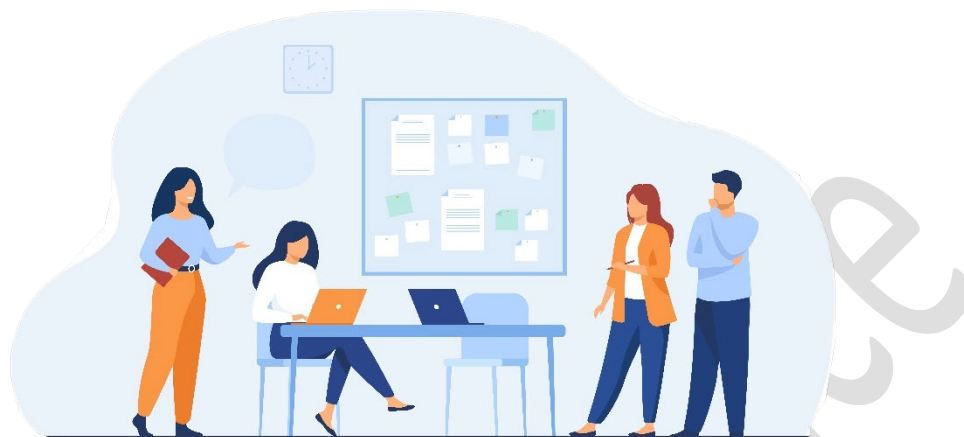


# Confusion between Employment vs Hire-of-Work



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What is the difference between hire-of-work and employment, and why it is essential? It comes up in the matter of control power over the worker and the payment conditions. Even though the outcome from both transactions is the accomplishment of work, legal concept of the hire-of-work and employment are entirely different.

## Legal Differences

**Employment** contract in Thailand is governed by the provisions of the Labor Protection Act (LPA) together with the Civil and Commercial Code (CCC), which defines employment as a contract whereby an employee agrees to render services to another person called the **employer** – who agrees to pay remuneration of working called wage in return for the duration of services.

Work completion might be an expectation when hiring a person, but the **'PERSON'** themselves is the key to the transaction. When working under the employment contract, an employee may be ordered by the employer and scope of duties or responsibilities might be shifted due to the employer's requirement. Therefore, the employee must follow a lawful order of the employer. Otherwise the employee will be receiving a warning letter from the employer. The employee may also be dismissed without receiving severance pay if they fail to perform duties under work rules and/or provisions of laws.

On the contrary, when it comes to an unlawful order of the employer, the employee has the right to refuse to act under such order. However, the employer cannot dismiss the employee without an advance notice for disobeying.

In addition, the employer generally be responsible for any damages caused by the employee provided that the employee performs the work for benefits and on behalf of the employer.

Moving on to the **hire-of-work**, it is merely governed by the provisions under the CCC, which defines a hire-of-work as a contract whereby a contractor or service provider agrees to accomplish a definite work for another person, freely working without control or supervise and wish for the remuneration in return for the work result. Therefore, responsibility for damages caused by the service rests with the service provider.

Substance over form concept applies to most circumstances under the law of Thailand including this following one. Although heading of the contract says “employment”, if the employer does not have a control power over the employee. Plus, the main focus is ‘**RESULT OF WORK**’. It is sure to say that this transaction is not somewhat an employment contract but rather a hire of work contract.

Besides the above, in the the 2017 case<sup>1</sup>, the Supreme Court (Labour Division) concretely ruled that the determination of thses 2 transactions are as follows:

Details	Employment	Hire of Work
Remuneration	Wages must be paid <u>throughout</u> the employment.	The remuneration must be paid <u>upon accomplishment of work</u> .
Tools or materials	It will be the <u>employer</u> to provide.	It will be the <u>service provider’s</u> to provide.
Commander/Control	The employer <u>will have</u> control power over the employee.	The service provider <u>will not have</u> control power over the service provider.

Additionally, we summarize below the court judgement on these two transactions for your better understanding.

<sup>1</sup> Supreme Court’s decision No. 1189/2560

Supreme Court Cases Nos.	Employment	Hire-of-Work
1. 2112/2524		- Service provider received remuneration for each pilling work - Service provider could freely perform the work.
2. 2707/2531		-Nature of freely working news and receive remuneration on working days only including no control between both parties
3. 1931/2539	The employer can fix working hour on the employment agreement.	
4. 1128-1129/2547		Service provider can select to serve customer for particular days on cruise.
5. 2189-2190/2548		-Painting service does not require control over the work. Thus a hire of work.
6. 2470/2556	- Intention of the employer is prescribed job description of the employee that is finding advertisement. - The employer can issue a warning when the employee fail to perform duties.	-Nature of freely working news and receive remuneration on working days only including no control between both parties

When hiring a company 'DIRECTOR', it could be under either employment or hire of work contract. As for the 1982<sup>2</sup> and 1981<sup>3</sup> cases, the Supreme Court considered that the director might be under the employment contract if:



<sup>2</sup> Supreme Court's decision No. 336/2525

<sup>3</sup> Supreme Court's decision No. 2465/2524

1. receive the wages in form of fixed-rate salary, not from meeting attendance fee or management fee; and
2. work under employer's order and must attend to the workplace during the working days and working hours; and
3. obtain employees' welfare or benefits as same as other employees.

In view of the above, you can see the key factors of 'employment' are control power, fixed remuneration, working in the employer's workplace and working during the working hours rather than concerning the 'result of work' or 'completion of work'.



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## Tax Consequences

After all the legal considerations are complete, the tax implications should be also taken into account as difference situation shall lead to difference tax treatments including tax exposures.

TAX	Employment	Hire of Work
Personal Income Tax (PIT)	Categorized as income under section 40 (1) of the Revenue Code (TRC).	Categorized as income under section 40 (2) of TRC.
Withholding Tax (WHT)	Calculated with the progressive tax rates 5-35% from the net taxable income that is made throughout the tax year (calendar year)	
Value Added Tax (VAT)	-	7% of the remuneration but if you are hiring as 'Director', such remuneration shall not be treated as 'provision of services' which is not subject to VAT*
Stamp Duty	-	0.1 % of contractual value (if contractual value over THB 1 million, stamp duty must be paid in cash rather than affixing stamp)

*\*please see the Director-General Notification re VAT (no 205) for more details*

Therefore, the above legal concepts and tax consequence for both employment and hire of work shall be considered for clearly legal and taxes relation.

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**Keywords:** Employment, Hire-of-Work, Completion of Work, Service, Director, Person, Scope of work, Demanding, Employee, Employer, Responsibility, Result of Work, Contractor, Control, Taxes, Personal Income tax, Withholding Tax, VAT, Stamp Duty

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