mechanism to assist he governments' policy.

Third, the social reason for inheritance tax is in order to change Thai people's behaviour of keeping property or inheritance for next generation. However, the

51 Justin McCurry, 'Equality in Japan: is this vision of fairer society too good to be true' (The Guardian, 25 April 2017) https://www.theguardian.com/inequality/2017/apr/25/equality-japan-inequality-vision-fairer-society-too-good-to-be-true 20 July 2018

52 Yuriko Koike, 'Why inequality is different in Japan' (World Economic Forum, 2 March 2015) https://www.weforum.org/agenda/2015/03/why-inequality-is-different-in-japan/ accessed 30 July 2018

53 The Economist, 'Taxing Inheritances is falling out of favour' (The Economist, 27 November 2018) https://www.economist.com/briefing/2017/11/23/taxing-inheritances-is-falling-out-of-favour accessed 30 July 2018

behaviour of a society is hard to change as it takes a long time to manifest and one factor (change in tax) is likely to have little to no effect on the behaviour of people unlike Japan where the culture of egalitarianism had been instilled after World War II where the country suffered great loss.[54]

However, as stated previously, it is hard to determine the effects of tax within two years of implementation as not enough data has been produced to do a proper analysis on it. Additionally, as inheritance tax is only collected upon death of owner and transfer of the property, it is understandable why there is a lack of data on the revenue that inheritance tax produces or the effects that it has on society.

In conclusion, although in the author's opinion, Thailand should not have implemented Inheritance Tax Act 2016 in the first place as it is not in line with Thai social behaviour. However, as it has already been implemented for two years, the author believes that Thailand should keep inheritance for at least a decade in order to fully assess its impact towards the society and whether it would achieve its goal in reducing the social injustice and income gap. This is because inheritance tax is a type of tax that is only triggered upon death and thus, would take several years in order to properly assess it and how it affects the society.

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54 Ibid 53