

**For translation purpose only**  
**Official language is Thai language**

**Order of the Revenue Department**

**No. Por. 104/2544**

Re: Payment of value added tax on the provision of services abroad and such services are used in Thailand under Section 77/2 of the Revenue Code, and on the provision of services in Thailand and such services are used abroad under Section 80/1(2) of the Revenue Code

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In order that the Revenue Officials may use this Order as guidelines for the payment of value added tax on the provision of services abroad and such services are used in Thailand under Section 77/2 of the Revenue Code, and on the provision of services in Thailand and such services are used abroad under Section 80/1(2) of the Revenue Code, the Revenue Department hereby issues the Order as follows:

No. 1 An operator who renders services abroad and the services are used in Thailand, under Section 77/2 paragraph 3 of the Revenue Code, is subject to value added tax under Section 82/13 of the Revenue Code of which the tax point is, wholly or partly, at the payment, in full or in part, under Section 78/1(3) of the Revenue Code. The computation tax shall be made from the tax base under Section 79 and at the tax rate under Section 80 of the Revenue Code.

No. 2 The provision of services abroad which is used in Thailand under Section 77/2 paragraph 3 of the Revenue Code means any action that could seek benefits having a value and is not defined as a sale under Section 77/1(10) of the Revenue Code. Additionally, an overseas merchant renders such services abroad and the person receiving the service in Thailand has used the result of such action in Thailand.

In the case that the overseas operator transfers the ownership of intangible property to any operators or any persons in Thailand, the action shall not be regarded as a provision of services abroad which is used in Thailand under Section 77/2 paragraph 3 of the Revenue Code. It shall be regarded as a sale of intangible property under Section 77/1(8) and Section 77/1(9) of the Revenue Code.

Examples of the sale of intangible property under paragraph two are the transfer of ownership in patent rights, goodwill, trademark, copyright, concession, royalties or any other transfer of ownership of goods having a similar nature.

In the case that the overseas operator has permitted any operators or any persons in Thailand to use the patent rights, goodwill, trademark, copyright, concession, royalties or any other rights having a similar nature, and the overseas operator still owns the patent right, goodwill, trademark, copyright, concession, royalties or goods having a similar nature, the action shall not be regarded as a sale of intangible property under Section 77/1(8) and Section 77/1(9) of the Revenue Code. The action shall be recognized as a provision of services abroad which is used in Thailand under Section 77/2 paragraph 3 and Section 77/5 of the Revenue Code.

No. 3 Where the service receiver in Thailand pays a service fee to the operator in No. 1, the payer is required to remit value added tax that the operator is liable under Section 83/6(2) of the Revenue Code. The payer has to file in a value added tax submission form (Por.Por. 36) at the district office within 7 days counted from the last day of the month that the payment is made to the operator under Section 83/6 Paragraph 2 of the Revenue Code.

Examples:

(1) A Co., Ltd. (Thailand) enters into a machinery rental contract with a foreign company where the foreign company gives advice and recommendations concerning management, control, planning, laws, finance, marketing and personnel. All of the services mentioned are rendered abroad and the foreign company sends such information through telephone, facsimile, e-mail and mail to A Co., Ltd. (Thailand). This case shall be regarded as a provision of services abroad which is used in Thailand and A Co., Ltd. (Thailand) is required to file in a value added tax submission form (Por.Por.36).

(2) B Co., Ltd. (Thailand) enters into a machinery rental contract with a foreign company. The machinery is used in the manufacture of ready-to-wear clothes. This case shall be regarded as a provision of services abroad which is used in Thailand and B Co., Ltd. (Thailand) is required to file in a value added tax submission form (Por.Por.36).

(3) C Co., Ltd. (Thailand) enters into a highway design contract wherein C Co., Ltd. (Thailand) has subcontracted certain structural design work to a foreign company. The foreign

company does the design work abroad and send in the work to C Co., Ltd. This case shall be regarded as a provision of services abroad which is used in Thailand and C Co., Ltd. (Thailand) is required to file in a value added tax submission form (Por.Por.36).

(4) E Co., Ltd. (Thailand) enters into a manufacturing machinery repair contract with a foreign company. The machinery is sent for the repair abroad. When the repair is finished, the machinery is returned to E Co., Ltd. (Thailand) for the use in Thailand. This case shall be regarded as a provision of services abroad which is used in Thailand and E Co., Ltd. (Thailand) is required to file in a value added tax submission form (Por.Por.36).

(5) F Co., Ltd. hires a foreign company to design a golf course. The ownership of the golf course plan, details and drawings for the construction of such golf course remains with the foreign company. The payment made to the foreign company is a royalty. This case shall be regarded as a provision of services abroad which is used in Thailand and F Co., Ltd. (Thailand) is required to file in a value added tax submission form (Por.Por.36).

(6) G Co., Ltd. Operates a metal smelting business. It has bought a manufacturing copyright from a foreign company where the foreign company retains the ownership of such copyright. This case shall be regarded as a provision of services abroad which is used in Thailand and G Co., Ltd. (Thailand) is required to file in a value added tax submission form (Por.Por.36).

(7) A government agency buys a computer program from a foreign company. The price for the computer program includes the copyright of the program that the foreign company still owns, installation, maintenance, training, consultancy, travel expenses and housing of staff. This case shall be regarded as a provision of services abroad which is used in Thailand and the government agency is required to file in a value added tax submission form (Por.Por.36).

(8) H Co., Ltd. hires a foreign company to produce hotel brochures, are distributed to clients in Thailand and to foreign clients. This case shall be regarded as a provision of services abroad which is used in Thailand and H Co., Ltd. (Thailand) is required to file in a value added tax submission form (Por.Por.36) which includes the whole amount of the service fee.

(9) I Co., Ltd. buys advertising space online or rents a server of a foreign company. This case shall be regarded as a provision of services abroad which is used in Thailand and I Co., Ltd. (Thailand) is required to file in a value added tax submission form (Por.Por.36) which includes the whole amount of the service fee.

(10) J Co., Ltd. uses the internet of a foreign internet service provider. This case shall be regarded as a provision of services abroad which is used in Thailand and J Co., Ltd. (Thailand) is required to file in a value added tax submission form (Por.Por.36) which includes the whole amount of the service fee.

(11) K Co., Ltd. enters into data management or co-location with a foreign company. This case shall be regarded as a provision of services abroad which is used in Thailand and K Co., Ltd. (Thailand) is required to file in a value added tax submission form (Por.Por.36) which includes the whole amount of the service fee.

No. 4 In the calculation of Value Added Tax, the tax base shall be in accordance with Section 79 and the tax rate shall be in accordance with Section 80 of the Revenue Code.

The tax base of services rendered abroad but used in Thailand is the whole value that the operator receives or shall receive for such services. This includes money, property, compensation, service fee or any other benefits that can be computed into money.

In the case that the service receiver in Thailand is required to withhold income tax under Section 50 of the Revenue Code or under Section 70 of the Revenue Code, the service receiver must calculate the value added tax from the total income before withholding taxes.

In the case that the service receiver in Thailand agrees to be responsible for the income tax in lieu of the operator in Article 1, the income tax shall be regarded as any benefits that could be computed as money. The service receiver shall include the tax paid for as the value of tax base until there is no liable tax left.

No. 5 In the case that a service receiver in Article 3 is a registered operator, the value added tax that has been remitted in accordance with Section 83/6 (2) of the Revenue Code is purchase tax in the computation of value added tax under Section 82/3 of the Revenue Code. It shall be regarded as a purchase tax in the month in which the registered operator files in a value added tax submission form (Por.Por 36) and receives a receipt of the Revenue Department.

No.6 When the service is rendered abroad and is not used in Thailand, it shall not be regarded as the service rendered in Thailand under Section 77/2 Paragraph 3 of the Revenue Code. The

operator is not subject to value added tax under Section 82/13 of the Revenue Code. Therefore, the payor is not required to remit value added tax under 83/6(2) of the Revenue Code.

Examples:

- (1) A Co., Ltd. operates a business of selling good. It hires a foreign company to find customers in foreign countries. This case shall be regarded as the service that is rendered abroad and is not used in Thailand. A Co., Ltd. (Thailand) does not have to file in a value added tax submission form (Por.Por.36).
- (2) B Co., Ltd. operates a securities business and needs a loan. It hires a foreign company to find the lender in exchange for a fee. This case shall be regarded as the service that is rendered abroad and is not used in Thailand. B Co., Ltd. (Thailand) does not have to file in a value added tax submission form (Por.Por.36).
- (3) C Co., Ltd. operates a manufacturing business. It hires a foreign company as an agent to pay for goods to its foreign distributors. The agent has to reimburse the foreign distributors before collecting the reimbursement along with service fee to C Co., Ltd. This case shall be regarded as the service that is rendered abroad and is not used in Thailand. C Co., Ltd. (Thailand) does not have to file in a value added tax submission form (Por.Por.36).
- (4) D Co., Ltd. operates a hotel and hires a foreign company to proceed with sales promotion, marketing, advertising and hotel reservation. This case shall be regarded as the service that is rendered abroad and is not used in Thailand. D Co., Ltd. (Thailand) does not have to file in a value added tax submission form (Por.Por.36).
- (5) A foreign TV channel is open for advertisement of goods in foreign countries. Some of its compensations come from Thai manufacturers and distributors. This case shall be regarded as the service that is rendered abroad and is not used in Thailand. Thai manufacturers and distributors do not have to file in a value added tax submission form (Por.Por.36).
- (6) E Co., Ltd. hires a foreign company to produce an advertisement that is published in Sawasdee Magazine on board of domestic and international airlines. This case shall be regarded as the service that is rendered abroad and is not used in Thailand. Thai

manufacturers and distributors do not have to file in a value added tax submission form (Por.Por.36).

- (7) F Co., Ltd. hires a foreign company to post an advertisement in a foreign magazine which is also sold in Thailand. This case shall be regarded as the service that is rendered abroad and is not used in Thailand. F Co., Ltd. and distributors do not have to file in a value added tax submission form (Por.Por.36).

No. 7 In the case that a registered operator renders services in Thailand and the services are used abroad, the registered operator is subject to value added tax under Section 82(1) of the Revenue Code.

If the receiver of services rendered in Thailand but used abroad is a foreign person and the services is consumed entirely abroad, the registered operator shall pay value added tax using tax rate in Section 80/1(2) of the Revenue Code.

No. 8 Services rendered in Thailand and consumed abroad under No. 7 is any actions in return for consideration which is not sale of goods under Section 77/1(10) of the Revenue Code.

In the case that a registered operator transfers an ownership right in an intangible property to an operator or any person abroad, the transfer shall not be regarded as services rendered domestically but consumed abroad under Section 77/1(10) and Section 80/1(2) of the Revenue Code. It shall be regarded as a sale of intangible property under Section 77/1(8) and Section 77/1(9) of the Revenue Code.

Examples of the sale of intangible property in paragraph 2 include transfer of ownership in patent rights, goodwill, trademark, copyright, concession, royalties or any other transfer of ownership of goods having a similar nature.

When a registered operator grants the right to use patent rights, goodwill, trademark, copyright, concession, royalties or any other rights having a similar nature to an operator or any person, it shall not be regarded as a sale of intangible property under Section 77/1(8) and Section 77/1(9) of the Revenue Code. It shall be regarded as services rendered in Thailand but is used abroad under Section 77/1(1), Section 77/5 and Section 80/1(2) of the Revenue Code.

In the case that a foreign person hires a registered operator to write software of which the owner of the copyright is the foreign person, it shall not be regarded as a sale of intangible

property under Section 77/1(8) and Section 77/1(9) of the Revenue Code. It shall be regarded as services rendered in Thailand and is used abroad under Section 77/1(10), Section 77/5 and Section 80/1(2) of the Revenue Code.

Ordered this 7<sup>th</sup> day of February 2001

(SupparatKawatkul)

Director-General of the Revenue Department

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