



ADMINISTRATION OF TAX PLANNING  
THROUGH THE USE OF TRUSTS

BY  
MS.KUNTIWA SINGHAPHAN

AN INDEPENDENT STUDY PAPER SUBMITTED IN  
PARTIAL FULFILLMENT OF THE REQUIREMENTS  
FOR THE DEGREE OF MASTER OF LAWS  
(TAXATION LAW)

GRADUATE SCHOOL OF LAW  
ASSUMPTION UNIVERSITY

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Independent Study Paper Title : Administration of Tax Planning Through the Use of  
Trusts

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Major	▪ Master of Laws (Taxation Law)
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Faculty of Law, Assumption University approves this Independent Study Paper as the partial fulfillment of the requirement for the Degree of Master of Laws.

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The seal of Assumption University of Thailand is a circular emblem. It features a central shield with a blue field containing a white cross and a red field containing a white cross. Above the shield is a crown. The shield is flanked by two golden lions. Below the shield is a banner with the text 'BROTHERS LABOR' and 'S1 GABRIEL VINCH'. The outer ring of the seal contains the text 'ASSUMPTION UNIVERSITY OF THAILAND' and 'SINCE 1969'. At the bottom, there is Thai text: 'มหาวิทยาลัยอัสสัมชัญ'.

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Independent Study Paper Title	Administration of Tax Planning Through the Use of Trusts
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## ABSTRACT

The overall of this research focuses on the establishing for personal trust law in Thailand. Thailand has been brought the Trust rule of England to handle with the asset and heritage to maintain the stability of those a great number of properties to be in the Trust. Later, Thailand has enacted the trust law on Section 1686 of the Civil and Commercial Code states that "prohibiting to establish the personal of trust in Thailand, unless by the virtue of the provisions of the law of trust creation", which, the Trust for Transactions in the Capital Market Act B.E.2007 can establish because it has specific law for establish and not contrary to the Civil and Commercial code.

According to the study and research, Thailand does not have the personal trust law to manage both movable and immovable property, it make a problem because Thailand have its inheritance and gift tax law. The millionaires such like a group of rich people in Thailand may be planning to avoid tax entirely. This cause supports those millionaires to bring their money or properties establish trust in foreign countries.

Moreover, many millionaires in Thailand may transfer properties such as home, land, condominium and shares to their descendant. Because they do not want to pay inheritance and gift tax. Also, they will transfer money and properties to foreign countries form "Trust" because it makes more profits. These ways are not tax avoidance but the diversification of investment.

In my point of view as a researcher, the government by itself should have the Trust for the Administration of the Personal Funds Act in order to eliminate the conflict between the Civil and Commercial Code of Thailand. The government should issuing this Act together with the inheritance and gift tax for motivating Thai

economic and attracting foreign investor to invest in Thailand. And the most important, that it to increase the state revenue.



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# **Chapter 1**

## **Introduction**

### **1.1 Background and Importance of Problems**

Thailand has been brought the Trust rule of England to handle with the asset and heritage to maintain the stability of those a great number of properties to be in the Trust. Later, Thailand has enacted the trust law on Section 1686 of the Civil and Commercial Code states that "prohibiting to establish the personal of trust in Thailand, unless by virtue of the provisions of the law of trust creation". Which, the Trust for Transactions in the Capital Market Act B.E.2007 can establish because it has specific law for establish and not contrary to the Civil and Commercial code.

Trust is the relationship between persons by giving another person ownership of property to managed-care benefits for the person established a Trust. This includes protecting the rights of stakeholder to not affect by the acts of those who gain the trust of society in Thailand putting their trust in the matter of property holdings or Estate Planning. Moreover, when problem has arose, Thailand still has no effective laws that face to the objective.

The researcher has the opinion that property management of another person under the Civil and Commercial Code is inefficient which used in asset management, tax planning, or in care management of real estate, found out the problems on lack of flexibility and standards of care in planning for the asset to be in line with the maturity of an administrator. The law will be enforced with not legal to be used to meet the objective by genuine relationships and trusts.

In the present time, most of Thai people usually do not care about tax planning and assets management. However, this issue must be received more attention because it regards family and inheritance. In particularly, the adoption of the law on trusts related with tax planning and assets management division to re-enforcement.

The trust can be established to set their own rules and conditions. And settlor can abolish the rules and conditions any time. In this regard, a settlor of Trust will be published in book form or a will for a trust established by itself. Trust will be more

flexible than establishment of trust under the Civil and Commercial Code. At present, the establishment of Trust can occur for many reasons as following examples:

1. Planning for inheritance.
2. Flexibility in controlling and managing assets and property.
3. Protecting property of family.
4. Tax deduction if the assets get the proper structure.

The Trust law is not a priority in terms of funding more powerful only. Nevertheless, there are still benefits to fleet management property of others for the better than past. Due to legal principles of trust, it is important to control for execution of trustee, included Duty of Care,<sup>1</sup> Duty of Loyalty<sup>2</sup> and Conflict of Interest<sup>3</sup> with the highest standards of control for protecting the vested interests of beneficiary to not be damaged by the acts of trustee as mentioned above.

It can be seen that, if there is no specific measurement for enforcing, the settler of Trust, trustee and beneficiary may not get fairness. Therefore, it should study on the importance and appropriateness of legal principles on Trust for tax planning and assets management in Thailand.

## 1.2 Hypothesis

Currently, there are many problems about property management. Because the government legislated inheritance tax and the government defined higher tax rate and it is narrowly. It is mean that the government can collect taxes only to the rich people. Also, there are many exceptions under the inheritance tax and gift tax together. It will make such rich people did the tax avoidance by bringing the money or property

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Duty of Care is a duty to treat with caution. This function is controlled to perform the duties of a trustee with standard precautions divided into two categories: standard care as common law and other standard precautions Trustee Act 2000.

<sup>2</sup> Duty of Loyalty is obliged to operate with integrity. This function controls the trustee without partiality or self interests in managing trusts not meet the objectives of founder or beneficiary damage.

<sup>3</sup> Conflict of Interest is getting a personal benefit from committing an act of trust and overlapping with interests of Trust.

manage through the holding company or establish trust at foreign country. It is results that, the taxation will become inefficient and the country will get revenue lose.

The researcher has an opinion, how to resolve the problems about management property of the taxpayer, the government should legislate trust law together with inheritance tax and gift tax in order to increase property management become more efficiency. Moreover, it is in order to comply with the inheritance tax and gift tax. At present, Thailand has a law prohibiting the establishment of a trust, but if the government legislate trust law it will lead the tax payer to manage their property by establishing trust and bring their money and property to invest in the country instead of investing in foreign country that had the trust law and Thailand should bring trust law of the United States to adapt with Thai trust law in order to prevent tax avoidance. And in the similar way, it is more benefit for the country to collect taxation.

### 1.3 The Objectives of the study

This Research on the application of Trust law used in tax planning and asset management has the objectives of the study as follows:

1. To study concepts and principles of Trusts law used in tax planning.
2. To study contents, scopes, and specific nature of Trust law in the United States.
3. To study problems and threats of using Trust law enforcement in tax planning and assets management or other properties.
4. To study advantage and disadvantage impacts of Trust law in tax planning, assets management or other properties.

### 1.4 Methodology

This research used Thailand and foreign documentary research, including the Civil and Commercial Code, legal tax planning and Trust law of the United States, compounding technical and legal descriptions of both Thailand and abroad, and documents regarded the impact of Trust law transition. In addition, the researcher studied the legal Trusts of the United States, which has been used Trust law and

developing legal Trusts establishment continuously, which the law also has been changed to be consistent with economy and society. The researcher suggests that there should study Trust laws of the United States systems because this will help to increase efficiency of Trusts establishment and use Trusts in various tariff plans which these sources provide clearer overview of Trust law.

## 1.5 Scope of the Research

This independent study paper is to study the principles of Trust law to use in tax planning, included to handle on assets management and maintain real estate for heirs. This paper reached different kinds of tax laws, educational documents on Trusts, and the primary laws of the United States. In the United States, the laws restrict on the Personal Trust law for leading to enforce trust law on plan and assets management in Thailand.

The researcher found that there are only a few educational documents on the principle of Trust law enforcement. This paper emphasizes the issues on Trusts Law of United State for using in tax planning, assets and real estate management, especially in terms of the Personal Trust Law. Whether a person owns many or less properties, such person can use Trust law for Tax Planning to manage property. Some contents in this paper are previously mentioned in other sources; nevertheless, the issues in this paper have never appeared in any thesis or dissertation.

Finally, the researcher believed that this significant project can introduce Trust law as guidance for using in tax planning and property management and to further study in next level.

## 1.6 Expectation of the Research

1. To understand the concepts and principles of Trust law to use in tax planning.
2. To understand trust laws of the United States.



3. To understand the problems and threats of implementing the law applicable to Trusts, included using Trusts in tax planning and assets or other properties management.

4. To understand advantage and disadvantage impacts Trust law used in tax planning and assets or property management.



## **Chapter 2**

### **Development, Concepts and Theory of Law Concerning On Establishment Trust for Tax Planning**

#### **2.1 Development of Trust**

Trusts were developed in Roman times and could be established in form of Testamentary Trust only which Trust's founder was still alive as called "*Living Trust*". Thereafter in the Medieval England, the Lords developed by giving land to person for taking care their lands under Trusts and provided benefits for their family. Moreover, England court also developed a Living Trust to person given lands by the Lords must perform the duties which could not take ownership of such lands.

The European countries, included Britain area where has been influenced by the Islam culture to develop society as well as bringing some principles to apply for Christian society. That's an origination the trust law during on the crusades, landowners who went to fight and might be killed during the crusades war would transfer title to their land to a person they trusted.

Historically, trusts were developed from the idea of "Use" originated in the Middle Ages when a person transferred property to another person with understanding that trustee must hold the property for beneficiary or third party. An entrusted person in taking care of estate or a trustee was in a position of trust. Nonetheless, trustee may use this chance to do any dishonesty. Hence, beneficiary should be protected by law. However, the common law court does not recognize this issue and never provide any protection.

Therefore, Equity Court would have law in resolving this problem by applying "Conscience" doctrine to determine disputes. It is can be said that, trustee have ownership in holding property but trustee must observes on condition entirely. Therefore, this case were create rights and duties of trustee.

Trust is established by transfer properties, after transferring, the settlor will lose their right, even there has a agreement between settlor and trustee. Therefore the Supreme Court tried to solve this problem by creating Equity principles.

The basic of trustees who holding the assets for beneficiaries. Trustees should manage and invest assets for beneficiaries.

## 2.2 Concepts and Theories of Trust

Trusts were in common law system. In the past, trusts were established in family or charity. Someone predicted the benefit of trust, so they applied trust for some types of business such in the capital markets. Moreover, trust has more benefits of taxation. In the past, trust was applied in only Common Law countries but nowadays trust is also applied to Civil Law countries, specially in the capital markets.

### 2.2.1 Meaning of Trust

In Black's Law Dictionary has explained the meaning of the trust that "An equitable or beneficial right or title to land or other property, held for the beneficiary or third party by another person, in whom resides the legal title or ownership, recognized and enforced by courts of chancery."<sup>4</sup>

Accordance with Section 3 of the Trust for Transactions in Capital Market Act B.E. 2550, according to Section 6 defined that, Trust means legal relationship arising from a trust instrument that means a contract whereby a person, called a settlor, transfers or creates real right or any right appertaining to property to or for another person, called a trustee, with trust and confidence in order that trustee shall manage the property for the benefit of beneficiaries<sup>5</sup>.

Foreign trust law was defined the meaning of trust as follow:

1. George T. Bogert defined that "a trust is a fiduciary relationship in which one person is the holder of the title to property subject to an equitable obligation to keep or use the property for the benefit of another."
2. Japanese Trust Act 1922 under Section 1 defined that Trust means a transfer of property rights to another person for manage or dispose of rights as follow the objective.

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<sup>4</sup> Bryan A. Garner, Black's Law Dictionary seventh edition (1999): 1513.

<sup>5</sup> The Trust for Transactions in The Capital Market Act B.E. 2007.

Thus, we can conclude that trust is legal relationship occurred from the settlor, the trustee and the beneficiary. The settlor is the owner of the assets who transfers ownership of his assets, under certain circumstances, to the trustee to manage that asset for beneficiary's profit. That trustee must manage assets under the trust deed. That trustee also owes fiduciary duty and duty of care of the asset. Besides, if trustees breach their duties, the beneficiaries may make a claim for all property wrongfully paid away to be restored, and may trace and follow what was trust property and claim restitution from any third party who have known of the breach of trust.

### 2.2.2 Characteristics of Trust

Trust has specific of characteristics. That can divide trust transaction as follows:

1. The legal status of the Trust, where the subject matter of a trust is "non-persona" but it is a trust property only.
2. Ownership<sup>6</sup> trust is legal relationship with the settlor who is the owner of the assets transfers ownership of his assets to the trustee to manage that asset for beneficiary.

In the law, Trustee and Beneficiary are jointly trust property owner. According to Common law system, there can separate in two types of ownership as following;

- 1) Common Law Legal Ownership (Legal Interest), who is the name shown in trust deed. Trustee can transfer the trust property, but trustee unable to receive any benefit from trust property.
- 2) Equitable Ownership (Equitable Interest), the owner in equity, beneficiary has right to receive benefit from trust property but beneficiary has no right to transfer in trust property.

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<sup>6</sup> Section 1336. Within the limits of law, the owner of property has the right to use and dispose of it and acquires its fruits; he has the right to follow and recover it from any person not entitled to detain it, and has the right to prevent unlawful interference with it.



Division of ownership in two characteristics was important. It was the beginning of trust law as well as trust relationship; when asset was transferred to trustee, that trustee has partially right in property.

3. Trust properties are separate from Trustee's assets. That, trust property cannot pay on trustee's debts.

4. Trustees have duty to manage trust property by "Fiduciary Duty" and "Duty of care." If a trustee mismanage of trusts, the beneficiaries can make a prosecution with trustee.

5. Beneficiaries might claim trusts to deliver benefits on behalf of their beneficiaries.

6. Beneficiaries have equitable ownership (equitable interest) in the trust property. Beneficiaries also hold proprietary right. Beneficiary can make a prosecution with creditors. It is also beneficiary may trace money that has wrongly been dissipated from the trust.

### **2.2.3 Establishment of Trust**

In establishment of trusts must have truly intended to create a trust. Settlor has "three certainties" as following;

1. There is certainty of intention to created trust deed by writing or telling to trustee or third party.

2. The requirements of certain subject matter. Establishment of trust must have transfer the ownership or real right in the trust property. So that, the settlor

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<sup>7</sup> Real right refers to a right that is attached to a thing or the right that expropriate the property directly. The type of real rights are follow:

1. Ownership means the owner of property who has the right to use and dispose itself and acquires its fruits; while, he has the right to follow and recover it from any person who not entitled to detain it, and the right to prevent unlawful interference with it.

2. Co-ownership is presumed to have equally shares.

3. Possessory Right by holding a property with the intention of holding it for himself and it have 2 types

must specify of the subject in trust property and that property should be available at that time.

This asset will be divided two types; asset is under the trust property and asset that will be vested in beneficiary. So, the subject must certainly.

3. Certainties of object, settlor must specify especially of beneficiary because settlor doesn't want the property belong to the trustee.

Establishment of trust, as mentioned above is legal relationship arising from trust. Settlor transfers or creates real right or any right to another person, called "Trustee", Trustee has duty to manage trust property for "Beneficiaries" or other benefit that defined by contract.

The law divided owner of the property in two categories as following;

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1) A person may acquire possessory right through another person holding for him.

2) A person who holds a property is presumed to hold it for himself

4. Servitude in Section 1387 an immovable property may be subjected to a servitude by virtue of which the owner of such property is bound, for the benefit of another immovable property, to suffer certain act affecting his property or to refrain from exercising certain rights inherent in his ownership.

5. Habitation means a person who has been granted a right of habitation in a building is entitled to occupy such building as a dwelling place without paying rent. A person must be live in building as a residents not working place and must live in the building not land.

6. Superficies means the owner of a piece of land may create a right of superficies in favor of another person by giving him the right to own, upon or under the land, buildings, structures or plantations.

7. Usufruct means an immovable property may be subjected to a usufruct by virtue of which the usufructuary which is entitled to the possession, use and enjoyment of the property.

8. Charge On Immoveable Property means an immovable property may be subject to a charge entitling the beneficiary to a periodical performance out of such property or to a specified use and enjoyment thereof

- a. Legal interest (Common Law) and
- b. Equitable interest (Equity)

That kind of owners brings ability to establish and persons who are concern in establishing of trust. That will be explained in the topic 2.3.

#### 2.2.4 Types of Trust<sup>8</sup>

Trust has many types as following;

1. Express Trust, Implied Trust, and Constructive Trust, which trusts can separate by intend of settler

1) Express Trust is the settlor intends to establish trust expressly.

(1) Inter Vivo Express Trusts : trust is establishing while the settlor be alive.

(2) Testamentary Trust : trust is establishing by wills and this trust in fore when the settlor die.

2) Implied Trust is this trust arise from intend of settlor but they don't intend by expressly.

3) Constructive: arise from suppose of Equity, which doesn't consider intend of settlor. In order that, Equity assume that the person hold asset of another person is a trustee.

For example, A. sent a car to B. for holding this car for benefit of C. if B. transfer this car to D. but doesn't consent from C. and D. know, this car is a trust property, Equity assume D. is a trustee.

2. Simple or Bare Trust and Special Trust

1) Simple or Bare Trust is trustee have duty to hold assets only.

For example, A. Make a will give all assets to B. And B. holding all assets for benefits of C. Therefore, the duty of B. have only to hold the assets for C.

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<sup>8</sup> Ratchanee Suthonmontree, *"The management of the property of a minor by a parent under the Civil and Commercial Code, Section 1574: Comparison with the laws of England Trust,"* (The Degree of Master of Law, Faculty of Law, Chulalongkorn University, 2003), p.69-73.

2) Special Trust is trustee have duty to do something by order of settlor, which Special Trust is manage trust for sale and bring money to satisfy an obligation for properties.

3. Statutory Trust is the law of trust enactment for special case such as Trust for sale by wills under Section 33 of Administration of Estates Act 1925 or Section 34-36 of Law of Property Act 125.

#### 4. Private Trust and Public Trust or Charitable Trust

1) Private Trust is establishing for benefit of specially for someone or some group.

2) Public Trust or Charitable Trust is establishing for benefit or happiness of people, even though people are beneficiary but they don't have right claim, which right of claim be under of Attorney General.

5. Secret Trust : this trust arise from A. make a will transfer estate to B. and A. don't told B. for hold estate like a trustee, but before or after A. make a wills, A. told B. has duty to hold estate like a trustee for benefit of C.

### 2.3 The parties are concern in establishing of trust

In generally, the establishing of trust is required as three persons as following;

#### 2.3.1 Settlor

##### 1. Authority and Duty of Settlor

A settlor may create a trust by agreement or document and "Settlor" is generally rights to hold and manage the property by a legal. However there are exceptions as follow:

1) The King: King can create the trust under his wills on private property. Moreover, if he creates trust by will, the property must be immovable property.

2) Corporation: Corporation itself can create the trust under his purposes that have not expressly prohibited by law.



3) Minors: Accordance with England law, minor cannot hold Legal interest on the land so minors are unable to create trust from Legal interest. On the other hands they can create trust from equitable interest.

4) A person of unsound mind: who adjudged incompetent by the Court cannot create trust.

When the property was transferred to trustee, Settlor will loss power to control and manage the property.

### 2.3.2 Trustee

#### 1. Appointment of Trustee

Trustee refers to one or two persons were appointed by settlor, trust deed and appointed by the court. Trustee has responsibility to manage trust property according to trust terms.

#### 2. Types of Trustee<sup>9</sup>

Type of trustee should be distinguished as following;

1) Ordinary Trustee is a person who was appointed by Settlor's willing under the Trustee Deed or Settlement or Declaration of Trust

2) Judicial Trustee. In case Settlor cannot find a right person who will be trustee so Settlor filed the request to the court to appoint trustee managing trust property. The requesting court to appoint Judicial Trustee. This Judicial Trustee has to place financial security as security for performing their duties to the court so Beneficiary will be protected from any damages.

3) The public Trustee, The public trustee is an office established pursuant to national statute, to act as a trustee. Those people cannot reject the order.

4) Custodian Trustee, A custodian trustee carries out the directions of the responsible trustee and holds the assets of the trust.

5) Trustee Corporations, Trustee Corporations is created for managing trust property that required Expertise in property management and financial stability. In the foreign countries is shown as bank or insurance company.

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<sup>9</sup> Puchong Tharanuntarapom, op.cit., p.19.

In theory, there is no limitation who will be trustee but the person who will be trustee has to have ability to carry the Fiduciary Duty and Duty of Care responsibility and liability to use the trust assets according to the provisions of the trust instrument.

### **3. Authorities'<sup>0</sup>**

#### **1) Authority of Trustee**

The authority of a trustee should be prescribed within the purpose of a settlor and a trustee shall be under Trusts laws and regulations. A trustee has authority as follows:

##### **(1) Power of selling and transferring trust property**

A settlor should specify the scope of trustee's authority to sell trust property and make clear which property can be sold. If not specified there is the law authorizing a trustee in selling, such as "Trust of Land and Appointment of Trustees Act 1996", regarding an executor has the same power as a trustee having a power to sell trust property for dividing money to the heirs.

##### **(2) Authority of acting as demanded by settler**

Trustee has a power to bring the assets to investment for getting the profits. A settlor should specify clearly which the assets can be brought into investment. At present, England has the law which is Section 4 of the Trustee Act 2000<sup>11</sup> as called "Standard Criteria" in scoping a trustee to invest appropriately and in various businesses (Diversification).

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<sup>10</sup> Sitanan Sriworakorn, Income Taxation of Trust and Estates and Trusts in foreign countries, 2014. (Typewritten).

<sup>11</sup> Article 4 Standard investment criteria.

(1) In exercising any power of investment, whether arising under this Part or otherwise, a trustee must have regard to the standard investment criteria.

(2) A trustee must from time to time review the investment of the trust and consider whether, having regard to the standard investment criteria, they should be varied.

(3) The standard investment criteria, in relation to a trust, are

### (3) Dividing Land

For the case when a beneficiary reaches the age as prescribed by law and is entitled to get the land of trust, the "Trust of Land and Appointment of Trustees Act 1996" provides that a trustee has a duty to divide the trust land for beneficiary.

### (4) Authority to use discretion in taking care of minor

### (5) Power to insure a Trust Property

A trustee has a power in providing insurance to immovable and moveable trust property for protecting trust property.

### (6) Authority

Normally, a trustee must act personally, unless there is a condition specified in trust clearly and by law. A trustee can entrust to other persons and define specifically.

### (7) Authority to file a lawsuit to the court

A trustee has a power under the law namely "Trust of Land and Appointment of Trustees Act 1996" providing that a trustee has a power to petition to the court for protecting the benefits of trust.

## 4. Duties and Qualification of Trustee

### Duties of Trustee

Trustees have certain duties called Equitable Obligation in Rem. These include the duty to:

(1) Since trustee receives trust property, the duties of trustee will be bond to that person except.

(2) According to the bankruptcy law, if anyone is bankruptcy, property of the person will be taken to repay debts to creditors. But if the property was held as trustee, that property will not be considered as private properties.

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(a) the suitability to the trust of investments of the same kind as any particular investment proposed to be made or retained and of that particular investment as an investment of that kind, and

(b) the need for diversification of investments of the trust, in so far as is appropriate to the circumstances of the trust.

In practice, trustee must have special duty of care, fiduciary duty and follow to trust deed. If trustee invest assets for beneficiary, trustee have duties as following factors:

a. Duties on the acceptance of trust

Who is a trustee, if after that the person who accepted to be a trustee, he must abide by trust deed. Moreover, trustee can manage and invest the property for beneficiary under the name of trust deed.

b. Duties in relation to accounts, information and audit

a) Trustee has duty to make Asset Accounting correctly by Beneficiary can audit it if it's necessary. Beside, Trustee must provide details on the investment. Nevertheless, beneficiary has authorities right to know the information of trust accounting.

b) Trustee has to audit trust Asset Accounting.

c. Duty of trustee to hand over the trust to the right persons

a) Trustee has duty to deliver trust property to Beneficiary who has entitled on that property. Trustee shall be liable to the Beneficiary If the Trustee interrelated the trust agreement inaccurately and deliver property to a person not entitled to receive the property. However, Trustee must not liable if the property was handed over to the Beneficiary.

\* b) In case of doubt about the wording in the trust agreement, trustee can send request to the court for guidance about interpretation.

c) Trustee can dismiss by themselves.

d. Duties where cestui que trust is solely and the right of beneficiary

Beneficiary has full entitle to receive all benefits (Sui juris). So, beneficiary has the right to transfer the property to trustee. In case, there are many Beneficiaries who have full entitle to receive all benefits in the present or future.

e. Duty to invest from the trust fund

The Trustee who authorized to invest according to the trust agreement has to take money from the trust funds to invest properly and reasonably. If not, Trustee takes money from the trust funds to invest improperly and unreasonably, Trustee shall be liable for damage that occurs as well. Unless, investment is not allowed.



### **Qualification of Trustee**

A settler should select and carefully choose a person to enter into a trustee. That qualified of trustee should have a reliability to protect in property. The law of trusts open for everyone but some person cannot be a trustee legally, such as minor and a person of unsound mind. The researcher has an opinion that a trustee should have a license or receive any approval from state. Which is like a lawyer because "Trust" is a new law and people doesn't know well about trust law. Hence, it is good and safe for a settler to control and manage trust property under the laws.

Establishment of trust, you must appoint a trustee in your wills, if you are also appoint the guardians for your children, trustee should know, as following:

- (1) Trust and honest
- (2) Some financial experiences
- (3) Concerns the beneficiary's best interests

### **5. Termination of Trustee**

#### **1) Express power**

A trust instrument may provide expressly for the retirement of trustee, it is unlikely the statutory provision which has been discussed below are normally considered adequately.

#### **2) Case under Section 36(1) of the Trustees Act 1925.**

If a trustee remains out of the United Kingdom for more than 12 months, or is unfit to act, or refuses to act, or is incapable of acting, he can be removed and replaced by the court under section 36(1).

#### **3) Case under Section 19 on Trusts of Land and Appointment of the Trustee Act 1996**

Trustee may be directed to retire, i.e. they can be removed.

4) The Court has the power of dismissal under Section 41 of the Trustee Act 1925

If the court exercises its powers, it may remove a trustee in the course of appointing a new trustee.

5) Inherent power

In an action for the administration of a trust by the court, a trustee may be removed using the inherent powers of the court.

6) Disclaimer

At any time before acceptance a trustee may elect to disclaim. The law is not so perverse as to force a trustee to accept the office against his will.

7) Death

Trustees hold the trust property as joint tenants and so on any death the property automatically vests in the remaining trustees. They should, of course, ensure that all the trust property is duly registered in the names of the remaining trustees: for example, any shares must be placed in the names of the surviving trustees.

### 2.3.3 Beneficiary<sup>12</sup>

Beneficiary is considered to be the real owner (Equitable Ownership or Equitable Interest). Which trustee can receive the benefit when entering into the agreement or expressing intention to receive benefit under the agreement.

#### 1. Authority and Duty of Beneficiary

If a trustee breach of trust agreement that lead to any damages on beneficiary such as trustee took trust property to be sold then took the money into his own. This case trustee is liable to compensate to beneficiary. Moreover beneficiary can make a claim. The right to claim from the property is not limited to only real estate. If

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<sup>12</sup> Puchong Tharanuntaporn, op.cit., p.20.

beneficiary knows that the trustee breached the trust agreement, beneficiary can request to the court to ban that action or sued for damages arising from that trustee action. If trustee transferred assets to a third party inappropriately, the beneficiary has the right to pursue and retake the property back except third party who has, for value and in good faith, acquired<sup>4</sup><sup>13</sup>

Trust Property is asset including profits that have been placed into a fiduciary relationship between a settlor and trustee for benefit of beneficiary under the trust agreement. Moreover, trustee has ownership on Trust Property according to the law, that properties are excluded from the trustee private properties. Thus, if a trustee is bankrupt, trust properties will not be integrated with trustee private properties to pay debt.

Trust law should concerns to create and protect of trust property. We can divide important as follow:

- 1) Trust property is established by settler who alive. Meanwhile, settler can appoint more than one trustee.
- 2) Trustee must manage benefit for the beneficiary
- 3) Trust properties are separated from trustee's properties. If the trustee manage and gain benefit from the trust properties, that benefit will be integrated with the trust properties
- 4) The trust properties are not a trustee marriage property or trustee inheritance that will be devolves on the heirs when a person dies.

Although the Trust Law has several major feature but there are some characteristics that are inconsistent with the Thai law as following:

- a. Trust law requires settlor to transfer certain assets to trustee when trust is established. As a result, property owners have no right on their property.
- b. Transfers of ownership in the property from settlor to trustee, that makes many people have independence right or ownership on the same properties. Unlike in the Civil and Commercial code of Thailand doesn't accept the principle of separation of ownership.<sup>14</sup>

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<sup>13</sup> Ratchanee Suthonmontree, op.cit., p.101.

<sup>14</sup> Ratchanee Suthonmontree, "The management of the property of a minor by a parent under the Civil and Commercial Code, Section 1574: Comparison with the

## 2.4 Taxation and Trusts related to Tax Planning

Taxation is a principle method by which a government gains revenue into budget. Most revenues are derived from resident, and a potential of implementing certain policies in paying public services, welfare and military.

### 1. The objective of Taxation

The objective of taxation is to collect tax for management and development of country, and also there are other objectives of taxation as follows:

#### 1) **Maintain the stability of country's economy**

Tax collection for maintaining economy of country is one of methods for solving the problem of economy. For example of this case, when country faces an inflation situation, people have more power to consume and use service, the government thus set a policy of tax for helping people. On the other hand, when country faces a deflation situation, people are less consume, the government would set a policy to decrease taxation for helping people.

#### 2) **For fairness in society**

Another objective is to eliminate an inequality of people in society based on social position; such as collecting tax as a personal income tax shall use a progressive rate. For example, if you have less income, you shall pay less. On the contrary, if you have more income, you must pay more.

#### 3) **For Social Promotion and Control**

The government realizes that some businesses are good for economy of country, thus there set a policy to promote such business owners by providing tax exemption or tax decrease for their businesses. Most these businesses are luxury products which must be paid for excises tax; such as alcohol beverages, tobacco, and perfume.

#### **4) For Promoting and Supporting New Businesses**

Development of country should encourage new businesses motivating national economy, but there are the problems on budget, management, administration and law. The government must help and solve these problems which Taxation is one of many measures used for encouraging national economy.

## **2. Good Taxation Policy**

There are several legal principles under the Revenue Code of Thailand. The notable one is the Four Canons of good taxation by Adam Smith.

Adam Smith laid down four principles of taxation which he called Canons of Taxation. His clear and simple statement of the four Canons of taxation that underpins a good tax system remains relevant to this date. These principles which have both an ethical aspects and administrative aspects to them can be summed as Canons of equity, certainty, convenience and economy.

### **1) Canon of Equity**

Canon of equity aims at providing economic and social justice to people. According to this principle, every person should pay tax to the government depending upon his ability to pay. The rich people should pay higher tax, because without the protection of the government authorities, they could not have earned and enjoyed their high income. Adam Smith argued that the amount of tax should be proportional to income; i.e., citizen should pay tax in proportion to the revenue that they respectively enjoy under the protection of the state.

### **2) Canon of Certainty**

According to Adam Smith's four canons, the tax which an individual has to pay should be certain, not arbitrary. The tax payer should know in advance how much tax he has to pay, at what time he has to pay the tax, and in what form the tax is to be paid to the government. In other words, every tax should satisfy the canon of certainty. At the same time, a good tax system also ensures that the government is also certain about the amount that will be collected by way of tax.



### 3) Canon of Convenience

The mode and timing of tax payment should be as far as possible, convenient to the taxpayers. For example, land revenue is collected at time of harvest income tax is deducted at source. Convenient tax system will encourage people to pay tax and will increase tax revenue.

### 4) Canon of Economy

This principle states that there should be economy in tax administration. The cost of tax collection should be lower than the amount of tax collected. It may not serve any purpose, if the taxes imposed are widespread but are difficult to administer. Therefore, it would make no sense to impose certain taxes, if it is difficult to administer.

According to four canons of Adam Smith mentioned above, the Revenue Code of Thailand lies under the Canon of Certainty because the rules and regulations are provided clearly under the Revenue Code. However, even the Revenue Code mentions that the tax is to be paid in different context, but it is still not certain enough because there are loopholes and the law does not strictly enforce. Therefore, taxpayer, who has a duty to pay tax, get a loophole to avoid paying tax.

## 3. Tax Planning

Tax planning is a business management and preparation of individuals or corporate for paying, not paying tax, or paying less tax by law. Tax planning is one part of business because when starting or going out of business, business owner must concern tax planning. Furthermore, when making a contract or transaction, there should have a tax planning also. Hence, Tax planning is very important for managing life.<sup>15</sup>

## 4. The Structures of Taxation

For studying taxation to understand and take advantage, there must know the structures of taxation. All types of taxation must have 6 parts as follows:

- 1) Tax Payer
- 2) Tax Base

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<sup>15</sup> Chaiyasit Trachutham, Tax Planning, Edition4 (Bangkok: T.Training Center, 2551), p.2.

- 3) Tax Rate
- 4) Tax Payment
- 5) Tax Settlement
- 6) Tax Sanction

## 5. Principles of Income Taxation

Taxation of business income derived by international enterprises may be either worldwide (Residence) taxation or territorial (Source) taxation.

### 1) Residence rule (Worldwide Taxation)

Residence rule is enforced when a person resides in and takes the advantages from public service of a country, therefore, such person should pay tax to the country.<sup>16</sup>

### 2) Source rule (Territorial Taxation)

The principle of source rule is whether or not a person holds the nationality of or resides in a country. Taxation is levied on income occurred in the territory, therefore it is called "Territorial taxation"<sup>17</sup>

Thailand uses both principles which are Worldwide (Residence) Taxation and Territorial (Source) Taxation prescribed in Section 41 of the Revenue Code

(1) Residence Rule, under Section 41 second paragraph of the Revenue Code, stated that

"A resident of Thailand who in the previous tax year derived assessable income under Section 40 from an employment or from business carried on abroad or from a property situated abroad shall, upon bringing such assessable income into Thailand, pay tax in accordance with provisions of this part.

Section 41 third paragraph stated that "Any person staying in Thailand for a period or periods aggregating one hundred eighty days or more in any tax year shall be deemed a resident of Thailand."<sup>18</sup>

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<sup>16</sup> Nattavee Makaew, The Problems of Personal income tax structure and collection from a non-juristic body of persons (Bangkok: Sangmongkongset), p.15.

<sup>17</sup> Nattavee Makaew, Ibid., p.15-16.

(2) Source Rule, under Section 41 of the Revenue Code stated that

"A taxpayer who in the previous tax year derived assessable income under Section 40 from an employment or from business carried on in Thailand, or from business of an employer residing in Thailand, or from a property situated in Thailand shall pay tax in accordance with the provision of this Part, when such income is paid within or outside Thailand." <sup>19</sup>

#### **2.4.1 Income Tax**

Income tax means tax collected from a person who derived or earned income; such as money, property or any rights which can be calculated as money. Income tax actually is imposed by the government on individuals or corporate having income or profit within taxable year.

Under Thai Revenue Code, there are two types of income tax which are the Personal Income Tax and the Corporate Income Tax.

##### **1. Personal Income Tax**

Personal Income Tax (PIT) is a direct tax. A person who is subject to tax is an individual person, a partnership or association, a person who died during a taxable year and has an inheritance which is unable to be separated.

Taxpayers are classified into "resident" and "non-resident". "Resident" means any person residing in Thailand for a period or periods aggregating more than 180 days in any tax (calendar) year. A resident of Thailand is liable to pay tax on income from sources in Thailand as well as on the portion of income from foreign sources that is brought into Thailand. A non-resident is, however, subject to tax only on income from sources in Thailand.<sup>20</sup>

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<sup>18</sup> Rachita Thipchoak, Revenue Code Translated Thai-English, (Bangkok: Soutpasai Law, 2552), p.37-38.

<sup>19</sup> Rachita Thipchoak, *Ibid.*, p.37-38.

<sup>20</sup> The Revenue Department, Person Income Tax at [http://www.rd.go.th/publish/6045.0.html/Person nal IncomeTax](http://www.rd.go.th/publish/6045.0.html/Person%20nal%20IncomeTax), (last visited 28 June 2015).

### 1) Taxable person

- (1) Natural Person:

In Section 56 of Thai Revenue Code

- (2) Deceased during Taxation Year:

In Section 57 Bis first paragraph of Thai Revenue Code

- (3) Undistributed Estate of the deceased:

In Section 57 Bis second paragraph of Thai Revenue Code

- (4) Ordinary Partnership and Non-juristic body of person:

In Section 56 second paragraph of Thai Revenue Code

### 2) Tax Base

The tax base for personal income tax is the income from sources within or outside Thailand on the amount that is brought into the country. Assessable income is classified into major categories, such as income from personal service rendered to employers, income from copyright, franchise or any other right, annuity, income in the nature of interest, dividends, gains from transfer of shares, and others.

### 3) Deductions and Allowances

Under the Revenue Code, there are *expenses and allowances* that can be deducted from assessable income.

$$\text{TAXABLE INCOME} = \text{Assessable Income} - \text{deductions} - \text{allowances}$$

### Deductions allowed for the calculation of PIT<sup>21</sup>

Type of income	Deduction
1. Income from employment:	40% but not exceeding 60,000 baht
2. Income received from copyright:	40% but not exceeding 60,000 baht

<sup>21</sup> The Revenue Department, Deductions allowed for the calculation of PIT at <http://vwww.rd.go.th/publish/6045.0.html/Personal Income Tax>, (last visited 28 June 2015).

3. Income from letting out of property on hire as follows:

- Building and wharves: 30%
- Agricultural land: 20%
- All other types of land: 15%
- Vehicles 30%
- Any other type of property: 10%

4. Income from liberal professions: 30% except for the medical profession where 60% is allowed

5. Income derived from contract of work whereby the contractor provides essential materials besides tools: actual expense or 70%

4) Allowances<sup>22</sup>

Under the Revenue Code, after deducting expenses from assessable income, the allowances are also permitted for deduction, such as following lists:

Personal allowances	Baht
1. Personal	30,000
2. Spouse	30,000
3. Parent (and parent in law)	30,000
4. Child	15,000
5. Child's education	2,000
6. Care of disabled or incapacitated family members, each	60,000
7. Care of a disabled or an incapacitated person other than a family member	60,000

5) Tax Rate<sup>23</sup>

Tax rate is the personal income used the Progressive Rate, as to be implemented for 2013-2014 tax year

<sup>22</sup> The Revenue Department, Allowances, at <http://www.pwc.com/2014-thai-tax-booklet-web.pdf>, (last visited 28 June 2015).

<sup>23</sup> Krisana Bonprok, Easy Guide: How to Reduce Your Tax, (Nontaburi: Think Beyond, 2014), p.101.



Level	Net Income (Baht)	Tax Rate(%)
0	0-150000	Exempt
1	More than 150,000 but less than 300,000	5
2	More than 300,000 but less than 500,000	10
3	More than 500,000 but less than 750,000	15
4	More than 750,000 but less than 1,000,000	20
5	More than 1,000,000 but less than 2,000,000	25
6	More than 2,000,000 but less than 4,000,000	30
7	Over 4,000,000	35

## 6) Tax Payment

Assessable Income for paying tax as follows:

For a taxpayer with assessable income over 60,000 Baht from sources not by virtue of employment, tax liability must not be less than 0.5 percent of assessable income.

## 2. Corporate Income<sup>24</sup>

Corporate Income Tax (CIT) is a direct tax levied on a juristic company or partnership carrying on business in Thailand or not carrying on business in Thailand but deriving certain types of income from Thailand.

### 1) Taxable Person<sup>25</sup>

#### (1) Under Section 66 of Thai Revenue Code

A company or juristic partnership incorporated under Thai law as follows:

- a. Limited company
- b. Public company limited

<sup>24</sup> The Revenue Department, Corporate Income at <http://www.rd.go.th/publish/6044.0.html>, (last visited 29 June 2015).

<sup>25</sup> The Revenue Department, Taxable Person at <http://www.rd.go.th/publish/6044.0.html>, (last visited 29 June 2015).

- c. Limited partnership
- d. Registered partnership

A company or a juristic partnership incorporated under foreign law as follows:

- e. A company or juristic partnership incorporated under foreign laws and carrying on business in Thailand.
- f. A company or juristic partnership incorporated under foreign laws and carrying on business in other places including Thailand.
- g. A company or juristic partnership incorporated under foreign laws and carrying on business in other places including Thailand, in case of carriage of goods or carriage of passengers.

(2) Under Section 76 Bis of Thai Revenue Code<sup>26</sup>

A company or juristic partnership incorporated under foreign laws which has an employee, an agent or a go-between for carrying on business in Thailand and as a result receives income or profits in Thailand.

(3) Under Section 70 of Thai Revenue Code<sup>27</sup>

A company or juristic partnership incorporated under foreign laws and not carrying on business in Thailand but receiving assessable income under Section 40 (2)(3)(4)(5) or (6) which is paid from or in Thailand.

## 2) Tax Rate

The corporate income tax rate in Thailand is 20 % on net profit (accounting periods 2015). However, the rates vary depending on types of taxpayers

Taxpayer	Tax Base	Rate (%)
1. Small company	- Net profit from 300,000 not exceeding 3 millions baht	15%

<sup>26</sup> Rachita Thipchoak, op.cit., p.83.

<sup>27</sup> Rachita Thipchoak, Ibid., p.77.

	- Net profit over 3 millions baht	20% (accounting periods 2015)
2. Companies listed in Stock Exchange of Thailand (SET)	Net Profit	20% (accounting periods 2015)
3. Companies newly listed in Stock Exchange of Thailand (SET)	Net Profit	20% (accounting periods 2015)
4. Company newly listed in Market for Alternative Investment (MAI)	Net Profit	20% (accounting periods 2015)
5. Bank deriving profits from International Banking Facilities (IBF)	Net Profit	10%
6. Foreign company engaging in international transportation	Gross receipts	3%
7. Foreign company not carrying on business in Thailand receiving dividends from Thailand	Gross receipts	10%
8. Foreign company not carrying on business in Thailand receiving other types of income apart from dividend from Thailand	Gross receipts	15%
9. Foreign company disposing profit out of Thailand.	Amount disposed	10%

### 3) Taxation of Dividends

Dividends paid by a limited company to another limited company in Thailand may be exempt from corporate income tax if certain conditions

are satisfied. Otherwise, 50% of the dividends is subject to corporate income tax at the normal rate. Any tax withheld on the payment of the dividends may be used to offset the final corporate income tax due for the company in the relevant tax year. If certain conditions are satisfied, dividends received from a foreign affiliate are exempt from further corporate income tax in Thailand.

4) Capital gains

Capital gains are subject to the normal corporate income tax rate, with no restrictions on the use of capital losses to offset net taxable profits.

5) Losses

Net operating losses can be carried forward for up to five accounting periods. If the net operating losses relate to a business promoted by the Board of Investment during a tax holiday period, the losses may be carried over to the first year after the tax holiday period and subsequently up to five years.

6) Withholding tax<sup>28</sup>

Certain types of income paid to companies are subject to withholding tax at source. The withholding tax rates depend on the types of income and the tax status of the recipient. The payer of income is required to file the return and submit the amount of tax withheld to the District Revenue Offices within seven days of the following month in which the payment is made. The tax withheld will be credited against final tax liability of the taxpayer. The following are the withholding tax rates on some important types of income.

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<sup>28</sup> The Revenue Department, Withholding Tax at <http://www.rd.go.th/publish/6044.0.html>, (last visited 29 June 2015).

Types of income	Withholding tax rate
• Dividends	10%
• Interest <sup>29</sup>	1%
• Royalties <sup>30</sup>	3%
• Advertising Fees	2%
• Prizes	5%
• Service and professional fees	
1. 3% if paid to Thai company or foreign company having permanent branch in Thailand;	
2. 5% if paid to foreign company not having permanent branch in Thailand	

#### 2.4.2 Inheritance Tax

##### 1. Inheritance Tax of Thailand

##### 1) Method of Inheritance Tax<sup>31</sup>

Inheritance tax is imposed on heirs inheriting money, property or other assets from testator and having duty to pay tax on the value of property.

Inheritance tax and tax on property may be classified into two types:

- (1) Estate Tax that is collected tax from the donor.
- (2) Inheritance tax that is collected from the heir.

Inheritance Tax should collect along with Gift Tax. Inheritance tax means taxes collected on value of estates which the heir or beneficiary each received benefit from the estate. The tax rates and allowances are based on the relationship between the heirs to the deceased. This means that tax rate may not be

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<sup>29</sup> Tax shall be withheld on interest paid to associations or foundations at the rate of 10%.

<sup>30</sup> Royalties paid to associations or foundations are subject to 10% withholding tax rate.

<sup>31</sup> Sutida Tanomjit, Inheritance Tax at <http://digi.library.tu.ac.th/thesis/1a/1798/07chapter6.pdf>, (last visited 30 June 2015).



equal, depending on the amount of inheritance for heirs each received.

Taxpayers under inheritance tax are collected according to the amount and value of the property. This tax is a progressive rate which is people getting more income must pay a higher rate, and people getting less income must be taxed at lower rate. This principle leads a fairness to all people. Moreover, the principle is a democratic regime based on the basic concepts on the values of equal humanity. Therefore, all citizens should be granted the right equally. Inheritance tax is a direct tax which taxpayers must pay for their own property and not burden in tax amount of others.

#### (1) Inheritance Tax in Thailand

Thailand was had inheritance in the Narayana of Ayutthaya period. This was known as "legacy duty" which collected only the excess amount of the inheritance as a form of public property. The procedures of the collection of all taxes, in regard to legacy duty, followed through as a civilized country. By enact of Inheritance taxation and Inheritance B.E. 1933 was effective for only 11 years and was defeasance.

The tax system of inheritance that determined the principles on the collection of tax on the estate, must be consider of this detail as following;

##### a. The meaning of inheritance

According to in inheritance law<sup>32</sup> when a person is deemed to have died, the estate; the estate of a deceased includes his properties of every kind, as well as his rights, duties and liabilities, except those which by law or by their nature are purely personal to him such as reward, funeral payments, insurance money that defined exactly beneficiary. These are not inheritance will not be devolved on the heirs.

##### b. Cause of inheritance

When a person dies, his estate devolves on the heirs. A death natural person can pass his estate to an heir only.<sup>33</sup> The juristic person such as

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<sup>32</sup> Section 1599 When a person dies, hid estate devolves on the heirs. An heir may lose his right to the succession only under the provisions of this Code or other law.

<sup>33</sup> Section 1602 When a person is deemed to have died under the provisions of Section 62 of this Code, his estate devolves on the heirs.

limited partnership or limited company that out of business, the law doesn't deem that juristic person is death.

c. Foreign estate

The estate, according to the legislation, referred to asset, rights and liabilities of the deceased. All of this property had to already be owned by the deceased before the event of death. The property may be in Thailand or in overseas, for example, having a piece of land in Bangkok and 1,000,000 dollars in the bank account in the United States, in the case that the owner of the estate was a Thai person, all assets within or outside Thailand, it had to be accountable for including the assets.

d. Net estate

The estate of an owner comprised the assets and the debts of the owner, altogether. The principles of the estate debts had to be deducted from assets, before, and then remainder of asset was divided to the heirs.

## 2) How to Collect Inheritance Tax<sup>34</sup>

### (1) Tax Payer

According to Section 11 of the Draft Inheritance Tax Act 2015, Taxpayer under Inheritance Tax is a person as follows:

- (1) Thai Nationality
- (2) Non-Thai Nationality but has the domicile or head office located in Thailand
- (3) Non-Thai Nationality and inherited a property situated in Thailand.

(4) For the case that the inheritor is a juristic person, it is deemed such juristic person is a Thai Nationality if that is registered in Thailand, or established under Thai laws, or consists of Thai nationality shareholders holding more

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If it is proved that such person is living or that he died at a time different from that specified in the adjudication of disappearance, the provisions of Section 63 of this Code shall be applied as regards his heirs.

<sup>34</sup> Legislative Institutional Repository of Thailand, The Draft Inheritance Tax (Bangkok: Secretariat of the Senate, 2015), pp.3-5.

than 50 percent of prepaid registered capital while having the right of inheritance, or consists of Thai nationality person having the authority in administration more than half of administrative persons.

In case of Non-Thai Nationality person inherited a property situated in Thailand, if the moment that a testator dies, the estate situates in Thailand and even such estate would transform afterwards, it deemed the estate is a property situated in Thailand and an inheritor must be liable to pay tax.

## (2) Tax Rate

The inheritance value means the value of total assets deducted liabilities. Inheritance Tax rate applies a progressive rate at 5% to 10%. Moreover, Section 16 of the draft Inheritance Tax provides that taxpayers must pay tax at 10% but the parents must pay at 5%.

## (3) Tax Base

Section 12 of the Draft Inheritance Tax provides that:

"The person who inherit, whether in entirety or in a partial, if each together worth more than 100 million baht." And

Section 14 of the Draft Inheritance Tax provides that:

The Estate that is to be paid tax as follows:

1. Immoveable properties.
2. Securities listed under law of Securities and Stock Exchange of Thailand
3. Deposit or other manners that heritage has the right to withdraw or claim from financial institutions or individuals who receive it.
4. Vehicles have registered.
5. Financial properties according to the Royal Decree

## (4) Tax Exemptions

Section 13 of the Draft Inheritance Tax provides that

1. Who is inherits from testator before this draft inheritance tax is promulgate.
2. Spouse
3. In case of charity purpose, education purpose and public charity.
4. The person or International Organizations Department

followed in the commitment with Thailand.

5. Property which is not registered, such as jewelry, diamond, gold, cash, drawing, and shares of company.

#### (5) Tax Payment

According to Section 17 of the Draft of Inheritance Tax providing that, taxpayer shall pay tax within 150 days since the date of the inheritance. Moreover, Section 10 provides that land officer having duty in registration of rights and juristic acts on inherited immoveable property must notify such registration to the Revenue Department in accordance with regulation, method and duration as prescribed by the Cabinet.

#### (6) Pay Installment

For inheritance tax, if an inheritor cannot pay full amount of tax, the inheritor can pay on the installment plan by not over 5 years.

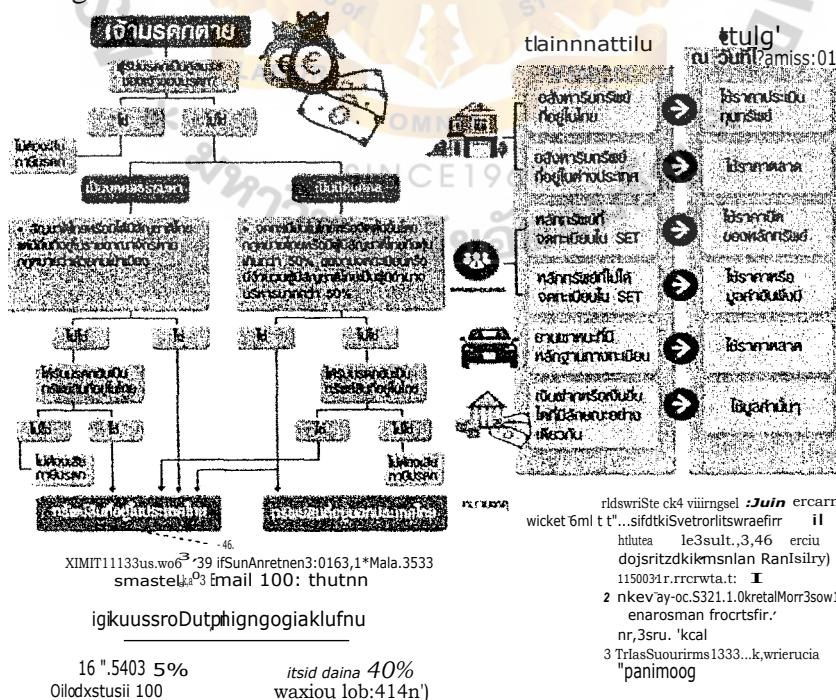
### The Summary of Inheritance Tax

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### 3) The purpose of Inheritance Tax <sup>35</sup>

At present, transfer of assets or estate is exempted to pay tax which is not fair for society since such transfer should be taxed calculating from value of estate to be used for developing country and lifting quality of life. The objectives of collecting Inheritance Tax are as follows:

#### (1) Restructuring of tax system

Most taxes are collected as indirect tax, which a person having salaries and wages must pay an indirect tax, rather than direct tax which taxpayers are indirectly taxed from consumption of goods and services. This tax system is a main factor causing a poverty of Thai people.

Thailand has a few direct taxations caused by three reasons as follows:

- a. Thailand has a low level of development.
- b. Thai people have low consciousness of duty.
- c. Direct taxation system in Thailand is very ineffective.

#### (2) Following a leaking of taxation

Inheritance tax is more efficient tax collection. Inheritance tax is a measure to track the spill of taxation. In the past, rich people often avoided tax or paid full amount of tax, that means the government cannot completely collect tax since there were so many loopholes to avoid from taxation. For legislating Inheritance Tax, the government will have a tool to collect tax and build more revenues for country, including block people avoided paying tax in the past to pay tax by law.

#### (3) Reducing Problem of Corruption in Government and Political Sector

The government has the inheritance tax policy may be one method to solve the problem of corruption. If the more a testator owns properties or money, the more an inheritor inherited such assets must be taxable.

#### (4) Developing Public Services

For public services preparation the government needs a huge amount of budget. Hence, Inheritance Tax is one method of collecting income used in management and administration of public services. Nonetheless, there is no

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<sup>35</sup>Sutida Tanomjit, The purpose of inheritance tax at <http://digi.library.tu.ac.th/thesis/la/1798/07chapter6.pdf>, (last visited 30 June 2015).



impact on poor people which are the majority of the country because they normally have no property to be an estate for heirs.

## 2. Inheritance Tax of the United States

The United States is one of many countries that levies taxes on estates or inheritances. Estate and inheritance taxes are broadly similar because both are generally triggered by death. Estate taxes are levied on the net value of property owned by a deceased person on the date of their death. In contrast, inheritance taxes are levied on the recipients of the property. Both of these taxes are generally paired with some kind of gift tax so that they cannot be avoided by simply transferring the property prior to death.

Most countries that levy estate or inheritance taxes do so with lower top rates than the rate in the U.S. The U.S. under current law has a high top rate and a large exemption. As a result, its estate tax, despite the high rate, raises very little revenue.

The United States Has the Fourth Highest Estate or Inheritance Tax Rate in the OECD<sup>36</sup>

A survey of top estate and inheritance tax rates among the Organization for Economic Cooperation and Development (OECD) countries shows that the U.S. has a very high top marginal rate on estates by worldwide standards. At the margin, an estate passed to a lineal heir is currently taxed at a rate of forty cents on the dollar, putting it at fourth overall, tied with the United Kingdom.

### 1. Top Estate or Inheritance Tax Rates to Lineal Heirs in the OECD

Ranking	Country	Tax Rate
1	Japan	55%
2	South Korea	50%
3	France	45%

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<sup>36</sup> Alan Cole, The United States Has the Fourth Highest Estate or Inheritance Tax Rate in the OECD at <http://taxfoundation.org/article/estate-and-inheritance-taxes-around-world>, (last visited 28 April 2016).

4	United Kingdom	40%
4	United States	40%

The US imposes an estate tax liability on all US citizens and residents. The estate tax will ultimately be assessed upon the gross estate, less applicable deductions. For a US citizen or resident, the gross estate is the Fair Market Value (FMV) of a decedent's worldwide assets at date of death (the taxpayer may also elect an alternative valuation date six months after date of death).

For an individual who is neither a US citizen nor a US resident (i.e., a nonresident alien), the gross estate only includes US situs property owned at death. US situs property includes real and tangible personal property located in the US, stock or options issued by a US corporation, debt of a US person (except portfolio debt), deferred compensation and pensions paid by US persons, and annuity contracts enforceable against US obligors. It does not include US bank deposits, insurance on the life of a nonresident alien or pensions payable by non-US persons.<sup>37</sup>

Transfer tax: A minority of states independently retain inheritance tax regimes. Generally, inheritance tax provisions do not impose taxes on transfers to spouses and descendants. Although, in the limited circumstances where inheritance taxes do apply, the impact can result in significant tax burdens, with rates ranging up to 20%.

#### 1) The parties are subject to US estate and gift?<sup>38</sup>

Residency General US law imposes income taxes on US persons defined as US citizens and US residents with respect to their worldwide income and imposes transfer taxes on their worldwide assets. However, income tax law determines residence differently than the US transfer tax (gifts, estate and GST tax) law determines residence.

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<sup>37</sup> Justin Ransome, For an individual at [http://www.ey.com/Publication/vwLUAssets/Worldwide-Estate-and-Inheritance-Tax-Guide-2014/\\$FILE/Worldwide-Estate-and-Inheritance-Tax-Guide-2014.pdf](http://www.ey.com/Publication/vwLUAssets/Worldwide-Estate-and-Inheritance-Tax-Guide-2014/$FILE/Worldwide-Estate-and-Inheritance-Tax-Guide-2014.pdf), (last visited 28 April 2016).

<sup>38</sup> Alan Cole, The parties are subject to US estate and gift at <http://taxfoundation.org/article/estate-and-inheritance-taxes-around-world>, (last visited 28 April 2016).

(1) Residency

US law imposes income taxes on US persons defined as US citizens and US residents with respect to their worldwide income and imposes transfer taxes on their worldwide assets. However, income tax law determines residence differently than the US transfer tax (gifts, estate and GST tax) law determines residence.

(2) Income tax residence<sup>39</sup>

US income taxation based on residence applies to US citizens and US residents. US residence is determined under two tests substantial presence test and green card test. The substantial presence test calculates residence based on the number of days an individual spends in the US over a three-year period. An individual who is in the US 183 or more days in the current year or for 183 days or more during a three-year period calculated using a weighted average formula is a US resident for income tax purposes. Under the three-year test the sum of the total number of days of presence is determined by adding the total number of days of presence in the current year, plus one-third of the number of days in the previous year, plus one-sixth of the number of days in the year prior to the previous year. Any day, or portion of a day, counts as a day of presence in the US. Exceptions and special rules are provided for individuals in the US due to a medical condition, students, teachers, commuters from Mexico and Canada, professional athletes and foreign government officials. There is also an exception to the substantial presence test for foreign individuals who are US residents under the substantial presence test but are present in the US for fewer than 183 days in the current year, have a tax home in a foreign country and have a closer connection to that home country than to the US. A closer connection is established if the individual maintains more significant contacts with a foreign country than with the US.

(3) Domicile<sup>40</sup>

In contrast to income tax residence, the US transfer tax laws determine domicile in a more subjective manner. A person acquires a domicile by living at a location even for a brief period while possessing no definite, present

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<sup>39</sup> Alan Cole, Income tax residence at <http://taxfoundation.org/article/estate-and-inheritance-taxes-around-world>, (last visited 28 April 2016).

<sup>40</sup> Alan Cole, Domicile at <http://taxfoundation.org/article/estate-and-inheritance-taxes-around-world>, (last visited 28 April 2016).

intention of later removing therefrom. Domicile depends on the facts and circumstances of each particular case. An individual has exactly one domicile no more, no less and once established, the individual must explicitly exhibit the intent to leave the old domicile in favor of a new one. Courts in the US have relied on several distinct factors when attempting to discern an individual's domicile. These include written statements of intention, such as those included in wills, visa applications, trust agreements and deeds, the time spent in the US in comparison to other countries, the location and size of the individual's residences, as well as business, family, social and religious attachments. No single factor is determinative, and each case will depend upon the totality of the circumstances.

## 2) Exemptions and reliefs<sup>41</sup>

### (1) Estate tax deductions

Administrative expenses, debts, taxes and losses Deductions for funeral and administrative expenses, debts and losses may reduce the gross estate of a US person. However, the estate tax law limits these deductions for most nonresident aliens. A nonresident alien determines the deductible portion of these expenses by a fraction the total US situs property as the numerator and the estate determined as if the decedent were a US citizen or resident as the denominator (i.e., the decedent's worldwide gross estate). Calculation of the nonresident alien's total deductible expenses occurs by multiplying the deductible expenses by this fraction. A case where a decedent owns US real property subject to a recourse mortgage illustrates this limitation on deductions. The estate must include the real property at its full date of death value, but the estate may only deduct the percentage of the mortgage represented by the US property's value in relation to the decedent's worldwide assets at death. Additionally, the estate must substantiate this deduction by providing the US taxing authorities with a certified copy of the foreign inheritance tax returns reflecting the worldwide assets. In some special situations, the provisions of US estate and gift tax treaties may allow full deductibility.

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<sup>41</sup>Alan Cole, Exemptions and reliefs at <http://taxfoundation.org/article/estate-and-inheritance-taxes-around-world>, (last visited 28 April 2016).

(2) Charitable deduction

US citizens and residents receive a charitable deduction for the entire value of any property donated to a qualifying charitable organization located anywhere in the world upon death. Nonresident aliens are also entitled to a similar charitable deduction for gifts to a qualifying charity. To receive this deduction, a nonresident alien decedent must disclose the full value of all worldwide assets. The deduction for nonresident aliens differs from the deduction for US citizens and residents. First, the deduction is only applied to the nonresident alien's US gross assets. Second, nonresident aliens only receive a charitable deduction for property passing to a US-based charity.

(3) Marital deduction for bequests to US spouse

US citizens, US residents and nonresident aliens receive an unlimited marital deduction for all bequests to US citizen spouses. The law limits the applicability of the marital deduction allowance to transfers to a US resident or nonresident alien spouse.

The estate tax allows portability of the estate tax exemption of a deceased US citizen or US resident to a US citizen or US resident surviving spouse. The availability of a portability election on behalf of a non-US citizen, non-US resident surviving spouse is limited to certain circumstances, including application of certain treaties. Portability of the estate tax exemption permits a surviving spouse to utilize any remaining unused estate tax exemption of the predeceased spouse. A major focus of US estate tax planning for married couples is to make certain that each spouse fully utilizes his or her estate tax exemption, because full utilization of both exemptions allows a married couple to double the amount that they pass free of estate tax. Portability allows for this full use of the estate tax exemption without the need to utilize tax savings trusts or other tax planning techniques on the first spouse's death. However, because these rules are not applicable to non-citizens, traditional estate tax planning minimization techniques should be considered for such persons. Portability of the estate tax exemption is claimed by filing an estate tax return.



### 2.4.3 Gift Tax

#### 1. Gift Tax in Thailand

##### 1) Method of Gift Tax

Principles or concepts of gift tax take into account the values of equality. Therefore, all citizens should be given the equal rights whether in politics and economy as prescribed in the Constitution of the Kingdom of Thailand B.E. 2550, which the state must provide a fairness of income.

A gift is provided without compensation. The provider does not wish to benefit from it. A gift is considered as unconventional in any case.

For example, Michael gives money or land to Bob, Michael does not expect something in return from Bob.

In legal nature, an effective gift can be classified into two types.

(1) A property is **movable**; such as car, diamond ring, watches or money. A gift is valid only on delivery of the property given.

(2) A property is real estate or **immoveable**; such as land, house, condominium or other buildings.

A gift of a property that the sale of which must be made in writing and registered by the competent official is valid only when it is made and registered by the competent official. In such case, it is valid.

Exception: the donor can claim revocation of a gift for an act only in the following cases:

(1) If the donee committed a serious criminal offence punishable under the Penal Code against the donor; or

(2) If the donee seriously defamed or insulted the donor; or

(3) If the donee refused the donor who is in need of the necessities of life while he was able to supply them.

For collection of personal income tax the gift tax is a property or benefit deemed to be a taxable income as prescribed in Section 40 (8) of the Revenue Code.

## 2) How to collect Gift tax

### 1) Moveable properties case

#### (1) Tax Payer

a. A person who receives income from maintenance or gift received in a ceremony from ascendants, descendant or spouse.

b. A person who receives income from maintenances and support under moral purpose or from inheritance, or gift received in a ceremony or on occasions in accordance with custom and tradition, it receives income from others are not the ascendants, descendant or spouse.

#### (2) Tax Base

All types of movable properties can calculate to money.

#### (3) Tax Exemption

a. Income derived from maintenance or gift received in a ceremony from ascendants, descendant or spouse, which specific of the money less than 20 million bath all the whole tax year.

b. Income derived from maintenances and support under moral purpose or from inheritance, or gift received in a ceremony or on occasions in accordance with custom and tradition, it receives income from others are not the ascendants, descendant or spouse, which specific of the money less than 10 million bath all the whole tax year.

c. Money donated to charity organizations, religious or educational by the Minister and published in the Ministerial Regulation.

#### (4) Tax Rate

Five percent of worth asset which receive more than 20 million bath or more than 10 million bath.

#### (5) Tax Payment

The following persons shall be required to file person income within a file time, which tax payer can choose pays tax in five percent rate of worth asset of surplus 20 million bath or 10 million bath.

#### (6) Withholding Tax

No pay

## 2) Immovable properties case

### (1) Tax Payer

Parent who are transfer ownership or possession right to the legitimization of children, it is not include adoption.

### (2) Tax Base

All types of immovable property.

### (3) Tax Exemption

Income derived from transfer ownership or possession right in immovable by it not has compensation to give for the legitimization of children, it is not include adoption. Specific of the money less than 20 million bath all the whole tax year.

### (4) Tax Rate

Five percent rate of worth asset that received more than 20 million bath.

### (5) Tax Payment

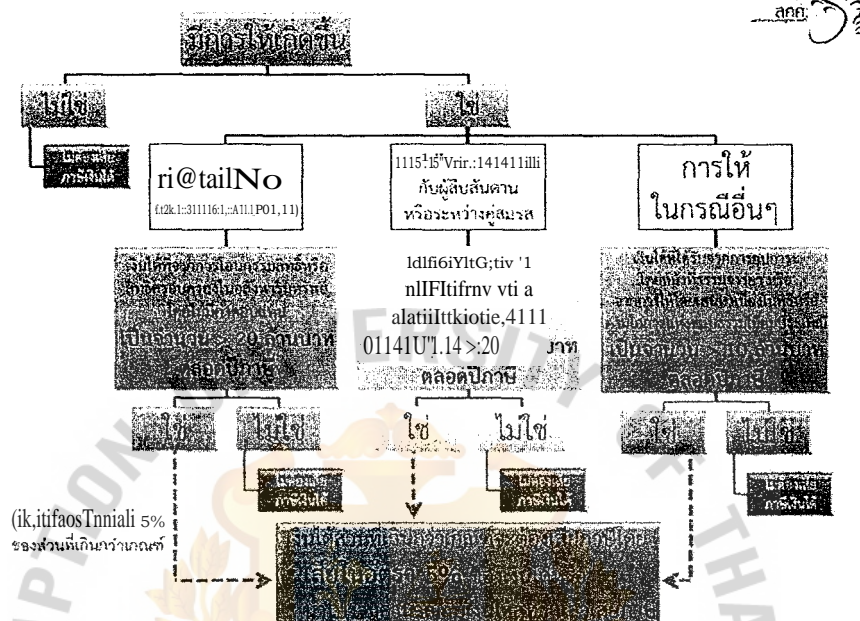
The following persons shall be required to file person income within a file time, which tax payer can choose pays tax in five percent rate of worth asset of surplus 20 million bath.

### (6) Withholding Tax

Have a deduct of withholding tax for in case to transfer ownership or possession right in immovable of one time, which has value of asset more than 20 million, by deduct withholding tax at five percent rate of value more than 20 million bath.

## The Summary of Gift Tax

min-ign-t\*A' (Gift Tax): Cii-l-la17NIASIY11101.11411Aft52.1cill



On this picture, I can explain for Gift Tax as follow;

I. No: it means you don't to pay income tax.

2. Yes: we have 3 levels to pay gift tax, it divide from relationship is follow;

1) Parent gift to child (exclude adopted child)

- Income from transferred right or possession of immovable property without consideration in the among more than 20 million THB in taxable year.
- Yes, it's a gift tax: the over income must be 5% rate of income or include to calculate net income to tax.

2) Gift between parents and descendant or between the spouses

- Income from Support or Gift more than 20 million THB in taxable year.
- Yes, it's a gift tax: the over income must be 5% rate of income or include to calculate net income to tax.

### 3) Other Cases

- Income from support by moralize or from gift according to traditional more than 10 million THB.

- Yes, it's a gift tax: the over income must be 5% rate of income or include to calculate net income to tax.

### 3) The purpose of gift tax<sup>42</sup>

The state should take out the taxes collected from the transfer of property and inheritance taxes, which will be coupled with the following objectives:

#### (1) To adjust a structure of fair tax

Gift tax and inheritance tax still are not imposed because there are no legislation of such taxes in Thailand. However, inheritance tax is being considered for adoption in the future.

Gift tax would increase state revenues. For tax rate collection, a receiving more gifts should pay more, and a person receiving less gifts should pay less. This principle brings a fairness to all persons.

#### (2) To seal leaking of tax collection

Due to levy imposing on income or interests of people some people have been trying to avoid paying taxes or minimizing the amount of tax. Hence, Thailand must have measures to solve the problems of tax avoidance by collecting gift tax to seal leaking of taxation.

For rich people evading or maneuvering tax payment in the past that the state officials could not thoroughly track, when those people transfer their property by giving to others while living thus, such people should be taxed under the gift tax policy for more efficiency of taxation.

#### (3) To reduce problems of corruption in Government and Political sector

The state has a gift tax policy which may be one method to solve the problem of corruption. If the more a testator owns properties or money, the more an inheritor inherited such assets must be taxable

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<sup>42</sup> Sutida Tanomjit Gift Tax at <http://digi.library.tu.ac.th/thesis/la/1798/07chapter6.pdf>, (last visited 30 June 2015).



## 2.4.4 Real Estate Investment Trust (REIT)

### 1. Resource and Relevance law of Real Estate Investment Trust (REIT)

#### 1) Resource of Real Estate Investment Trust (REIT)

A REIT is a type of "trust" where a trustee is determined its true owner on behalf of its beneficiary and does not have a juristic person status. The trust settlor will eventually become the REIT manager (RM) whom will offer trust units to the public. Once received capital from the sale of trust units, the MR will entrusted the following fund with the REITs designated trustee in order to establish the REIT. The trust deed will assign the REIT Manager to manage the REIT and the trustee to supervise the performance of the REIT Manager and administer the REIT in the best interest of the beneficiary.<sup>43</sup>

On October 11, 2010, the Securities and Exchange Commission of Thailand (SEC) approved the regulatory framework for establishing real estate investment trusts (REITs) in Thailand. The evolution of real property financing in Thailand from primarily bank loans to the rigid Property Fund for Publish Offering (PEPPO) to the proposed REIT-reflects the liberalization of the Thai market, the need for alternative funding options in the wake of the recovery of Thailand's property sector, and the need for Thailand to maintain its regional competitiveness. The article is a primer for investors, developers, and other stakeholders on the upcoming REIT in Thailand.

#### 2) Relevance law of Real Estate Investment Trust (REIT)<sup>44</sup>

REIT is governed by two relevant laws and under three taxations as below:

(1) The Trust for Transactions in the Capital Market Act. B.E. 2007(2550).

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<sup>43</sup> The Stock Exchange of Thailand, Resource and Relevance law of Real Estate Investment Trust (REIT) at <http://www.set.or.th/th/products/listing/files/Brochure REIT.pdf>, (last visited 1 July 2015).

<sup>44</sup> The Stock Exchange of Thailand, Ibid.

Trust certificates are considered a type of security.

(2) The Securities and Exchange Act B.E. 2535(1992) (Securities Act)

Therefore, the issuance, the public offering of trust units, and the disclosure of information must all comply with the Securities Act.

In addition, three Taxations which REIT is governed by as follows:

(3) Corporate Income Tax on Trusts is exempted

(4) Dividend Tax of investor must be paid

a. Natural person is 10% withholding tax

b. Juristic person is a normal rate to 30%

(5) Other Taxes are in an event of transferring

a. In an event of transferring assets into REIT, the settlor shall pay all relevant taxes

b. Transfer fee is the normal rate of 20%

(6) Capital Gain Tax

a. Natural person is exempted

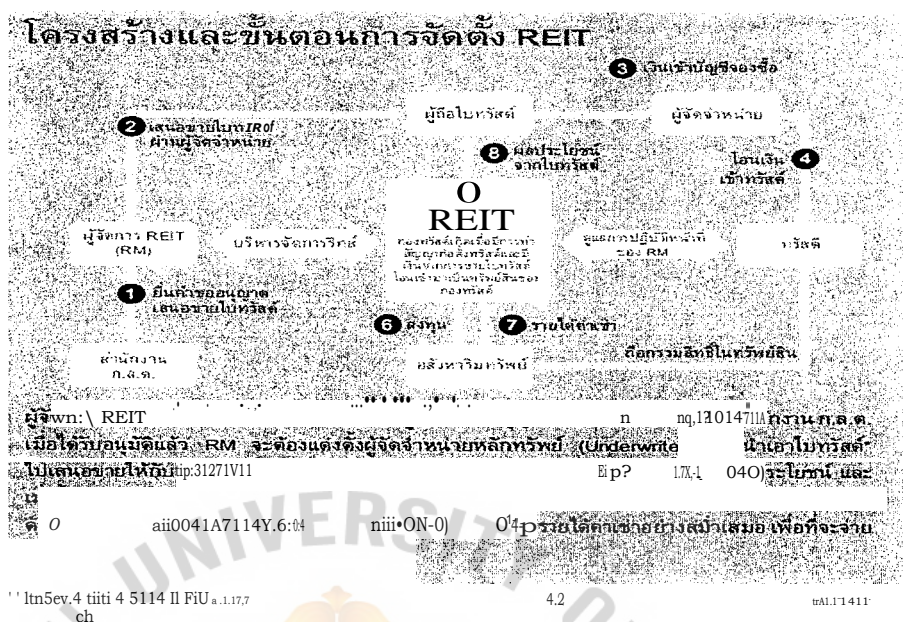
b. Juristic person is a normal rate

## 2. Structure of Establishing Real Estate Investment Trust (REIT)<sup>45</sup>

The structure of Real Estate Investment Trust (REIT) can be explained as follows:

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<sup>45</sup> The Stock Exchange of Thailand, Structure of Establishing Real Estate Investment Trust (REIT) at <http://www.set.or.th/th/products/listing/files/Brochure REIT.pdf>. (last visited 1 July 2015).



- 1) The REIT Manager (RM) files a public offering of trust certificates application with the Stock Exchange of Thailand.
- 2) After the SET's approval is granted, the RM will appoint an underwriter
- 3) The underwriter then distributes trust certificates" to investor called Trust Unit Holders, which will later become the beneficiary of REIT.
- 4) After the underwriting process is completed
- 5) The underwriter will transfer a capital raising (commission deducted) to trustee.
- 6) Trustee will bring the capital raised by the underwriter of REIT to invest in potential real estate.
- 7) Trustee will manage investing in potential real estate to receive benefits as rental income and generate to Trust Unit Holders.
- 8) Eventually, trustee pays the dividend to Trust Unit Holders.

<sup>46</sup> Trust certificates are instruments which present the right of the holder as the beneficiary of the trust, represented by units; units of the same tranche have equal value (unitization).

## 2.5 The Laws Concerning Personal Trust

### 2.5.1 The Trust for Transaction in the Capital Market Act B.E.2007

Trust law developed from the country used Common Law system for a long time 700 years, this law is important for manage the asset, doing business and funding on Capital Market. On the other hand, foreign country using trust law to manage private properties for settlor, his family of settlor or benefits for charity. And they develop this law for using in funding on Capital Market to appropriately and efficient.

At present, many countries of Civil Law are bringing trust law to adapt in Civil law system.

In Thailand was used trust law in B.E. 2000 by enact especially, that is the Trust for Transaction in the Capital Market Act B.E. 2007. And amendment Act of Civil and Commercial law (No.17), Section 3 provide to repeal the Civil and Commercial law in Section 1686 and using this text, Section 1686 states that "Trusts created whether directly or indirectly by will or by any juristic act producing effect during lifetime or after death shall have no effect whatever, are not effective, unless by virtue of provisions of the law of trust creation." Establishing trust specific for the Trust for Transaction in the Capital Market Act B.E. 2007 only.

#### 1. Meaning

In the Trust for Transaction in the Capital Market Act B.E.2007 provide a definition of meaning as following;

Section 3 of The Trust for Transaction in The Capital Market Act:

"Trust" means legal relationship arising from a trust instrument.

"Trust Deed" means the contract which the settlor transfer or setting ownership in the property/asset to trustee by have trust, trustee will manage properties to get benefit for beneficiary, and include the agreement which settlor and trustee is same person.

"Trust property" means the property/asset is specify by trust deed and including profit, debt and obligation or duty arise from a manage follow by trust deed or this Act.

Observations for meaning of trust instrument, it found three certainties as following;

- 1) Certainty of Word is intended of settlor for establish trust by direct or indirect.
- 2) Certainty of Subject is certain of the asset for establishing of trust.
- 3) Certainty of Object is certain of beneficiary, the settlor must be specify of beneficiary.

## 2. Characteristics

Characteristics of The Trust for Transaction in The Capital Market Act B.E.2007 have some objective for establish trust, it has three reasons as following;

- 1) The issuance under the Securities and Stock exchange.
- 2) The securitization accounting to law for special corporate for the securitization.
- 3) Any transactions that promote the capital market.

## 3. Basis

- 1) The person who establish trust

In the Trust for Transaction in the Capital Market Act B.E. 2007, that have three relationship are Settlor, Trustee and Beneficiary.

(1) Settlor: Section 12 means settlor must be the juristic persons as following;

- a. Securities company are establishing by the Securities and Exchange law.
- b. Distributor of the asset followed in the Special Purpose Juristic Persons for Securitization.
- c. Juristic persons have qualification followed in The Securities and Exchange Commission.

(2) Trustee: Section 54 and Section 55

Section 54 means prohibit any person to do the business about trustee, unless have permitted from The Securities and Exchange Commission.



Section 55 means who is applications to do the business about trustee to The Securities and Exchange Commission as following;

- a. Commercial Bank
- b. Financial institution, established by specific law.
- c. Other The Juristic person follow in The Securities and Exchange Commission.

Can you see that, the law specific who coming to a trustee, must be constantly of finance through Trustee Corporations. And trustee must be work as a financial.

(3) Beneficiary: as follows The Trust for Transaction in the Capital Marker Act B.E. 2007 under Section 14 said that "in trust agreement must mention by name or specify of qualification or characteristic of one person who is a beneficiary. Therefore, everyone who are come a beneficiary".

## 2) Objective for establish of trust

The Trust for Transaction in The Capital Market Act B.E.2007 under Section 4 said that "trust establish for doing business in the capital market followed in The Securities and Exchange Commission as following;

- (1) Issue of securities by The Securities and Exchange law.
- \* (2) The Securitization followed in the Special Purpose Juristic Persons for Securitization.
- (3) Other the Juristic person follow in The Securities and Exchange Commission."

## 3) Trust Instrument

The Trust for Transaction in The Capital Market Act B.E.2007 under Section 11 said that "A trust is establishing, when make a agreement or a written and the settlor transfer the property or ownership or other right in trust property to trustee already. And in case, the settlor and trustee as same person, trust will be establish, when the settlor make intend and a written submit to The Securities and Exchange Commission".

The researcher think that the Trust for Transaction in the Capital Market Act B.E. 2007 legislate for created trust instrument must be created a written contract because transfer of ownership in the property, Thailand system must refer to document, example under the Civil and Commercial Code Section 458<sup>47</sup> and Section 1299<sup>48</sup>

#### 4. Taxation

Establishment of trusts should follow the Trust for Transaction in the Capital Market Act B.E. 2007, that law has tax exemption through the enforcement of Royal Decree 533 and Revenue Department News as following;

##### 1) Revenue Department News<sup>49</sup>

Revenue Department news on The Revenue Department Supports Capital market by giving tax exemption to settlor and trustee

Trustee is a new channel for investment in the capital market and this is relatively recent in Thailand (effective 2007) but the current tax law leads to double taxation in the capital market. The Revenue Department therefore released tax measures to boost transactions in the capital market through trusts which subjects to the same tax obligations as other investments in the capital market through the enforcement of Royal Decree 533 to give tax exemption for such activities.

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<sup>47</sup> Section 458 The ownership of the property sold is transferred to the buyer from the moment when the contract of sale is entered into.

<sup>48</sup> Section 1299 Subject to the provisions of this code or other laws, no acquisition by juristic act of immovable property or of real right pertaining thereto is complete unless the juristic act is made in writing and the acquisition is registered by the competent official

when immovable property or real right pertaining thereto is acquired otherwise than by juristic act, the acquirer's right cannot be dealt with through the register unless it has been registered; nor can it, without registration, be set up against a third person who has, for value and in good faith, acquired and registered his right.

<sup>49</sup> The Revenue Department, Revenue Department at [http://www.rd.go.th/publish/fileadmin/images/image\\_eng/englishnews44\\_55 .pdf](http://www.rd.go.th/publish/fileadmin/images/image_eng/englishnews44_55.pdf), ( last visited 1 July 2015).

(1) Exemption of corporate income tax, personal income tax, specific business tax and stamp duty for settlor and trustee for transfer of assets capital from settlor to trustee to manage and give tax benefits to beneficiaries. Tax exemption also applies when trustee transfers asset back to settlor.

(2) Remunerations managed by trustee are exempted from corporate income tax, however, if trustee received fee or remunerations in return for such service, this income will be subjected to tax.

(3) When trustee remunerates to beneficiaries, beneficiaries choose to let trusts to deduct withholding tax 10% like withholding tax on dividend payment and need not include such income at the end of the year.

(4) If trusts received while trusts manage the assets and such gains are paid to settlor, settlor may receive exemption of corporate income tax if the company is registered in the stock market or is a company that holds more than 25% of shares with voting rights in the company that pays remuneration. However, if a company that holds less than 25% of shares with voting rights, such company will receive 50% reduction of corporate income tax just like remunerations received from payer of such remunerations.

## **2) The purposes of this Royal Decree**

In an attempt to promote the use of a trust under the Trust for Transactions in Capital Market Act B.E. 2550 (2007) ("Trust Act") as a new investment vehicle in the capital market, the Thai cabinet approved an executive decree to grant certain tax incentives. Moreover investment in capital market, there are many law involved. That caused to double taxation those not temp investors to invest in the capital market in Thailand. So this decree are issued to exempt income tax, VAT, specific business Tax and stamp duty for settlor, trustee and beneficiary for value of income tax base and some of case in trust law for encourage and support to establish in the capital market as well as help for funding in the capital market also. Therefore, they must enact of this Royal Degree.

### 2.5.2 The Civil and Commercial Code Section 1686

Trust law was established in Thailand during King Rama V period. In that period, the court of Thailand brings the trust law from England and principal about the Equity to enforce directly. After that, Thailand had the Civil and Commercial Code and the government didn't bring trust law using in Thailand. Because it had law for manage heritance in the Civil and Commercial Code already.

#### 1. Prior the enactment of the Civil and Commercial Code

- 1) Popular among high society as method used to manage an estate
- 2) Trusts law was applicable in the Land Registration Act 1916
- 3) Trusts law had deteriorated due to too many disadvantages

#### 2. After the enactment of the Civil and commercial Code

- 1) The parliament had enacted the Civil and Commercial Code Book VI: Succession: Section 1686 provide that, absolutely prohibited the settlement of the trust in Thailand.
- 2) Civil and Commercial Code of Thailand Book VI: Chapter IV Section 1686 states that "Trust created whether directly or indirectly by will or by any juristic act producing effect during lifetime or after death shall have no effect whatever."
- 3) Accordingly, settlement of a trust was unenforceable and had no legal effect at all. However, a trust settled up before the enactment of Section 1686 is still enforceable.

#### 3. After the amendment of Section 1686

- 1) Civil and Commercial Code of Thailand Book VI: Chapter IV Section 1686 states that "Trusts created whether directly or indirectly by will or by any juristic act producing effect during lifetime or after death shall have on effect whatever, are not effective, unless by virtue of the provisions of the law of trust creation"
- 2) The civil and Commercial Code Amendment Act (No. 17) B.E. 2550
- 3) Trust can be created only if there is provided by law which currently is the Trust for Transactions in Capital Market Act, B.E. 2550 (2007)

Although, Section 1686 prohibited settlement of trust, it prohibited only in private trusts but not prohibited in public trusts. So, Thailand can be establish trust for manage personal property.





## Chapter 3

### Trusts in Foreign Countries

#### 3.1 Trusts in the United States of America-(USA)

##### 3.1.1 Introduction to Trust

The purpose of the trust and may also depend on the size of the estate. A trust is a very useful instrument in the estate planning. Estates can be as various as people, and the flexibility of a trust makes it useful for many different needs.

Besides, a trust may be a very desirable solution for many problems. While, a trust has a benefit for others, such as minor children, grandchildren, disables relatives, provides a mechanism for managing property without court.<sup>50</sup> Also, a trust is also provides beneficiaries with protection from creditors.

The definition of 'Trust' in Black's Law Dictionary which has demonstrate that; first of all, the trust is an equitable or beneficial right or little to land or other property, which held for the beneficiary by another person, in whom resides the legal title or ownership, recognized and enforced by courts of chancery. Besides, trusts are considered to be used in the following reasons: Property's owner never trust in his own family members. Secondly, tax advantages. Thirdly. manage and run business of family. Lastly, to transfer large sums of money entirely.

##### 3.1.2 Characteristics and Types of Trust

###### 1. Characteristics of Trust <sup>51</sup>

- 1) Real right over the trust property
- 2) No personal interest in trust
- 3) Trust property is separate from trustee's

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<sup>50</sup> Jack L. Rives, et al., Guide To Wills & Estates, 4<sup>th</sup> ed. (The United States of America: Random House, 2015), pp.90.

<sup>51</sup> Sitanan Sriworakorn, Income Taxation of Trust and Estates and Trusts in foreign countries (Bangkok: Publishing company, 2014), pp.8.

4) Ownership of the trust property may be under trustee's or his agent

5) Trustee has authority and duty to keep accounting record, manage, and distribute trust property in accordance with trust deed or trust instrument

## 2. Types of Trust<sup>52</sup>

1) **Revocable Trusts** are the simple trust that can be changed or even terminated at any time by settlor.

2) **Irrevocable Trusts** cannot be changed or terminated before the time specified in the trust lacking flexibility, however, the loss of flexibility may be offset by saving in taxes.

3) **Other Specific Types of Trusts** include as follows:

(1) **Charitable trusts** are created to support charitable purposes. These trusts will often make annual gifts to worthy cause of settlor's choosing, simultaneously helping good causes and reducing the taxes on settlor's estate.

(2) **Discretionary trusts** permit the trustee to distribute income and principal among various beneficiaries or to control the disbursements to a single beneficiary, as he or she sees fit.

(3) **Dynasty trusts** or Wealth trusts or legacy trusts can last for a number of generations, and sometimes can last forever. This kind of trusts can help people with significant assets control the distribution of their wealth over a very long period of time.

(4) **Insurance trusts** are tax-saving trusts in which trust assets are used to buy a life insurance policy whose proceeds benefit the settlor's beneficiaries.

(5) **Living trusts** enable settlor to put assets in trust while settlor is still alive. Settlor can play three roles as settlor, trustee, and beneficiary, or can set up different persons playing as trustee and beneficiary.

(6) **Split-interest trusts** make it possible for either a charity or an individual to have an interest in the trusts for a period of time, after which the other gets the remainder of the funds.

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<sup>52</sup>Jack. L. Rives, et al., op.cit., p.92-93.

(7) **Support trusts** direct the trustee to spend only as much income and principal as may be needed for the education and support of the beneficiary.

(8) **Testamentary trusts** are set up in wills.

### 3.1.3 Parties are involved in a Trust

A trust is a legal relationship in which one person or qualified trust company (trustee) holds property for the benefit of him or another (beneficiary). The property can be any kind of real or personal property such as money, real estate, stocks, bonds, collections and business interests.

Trust consist of three main parties are Settlor, Trustee and Beneficiary. A settlor set up trust by putting money, property and other assets into and transfer to managed by a trustee, then trustee provides benefit occurring from such property to beneficiary after a settlor passes away.

#### 1. Settlor

- 1) The person or company who is creates a trust
- 2) Transfer ownership of trust property to Trustee
- 3) Settlor can be both of a natural person or a juristic person
- 4) Deliver trust property
- 5) If you as a settlor and you can also be a trustee

#### 2. Trustee

Person who is manages a property for benefit of the settlor and others.

#### 3. Beneficiary

Person who is gets benefit from a trust.

#### 4. Trust Deed

#### 5. Trust Property

law and people doesn't know on trusts. Hence, it is better and safe for a settler to control and manage trustee under the laws.

If you choose to establish a trust, you must appoint trustee in your wills, if you are also appointing guardians for your children, as following:

- (1) Trustworthy and honest
- (2) Some financial experiences
- (3) Concerns the beneficiary's best interests
- (4) Can be reasonably expected to outlive you

### 3.1.4 Termination of Trusts

A terminated trust is a situation that trustee leaving the property to be returned to settlor or distributed to other persons. This may also be referred to as "*revocation*." The manner in which a trust is terminated depends on whether a trust is a revocable trust or an irrevocable trust.

**Revocable Trusts:** Generally, trusts are considered irrevocable unless otherwise specified in the trust instrument. Thus, revocable trusts will contain details outlining the manner in which the trust is to be revoked, terminated, or winded down.

**Irrevocable Trusts:** Termination of an irrevocable trust is generally only permitted with the consent of all beneficiaries, so a settlor cannot unilaterally terminate an irrevocable trust once created it.

Trusts may also be terminated for a variety of legal reasons as follows:

1. Violations of duties by the trustee
2. The subject matter of the trust was found to be illegal
3. Accomplishment of the trust's objectives
4. Court order
5. Trustee becomes an only beneficiary
6. As specified in trust agreement

## 3.2 Personal Trust

### 3.2.1 Living Trust<sup>54</sup>

A living trust or called "*an inter-vivos trust*" in formally allows of settlor to put assets in a trust while settlor is still alive. If living trust is revocable, this means that the trust gives settlor great flexibility. Settlor or someone getting a confidence in manage trust property for benefit of settlor and/or settlor's family so called as Trustee. A Trustee has a power to manage trust property which settlor has transferred into trustee's ownership. Most settlors names themselves as trustee at the same time to enable them a right to buy, sell, or give property, even though trust property is in possession of trust, rather than in their own name.

#### 1. How Living Trusts work

For setting up a living trust vary with each state, in general, settlor must produce a document stating that settlor is creating a trust to hold property for benefit of settlor and family. In any case, settlor can add and subtract property anytime. Settlor has to transfer the ownership registration on whatever property that put into trust deeds, brokerage accounts, bank account, and so on from settlor's name to the name of trustee. If settlor plays another role as trustee, settlor has to remember to sign in transaction.

When settlor put property into a living trust, a trustee becomes owner of such property by transferring title of the property to trustee. Nevertheless, settlor retains the right to use and enjoy the property. Moreover, Trust is in the eye of tax authorities, the trust property still belongs to settlor, thus if settlor receives income from trust property as the assets, settlor must still report such income received from trust property directly on income tax return. The trust itself often files a separate income tax return as well, though the IRS doesn't require one if the settlor and trustee are the same person.<sup>55</sup>

Settlor can appoint anyone as trustee (it usually means that a person is legally appointed as trustee must be at least 18 years old and competent).

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<sup>54</sup> Jack L. Rives, et.al., op.cit., pp.110-111.

<sup>55</sup> Ibid.



Living trusts like wills, give Settlor wide flexibility in distributing property. For example in the trust agreement, Settlor could say "at my death, my trustee is to give my car to my son Bill, my boat to my son Jacob," and so on. Settlor's instructions can tell the trustee to continue managing assets for the benefit of someone else, distribute assets to any chosen beneficiaries. If beneficiaries die before Settlor, what will happen to the property depends on the terms of the trust and state law.

Moreover, taxes are a worry and they won't be in the vast majority of estates, settlor should be sure to retain the right to revoke or amend your trust whenever settlor wish. A revocable trust agreement allows Settlor to change the terms of trust or trustee, or just to forget the whole thing if it is too much trouble.<sup>56</sup>

A living trust can contain other separate trusts, which gives Settlor more flexibility. For example as a Settlor, if you plan to leave some of your property to your minor children in trust, you could specify in your trust that the children's property goes into an irrevocable children's trust. You can design separate trusts for several beneficiaries, all funded (usually at your death) by the assets in your living trust.<sup>57</sup>

## **2. Setting up a Living Trust<sup>58</sup>**

To understand why most lawyers charge too much for a living trust and why it is safe to do it yourself, it helps to know that a living trust is about as easy to prepare as a will. To draft a standard living trust, which is what most attorneys offer you start with a lot of legal boilerplate and add the following information:

1. The name of the person creating the trust (called the grantor or settlor). If it's your trust, that's you.
2. The name of the person who will manage the trust (the trustee). If it's your trust, this is you. That's right, the same person creates it and controls it.

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<sup>56</sup> Jack. L. Rives, et.al., pp.112-113.

<sup>57</sup> Ibid.

<sup>58</sup> Denis Clifford, *Setting up a Living Trust* at <http://www.nolo.com/legal-encyclopedia/making-living-trust-yourself-29736.html> (last visited on 18 July 2016).

3. The name of the person who will take over as trustee and the distribute property in the trust when the settlor dies or becomes incapacitated (the successor trustee). Most people choose a spouse, grown child, or close friend.

4. The names of the people who will receive the property in the trust (your beneficiaries, just as with a will).

5. The name of a person to manage any property left to young beneficiaries.

Living trust unlike a will, which comes into play only after you die, the living trust can start benefiting you while you are still alive. The trust is revocable in nature, which allows you to make changes to fit your personal situation.

The revocable living trust is established by a written agreement or declaration that appoints a trustee to manage and administer the property of the settlor. As long as you're a competent adult, you can establish a revocable living trust. In essence, the trust is like a rulebook for how your assets are to be handled when you die. As the grantor, or creator of the trust, you can name any competent adult as your trustee; some people prefer to choose a bank or a trust company to fill this role.

### 3.2.2 Family Trust<sup>59</sup>

A family trust is a legal entity created to hold and protect your assets, for you and your family for the future. The assets will be owned by the trust rather than by a person, and they manage by trustees (a family member or a lawyer) for the beneficiaries (family members).

There are several reasons for setting up a trust, including:

1. To put money aside for a specific purpose, pay for your children's weddings or tertiary education costs when they grow up.

2. To manage the assets of a family member who is unable to manage their own financial affairs.

3. To protect your assets from a professional liability claim or unexpected business-related financial problems (which is more relevant if you have your own business).

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<sup>59</sup> Commission for Financial Capability, Family Trust at <http://www.cab.org.nz/vat/money/bit/pages/familytrusts.aspx>, (last visited 19 July 2016).

4. To prepare for the possibility that you will need residential care in the future (as the residential care subsidy is income and asset tested).

5. To maintain some control over how the assets will be used after you die.

6. To protect assets from relationship property claims, to protect a family heirloom which your child will inherit, so that it doesn't become relationship property when they grow up and enter a relationship.

#### 1. The parties are involved in the workings of a trust<sup>60</sup>

1) The settlor is the person who sets up the trust and transferred to the trust.

2) The beneficiaries are the people who receive the benefits of the assets held by the trust. For example, they might receive income from the trust. The settlor can also be a beneficiary of the trust.

3) The trustees are people appointed by the settlor. Trustee has duty to manage trust's assets in accordance with trust deed. And trustees must be aged 20 years or over, Trustee should be mix with family members and independent professional advisors such as lawyers, accountants or a professional trustee organization

4) The trust deed is the legal document. Who are in trust deed must behave by condition of settlor.

It is possible for the same person to be a settlor, a trustee and a beneficiary of a trust but they cannot be the same beneficiary. A settlor can give the right to trustee or appoint a new one, by including this provision in the trust deed.

#### 2. Responsibilities of a trustee

When you become a trustee, the first thing you must do is read the trust deed and related documents, and make sure you understand that contents. If you are replacing a trustee you will need to find out what role that person played.

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<sup>60</sup> Commission for Financial Capability, The parties are involved in the workings of a trust, at <http://www.cab.org.nz/vat/money/bit/pages/familytrusts.aspx>, (last visted 19 july 2016) .

### **3. You and the trustees will be responsible as following:**

- 1) Meeting regularly to review the needs of the beneficiaries and any investments made by the trust
- 2) Making and recording trust decisions
- 3) Investing trust funds responsibly
- 4) Ensuring that the trust complies with its legal obligations
- 5) Ensuring that the trust meets its tax obligations
- 6) Acting impartially with the good of the beneficiaries in mind
- 7) Getting professional advice when appropriate
- 8) Not profiting personally from your position as trustee

### **4. A remove or replace of a trustee**

A trustee might be removed or replaced because:

- 1) They have died
- 2) They are unfit for the role
- 3) They refuse to fulfil their role
- 4) They no longer wish to be a trustee
- 5) They are a company that has ceased trading

The trust deed should include a clause which specifies who has the power to remove a trustee. If there is no power of removal built into the trust deed, or the unwanted trustee refuses to go, you can apply to the court to resolve this.

It is also possible for the beneficiaries (if they are all in agreement) to apply to the court to have a trustee removed. Be aware, though, that going to court can be an expensive and time consuming process.

### **5. Setting up a Family Trust**

If you decide to set up a family trust, you should following:

- 1) What assets should be in trust, including real estate, motor vehicles, valuable artwork, household items such as furniture, and company shares.
- 2) Who will be the beneficiaries
- 3) Who will be the trustees — they should be people you can trust and who understand what their responsibilities will be

4) What, if any, special rules there will be about how the trust will be run

You should choose the trustees carefully, as removing or replacing a trustee can require a significant amount of legal paperwork and related costs.

### 3.3 Taxation Related to Trust

The United States tax systems can divide in two types as following;

1. Federal Income Tax
2. State Income Tax

The United States has several tax types, the rules and tax rates vary. Generally, in the US tax comprises such as income tax, real property tax, social security tax, inheritance and gift tax, sales tax and estates and trust tax etc.

In general, a trust is considered a stand-alone entity and is therefore subject to federal and, potentially, state income tax laws. Similar to partners in a partnership, beneficiaries in certain types of trusts (e.g., simple trusts) are responsible for reporting the income earned by the trust on their personal federal and state income tax returns. Alternatively, other types of trusts (e.g., complex trusts) do not "flow-through" the income to the beneficiaries but are instead required to file and pay the applicable federal and state income taxes.<sup>61</sup>

#### 3.3.1 Resident Trusts<sup>62</sup>

States tax trusts using many of the same principles that apply to individuals. For example, a "resident" trust is typically taxed on all of its undistributed income (i.e., income that is not reported by the beneficiaries); while a "nonresident" trust is only taxed on undistributed income sourced to a particular state.

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<sup>61</sup> David Seiden & Matt Stein, In general a trust at [http://www.huffingtonpost.com/david-seiden/state-taxation-of-trusts\\_b4045738.html](http://www.huffingtonpost.com/david-seiden/state-taxation-of-trusts_b4045738.html), (last visited 24 September 2016).

<sup>62</sup> David Seiden & Matt Stein, Resident Trusts at [http://www.huffingtonpost.com/david-seiden/state-taxation-of-trusts\\_b4045738.html](http://www.huffingtonpost.com/david-seiden/state-taxation-of-trusts_b4045738.html), (last visited 24 September 2016).



Similar to the income taxation of resident individuals, most states tax a resident trust on all its income and tax a nonresident trust on income sourced to the state. To avoid double taxation, most states allow a resident trust to claim a credit for taxes paid in the nonresident states. The credit is usually limited to the resident state's tax on the income subject to double taxation or the resident state's tax on income earned in other states (using the resident state's sourcing rules). Some states may even allow the credit when the taxpayer is considered a resident of more than one state.

Most states use a combination of the following four "Trust Factors" to determine if a trust is a resident or nonresident:

1. Settlor's state of residence (either at death or when the trust becomes irrevocable);
2. Location of the trustees;
3. Location of the beneficiaries; and
4. Location of the trust assets.

Given the significant difference in tax cost of being a resident versus a nonresident trust, it is very important for trustees and advisors to understand how the Trust Factors apply to a specific set of facts. Depending on the circumstances, three out of the four Trust Factors (numbers 2, 3 and 4 above) can be changed after the trust has been established, potentially resulting in state tax savings. For example, Georgia considers a trust to be a "resident" if it is managed by an in-state trustee. Therefore, a trust can avoid paying Georgia income tax by simply changing the location of its trustees to a state that does not use the location of trustee rule.

However, even in situations where a trust cannot change its state of residency, there may be an opportunity to minimize or eliminate a trust's state tax liability. For example, New Jersey considers a trust to be a resident if the grantor is a New Jersey resident at the time the trust becomes irrevocable. However, New Jersey tax law also provides that a resident trust cannot be taxed on its income if the trustees and trust assets are located outside the State and the trust has no New Jersey source income. We have seen many situations where a trust could have avoided paying significant state taxes simply by changing a Trust Factor that was not otherwise important to the trustee or beneficiaries (e.g., location of trust assets).

**Planning Point:** State income taxes are deductible for federal income tax purposes. However, the alternative minimum tax will often offset this deduction. Internal Revenue Code § 56(b).<sup>63</sup>

### 3.3.2 State Income Tax Add-Back<sup>64</sup>

Most states do not allow the same tax to be deducted and claimed as a credit. For example, the Illinois statute states "the credit provided by this paragraph shall not be allowed if any creditable tax was deducted in determining base income for the taxable year." For individuals, this is usually not an issue because many states either add back all state income taxes or start with federal adjusted gross income (AGI). Trusts, however, usually deduct state income taxes in computing federal taxable income

In concept this sounds fairly simple claim a deduction or a credit, but not both. However, relatively straightforward concepts can become complicated issues when they are applied to trusts. Most states follow the federal tax treatment of trusts. In many states, the adoption of the federal system is built in because the state uses federal taxable income as the starting point for the state tax calculation.

For federal income tax purposes, depending on the terms of the governing instrument and/or the trustee's actions, non-grantor trusts' income may be taxed to:

1. The trust on its income tax return (Form 1041, U.S. Income Tax Return for Estates and Trusts);
2. The beneficiary on his or her personal income tax return (Form 1040, U.S. Individual Income Tax Return); or
3. Some combination of both.

This potential shifting of the liability for the tax payment results from the allowance of an income distribution deduction (IDD) under Sec. 661(a) when a trust

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<sup>63</sup> Charles A. Redd, Planning Point, at <https://www.naepc.org/jottrnal/issue08d.pdf>, (last visited 24 September 2016).

<sup>64</sup> Gregory A. Bergmann, State Income Tax Add-Back, at <http://www.thetaxadviser.com/issues/2012/sep/salt-sept2012.html>, (last visited 24 September 2016).

distributes income to its beneficiaries. Most states follow federal tax treatment and allow the trust an IDD. Likewise, most states tax beneficiaries on the income associated with the IDD.

### 3.3.3 Different Taxpayers<sup>65</sup>

In some states, such as California, the statute specifically allows a resident beneficiary who is taxable on income from a trust to claim the credit for taxes paid by the trust to another state on such income. Most states do not have statutory provisions specifically allowing the beneficiary to claim the credit for tax paid by the trust. However, there may be a position in some of these states for the beneficiary to claim the credit.

### 3.3.4 Basic Tax Term of Trust<sup>66</sup>

Trusts, like estates are a taxable entity. A trust is a fiduciary entity whose objective is to hold and invest money or property held in the trust for the benefit of the beneficiaries. Trust property consists of Principal (aka Corpus), which is the property transferred to trust by the grantor, and income earned by trust, usually from investments.

#### 1. Taxation of Trust

The computation of taxable income of trust is computed in the same manner as that for personal income tax (an individual).

##### 1) Items incomes and expenses

**Cash Basis:** cash basis refers to a major accounting method that recognize revenues and expenses at the time physical cash is actually received or paid out.

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<sup>65</sup> Gregory A. Bergmann, Different Taxpayers at <http://www.thetaxadviser.com/issues/2012/sep/salt-sept2012.html>, (last visited 24 September 2016).

<sup>66</sup> William C., Basic Tax Term of trust at <http://thismatter.com/money/tax/trust-taxation.htm>, (last visited 9 August 2016).

Typical items of income and expense allocated to income are identified as follows:

- (1) Interest income
- (2) Dividend income
- (3) Net rental income from real or personal property
- (4) All or a portion of trustee commissions

## 2) Tax Rate

The principle for the estate income and trust tax collection is Progressive Rate at 15%-36.9% as following:

Marginal Rate	Estates and Trust
15%	0 - \$ 2,550
25%	\$ 2,551 - 5,950
28%	\$ 5,951 - 9,050
33%	\$ 9,051 - 12,400
36.9%	Over \$ 12,400

## 3) The Trust and Estate Taxation<sup>67</sup>

(1) Trusts and Estates are separate taxpayer\*

a. Trustee must file Form 1041

➤ For an estate: if gross income > \$600

➤ For a trust: if gross income > \$600, or if trust reports any

taxable income.

b. Taxable income is subject to highly progressive rate

c. Top rate of 39.6% is applied to taxable income > \$12,400

d. There is no 10% tax rate

e. Trusts must use calendar year (estates have a choice)

(2) Trusts and Estates are allowed a personal exemption

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<sup>67</sup> Sitanan Sriworakorn, Income Taxation of Trusts & Estates, (Bangkok: n.p., 2011).

- a. Estate: \$600
- b. Trust: either \$300, or \$100 (see type of trusts)

(3) There is no double taxation of income earned by trust or an estate

- a. Estates and trusts act as conduits for income received (are flow-thru entities)
- b. Taxable income of trusts or estates is taxed to the entity or to its beneficiaries to the extent that each has received the accounting income
- c. The beneficiaries report the distributed trust income on their individual tax returns & the income retains its character
- d. A deduction for income distributed to beneficiaries is created within the trust (this is the mechanism that is used to avoid double taxation)

(4) In general, the income tax consequences for a trust or estate are determined in similar manner as for individuals (same definition of gross income, exclusions & deductions).

#### 4) Deductible expenses<sup>68</sup>

- (1) Must be ordinary and necessary expenses paid
- (2) Includes trustee's administration fees
- (3) Trustees' and executors' fees and tax return preparation fees are not considered miscellaneous itemized deductions
- (4) There is no limit on complex trust's charitable contribution deduction

## 2. Payment of tax by the parties concerning trust<sup>69</sup>

### 1) Settlor

When the settlor transfers the property to trust. The law adopts the rule of IRC S. 102(a) concerning gifts and bequests provides that a gifts or devise should not be taxed. So, the settlor transferred the property to a trust, it's just only to

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<sup>68</sup> Sitanan Sriworakorn, Income Taxation of Trusts & Estates, op.cit., pp.7.

<sup>69</sup> Sitanan Sriworakorn, Income Chapter7: Estate and Trust Taxation, op.cit., pp.241.



established trust. And S. 102(b) was enacted codifying that view and making it clear that income from the gifts or devised property should be taxed. Thus, when the property is transferred to a trust to be held for the beneficiaries, the gifts or devised received by the trust is not taxable income, but the income from the property in trust is taxable. Therefore, settlor is no taxation.

## **2) Trustee**

The best way to understand the tax treatment of estates and trusts is to compare their treatment to that partnership and corporations. As a result, income received by the corporation can be taxed twice: once at the corporate level and again when the after-tax income is distributed to the shareholders as dividends.

In contrast, a partnership is not a taxable entity but rather acts as conduit. Income flows through the partnership to the individual partners who report their share of partnership income whether or not the income is actually distributed. Therefore, tax treatment of trusts is adopted a partnership. Conceptually, this seems that trustee is acting to protect and conserve the assets for the beneficiary. This is accomplished by treating the trust as a separate taxable entity, like a corporation.

The basic of principles applicable in computing an individual's taxable income are applied in computing trustee taxable income.

The basic pattern used to tax the income of fiduciaries is reasonably as following;

- (1) Total taxable income of the fiduciary (trustee) must be identified, and it is taxed only once.
- (2) The total taxable income is taxed to either the fiduciary (trustee) or beneficiary, but not to both.

## **3) Beneficiary**

Distributions of the trust corpus itself are tax-free since the beneficiary is simply received the gifted or inherited property that would have been nontaxable had the property been received directly. Distributions of the previously taxed income are tax-free because the income has already been subject to tax at the trustee level.

Subchapter J of the code contains the rules governing the income taxation of trusts. The computation of taxable income of trust is computed in the same manner as that for "an individual". The primary concern of Subchapter J is who reports the taxable income, the trust or the beneficiary. In all cases, it should be remembered that total taxable income is taxed once.

This ensures that any taxable income received is taxed currently. However, the tax burden is shifted to the beneficiaries to the extent the fiduciary distributes its income. Such distributions are then included in the gross income of the beneficiary.

The purpose of Distributable Net Income (DNI) is to determine what part of a distribution to beneficiaries is taxable to the beneficiary and deductible by the trust. This is achieved by multiplying each type of income, such as rent or dividends, by the total amount distributed divided by the DNI. Capital gains or losses are generally allocated to corpus unless they are distributed to the beneficiaries.

Under the taxing regime of Subchapter J, the computation of taxable income of the fiduciary (trustee) and beneficiary involves two basic steps:

- (1) Identify total income that is subject to tax
- (2) Allocate total taxable income between the fiduciary (trustee) and the beneficiaries based on the amount of distributions, using the distribution deduction.

### **3. Exemption of taxes in a trust"**

#### **1) Settlor**

If established a trust, when the settlor transfers the property to a trust, the law of trust provides that the settlor does not to pay taxes because this is the only for establishes of trust. And then inheritance is nothing left, so it is tax-free.

#### **2) Trustee**

Trustee accounting income is a unique concept. This taxable income is exempt. But the income is excluded fees or other benefits.

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<sup>70</sup> Sitanan Sriworakorn, Income Chapter7: Estate and Trust Taxation, op.cit., pp. 238.

### 3) Beneficiary

The problem in applying these rules is determining whether a distribution to a beneficiary represents the gifts or devised property or income from either. As a Subchapter J adopts that distributions from a trust nontaxable if the amount of money or identity of specific property is **ascertainable** under the term of the trust instrument as of the date of the trust's inception. Otherwise, the distribution represents income.

While the amount of income from an entity is normally the amount of cash received from the entity, there are several exempt as following:

- (1) Cash received in one distribution or series of related distributions in exchange for part or all of a trust's interest in the entity is allocated to principal (redemption.)
- (2) Cash received in total or partial liquidation of the entity is allocated to principal.
- (3) Cash received from a mutual fund or REIT that is a capital gain dividend for federal income tax purposes is allocated to principal. Nontaxable distribution from these entities are allocable to income.
- (4) Distributions of property by an entity are allocated to principal.

Note that dividends reinvested are allocated to principal.

## **Chapter 4**

### **Analysis of Problems of Using Trust to Tax Planning**

#### **4.1 Reasons and Necessities to Establish Personal Trust Law**

At present, Thailand does not have the personal trust law for manage both movable and immovable property, the government should consent to establish the personal trust law. Now, Thailand legislated inheritance and gift tax, if Thailand doesn't have the personal trust law, taxation of inheritance and gift tax may encourage or stimulate the money or property to flow out of the country. Because many millionaires in Thailand, they transfer properties, home, condominiums, and shares to their descendant. And they transfer the money to foreign countries will invest in the form of "Trust".

The researcher has opinion, Ministry of Finance should enact the personal trust law simultaneously with inheritance and gift tax, for wealthy in Thailand invest in Thailand.

So, if Thailand does not enact the personal trust law, it leads the government to loss of huge revenue.

#### **4.2 The Problems of Civil and Commercial Code Thailand under Section 1298 and Section 1686**

Property rights means the rights that exist over the property. Or the rights to expropriated the property directly.

Section 1298 states that "Real rights may be created only by virtue of this Code or other laws"

"Real Right" in the Civil and Commercial Code, it have eight rights as following;

1. Ownership
2. Mutual right of ownership
3. Possessory right
4. Servitude

5. Right of habitation
6. Right of superficies
7. Usufruct
8. Charge on immovable property

Therefore, The law said that, all real rights will created must virtue in this Code or other law, which the personal trust law will establish must be authorized by other law as follow on Section 1298. So, it should enact the new law for establish the personal trust law.

According to Section 1686 of Thailand Civil and Commercial Code prohibiting to establish a trust in Thailand as follows:

Section 1686 states that "Trusts created whether directly or indirectly by will or by any juristic act producing effect during lifetime or after death shall have on effect whatever, are not effective, unless by virtue of the provisions of the law of trust creation"

Under the prohibition of establishing a trust, this causes a person owning tremendous properties including both movable and immovable properties and having an intention to establish a trust to manage and get more benefits from such properties, cannot establish a trust legally because trust is prohibited by the law leading to the problems as follows:

1. At present, Thailand enforces the inheritance tax and gift tax, and the properties to pay taxes have four types such as immovable, securities, deposits and vehicles to registered in Thailand.

1) Tax rate of inheritance tax, worth more than 100 million baht and it have 2 rates as following;

- (1) 5% for parent and descendant
- (2) 10% for other person

2) Tax rate of gift tax and worth of pay taxes as following;

- (1) Parent gift to child more than 20 million bath = 5%
- (2) Parent gift to descendant or spouses more than 20 million baht = 5%

- (3) Other cases gift more than 10 million baht = 5%

Rate of inheritance and gift tax is too high as 100 million baht and 20 or 10 million baht. Wealthy in Thailand, they may be tax planning for avoid taxes. So, the government should concerned about this problems.



2. From enacting the inheritance tax and gift tax by ignoring an enactment of trust law, this causes rich people seeking the way to do tax planning by transfers the properties such as shares, bonds and immovable property to foreign country, especially in neighbor countries such as Singapore and Hong Kong, which those countries do not have inheritance tax but they have a trust law. Because trust can hold all the assets by trustee to manage as follow in order of settlor. Even though, settlor is death.

In foreign country trust law is population. Establishment of trust is not for avoid taxes but it has the benefit for heir in long terms, for example, settlor has order trustee to manage although settlor is death.

If heritance is transfer to your child directly, it may be the problem of their descendant. Because they will bring all heritance to spend extravagant or sale and they are not follow to intent of the parent. In order that, the government loss the revenue from inheritance tax.

3. A wealthy or businessman in Thailand bringing money to invest in foreign country because they get more benefit, because it is not avoid taxes but it means to disperse of risks.

4. The Civil and Commercial Code of Thailand states that the administrator must take care of heritage for the heir is a minor. According to Section 1719 of Thailand Civil and Commercial Code provided "The administrator of an estate has the right and duty to do all such as may be necessary for complying with the express or implied order in the will and for the general administration or distribution of the estate." From definition, an administrator has only duty to distribution of the estate.

Therefore, the administrator of an estate doesn't have ownership or other rights in the estate. Unlike, trustee has ownership in property of settlor. Trustee can manage the property and provide benefits to settlor and beneficiaries. In this part, the administrator of an estate cannot do it. As an example, the following;

Example 1: If Thailand does not have a trust law, if the administrator of an estate would like to bring the estate to invest but they cannot do it because it prohibited by the law. On the other hand, if Thailand has a trust law a trustee can manage the property to get more benefits and it will be pass on to beneficiary.

Example 2: The administrator of an estate may defraud by bringing inherited of the heir to invest. If beneficiary as a minor may gets disadvantage and loses benefit. For example, the administrator brings land belong to beneficially (minor) for rent, during the law prohibiting an administrator to manage or invest inherited property, hence, the administrator of an estate does not report arisen benefits which it is a gap of defraud.

### 4.3 The Problem of Tax Planning of the Personal Trust Law

**Trusts are related to inheritance tax and gift tax**

#### **I. Gift Tax**

The benefit of establish a personal trust as following

- 1) Certainly, if the settlor gifts or transferred money less than 20 millions baht to beneficiary, the settlor is not to pay 5% of taxation.
- 2) If the assets are not money and it cannot divided such as land, house, shares and the other property has value more than 20 millions bath. Therefore, if establish of personal trust, settlor can transfer the property has value more than 20 millions baht to trust. This transfers are nontaxable because the principle of IRC S.102(a) provides that a gifts and devised to trust should not be taxed, because it's only to transfer the property to beneficiary. So, trust or beneficiary is not pay taxed. However, the income taxed from the gifts or devised property should be taxed.

#### **2. Inheritance tax**

Inheritances tax like a gift tax. If the property is more than 100 millions baht, it should be taxed. But some the properties cannot divided or sell such as land, the company or the partnership has value more than 100 millions baht. Therefore, it should have established trust for transfer those properties, and trust can manage the property to get more benefits. And settlor is not to pay taxed also, when transfer the property to trust.

So that, Trust like a corporate an **individual's taxable** income is better than the corporate rate as following;

1) When transferred the property to trust is not to pay tax. It is the same of the principle of US trust.

2) Taxation of trust is **an individual's taxable income**

(1) Tax rate of personal tax maximum is 35% and taxes based on net income.

(2) Tax rate of corporate tax maximum is 20% and taxes based on net profits.

Rate of an individual tax rate will be higher, but it has an exemption and deduction.

Therefore, the researcher has an opinion it should have exemption tax for three parties such as Beneficiary, Trustee and Settlor as following;

(1) When trustee remunerates to beneficiaries, beneficiaries choose to let trusts to deduct withholding tax 10% like withholding tax on dividend payment and need not include such income at the end of the year.

(2) Remunerations managed by trustee are exempted from corporate income tax, however, if trustee received fee or remunerations in return for such service, this income will be subjected to tax.

(3) Exemption of corporate income tax, personal income tax, specific business tax and stamp duty for settlor and trustee for transfer of assets capital from settlor to trustee to manage and give tax benefits to beneficiaries. Tax exemption also applies when trustee transfers asset back to settlor.

### **The problem of establish the personal trust**

The problem of establish the personal trust because it's not has the law to establish and the Civil and Commercial Code of Thailand in Section 1686 states that "prohibiting to establish a trust in Thailand, unless by virtue of the provisions of the law of trust creation". Which, the Trust for Transactions in the Capital Market Act B.E.2007 can establish because it has specific law for establish and not contrary to the Civil and Commercial code.

However, establishment of the personal trust law, it must legislate law specifically. The researcher has an opinion, if Thailand has the Trust for the Administration of the Personal Funds Act, it should have the structure of taxes as following;

"Trust" means legal relationship arising from a trust instrument.

"Trust instrument" means a contract whereby a person, called a settlor, transfers or creates real right or any right appertaining to property to or for another person, called a trustee, with trust and confidence in order that the trustee shall manage such property for the benefit of beneficiaries. This meaning includes a document showing the intention to create trust whereby a settlor and a trustee are the same person.

"Trust property" means any property as specified in a trust instrument, including any property, interest, debt and liability arising from management of a trust in compliance with a trust instrument or this Act.

"Corpus" means the total amount of assets that were defined in Trust instrument.

"Settlor" means a natural person or juristic person.

"Trustee" means a natural person or juristic person.

"Dividend" means amount of money that Trustee must pay to Settlor or Beneficiary where shares are held by a trust and a dividend is paid in respect of those shares.

"Affiliated companies" means when one company holds not less than 25% of the total voting shares of another company for not less than six months prior to the date of the loan.

1) Trust is established by a written or trust deed and Settlor transfer the property or real right or other right to Trustee

2) Trust Deed if not have at least of this lists is avoid as following;

- (1) Name of Settlor or Trustee
- (2) Specify name and qualification of Beneficiaries
- (3) Objectives of trust
- (4) Specify of the property to bring in trust

## 1. Taxpayer

Taxpayer means person liable for the payment of any tax as the term tax is defined below:

- 1) Trustee or
- 2) Beneficiary

## 2. Tax Base

Tax Base means amount of income that shall include money, assets, remuneration or any benefits that can be computed as the income of Trust. Then taxpayer shall take that amount of income to calculate the net profit - net loss.

$$\text{Net Profit} = \text{income} - \text{expenses} - \text{deduction}$$

- 1) Trust income
- 2) Income from sale, distribution or transfer of trust.

The money received from this properties, to be calculated as income as following;

Types of properties	The value for calculated at date of receipt
1. Immoveable situated in Thailand or	Use cost appraisal of capital
Immovable outside of Thailand	Use the market price
2. Deposit or other money as same type	Use that value
3. Securities listed on SET	Use the closing price of stock exchange
Securities not listed on SET	Use the price or value at tthat time
4. Vehicles has evidence of registration	Use the market price

**Cash Basis:** cash basis refers to a major accounting method that recognize revenues and expenses at the time physical cash is actually received or paid out.

Under the law and Trust instrument. Items of income allocated as taxable income are as follow:

- (1) Interest income
- (2) Dividend income
- (3) Income received from trust property but capital income cannot collected taxation



- (4) Net rental income from real or personal property
- (5) A portion of trustee commissions

### 3. Tax Rate

The principle for the trust tax collection is Progressive Rate at 0% - 35% as following:

<b>Marginal Rate</b>	<b>Trusts</b>
Exempt	0 -150,000 baht
5%	150,001-300,000 baht
10%	300,001-500,000 baht
15%	500,001-750,000 baht
20%	750,001-1,000,000 baht
25%	1,000,001-2,000,000 baht
30%	2,000,001-4,000,000 baht
35%	Over 4,000,000 baht

### 4. Tax Payment

Duty of taxpayer to file return despite the income tax is lower than tax-free threshold. Taxpayer still has duty to file return. That's the way to show revenues occurred during the past year taxes, Tax returns shall be submitted during 1 January — 31 March of each year. And file return tax to Ministry of Commerce.

### 5. Tax Exemption

Exemption of corporate income tax, personal income tax, specific business tax and stamp duty as following;

1) Exemption of corporate income tax, personal income tax, specific business tax and stamp duty for settlor and trustee for transfer of assets capital from settlor to trustee to manage and give tax benefits to beneficiaries. Tax exemption also applies when trustee transfers asset back to settlor.

2) The amount of income from trust is normally the amount of cash received from the trust. And there are cash exemptions as following;

(1) Cash received in one distribution or series of related distributions in exchange for part or all of a trust's interest in the entity is allocated to principal.

(2) Cash received in total or partial liquidation of the entity is allocated to principal.

(3) Cash received from a mutual fund or REIT that is a capital gain dividend for federal income tax purposes is allocated to principal.

3) Tax exemption for the any interest from loans lend to affiliated companies. In other word, holding company gave money to affiliated companies. That money shall be exempted.

4) Tax exemption for personal income and corporate income tax accordance with Revenue Code are as following:

(1) Dividend when trustee remunerates to beneficiaries, beneficiaries choose to let trusts to deduct withholding tax 10% like withholding tax on dividend payment and need not include such income at the end of the year.

(2) Exemption of corporate income tax on dividend income received from affiliated companies to beneficiaries.

5) Exemption of income taking to invest in the government fund.

6) Remunerations managed by trustee are exempted from corporate income tax, however, if trustee received fee or remunerations in return for such service, this income will be subjected to tax.

## **Chapter 5**

### **Conclusion and Recommendation**

#### **5.1 Conclusions**

Prior the enactment of the Civil and Commercial Code, Book VI : Succession, Thailand used to use the trust law. After that, the government promulgate the Civil and Commercial Code of Thailand, and they have declare not to apply trust law because it had the law on Succession already, that commandment to prohibit in Section 1686 state that "Trust created whether directly or indirectly by will or by any juristic act producing effect during lifetime or after death shall have no eddect whatever."

In the present, Thailand has seen the benefits of established some of trust, that is the purpose of transactions in the capital market. Therefore, it has the Trust for Transactions in the Capital Market Act, B.E. 2550(2007). And amendment the Civil and Commercial code of Section 1686 states that "Trusts created whether directly or indirectly by will or by any juristic act producing effect during lifetime or after death shall have no effect whatever, are not effective, unless by virtue of provisions of the law of trust creation"

In this paper, the researcher study the structure and characteristic of the trust law focusing on use a trust to manage the personal property which can be clearly concluded the main characteristic namely as follows:

##### **1. Meaning of Trust**

There is no any legal professors defined the complete meaning of trust but in Black's Law Dictionary has explained the meaning of the trust that "An equitable or beneficial right or title to land or other property, held for the beneficiary or third party by another person, in whom resides the legal title or ownership, recognized and enforced by courts of chancery."<sup>71</sup>

Accordance with Section 3 of the Trust for Transactions in Capital Market Act B.E. 2550, according to Section 6 defined that, Trust means legal relationship

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<sup>71</sup> Bryan A. Garner, Black's Law Dictionary, seventh edition, pp.1513.

arising from a trust instrument that means a contract whereby a person, called a settlor, transfers or creates real right or any right appertaining to property to or for another person, called a trustee, with trust and confidence in order that trustee shall manage the property for the benefit of beneficiaries<sup>72</sup>.

## 2. Establishment of Trust

In establishment of trust must have truly intended to create a trust and the people who are to benefit must also be certain. Certainty of intention, it has been called the "three certainties" as following;

1) There is **certainty of intention** to ensure that the settlor truly intended to benefit another person with his or her property by writing or telling their intention to the people.

2) The requirements of **certain subject matter**. Establishment of trust must have transfer the ownership or real right in the trust property. So that, the settlor must specify of the subject in trust property and it has while establishing trust.

This asset will be divided two types; asset is under the trust property and asset benefit that will be vested in beneficiary. So, the subject must certainly.

3) **Certainty of object**, certainty of object are important so that settlor must specify of beneficiary because intent of trust doesn't want the property being vested in Trustee.

## 3. The basic elements in legal relation of trust

Trust is the relationship between "Settlor" as a founder of trust providing reliance and transferring the ownership of property to one person called "Trustee" with a responsibility of managing the property and providing the benefits arisen from the managed property to another person called "Beneficiary". In conclusion, the relationship of trust consists of three parties as follows:

1) **Settlor** as a person who has the right in the property and transfer to a trustee in order to manage the property in accordance with the purpose of a settlor for the benefits of a beneficiary. Moreover, a settlor can define a guideline of property

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<sup>72</sup> The Trust for Transactions in The Capital Market Act B.E. 2007.

management, terms and conditions of cancellation, including defining a beneficiary who will be received the benefits arisen from the property.

2) **Trustee** a trustee can be an individual or a corporation, and no limitation of number. A settlor transfers the ownership of property to a trustee for managing the property in accordance with the purpose of a settlor for the benefits of the beneficiary. While being a founder of trust, a settlor can also be a trustee at the same time.

3) **Beneficiary** a beneficiary is a person who is received the benefits arisen from the trust property in accordance with a desire of a settlor.

#### 4. Characteristics of Trust

Trust has specific of characteristics. That can divided as following;

1) The legal status of the asset, where the subject matter of a trust is "impersonality" but it is a trust property only.

2) Ownership trust is legal relationship occurred by settler who is the owner of the assets who transfers ownership of his assets, under certain circumstances, to the trustee to manage that asset for beneficiary.

3) Trust properties are separate from the Trustee's assets. Trust property has only benefit of beneficiary and that trust property cannot be used to pay trustee's debts.

4) Trustees have duty to manage trust property by Fiduciary Duty and Duty of care. If a trustee had acted in breach of duty, mismanage or breach of trusts, the beneficiaries can make a claim with a trustee.

5) Beneficiaries must claim trusts to deliver benefits on behalf of their beneficiaries.

6) Beneficiaries have equitable ownership or equitable interest in the trust property. Beneficiaries also hold proprietary right.

The researcher consider the characteristic of trust law compared with section 1686 of Civil and Commercial Code founded that the provision has the limit to manage property namely;



## 5.2 Recommendations

According to the researcher has an opining, recommendation to issuing specific Decree relating to the Personal Trust Law regarding to Civil and Commercial Code Section 1686 state that establishment of trust need to be following the law. Therefore, the researcher has an opinion that should issue the specific law in order to eliminate the conflict with Civil and Commercial Code of Thailand.

Nevertheless, the government should issuing trust law together with inheritance law in order to prevent the investors establish trust in outside country such as Singapore and Hong Kong. It will be effect because investing or establishing trust outside country has more opportunity to receive more benefits or any advantages because in foreign country, trust is very famous and popular.

Therefore, the purpose of trust is not for tax avoidance but it is more advantages. Because trust law can manage a heritage and take care the heir in long term as following;

1. Settlor required trustee manage trust property even. Settlor death but trust is still.
2. Settlor can specify the prohibition not to sell the company or the property or provide any benefits from trust property to each heir per annual until the graduated or age requirement by settlor. If it has transfer property to the heir directly, the heir will bring such property to sale or purchase and the parent cannot control it, it is will effect to loss property. And most important reason is the state will lost big amount revenue without Trust.

To solve this problem, the Author recommended that it should issuing specific Decree and concluded the structure of Act as following;

### **The Structure of the Trust for the Administration of the Personal Funds Act**

"Trust" means legal relationship arising from a trust instrument.

"Trust instrument" means a contract whereby a person, called a settlor, transfers or creates real right or any right appertaining to property to or for another person, called a trustee, with trust and confidence in order that the trustee shall manage such property for the benefit of beneficiaries. This meaning includes a

document showing the intention to create trust whereby a settlor and a trustee are the same person.

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- 2) Trust Deed if not have at least of this lists is avoid as following
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The money received from this property should be calculated as income as following;

#### **Types of properties**

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2. Deposit or other money as same type
3. Securities listed on SET or Securities not listed on SET
4. Vehicles has evidence of registration

Cash Basis: cash basis refers to a major accounting method that recognize revenues and expenses at the time physical cash is actually received or paid out.

Under the law and Trust instrument. Items of income allocated as taxable income are as follow:

- 1) Interest income
- 2) Dividend income
- 3) Income received from trust property but the capital income cannot collect taxation
- 4) Net rental income from real or personal property
- 5) A portion of trustee commissions

### **3. Tax Rate**

The principle for the trust tax collection is Progressive Rate at 0% - 35% as following, like an individual's taxation income.

### **4. Tax Payment**

Duties of taxpayer to file return the income tax, it shall be submitted during in 1 January — 31 March of each year. And file return to Ministry of Commerce.

### **5. Tax Exemption**

Exemption of corporate income tax, personal income tax, specific business tax and stamp duty as following;

- 1) Exemption of corporate income tax, personal income tax, specific business tax and stamp duty for settlor and trustee for transfer of assets capital from

settlor to trustee to manage and give tax benefits to beneficiaries. Tax exemption also applies when trustee transfers asset back to settlor.

2) The amount of income from trust is normally the amount of cash received from the trust. And there are cash exemptions as following;

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(2) Cash received in total or partial liquidation of the entity is allocated to principal.

(3) Cash received from a mutual fund or REIT that is a capital gain dividend for federal income tax purposes is allocated to principal. Nontaxable distribution from these entities is allocable to income.

3) Tax exemption for the any interest from loans lend to affiliated companies. In other word, holding company gave money to affiliated companies. That money shall be exempted.

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(2) Exemption of corporate income tax on dividend income received from affiliated companies to beneficiaries.

5) Exemption of income from taking to invest in the government fund.

6) Remunerations managed by trustee are exempted from corporate income tax, however, if trustee received fee or remunerations in return for such service, this income will be subjected to tax.

Therefore, I'm recommended that, the government should have the Trust for the Administration of the Personal Funds Act together with inheritance and gift tax in order to motivate Thai economic, attract foreign investor to invest in Thailand and most important it is increase the state revenue.

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