

LEGAL MEASURES IN RELATION TO THE OBESITY IN THAILAND^{*}

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Abstract

This article presents new challenge for Thai government, the obesity epidemic, and the measures that government implemented in order to curb the obesity growth. Even though Thai government has added an excise tax on sugary beverages and introduced compulsory regulation of nutritional labelling for some products. Yet obesity still rise. This shows that current legal measures are ineffectual to deal with the epidemic. Extending the ranges of unhealthy food products that are subject to excise tax might be useful and supportive to the current measures. Hence, the first step might be to tax all products containing nutritional labelling, providing exact information about content, such as snack products. In addition, new food label regulation, especially signpost, is necessary. With effective fiscal measures and non-fiscal measures adapted to Thai cultures and society patterns, the obesity growth rates may decrease, more or less, which will bring the benefits to our society.

Keywords: Obesity, Legal Measures, Fiscal and Non-fiscal Measures and Excise Tax

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1. Introduction

Nowadays, the obesity is globally recognised as an inevitable national crisis due to its consequence, in directly way, which produces higher risks having the non-communicable diseases or NCDs in human.¹ Apart from personal health problems, having obese people tend to generate the higher public expenses in public health budget that becomes government's and public's burden.² For example, If most people are overweight and obese, they could affect not only the economic status in human development but also labour performance of such country. Consequently, the quality and efficacy of labour, which is the driving force of the economic system in the country, will decrease unfortunately.

Many counties focused on using consumption tax to curb the consumption of all of the unhealthy diet. For instance, Denmark,³ Japan,⁴ or India⁵ applied either sales tax or excise tax on unhealthy diet which is collected from either beverage or diet like snacks, but only in Japan where tax is derived from obese people. Such law is called "Metabo law". The main certain goal is to reduce the growth of obesity while on the other hand, the government can also generate additional revenue back to society for not only the health care purposes but for other fields of state

¹ World Health Organisation, Overweight and Obesity: Fact Sheet (2011) [online]<http://www.searo.who.int/entity/noncommunicable_diseases/media/non_communicable_diseases_obesity_fs.pdf> Accessed 16/07/2017

² Gray, Barbara Bronson, Obesity Might Slow You Down at Work (2014) [online] <<http://www.consumer.healthday.com/vitamins-and-nutrition-information-27>> Accessed 16/07/2017

³ Am J Public Health, Taxing Junk Food to Counter Obesity (2013) [online] <doi: 10.2105/AJPH2013.301279> Accessed 23/07/2017

⁴ Robin Hanson, Japan's Fat Tax (2011) [online] <<http://www.overcomingbias.com/2011/11/japans-fat-tax.html>> Accessed 16/07/2017

⁵ Basu S, Vellakkal S, Agrawal S, Stuckler D, Popkin B,) Averting Obesity and Type 2 Diabetes in India [online]<e1001582> Accessed 23/07/2017

management, for example, in the field of public utilization or education budget.

In Thailand, both growth of obesity prevalence and the diabetes rate keep continuously increasing. The growth tends to climb up wildly to the higher rate assumed by OECD report, 2017.⁶ Fiscal measures and non-fiscal measures were implemented to enhance the healthy lifestyle in Thai society, however, it turns out that the existing measures are still inappropriate shown by the growth rate both in obesity and NCDs rising up.

2. The Difficulties of Enforcing Fiscal Measures in Order to Discourage the Obesity

2.1 Implementation of Tax on Unhealthy Food Products

First and foremost, there is none of the exact definition of unhealthy diet, it depends on each country. Different nations have different quantity for its population's nutrition needs. People in the Western can consume more fat because of their weathers and circumstances, while people living in the tropical countries need less fat.

Although, unhealthy food can cause or lead people to NCDs or other diseases from overconsumption, the certain amount of "Over or Too much" cannot be defined yet. It depends on each person. With this argument, it brings the problem to the government whether this tax is justified or discriminating treatment. Nowadays, the sugary beverages (SSBs) are the only products, out of all unhealthy diets, that are widely accepted as products that should be levied, while the other food products are recognised only in some countries. Due to the reluctant of taxing on a meal, the government proposed tax on snacks instead with the reason that snacks are unnecessary food products. With scientific supports and surveys, snacks

⁶ OECD, Obesity Update (2017) [online] <www.oecd.org/els/health-systems/ObesityUpdate-2017.pdf> Accessed 23/07/2017

are part of the cause of obesity in children.⁷ Snacks are sold everywhere, serving in small amount in accessible price. People usually are not aware of the quantity which they have consume.

Most importantly, increasing tax rate may affect differently between the low-to-middle-income earners and the high-income earners because the power of purchase is different. In countries where healthy food is more expensive than unhealthy food, tax measures become tax burden to their lives which can be double or more sanction compared to other people who have better financial status. This problem is one of the other reasons leading the government of Denmark, Mexico, and India to rethink about the tax rate. Some rescinds the fiscal measures, some reduces the rate which is still higher than normal rate, and some turn back to general rate.

In Thailand, only sugary drinks are subject to excise tax in which the tax rate and tax base were amended in more details, in consistent with the amount of sugar content in 2017. Amount of tax depends on the amount of the sugar contained in beverage while the tax rate also rises upon the time. Meanwhile, the other unhealthy food products, including snacks, have not yet been implemented in excise tax. In Thailand, healthy food is actually not expensive that everybody can afford it. An increase of tax on unhealthy food will not create extreme financial sanction for poor people like Western countries. Unhealthy food products may cause high risk of health problem similar to alcohol beverages, tobacco and SSBs. Therefore, the most suitable type of tax for unhealthy food is undoubtedly the excise tax because of its effects leading to the health problem, just like alcohol beverages. The later question is what type of unhealthy food we should implement tax on. It might be impossible to levy tax solely on primary ingredients in Thailand because there is no specific organisation to take care of. Therefore, taxing on the final products which contain the excessive

⁷ Sahoo K and others, 'Childhood Obesity: Causes, Consequences and Solutions' (2016) [online] Accessed 16/07/2017

amount of saturated fats, sugars, salts and calories for human need in one serve will be the way out. It may be hard to identify which menu to be taxed when the standard recipes of Thai food are different in each restaurants and regions. Even though some menus are to be taxed, the enforcement will reach only the registered restaurant, while the local restaurants might not be taxed because they are not required to register. With this problem, it can lead to unfair treatment for entrepreneurs who follow the laws.

What can the government do? Starting with food products by fixing compulsory nutrition label requirements, such as snack products, which may be the only way that would bring results. When the nutrition label is required, it will be easy for government to implement and calculate the tax. Firstly, what will be qualified as unhealthy snack products? According to foreign countries which imposed tax on unhealthy diets, Denmark pointed out that any food product which contains saturated fat over 2.3 % per weight or 5.2 g per 100 g are subject to Fat Tax Act or known as improper food products. Likewise, in Mexico, any non-essential food products with energy density equal or greater than 275 kcal per 100 g are subject to tax. Hence, unhealthy snack products can also be defined as products that contain saturated fat over 2.3 % per weight or 5.2 g per 100 g or/and have energy density equal or greater than 275 kcal per 100 g.

Where should the tax go after collection? In Denmark, the money from levying tax from unhealthy food goes to the extra-budgetary fund according to the special purpose, earmarked tax because the Fat Tax Act was specially enacted to discourage unhealthy consumption represented in saturated fat form. The money is well spent on the public health care services and other activities related to public health issues. Meanwhile in other countries, the tax on unhealthy food products are not earmarked enough. Therefore, the money goes directly to annual budget where the government can adjust the way of money and to specific fund.

To look more closely on the problem of earmarked tax in Thailand, even though the earmarked tax is prohibited according to

section 35 of Thai State Financial and Fiscal Discipline Act B.E. 2561, any revenues can be earmarked if the laws allow. Moreover, the objectives of state enterprise need to be written to be able to accept the money, according to section 36 of Thai State Financial and Fiscal Discipline Act. Recently, earmarking tax on sin tax was the issue that was raised to the MLA, which is the Commission who drafted the Constitution, whether or not it is valid and lawful. Eventually, the Commission (MLA) announced that Thai Health Promotion Foundation (Thai Health) is able to receive the subsidies from earmarked tax objective. However, the limit amount of money shall be certainly imposed. For example, 2% from levying excise tax but not more than four billion a year is subject to Thai Health.¹¹⁰ For unhealthy snack products, the government should consider about the percentage of earmarked tax in order to support the objective. When unhealthy snack products are treated as equal as tobacco and alcohol products which generate the higher risk of health issues in the future after consumption. Therefore, excise tax levying on unhealthy snack products should be earmarked directly to Thai Health at 2% but not more than four billion a year, as the same percentage used for sin tax. The money from earmarking will return to society on specific purposes which are to promote healthy lifestyle such as providing mass media campaigns to help people get away from obesity. It is a way to raise people's awareness and this money comes from people who may cause any further expenses. The appointed budget from government will reduce consequently which means it can reduce financial burden for government. This is the suitable approach for this problem.

2.2 Implementation of Tax Incentive to Food Products

Implementing tax incentives whether exemption or deduction on healthy diet is usually applied in the countries that are not suitable for cultivation, believing that is what they can do to create more power to purchase for those people. Price of healthy food products are more expensive that only small group of people can afford it. In Thailand, the tax

incentives for healthy food products are unnecessary since they are affordable and easily accessed. Tax incentive might create the bigger gap between the price of unhealthy food and healthy food.

2.3 Implementation of Tax on People

Japan is the only country that implemented tax directly on people who cause the risks of future expense to government, especially on health care cost. The particular regulation called Metabo law is applied on citizens the ages between 45 to 74 years old to have their waistlines measured annually.

Under section 27 of the Constitution of the Kingdom of Thailand states that *“Unjust discrimination against a person on the grounds of differences in origin, race, language, sex, age, disability, physical or health condition, personal status, economic and social standing, religious belief, education, or political view which is not contrary to the provisions of the Constitution, or on any other grounds shall not be permitted”*, addressing tax on obese people is an unjust discrimination on the ground of physical condition, hence, taxing on obese people violates Thai constitutional law under section 27.⁸ Although, this measure might be effective and give positive result to obesity growth prevention, the ground of that tax is prohibited in Thailand.

3. The Difficulties of Enforcing Non-fiscal Measures

Non-fiscal measures, such as food labelling or food advertising regulation, are often adopted in order to support the fiscal measures. In the belief of the most effective way to achieve the goal. Non-fiscal measures have duty to raise people’s awareness as the second step, after the cost of goods, by sending the messages to people. The obvious example is food label attached on the product that can make people

⁸ Thai Constitution Law, section 27

rethink whether or not to buy such product. The main reason is that it wastes time to consider the amount of ingredients that they do not know how much would be deemed unhealthy consumption. Many countries solved this problem by using either the colours representing the level of recommendation for consumption or signpost like “Keyhole logo” that is shown on the healthy products.

Moreover, food advertising regulation is the tool that many countries use to discourage unhealthy consumption by banning the advertisement of unhealthy food during the children’s programming. Many people argue that banning does not help reducing unhealthy consumption among kids, they still love eating junk food. The problem is there is no evidence showing that it relates to the reduction of unhealthy consumption in children.

4. Conclusion

Due to the obesity impacts in society, being obese is not personal issue anymore. The further expenses that might occur because of obesity tend to rise continuously in the immoderate way. This leads to government intervention to the people’s right. Each country has its own way to curb the obesity growth rate. Some may implement fiscal measures to food that may cause or lead to obese condition in human. Some may point to obese people that need to be responsible for further society expenses that might happen. According to an enormous increase of obese people in Thailand, the government shall not ignore to this issue. With effective fiscal measures and non-fiscal measures adapted to Thai cultures and society patterns, the obesity growth rates may decrease, more or less, which will bring the benefits to our society

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