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Column: LEADING THE WAY: INHERITANCE TAX IN THAILAND? FIX THE FLAWS OR FORGET IT

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LEADING THE WAY

PwC THAILAND

It has been widely reported that the National Council for Peace and Order (NCPO) has approved in principle an inheritance tax. Its primary stated goal is to create greater wealth equality by redistributing income from the rich to the poor and not to raise significant new revenue for the government.

It is hard to see how such a tax will redistribute wealth, but it's a good thing the government is not counting on a lot of new revenue. The reason is the system as described so far will be so rife with flaws that avoiding the tax will be quite easy.

The first and most significant problem is the tax has been described as applying only to assets located in Thailand. At least one official has commented to the effect that this is acceptable because holders of assets offshore would have to pay tax to other countries.

Well, maybe he didn't know, but only 21 countries impose an inheritance or estate tax. The major Asian financial centres of Hong Kong and Singapore abolished such taxes in 2006 and 2008, respectively.

So what will a wealthy Thai who has millions in SET-listed securities and/or Thai banks do? It doesn't take a genius to figure it out. Major capital flows out of Thailand could have a significant effect on the Thai capital markets. One can see the investment bankers in Hong Kong and Singapore salivating.

The second major flaw is the lack of a parallel gift tax. Without a gift tax, all a wealthy Thai individual has to do is gift money, securities and other assets to whomever would be the beneficiary of the estate under his or her will. Each major country with either an inheritance or an estate tax also has a gift tax to close this major loophole.

Many say a "death tax" is unfair in any case since it results in double taxation — once when the wealth is created and again upon death. This article will not address that debate. But if Thailand is serious about an inheritance or estate tax, it should head off any loopholes.

A well-designed inheritance or estate tax has a number of characteristics. First and foremost, it applies to worldwide assets. Second, it is combined with a gift tax. Also, any assets left to a surviving spouse are exempt from the tax. This is only fair since the tax will be collected when the surviving spouse dies. Another element is a minimum exempt amount.

Any new tax must have an effective date that makes it difficult for sophisticated taxpayers to avoid it. In other words, it must become effective either retroactively or as of the date it was first announced. Any delay between the announcement and effective date will only result in attempts by the wealthy to move assets.

So far, we have used the terms "inheritance tax" and "estate tax", but they are vastly different in practice. An inheritance tax is a tax on the beneficiary who inherits the assets of the deceased person. This is much more difficult to administer, as there can be dozens of beneficiaries. How will the Revenue Department track each of them down?

An estate tax is applied to the estate itself and collected before any amounts are paid out to beneficiaries. In practice, the estate itself becomes a taxable person. This is easy to administer, as there is a single taxpayer and the tax must be paid before anyone gets any assets.

Most, if not all, wealthy Thais have a will, under which an executor or administrator is named, subject to validation by the courts. Under an estate tax, the executor/administrator could be made the responsible party for filing and paying the tax. Failure to do so could be a personal liability, which would go a long way to ensuring the tax is collected.

If Thailand is serious about such a tax, the authorities who are writing the law should seek out competent outside advice before publishing an unworkable law.

Finally, turning back to the question of wealth redistribution, there is a simple fix to the existing tax law that could probably raise a significant amount of money — repeal the "remittance rule". Today, income (wages, interest, rents, dividends, capital gains etc) earned by a Thai individual from "offshore" are subject to Thai tax only if remitted to Thailand in the same year it was earned. Wait a year and no Thai tax.

One can only speculate how much money wealthy Thais have invested in tax havens such as Hong Kong and Singapore (neither of which will tax this income) and other countries. Most major countries tax their citizens on worldwide income regardless of where it was earned and regardless of whether it was remitted. This loophole should be closed, as it benefits only the wealthy.

But how can the Revenue Department police this and know about offshore accounts? The US is at the forefront of requiring all taxpayers to file a report annually listing all offshore accounts and income. Failure to report or report completely can be both a criminal and civil violation. The civil penalties can be up to 50% of the unreported values. Other countries are following suit.

The revenue raised by ending the remittance rule and mandating disclosure could be used to reduce tax rates for the middle class and provide for the "negative income tax" that is also being discussed. That would be real wealth redistribution. Oh, and about that "little" problem of corruption the NCPO is committed to tackling — what would such an income and offshore asset disclosure mean to that effort?

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