

Taxation of Inheritances and Donations, Conceptions and Models

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I. Introduction

The taxation of inheritances and donations is a relatively a wide issue, which can be formulated in the structures of different forms of taxation. Gratuitous acquisition can be levied both indirect and direct taxes. This article describes one of the most commonly used method- tax on inheritances and donations

Succession tax is a widely known and commonly used tribute in the tax system both in and outside Europe.

Considering the circumstances and the method of levying a tax, and first of all, for fiscal reasons, in the tax legislation succession tax is supplemented by donation tax. Mostly these two tributes are included in the same legal act [1].

Taxation of gratuitous acquisition of property by means of inheritance has a long history dating back to antiquity. Succession tax was known in Ancient Egypt, Ancient Greece and also in the Ancient Rome [2]. In Rome succession tax (*vicesima hereditarium*) was implemented by Emperor Hadrian in the first half of 2nd century AD [3]. The revenue from this tax replenished military purse (*aerarium militare*) which was governed by three *praefecti aerarii militaris*. In the beginning, tax rate of *vicesima hereditarium* ranged 5%, but under the reign of Emperor Karakalla, the rate increased to 10%. Taxable persons were all people who lived on the Empire territory, thereby this tax was an exception to the rule not to tax the people who were citizens of Rome and the territory of Italia. The structure of this tax was quite well developed and contained a limit of tax exemption, exemptions and reduction of tax for the family. Exempted from the tax were inheritances to direct heirs, ancestors and descendants, small value inheritances and legacies up to the fixed value. As in many countries at

present, it was possible to less the taxable base by funeral cost and average cost of the tomb.

In that times succession tax was one of the main fiscal revenues. Sovereigns often laid their hands on these revenues, mainly to settle military expenditure. What is characteristic, is the fact that as far back as in Ancient Rome this tax was so controversial that there were lot of protests against it. Sometimes these protests were so effective that resulted in repealing this tax, but usually were brutally repressed by the army [4].

In spite of the fact that the Roman succession tax was finally abolished by Emperor Justinian, it became a model to implement in further periods. Obviously, with the course of time it was frequently transformed, but most often succession tax was based on the fundamental solutions developed in the Roman period.

2. Theories Concerning Taxation of Inheritances and Donations

Apart from ancient origin, succession tax is also characterised by rich theoretical approaches concerning its form and essence. This tax was always controversial because of its character and function.

According to the socialist doctrine [5], inheritance facilitates to accumulation of property by small numbers of inheritors and it takes place without any credit on their side. Hence succession tax should be appropriately high to be an effective measure generating as well leveling difference of properties and progressively collectivizing private property [5]. Accomplishing this purpose, this tax became an important source of state revenue.

The followers of the Equivalent theory [6] claimed that tax, paid by taxpayers receiving inheritance or donation, is for the protection per-

formed by the state. It guarantees free usage and transfer of property e.g. from parent to child. With regard to government institutions such as police, jurisdiction, citizens can safely execute these transactions. In this situation, it is normal that state has to receive remuneration (insurance) in the form of tax. It seems that this conception was based on false principles, because it effaces the boundaries between charge and tax.

There is a similar opinion of the Equivalent theory that succession tax, in practice expresses a right to inherit after deceased citizens [7]. The necessity of existing of this tax also comes from the fact, that it constitutes an indispensable complement of income tax [8]. Levy of this tax allows to control taxpayer's real incomes. With regard to the fact that taxpayer, during his all lifetime, can resort to tax evasion, the succession tax has a role as a certain remuneration and assurance to the state.

What is justly emphasised in the doctrine that this theory contains serious gaps and defects [9]. First of all, it discriminates these taxpayers who honestly pay their liabilities for tax. In their case, such formulation of succession tax directly leads to double taxation, encouraging taxpayers to dishonest behaviour and tax evasion. Irrespective of this, we have to share the opinion, that each tax system should be constructed in such manner, that the need to apply complementary tax burdens should not arise (in the sense of double taxation) [10].

In this point we have to distinguish between the used above notion "complementary of tax burden" and "tightening" of tax system. The tightening of tax system corresponds with universality and justice of taxation and constitutes another theory giving the reasons to apply succession tax. If tax is levied on non gratuitous acquisition of property, it is natural that also gratuitous acquisition of property will be taxed [11], while the theory of complementary income tax can carry on- as mentioned above- to double taxation.

Indicating the need to levy succession tax, evolution of the family and their property law was reverted [12]. Attention has been drawn to the fact that in ancient times, family was a closed cell, where organising frame was strictly laid out. On the top of the family there was a *pater familias* who, being a depository of all property, could decide about giving it to his successors. The property of family had a prevailing role, which restricted evolution of personal property. Together with disintegration of big families an

individualisation of the property of each member of the family took place. In this manner family duties in relation to individual were reduced. A considerable part of these duties was transferred to the "public entities", local administration and state, at the same time arising to participation in deceased's property by entity of public law.

The above theory was complemented by the idea of social solidarity [13]. Social solidarity treats all society as collective body in which all individuals are connected by relation of mutual rights and duties. Society was acknowledged as one big family, who has right to inheritance. Because of the fact that it is the state which is the representative of society understood in this way, it is the state which automatically acquires the right to inheritance.

In accordance with the idea of solidarity, accomplishment of the rights and duties mentioned above, should be undergo a gradation. Close relatives have a priority in the rights and duties. If relation between deceased and family is distant, then the intensity of rights and duties diminishes. As a result, if deceased leaves close relatives, then the right of state to inheritance is diminished. In the situation when the right to inheritance belongs to more distant, the state's share in inheritance rises. When there are no close and further relatives of the deceased, the state has a right to all inheritance.

To motivate the theory of solidarity is presented another argument; the property of deceased which creates an estate, wouldn't be generated without the existence of society. Social conditions gave occasion to create, preserve and multiply the property of deceased, so from this fact the deceased's duties to society and the society's right to inheritance is deducted.

The followers of succession tax are quoting the rule of the capacity to pay [14].⁴ The main argument for taxation of inheritances (imposed on the value of estate or on each beneficiary separately) is that the heir's capacity to pay should be increased. Succession tax appears in the moment of high capacity to pay, which in turns, results from the increase of property.

Apart from many conceptions supporting the existence of this tax, we can also encounter opinions negating the sense of its levying, e.g. in United States there were postulations to liquidate this tribute, because it is the main reason which curbs savings and economy growth [15].

Also in the Polish doctrine there were popular arguments against levying of this tax on de-

scendent and surviving spouse of deceased person [16]. It was considered that levying tax for the persons mentioned above was an unjustified interference of state into private property law and was the fundamental factor preventing the testator from undertaking intensive work (during his lifetime). It was emphasised, that the levying this tax often leads to changing for the worse the material situation of inheritors, mainly underage children and widows who live together and used to be dependent from deceased persons. By this reason in Poland there was a proposal to exempt from succession tax the persons mentioned above, if the value of inheritance is not so high.

The controversies relating to advisability and justness of the taxation of inheritances went together with a need to levy a tax on transfers of property by gifts [17]. The taxation of donations was not so controversial, as taxation of inheritance because without these regulations succession tax would be evaded by untaxed transfers inter vivos [18].

3. Examples of Presently Used Tax Solutions

As was mentioned above, the taxation of inheritances and donations is rather commonly known and widely used element of the present tax system. The doctrine emphasises a few most commonly used features of taxation, common to many countries. These include the following [19]:

- similar determination of taxable base, which is the net value of the acquired property, i.e. the value after deducted allowance fixed by the law
- preferential rules in taxation of the close family of the transferor of the property
- similar catalogue of exemptions and tax relieves
- non proportional, progressive taxation scale

The clearly noticeable group of similar features of taxation does not mean, that in modern countries a unified (in its essential construction) model of succession and donation tax exists. The process of creating appropriate solutions dating back to antiquity, a diversity of conceptions and attributed functions resulted in creating many differences which helped to define a significantly distinct form of taxation of gratuitous acquaintance of property.

For the sake of this article tax solutions in over 100 countries have been examined, mainly

from Europe, but also from selected states from North and South America, Asia, Africa and Australia. Analysis made in such a manner allows to distinguish two main models of succession tax:

- inheritance tax;
- estate tax.

These tax models not always appear separately and independently. Sometimes two different models exist within the state's tax system. Apart from this, additional burdens of other tributes are applied and the above models can be even substituted by other forms of taxing gratuitous acquisition of property.

In European countries still "classical" tax model for inheritances dominates, which has a personal character. Apart from the common features mentioned above, this model is characterised by the basic assumption that **succession tax is levied on each beneficiary, proportionally to his share in the received property (inheritance tax).**

In this model parallel regulations referring to taxation of inheritances and donations (and also other forms of gratuitous acquisition of property) exist. The regulations are characterised by clearly preferential rules of the taxation of the property's transferor's close family. Such kinds of solutions can be encountered, among others, in Austria, Bulgaria, Belgium, Croatia, Czech Republic, France, Germany, Greece, Hungary, Republic of Ireland, Luxembourg, Macedonia, Monaco, the Netherlands, Norway, Poland, Russia, Serbia and Montenegro, Slovenia, Spain and Sweden [20]. In this point we have to say, that the range and the manner of forming preferential position of transferor's close family is not unified. In some countries, which, basing on the relationship criteria, accepted the apportionment of taxpayers into the categories, the first category (always the most privileged) is defined in different ways, which usually includes spouse, descendants and ancestors.

Yet this situation does not form a strict rule: in Austria the first category includes just spouse and children; in the Netherlands spouse, child and a person with whom the deceased/donor lived together for a period fixed by law (usually for at least 5 years after reaching the age of 22, for partners this period is 6 months in the case of inheritance and to 2 years in the case of gift); in Slovenia spouse and descendants (parents are included in the II category); in Sweden spouse, descendants and cohabitant; in Mozambique

children and grandchildren (parents are included in the II category, and the spouse was qualified only in the III category) [21]. Taxpayers from the I category most frequently have the right to higher limit of tax exemption and the right to fewer tax rates (or special reductions, e.g. in Turkey even to 50% for the gifts). In some countries all taxpayers from I category (e.g. Czech Republic, Macedonia, Slovenia) or just a spouse (e.g. Norway, Republic of Ireland, Lithuania, Sweden) are exempted from the tax.

Usually the apportionment of taxpayers is made into three or four categories, but there are many exceptions, for example Austria and Monaco have five categories of taxpayers while in Mozambique there are six.

Similar solutions can be observed in the countries from other continents, in which the mentioned above tax model for inheritances and donations has been implemented. Constructs similar to classical European solutions exist, among others, in Angola, Macao, New Caledonia, the Netherlands Antilles, Aruba, South Korea, Cuba, Dominican Republic, French Guyana, Surinam, Bolivia, Chile, and Venezuela [22].

The main difference in the countries using the “classical” tax model for inheritances and donations, resolves mainly to:

- taxable persons: taxpayers can be individual persons (e.g. Poland) or all persons: individual and legal entities (e.g. Croatia, Serbia and Montenegro, Turkey)
- height of tax rates and the manner of creating tax schedule e.g. in Belgium, Spain and Switzerland rates differ for each region of the country; usually rates range from 3% to 40% but in Belgium the rate can range even to 80%. In Switzerland each canton can lay down its own rules of taxation, for example in the Canton of Schwyz no inheritance and donation tax is levied.
- character of the tax – it can have the form of the local tax or the state (federal) tax.

What is worth mentioning is that in some countries inheritance and donation tax exists alongside other tributes or special surtaxes. In Mozambique estimated value of tax increases by following a fixed surcharge: 15%, 20% or 25% (accordingly to the value of transferred property). The resulting tax liability is then subject to a fixed stamp surcharge ranging from 3% to 10%

value of the property. Additional stamp duty or special surtax is also levied in Angola, Austria (on the transfer of immovable property - 2% or 3.5%), Macao or Monaco. In Greece tax rates include the municipal duty of 3% and the highway construction duty of 7%.

In Russia inheritance tax is reduced by municipal tax known as the individual property tax, payable by the heir in the year of the transfer. This tax is imposed on the transfers of immovable property (buildings, apartments, garages and constructions) and is payable in two equal instalments: to 15 of September and to 15 of November.

The second model of succession tax has the character of tax on property. The stress is laid on the object of taxation. **In this model no shares of each heirs are levied but the tax is imposed on the estate of transferred property (estate tax).**

In Europe such tax model is known in Denmark. We have to emphasise that solutions existing in this state indicate that a mixed tax model (estate tax with inheritance tax) was in fact used here. The basic estate tax is imposed on the net value of the estate of deceased person supplemented by an additional tax (inheritance tax) on the property which passes to persons other than close relatives. Transfer to a spouse is exempt from both estate tax and inheritance tax. The close relatives who are subject only to the estate tax include: descendants, parents and spouses of children. Other beneficiaries are additionally subject to inheritance tax. These rules are also applied to beneficiaries who are non-residents. Estate tax is imposed at a rate of 15%, while the rate of additional inheritance tax ranges 25%. Before levying additional inheritance tax certain deductions from estate tax are possible, in this case maximum tax burden should not exceed 36.25%. In Italy similar solutions were in force until 2001 [23].

Taxation of inheritances in the mixed tax model (estate tax with inheritance tax) comprises legislation in St. Vincent [24]. Estate tax is payable on the value of transferred property, and then an additional inheritance tax is levied in respect of each share of the heir of the deceased person. Presently, in St. Vincent, according to the first and the second schedules to The Estate and Succession Duties Act no estate tax and inheritance tax shall be payable in respect of persons dying on or after the 5th day of August 1993.

A pure model of estate tax is applied in South Africa [25]. Estate tax is related to dona-

tion tax but is imposed without inheritance tax as in Denmark. This tax is levied on the estate of each deceased person. In the case of the death of a non-resident tax is imposed only on property situated in South Africa. Taxable base is reduced by the amount fixed in the law. Moreover, funeral expenses (tombstone, deathbed), all debts due by deceased from residents (debts due to non-residents are subject to certain conditions), claims by the spouse, bequests to the public benefits organisations and all estate administration and liquidation costs can be deducted. If the assets are not sold in the course estate liquidation, the property is determined on the basis of market values. If a person dies within 10 years after the death of another person from whom he has inherited, then a quick succession relief is applied based on reduction acquired property by appropriate proportional coefficient. In the case of 10 years the value of the property is reduced by 20%, and further: 8 years –40%, 6 years- 60%, 4 years-80%, 2 years-100% (such relief is known also in countries from the other part of the world e.g. in Hong-Kong and Taiwan) [26]. The rate of estate tax in South Africa is 20%, but in the case of persons who died before the 1st of October 2001 it is 25%.

Describing existing contemporary succession tax models we have to stress that this tax is usually supplemented by donations tax. Taxation of donations is based on the same rules as taxation of inheritances. It applies similar tax rates and preferences for donator's close family. These regulations are adequate both to the estate tax model, inheritance tax model and mixed tax model (inheritance tax with estate tax)

The models mentioned above do not exhaust all manners of the taxation of gratuitous acquisition of property. In a large group of countries from all continents tax reforms were carried out which resulted in abolishing the succession tax although sometimes the donation tax was left (e.g. Bangladesh, Honduras) or succession tax remained in force while donation tax was repealed (e.g. Romania, Guatemala). In some cases what was entirely given up was the traditional parallel taxation of inheritances and donations according to the canon of estate tax or inheritance tax. For these reasons we can distinguish a wide collection of **special tax solutions** concerning gratuitous acquisition of property. We can include various forms of the so called transfer taxes which levy both non –gratuitous and gratuitous manners of property transfer, e.g. capital transfer tax or property transfer tax applied

for example in Botswana, Jamaica, Malta, Barbados, Costa Rica, Uruguay and Peru. In some countries classical model of inheritance and donation tax was replaced by various forms of taxes, registration duties or stamp duties e.g. in Portugal, Vietnam, Cameroon, Salomon Islands. Most often the resignation from one of the succession and donation tax models leads to levying income tax on gratuitous acquisition of property (just succession or just donations), e.g. in Ukraine, Estonia, Malaysia, Nicaragua, Namibia, Mexico, Ecuador and Colombia.

Conclusions

Succession tax is one of the oldest methods of taxation. Also, such as in the past and in the present time, taxation of inheritance is usually connected with taxation of donations (in the frame of the same legal act). We can say that it is a standard form of the taxation of gratuitous acquisition of property.

Succession and donation tax causes a lot of practical and theoretical controversy. Usually it has ideological, political and geographical grounds, and also from the role and the place which this public tribute has in the tax system .

In the result of the enduring evolution of solutions two main tax models developed: inheritance tax model and estate tax model. Sometimes these two models are applied jointly for the reasons of fiscal nature. In this manner in a natural way a third tax model developed, namely the mixed tax model (inheritance tax with estate tax). In this point we have to note that in the present the most commonly applied tax model – especially in Europe – is the inheritance tax model.

For several years we have been observing a tendency to withdraw from succession and donation tax (regardless of applied of the tax model). It includes all continents and what is characteristic is the fact that during the last three - four years such changes has become more intense in Europe. Such kind of tax is not imposed, among others, in Slovakia, Ukraine, Estonia, Latvia, Portugal and Cyprus. In The United States of America a program of tax reform is being carried out which effaces succession tax until 2009. Together with over a one hundred countries analysed in the study, over fifty of the countries have abolished or are planning to abolish these models of succession and donation tax. The most widely used form of the taxation of gratuitous acquisition of property is income tax.

It is not impossible that the nearest years can see the end of the period of the standard form of taxation of inheritances and donations, the period dating back to the Ancient Rome.

Summary

In this article the author presents conceptions concerning succession and donation tax and presently existing models of such taxes. For the sake of this article tax solutions in over 100 countries have been examined, mainly from Europe but also from others continents.

Succession tax is one of the oldest methods of taxation. Also, such as in the past and in the present time, taxation of succession is usually connected with taxation of donations (in the frame of the same legal act). We can say that it is a standard form of the taxation of gratuitous acquisition of property.

Succession and inheritance tax causes a lot of practical and theoretical controversy. Usually it has ideological, political and geographical grounds, and also from the role and the place which this public tribute has in the tax system .

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Paweł Smoleń

Dovanojimo ir paveldėjimo apmokestinimas: koncepcijos ir modeliai

Santrauka

Šiame straipsnyje autorius nagrinėja dovanojimo ir paveldėjimo mokesčius kaip dvi pagrindines neatlyginamai įsigijamo turto apmokestinimo formas. Straipsnyje nuosekliai pateikiama dovanojimo ir paveldėjimo apmokestinimo raida, išskiriamos svarbiausios raidos tendencijos, išsamiai analizuojami du pagrindiniai apmokestinimo modeliai: paveldėjimo mokesčio modelis (*inheritance tax model*), pagal kurį mokestis taikomas kiekvienam įpėdiniui proporcingai jo paveldimo turto daliai, bei turto mokesčio modelis (*estate tax model*), pagal kurį mokestis taikomas visam palikėjo turtui, neatsižvelgiant į įpėdinių dalį ar jų giminystės ryšį su palikėju. Teigdamas, kad paveldėjimo mokesčio modelis yra Europoje vyraujanti paveldimo turto apmokestinimo forma, autorius pažymi pastarųjų metų tendenciją daugelyje valstybių atsakyti paveldimo turto apmokestinimo. Todėl, anot autoriaus, neatmestina galimybė, jog dar nuo senovės Romos laikų žinomas dovanojimo ir paveldimo mokesčiai gali būti panaikintas.

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