

## Abstract

This thesis aims to study and analyze on the appropriate tax unit for taxing couples in personal income tax. The objectives of this thesis are to demonstrate that Section 57 ter and Section 57 quinque of the Revenue Code, B.E. 2481 are inappropriate and to propose alternative approaches to reform the Revenue Code, B.E. 2481 relating to taxing the couples.

According to Section 57 ter and Section 57 quinque of the Revenue Code, B.E. 2481 of Thailand, in the case of a husband and wife, each having income and living together throughout the preceding tax year, the wife's income is deemed for income tax purposes to be her husband's income, that is, the husband and wife are treated as a single tax unit and income of the couple is taxed as if it is earned by one person (Section 57 ter); however, if the wife's income is derived by virtue of employment e.g. salary and wage, the wife's tax liability on such income may be assessed separately from her husband as if she is a single woman (Section 57 quinque).

The prime disadvantage of the joint taxation with income aggregation in accordance with Section 57 ter is that the couple's income is the subject of higher rates of tax than it would be if they were unmarried and so not aggregated. Opting for separate taxation will remove this disadvantage for the wife's income derived by virtue of employment, but their other categories of assessable income ,e.g. income derived by virtue of jobs, positions or services rendered, which cannot be disaggregated by Section 57 quinque, are still taxed at higher rates.

Moreover, Section 57 ter and Section 57 quinque of the Revenue Code, B.E. 2481 have several problems and are inappropriate to enforce for at least four reasons. First, Section 57 ter treats a couple as single tax unit as if the married woman is not recognized as a separate individual. This asymmetrical treatment of men and women clearly relegates women to subordinate status and, among other things, denies women's rights in tax matters, especially when they derive investment income. In addition, the joint system of taxation aggregating income of married persons may discourage the market labour supply of married women—both their participation rates and their hours

worked—compared to individual taxation since in most case it results in a higher average and marginal tax rate on married women's earnings. Thus the tax system encourages traditional gender role.

Second, the aggregation of marital income but not permitting income splitting is inconsistent with the ability-to-pay principle because the ability-to-pay principle as a basic rule of the equity refers to the individual taxpayer and not to a unit of people such as marital unit or family unit. In addition, the marriages of the taxpayers do not increase their ability-to-pay, so their tax liability should not increase or change upon marriages. Although commentators argue that the joint taxation with income aggregation is also justified on the grounds that married couples can live more cheaply than two single adults due to the economies of scale derived from living together, leading to an increase in tax paying capacity, there are several reasons that those assumed economic-of-scale benefits should not be taken into account in fixing tax burdens.

Third, the marriage of two individuals typically has no important economic consequence, therefore the goal of marriage neutrality requires that a couple's combined tax liability remains unchanged after marriage, neither rising with marriage (a marriage tax or a marriage penalty) nor falling with marriage (a marriage subsidy or a marriage bonus). However the aggregation of the income of husbands and wives for tax purposes under Section 57 ter produces marriage penalty, which interferes in taxpayers' decisions to marry. So it is unable to achieve the goal of marriage neutrality.

Finally, Section 57 quinque providing the separate taxation of wife's income derived by virtue of employment might create avoidance opportunities, most notably in the case of a wife who derives her employment income from her husband's business activities, and it might create horizontal inequity between the two couple in some cases.

Furthermore, Section 57 ter of the Revenue Code aggregating the income of married couples and taxing the aggregated amount by reference to the same rate schedule that applies to an unmarried individual's income is repugnant to the Constitution of the Kingdom of Thailand, B.E. 2550 i.e. it is inconsistent with Section 29 of the Constitution, relating to the restriction of rights and liberties as recognized by the

Constitution; violates the principle of equality and ability-to-pay principle under Section 30 of the Constitution; and breaches the family right protected by Section 35 of the Constitution. Therefore the Section 57 ter of the Revenue Code, B.E. 2481, which is unconstitutional, shall be unenforceable. If Section 57 ter providing foundation for the joint taxation with income aggregation is unconstitutional, the independent existence of the ancillary provision to Section 57 ter, namely, Section 57 quinque will be meaningless since it forms an inseparable entity along with Section 57 ter.

From the reasons mentioned above, Section 57 ter and Section 57 quinque should be reformed by adopting the individual taxation instead of the joint taxation with income aggregation since the individual taxation, which use the individual as a proper tax unit and define income base upon the taxpayer's control over economic resources, will make the income tax a more effective policy instrument in achieving the government's broad objectives of raising revenue fairly and achieving an acceptable distribution of income. Moreover, each of the criteria of a good tax system i.e. equity, neutrality, and simplicity supports the case for the individual taxation. However, individual taxation provides spouses with higher income an incentive to shift income to the lower-earning spouses. So the tax system requires special provisions to tax the property income of both spouses in the hands of the higher income spouses, not necessarily the husbands.