

Difference between “Transport” and “Service” under Thai Tax Law

Transport vs Service

From past to present, there are no tax judicial interpretation that has clearly distinguished “transport” from “hire of work” or “service”. Technically, another word for transport is service of transporting. However, when it comes to withholding tax and VAT under the Thai Revenue Code (“TRC”), transporting does not refer to and does not impose same taxes as “service provision”.

The distinction today between transport vs service is only explained by the Thai Revenue Department (“TRD”) rulings. If you ever go through tax rulings ruled by the TRD during the past 20 years, you will discover that tax implications on transport is quite tricky. Your understanding on the nature of transport and service could be wrong. One thing we could assure you is that paying your tax right could get you out of cash flow problem and away from a scary tax audit.

Before we get started on tax liabilities, we should walk you through what transport and service is according to the TRD rulings.

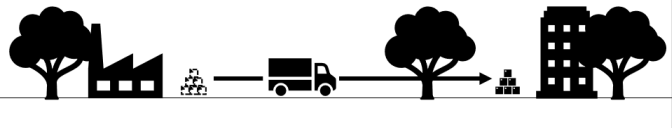
What is considered as “Transport”?

Based on the tax rulings, the TRD viewed that transport refers to delivery of product or people from one place to another without added-on services.

Example of factors that give rise to “transport”:

1. Providing service focusing on movement of products from one point to another.
2. Providing transport service without service other than load and unload of products.
3. Separating transport from other services such as packing and unpacking service, barcoding service, and warehouse management service.
4. Separating transport from additional services such as logistics, cleaning, or inspection service.
5. Separating invoice and receipt for transport service from other related services.
6. Transporting product from the factory where customer buys products from directly to the customers' own warehouse without passing through the transporter warehouse.

Only delivering products, no additional services



What is considered as “Hire of Work” or “Service”?

Under the Thai Civil Commercial Code, a “hire of work” contract is defined as a contract whereby a person, called contractor, agrees to accomplish a definite work for another person, called employer, who agrees to pay him a remuneration of the result of the work. Provision of service is, therefore, regarded as a hire of work contract.

Besides transporting, hire of work could be any services.

Example of factors that give rise to “service”:

1. Providing transport service with added-on services such as:

(A) pre-cooling the containers as required by the customer before picking up the product;

(B) providing temperature-controlled containers as required by the customer to maintain the temperature suitable for a particular product;

(C) installing devices for the customer to monitor delivery status with goods condition such as (i) temperature tracking device; (ii) product damage prevention device; and (iii) real-time tracking GPS;

(D) reporting the results of product delivery to customers;

(E) unloading and put away products; and

(F) providing services such as arranging, labeling, repacking product from the warehouse to be distributed with temperature-controlled containers to the destination specified by the customer.

2. According to the contract, the service provider must provide additional services such as:

(A) forklift service to lift the customer’s product from the warehouse and load in the truck;

(B) providing staff to sort up the product to the containers; or

(C) arrange at least one assisting staff to load the product to the customer storage pile or at the destination where product is designated to be received.

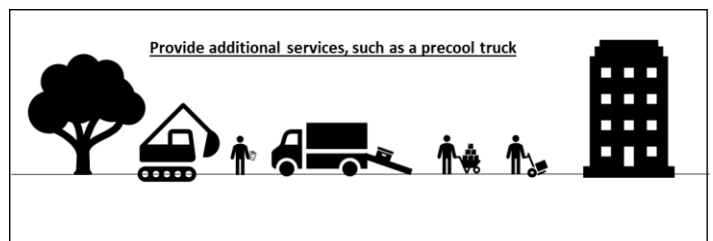
3. Provides “warehouse management services” along with its “transport service” at either the customers warehouse or at the warehouse the customer rents from a third party.

4. Providing "truck" suitable for transporting bank’s valuable assets which includes:

(A) safety armored vehicles with good working condition compliant with satellite tracking systems, oil breaking off system, walkie-talkies and a well experience and armored staff.

(B) staff and the vehicle are solely working for the job.

(C) authorized representative to be stationed at a place designated by the Commercial Bank on the normal business hours to monitor the transportation throughout the delivery and coordinated with the Bank



Transport vs Service

After we have learned the differences between transport and service, why is it important to distinguish between the two? Let us go deep into tax implications of transporting and provision of services.

Type of Services	Descriptions	Withholding Tax	VAT
Transport	<ul style="list-style-type: none"> - Focus on delivering product from one place to another - Separate transport invoice from other service (if any) 	1%	Exempt
Service (Hire of Work)	<ul style="list-style-type: none"> - Provide transport service plus added-on services - Tend to charge for all services in one invoice 	3%	7%

Based on the above, if your company is paying for someone who delivers product for you, you might want to revisit the withholding tax rate you are deducting. Withholding wrong amount of tax not only leads you to surcharges for a shortfall tax, but also reduces the amount of cash flow in your company.

VAT is also the key.

Sale of goods and provision of service are subject to VAT in Thailand. However, domestic transport business whether by land, air or sea are exempt from VAT. There is one major different i.e., domestic land transport cannot register as VAT registrant while transport by air and sea can.

Provided that one is a VAT registrant, one could claim for input VAT paid to suppliers. Let's say, when input VAT is greater than output VAT collected from customers, the taxpayer could claim for a tax refund or VAT creditable. On the other hand, if a business is NOT in VAT system,

input VAT they paid to suppliers will possibly be deductible expenses or cost for corporate income tax computation. It is safe to say that most VAT business has a better cash flow than non-VAT.

Over the decades, taxpayer have learnt from the TRD rulings and chosen to "nip it in the bud" by separating its transport business from other services, for example (i) TNT Express and TNT Logistics (ii) Linfox Transport and Linfox Logistics, in order to plan for VAT and Non-VAT expense treatment.

We have seen tax planning for VAT and Non-VAT businesses is being done by separating transport from other services due to the following facts that:

(1) Service is subject to VAT, but the transport is not. For a Non-VAT business, its "input tax" becomes cost and its "output tax" cannot be collected from customers. However, for a VAT business, its output tax can be collected from customers and can be used to offset against input tax it has paid to suppliers. However, as land domestic transportation is a business absolutely exempt from VAT and cannot choose to enter the VAT system, a disadvantage compared to the domestic transport by air and sea. Domestic transport by air and sea could choose to enter the VAT system to take advantage of the VAT credit.

(2) The cash flow management of the transport is inferior to the service. Although the transport withholding tax is 1% while service is 3%, 7% VAT has a greater proportion of cash flow-in and out.

(3) People management between transport and service is inevitable from a centralized service or shared service as it has an "inter-transaction" between related parties and subject to 'Transfer Pricing' tax compliance. Transport focuses on the driver which is different from services which focuses on the people and team with difference in skills and expertise.

(4) In becoming a VAT registrant, there are massive of official documents such as input/output tax invoices, input/output VAT and inventory reports and tax filing needed to be complied with. Documents need to be kept for at least 5 or 10 years, and staff working for the business must understand the VAT systems in order to reconcile with corporate income tax compliance.

The above advantage and disadvantage are things taxpayers considered before starting a company.

Still, the world is revolting every day and new ideas are being created. What worked in the past may have not work in the present. This also apply with how the law works as well. Transfer pricing, a new idea to track transaction between related parties created to abolish tax evasion and avoidance, was enforced in Thailand in 2019. The introduction of the transfer pricing law will greatly affect tax planning of a group companies.

Even though companies have separated its legal entity for tax planning, service between related parties, by selling or providing services is being overseen by the transfer pricing law. Is the market price justifiable? Will the transaction be regarded as a tax evasion or avoidance? By separating legal entities, transportation,

services, invoice, and contracts may help with VAT or Non-VAT planning, but it cannot help business "escape" from the new tax pitfalls, "transfer pricing."

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Keyword: Transportation, Hire of Work, Service, Logistics, Tax, VAT, Value Added Tax, Withholding Tax, Corporate Tax, Related Parties Transactions, Transfer Pricing, Tax Compliance, Tax Refund, Tax Credit, Tax Planning, Tax Avoidance, Tax Evasion,

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