



**EXPORT OF SERVICES SUBJECT TO ZERO RATE UNDER
THE REVENUE CODE**

**BY
MS. PAJAREE SOMSAP**

**AN INDEPENDENT RESEARCH PAPER SUBMITTED IN
PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF MASTER OF LAWS
(TAXATION LAW)**

**GRADUATE SCHOOL OF LAW
ASSUMPTION UNIVERSITY**

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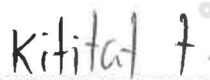
Independent Study Title : Export of Services Subject to Zero Rate under the
Revenue Code
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Faculty of Law, Assumption University approves this Independent Study as the partial fulfillment of the requirement for the Degree of Master of Laws.


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Independent Research Title : Export of services subject to zero rate under the Revenue Code

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Academic : 2007

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ABSTRACT

The main objective of an independent research is to describe the meaning of export of services subject to zero rate according to Section 80/1(2) of the Revenue Code and clauses 2 (1) of the Notification of the Director-General on VAT (Number 105)

The meaning of export of services is prescribed in Section 80/1(2) of The Revenue Code. The provision of services performed in Thailand and used in foreign countries could be zero rated if it is subject to rules, procedures and conditions, prescribed by the Notification of the Director-General.

Provision of services performed in Thailand and used in foreign countries includes provision of services performed in Thailand for manufacturing goods in a duty free zone for manufacturing goods for export.

Services provided in Thailand for persons in foreign countries must be the services which are performing in Thailand and the results of services are entirely used in foreign country. This is the meaning of export of service is subject to zero rate under the Revenue Code. The problem is the interpretation “entirely or totally used services in the foreign country” .In the case of provision of service performed by the service provider in Thailand by making a report in a form of document and sending it to foreign customer. Then the customer concludes a transaction with the manufacturer in

Thailand. The problem is whether it is an export of services is subject to zero rate or it is service used in Thailand.

The Revenue Department views that meaning of totally or entirely consumed services in the foreign country is not included the results of services which are exploited in Thailand, the cases where the results of such services are exploited in Thailand since it is partly consumed services in Thailand. Therefore, it is not regarded as export of service is subject to zero rate according to section 80/1(2) of the Revenue Code and clauses 2(1) of the Notification of the Director-General on VAT (Number 105) so the service provider in the foreign country is not subject to VAT in Thailand according to Section 80 under the Revenue Code.

On the other hand, the decision of the Central Tax Court stated that in the case where the results of such services are exploited in Thailand, such services are not used services in Thailand. The service provider is not subject to VAT in Thailand. The Central Tax Court pointed out that this is a provision of services performed in Thailand and totally or entirely consumed services in the foreign country. This is an export of services so the service provider is not subject to VAT in Thailand.

Tax rulings and the decision of the Central Tax Court has different ideas about the meaning of the term “entirely used services in the foreign country” under Section 80/1[2] under the Revenue Code and clause 2(1) of the Notification of the Director-General on VAT (Number 105). If services are entirely used in the foreign country, it should be regarded as an export of services. If services are partly used in Thailand, it is not an export of services. It means that the service provider or supplier is liable to VAT in Thailand.

The interpretation of export of services subject to zero rate should be consistent with the destination principle. Goods and services should be subject to VAT in the place where goods and services are used or consumed. So in the case of goods and services are exported, such transactions should be exempt or no taxes on such transactions. Section 80/1(2) of the Revenue Code and clause 2(1) of the Notification of The Director-General on VAT(Number 105) are prescribed conditions and the meaning

of export of services subject to zero rate. This is the domestic problem, so we should amend the domestic law.



ACKNOWLEDGEMENT

This Independent Research Paper, entitled “Export of service subject to zero rate under the Revenue Code” could not have been successfully completed without the support of A. Prapas Kong-iead as the advisor of the independent research paper, checking about the grammar and also providing advice.

Especially, I am very thankful for Assoc. Prof Nattapong Posakabutra, A. Kititat Tungsuwan and Dr. Petcharat Supanimitkulkit to give the guideline, ideas and teach me on how to write and what should be the approach in conducting the research, and which has been of great assistance to the author.

I would like to express my deepest thanks to teachers and members of the Faculty of Law, all my friends, especially my classmates, for their helps and support during my study at Assumption University.

Finally, I would like to give my utmost love and appreciation to my family for their fervent and continuous support.

Ms. Pajaree Somsap

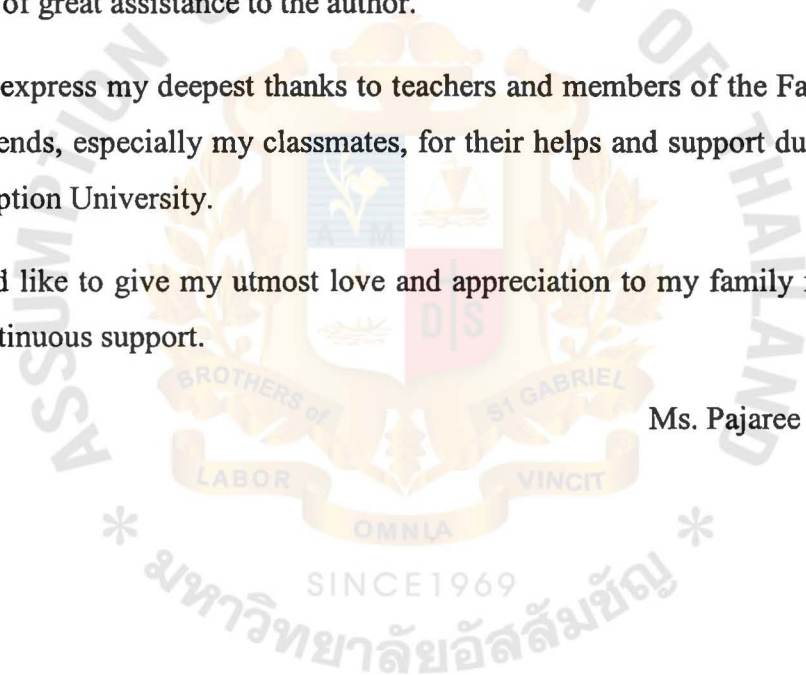


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Chapter 1

Introduction

1.1 Background and General Statement of the Problems

A supply of service means any act that may derive valuable benefits other than sale of goods according to section 77/1(10)¹ under the Revenue Code.

Value added tax (VAT) shall be charged provision of service which is performed in Thailand by the supplier.

Provision of service in Thailand means services performed in Thailand whether the use of such service is made in a foreign country or in Thailand. A service which is performed in a foreign country and is made use of in Thailand shall be treated as provided in Thailand.²

¹ Section 77/1 in this chapter, unless the context otherwise requires:

(10) “ Services” means any activity performed with a view to benefits of value other than sale of goods, and includes making use of the supplier’s own service by any means, but not including-

- (a) Making use of services or goods directly for his own business following the rules, procedures and conditions prescribed by the Director-General
- (b) Utilization of money for seeking benefits by way of depositing with banks or purchasing bonds or securities;
- (c) Any activity designated by the Director-General with the approval of the Minister.

² Section 77/2 Value added tax under the provision of this chapter shall be charged on the following transactions that are performed in Thailand:

- (1) Sale of goods or provision of a service by a supplier
- (2) Import of goods by an importer

Imposition of VAT for provision of service performs in Thailand is consistent with the destination principle which collects the tax base on the place of supplying services.

Zero-rated is a transaction in which the seller collects no output tax and the corresponding input tax is fully refundable. So Exports are zero rated. Zero rated is also imposing VAT but do not need the real money. The providers or suppliers can claim input tax as a credit.

Thailand does not need to collect VAT from provision of services performed in Thailand and used in the foreign country or export of services because the government needs to support the export of services.

Export of services means services are performed in Thailand and entirely used or consumed services in the foreign country. So export of services has problems about interpretation, especially on the term “entirely used services in the foreign country” under clause 2(1) of the Notification of The Director-General on VAT (Number 105). The practical problem always occurs, in the cases of provision of services in Thailand and used services in the foreign country for the recipients in the foreign country and services which are performed in Thailand are totally or entirely consumed in the foreign country according to section 80/1(2) of the Revenue Code and the Notification of the Director-General on VAT (Number 105).

clause2(1) of the Notification of the Director-General on VAT (Number 105) provided that the following business shall be designated as a business performed in Thailand, but used in a foreign country under Section 80/1(2) of the Revenue Code.

Provision of a service in Thailand means performing services in Thailand regardless of whether the use of such service is made in a foreign country or in Thailand- a service which is performed in a foreign country and is made use of in Thailand shall be treated as provided in Thailand.

The provision of services performed in Thailand to a recipient in a foreign country, where the entire services are used in foreign country. The provision of services under the first paragraph means any activity not being a sale of goods, performed to seek a valuable benefit but not including tour services in a foreign country.

Export of services must be totally consumed in the foreign country. If it is partly consumed services in Thailand, it is not an export of service which is subject to zero rate according to section 80/1(2) of the Revenue Code and the Notification of the Director-General on VAT (Number 105). It means that the provider would subject to VAT in Thailand according to section 80 of the Revenue Code.

The problem usually arises in the case that the service provider performed services by specifying or checking the quality of goods in Thailand. The provider makes the report in a form of document and sends it to the recipient in the foreign country. In this regard, the question is that sending the report of such services to a foreign country is considered as “totally or entirely used services in the foreign country”. This is because when the recipient receives the report, this service is already finished. The recipient uses the result of such report by ordering the goods with the manufacturer in Thailand. The legal problem in this independent research is on the interpretation of the term “totally used in the foreign country or partly used services in Thailand”. If it is totally used services in the foreign country, it means export of services subject to zero rate according to section 80/1(2) of the Revenue Code and clause 2(1) of ^{the} Notification of the Director-General on VAT (Number 105). If it is partly used services in Thailand, the service provider is liable to VAT in Thailand.

1.2 Hypothesis of the Research

Provision of services performed in Thailand and used of such services in the foreign country subject to zero rate under Section 80/1(2) of the Revenue Code and clause 2(1) of the Notification of the Director-General on VAT (Number 105) does not comply with the destination principle.

1.3 Objectives of the Research

This independent research is:

1. to study structure of VAT on provision of service performed in Thailand and used in the foreign country under The Revenue Code and clause 2(1) of the Notification of the Director-General on VAT (Number 105);
2. to study the legal problem when apply the case law on Section 80/1(2) of the Revenue Code and clause 2(1) of the Notification of the Director-General on VAT (Number 105);
3. to analyze the practical problem on export of service subject to zero rate of the Revenue Code;
4. to find the solution of the problem in order to solve the problem to be suitable principle.

1.4 Research Methodology

The research paper will be analyzed on the meaning of export of service subject to zero rate according to section 80/1(2) of the Revenue Code and clause 2(1) of the Notification of the Director-General on VAT (Number 105) and the Structure of VAT concerning export of services subject to zero rate in Thailand. This can be done by utilizing documentary research i.e. the Thai Revenue Code, the Revenue Department Monthly Journal, the Tax and Business Journal, textbooks, journals, applicable theses, the articles and VAT information regarding export of services in Thailand, Singapore and Canada.

1.5 Scope of the Research

The scope of an independent research is to study the provision of services performed in Thailand and used in the foreign countries according to Section 80/1(2) of the Revenue Code and to analyze the term “totally consumed in the foreign country” under clause 2(1) of the Notification of the Director-General on VAT (Number 105). The service is a report, provides on checking the qualities of goods in Thailand. Such report then is sent to the recipient in the foreign country.

1.6 Expectation of the Research

1. To know the characteristics and comprehend the system of VAT on export of services subject to zero rate in Thailand.
2. To know the significant role of the system of VAT on export of services subject to zero rate.
3. To know the legal opinion and interpretation.
4. To identify the legal problems and establish the solutions for such problems.

Chapter 2

General Structure of VAT under the Revenue Code

2.1 Introduction

Taxation is a compulsory levy by public authorities for which nothing is received directly in return. VAT effective in Thailand from 1st January 1992, replacing the former system of Business Sales Tax (BST).

VAT is a broad-based sales tax, an indirect tax imposed on the sales of goods or rendering of services by a supplier in Thailand, on importation of goods and services. VAT is a tax on consumption expenditure. It is collected on business transactions and imports. VAT is an assessment tax and duty³. VAT is the taxes is collected from the manufacturers, providers or importer who the sells goods or provides a commercial or professional services⁴.

VAT means the valuable that producer or manufacturer added up on the capital goods or services in order to fix the price of purchase or the price of service fee. In addition, value added tax is output tax⁵ subtract input tax⁶. The popular method of calculation

³Section 77

⁴Section 80 the tax rate of 10 percent shall be applied in computing value added tax on the following transactions, except in the cases provided in section 80/2:

- (1)Sale of goods,
- (2)Provision of services,
- (3)Imports

The tax rate under the first paragraph may be reduced by a Royal decree, provided that the rate shall be uniform for sale of goods, provision of services and import all cases.

⁵Amounts received from buyers in sales=VAT on sales

⁶Amounts paid to sellers in purchase=VAT on purchases

in VAT system is the Credit-Invoice method which is the method of calculation in VAT system in Thailand.

The advantages of the Credit-Invoice method are as follows;

- Easy to calculate.
- Using an invoice as evidence for reclaiming of input tax.
- Cross checking the record firm.
- Fully tax free exports.
- The disadvantages of the Credit-Invoice Method are as follows
- High compliance and administrative costs.
- Taxpayers trend to issue a false tax invoice.

The Credit-Invoice method require a business to register for VAT purpose⁷,issuing of VAT invoices to consumers when the firm sells goods or provides services and maintain reports[record-keeping] with supporting documentation(e.g. output tax, report, input tax, goods , raw material and tax invoices).

2.2 Taxpayer

Person who is liable to VAT are as follows

2.2.1 A Supplier

A supplier means a person who sells goods or provides a commercial or professional services, whether in doing so he receives any benefit or

⁷Section 77/1 in this chapter, unless the context otherwise requires:

(6) “Registrant” means a supplier who has been recorded for value added tax registration under section 85 or 85/1 or for temporary value added tax registrant under section 85/3.

consideration, and whether or not he is recorded for value added tax registration under section 85/3 ⁸according to section 77/1(5).

Suppliers can be divided into 3 categories as follows:

1. Natural person, includes an estate under Section 77/1(2)
2. Non-juristic body of persons Means an ordinary partnership, a non-juristic fund or foundation, and includes a non-juristic work or business unit operated by two or more natural person under Section 77/1(3) for example committees and the agriculturist etc.

⁸Section 85/3 the following suppliers are not required to be recorded for value added tax registration:

- (1)A supplier residing outside Thailand and temporarily carrying on business of selling goods or providing services in Thailand,
- (2)A supplier providing services in a foreign country and the services are used in Thailand,
- (3)Other suppliers designated by the Director-general whenever there are appropriate reasons

The Director-General may allow a supplier under (1) or (3) who carries on business of such description and in such manners as given or designated by him to apply for temporary value added tax registration.

The application for temporary value added tax registration and the issuance of a certificate for such a registration shall be in the form and shall follow the rules, procedures and conditions prescribed by the Director-General.

For the purpose of complying with the first paragraph, the Director-general shall have the power to prescribe rules and conditions for the determining whether any particular instance of carrying on the business of selling goods or providing services in Thailand is of a temporary nature.

3. Juristic person means a juristic company or partnership under Section 39, a governmental organization under section 2, a co-operative and any other entity designated by law as a juristic person Section 77/1(4).

The supplier means a person who sells goods or provides a commercial or professional service, whether the supplier receives any benefits or considerations or not, and whether or not he is recorded for value added tax registration section 77/1(5).

For example, Mr. A works as an employee has salary income and has car for his own use then he sold his car. Sale of his car does not selling goods in commercial or professional service, so Mr. A is not a taxable person according to section 77/1(5).

2.2.2 Importer

Importer means a supplier or any other person who imports goods into Thailand under section 77/1(11).

Import means bringing goods into Thailand and includes removing goods from an duty free zone not for exporting purpose whether liable to or exempt from input duty under the law governing customs according to section 77/1(12).

Duty free zone means a duty free zone under the law governing customs, an export processing zone under the law governing industrial estate of Thailand, and other zones designated by law to be exempted from import duty according to section 77/1(21).

So, importer whether the supplier or not the person who does not the supplier import is goods in to Thailand, also will subject to VAT. For example, the corporation is the supplier at export processing zone according to section 77/1(21) of the Revenue Code. The supplier removes the fraction material

from the export processing zone in order to sell for the consumer in Thailand and not for exportation purpose so the supplier has to pay VAT on the importation.

2.2.3 Other persons

Other persons which also are liable to VAT are following

1. An agent under section 82/1(1) Agent means a person who concludes contracts or has the responsibility for maintaining a stock of goods, securing customers, or doing any act in connection with the carrying on the business in Thailand for or on behalf of a supplier residing outside Thailand according to section 77/1(7)
2. The transferee of such goods or such right section 82/1(2)
3. In the case of importation of goods listed in the part on exempted goods from duty under the law governing customs tariff, valued added tax being exempted under section 81(2)(c), if the goods afterwards become liable to duty under the law governing customs tariff:
 - a. The person with the liability under the law governing customs tariff,
 - b. The transferee, if goods are transferred according to section 82/1(3)
4. In the case of amalgamation: the persons amalgamated and the new supplier according to section 82/1(4)
5. In the case of transfer of business: the transferor and the transferee according to section 82/1(5)

6. In case of a supplier living outside Thailand and temporarily carrying on business of selling goods or providing services in Thailand without being required to record for value added tax registration according to section 82/13

7. In case of a supplier provide service from the foreign countries and used service in Thailand, the supplier has duty to pay VAT when tax liability arisen according to section 82/13

2.3 Tax Point

Tax point means the point which law imposed the burden of tax for the supplier for example,

- The supplier has duty to collect VAT from the buyer or the recipient according to section 82/4 under the Revenue Code.
- The supplier has duty to issue and deliver tax invoice to the buyer or the recipient according to section 86 under the Revenue Code.

If the suppliers do not comply with such duties, they would be punished under the criminal law and need to pay fine also.

Tax point can be divided in to 4 cases.

2.3.1 Sale of goods

1. In case of sales of goods other than that are dealt with in (2), (3), (4), or (5), full liability shall arise upon the delivery of goods, except where any acts occurs before such a delivery, the liability shall be arise upon the occurrence of such acts:

- a. Transfer of the ownership of the goods,
- b. Receiving payment of the price of the goods,
- c. Issuance of a tax invoice

However, the liability that arises shall be proportionate to the extent of such acts according to section 78(1)

2. In case of sale of goods by the way of hire-purchase or installment sales whereby the ownership of the goods is not yet transferred to the purchaser upon delivery of goods, liability shall arise when the payment of price becomes due for each payment period, except where any acts occurs before the payment becomes due for any period, liability shall be to arise upon the occurrence of such acts:

- a. Receiving payment for the price of goods,
- b. Issuance of a tax invoice

However, the liability that arises shall be proportionate to the extent of such acts, according to section 78(2).

3. In cases of sale of goods through a sale agent and goods has been deliverer to agent, only if the agency agreement covers such a category of goods and follows such rules, procedures and conditions designated or prescribed by the Director-General with the approval of the Minister, full liability shall arise when the agent delivers goods to the purchaser, except where any of the following acts occurs before the delivery, liability shall be deemed to arise upon the occurrence of such acts:

- a. Transfer of the ownership of goods by the agent to the purchaser,
- b. The agent receiving payment of the price of the goods,
- c. Issuance of a tax invoice by the agent, or
- d. Appropriation of goods for use by the agent or any other person

However, the liability that arises shall be proportionate to the extent of such acts according to section 78(3).

4. In the case of sale of goods by way of export, liability shall arise as follows:

- a. All exports other than (b) and (c), liability shall arise upon payment of export duty, or furnishing security or surety for export duty, except where goods are free of or exempt from export duty, liability shall be arise on the date of issuing an export entry under the customs law.
- b. Export by way of bringing goods into an export processing zone under section 77/1(14) (a), liability shall arise on the date when the domestic goods are brought into export processing zone.
- c. Export of goods lying in a bonded warehouse under customs law, liability shall be arise concurrently with the liability under customs law, section 78(4).

5. In the case of sales of zero-rated goods under section 80/1(5), if the ownership of goods is afterwards transferred and the transferee becomes liable to value added tax under section 82/1(2), liability shall arise upon the transfer of the ownership according to section 78(5).

2.3.2 Provision of services

The tax point of provision of service according to section 78/1 can be divided into 4 cases as follows:

1. Provision of services other than (2),(3) or (4), full liability shall arise when the consideration for service is received, except any acts occurs earlier, the liability shall be arise upon the occurrence of such acts:

- a. Issuance of a tax invoice, or
- b. Use of the service whether by the supplier or any other person.

However, the liability that arises shall be proportionate to the extent of such acts, as the cases may be under section 78/1(1).

2. Provision of services where a consideration therefore is by agreement payable on the basis of a percentage of a completion, the liability in respect of each portion of the service shall arise when the consideration for the completed portion is received, except where any of the following acts occurs earlier, the liability shall be deemed to arise upon the occurrence of such acts:

- a. Issuance of a tax invoice, or
- b. Use of the service whether by the supplier or by any other person

However, the liability that arises shall be proportionate to the extent of such acts according to section 78/1(2).

3. In the case of service is performed in a foreign country and is made use of in Thailand, full or partial liability shall be deemed arise when a consideration for the service is paid in full or in part, as the case may be according to section 78/1(3).

4. In the case of provision of zero-rated service under section 80/1(5), if the right of the service is afterwards transferred and the transferee becomes liable to value added tax under section 82/1(2), full liability shall be deemed arise when the consideration for the service is received, section 78/1(4).

2.3.3 Importation

The tax point of importation can be divided into 4 cases according to section 78/2.

1. In cases of import other than as dealt with in (2), (3), or (4), liability shall arise upon the payment of import duty or furnishing security or surety for import duty, except where goods are free of or exempt from import duty, liability shall be deemed to arise on the date of issuing a customs entry under customs law according to section 78/2(1).
2. In case of bringing domestic goods into an export processing zone and afterwards removing them from such a zone not for export as described in section 77/1(12), liability shall arise on the date when the goods are removed according to section 78/2(2).
3. In case where imported goods are left unattended under the customs law, liability shall arise when the authority sells the goods by public auction or by any other method for the purpose of using the proceeds for settlement of tax, storage charges, handling expenses or any other obligations according to the procedures prescribed by the customs law according to section 78/2(3).
4. In case of import of goods listed in the part on exempted goods from duty under the customs tariff law, being exempt from VAT under section 81(2) (c), if afterwards such goods become liable to duty under the customs tariff laws, thereby causing the person liable to duty under such laws or the transferee of the goods to become liable to value added tax under section 82/1(3), liability shall arise concurrently with the liability under the customs tariff law according to section 78/2(4).

2.3.4 Specific cases on the sale of goods and provision of services

Sale of goods or provision of services in the following cases shall be governed by a Ministerial Regulation according to section 78/3.

1. Sale of incorporeal goods such as patent rights or goodwill, sale of electricity currents, sale of goods of a similar nature, or a certain type of sale where, because of the nature of the goods, the time of their delivery is unascertainable according to section 78/3(1)
2. Sale of goods or provision of services by means of automatic equipment requiring payment by depositing coins, inserting cards or using a similar device according to section 78/3(2)
3. Sale of goods or provision of services payable by means of credit cards or a similar device according to section 78/3(3)
4. Sale of goods under an agreement to sell goods under section 77/1(8)
(a) According to section 78/3(4)
5. Sale of goods under section 77/1(8) (d), (e), (f) or (g) according to section 78/3(5)

Such a Ministerial Regulation may so prescribe that ability to value added tax arises differently among different categories of goods or services.

2.4 Tax base and Tax rates

2.4.1 Tax base

Value of the tax base for sale of goods or provision of services means the total value received or receivable by a supplier or service provider from such sales or provisions inclusive of excise tax as defined in section 77/1(19), if any according to section 79

Tax base * Tax rate = VAT

General Goods and Services

Tax base of VAT is the total value received or receivable from the supply of goods or services. Value means money, property, consideration, service fees, or any other benefits which is ascertainable in terms of money.

Tax base will also include any Excise tax arises in connection with such supply. However, tax base is exclusive of the VAT itself and does not include any discounts or allowances, but only if discounts or allowances are clearly shown in the tax invoices.⁹

⁹ Section 79 Subject to Section 79/1, the tax base for sale of goods or provision of services means total value received or receivable by a supplier from such sales or provisions inclusive of excise tax as defined in Section 77/1(19) if any.

Value of the tax base means money, property, compensation, consideration for services, or any benefit ascertainable in terms of money.

Value of the tax base shall be exclusive of-

(1) a discount or an allowance which is granted by a registrant at the time of sale of goods or provision of services, and is deducted from the price of goods or services, such deduction being expressly shown in tax invoice issued on each occasion: Provided that in the case of sale of goods or provision of services by a registrant who

Imported Goods

Tax base = C.I.F. price + Import duty + Excise Tax (if any) + other taxes and fees (if any)¹⁰

is entitled to issue a summary tax invoice under Section 86/6 or 86/7, the registrant may omit depressingly showing such deductions in the summary tax invoice, (1) a rebate or subsidy prescribed by the Director-General with the approval or the Minister,

(3) Output tax,

(4) Compensation answering to the descriptions and conditions given or prescribed by the Director-General with the approval of the Minister.

¹⁰ Section 79/2 The tax base for import of goods of all kinds shall be governed by the following rules:

(1) The tax base for import of goods of all kinds shall be the value of the imported goods determined by reference to C.I.F. price plus import duty and excise tax defined under Section 77/1(19), special surcharge under the law governing promotion of investment, and other taxes and fees listed by a Royal Decree.

In the case of import of goods in respect of which an importer is entitled to exemption from or reduction of import duty by virtue of the law governing promotion of investment or any other law, the amount of import duty which is exempted or reduced shall be included as value in the tax base.

C.I.F. price shall be cost of goods plus insurance charges and freight up to the Customs post of import, provided that-

(a) in the case where the Director-General of Customs by notification requires that an average a market price under the law governing customs tariff be applied for any category of dutiable goods, such price shall be taken in lieu of C.I.F. price;

(b) In the case where the Customs officer reassesses price subject to import duty under the law governing customs, such price shall be taken in lieu of C.I.F. price.

(2) in the case of import of the goods listed in the part on goods exempted from duty under the law governing customs tariff, being exempt from value added tax under

Exported Goods

Tax base = F.O.B. price + Excise Tax (if any) + other taxes and fees (if any)¹¹

Section 81 (2) (c), if afterwards such goods become liable to duty under the law governing customs, thereby causing the person liable to duty under such laws or the transferee of the goods to become liable to value added tax under Section 82/1(3), the tax base in respect of such goods shall be the value of the goods in the condition and of the quantity on the date when the liability under Section 78/2(4) arises.

¹¹Section 79/1 The tax base for sale of goods or provision of services in specified business shall be governed by the following rules:

(1) The tax base for sale of goods by way of export shall be the value of the exported goods determined by reference to F.O.B. price plus excise tax defined under Section 77/1(19) and other taxes and fees listed by a Royal Decree, but not including export duty.

F.O.B. price shall be price of goods at the Customs post of export excluding insurance charges and freight for carriage from such post to a foreign country.

(2) The tax base for provision of international transport services,

(a) in the case of carriage of passengers, shall be value of the fares, fees and any other benefits collectible in Thailand in respect of such carriages before deduction of any expenses;

(b) In the case of carriage of goods, shall be value of the freight, fees and any other benefits collectible whether in Thailand or elsewhere in respect of carriage of goods from Thailand before deduction of any expenses.

(3) The tax base for sale of goods or provision of services in specified businesses other than (1) or (2) shall be as prescribed by a Royal Decree.

2.4.2 Tax rates

The Revenue Code provides the rate of VAT in 2 rates

1. The tax rate of 10 percent shall be applied in computing value added tax on the following transactions, except in the cases provided in section 80/1.

- a. Sale of goods,
- b. Provision of services,
- c. Imports

The tax rate under the first paragraph may reduced by a Royal Decree, provided that the rate shall be uniform for sale of goods, provision of services and import in all cases section 80.

Currently, the rate is 7 percent.

Zero percent rated shall be applied in computing value added tax on the following transactions (Zero rate) according to section 80/1 of the Revenue Code and clause 2(1) of the Notification of the Director-General on VAT (Number 105).

Certain activities are liable to VAT at the rate of zero percent. Those activities include:

- export of goods;
- services rendered in Thailand and utilized outside Thailand;
- aircraft or sea-vessels engaging in international transportation

- supply of goods and services to government agencies or state-owned enterprises under foreign-aid program;
- supply of goods and services to the United Nations and its specialized agencies as well as embassies, consulate-general and consulates;
- Supply of goods and services between bonded warehouses or between enterprises located in duty free zone.

2.5 VAT on provision of services

2.5.1 Provision of service performed and used in Thailand

“Services” means any activity performed with a view to benefits of value other than sale of goods, and including-

1. Making use of services or goods directly for his own business following the rules, procedures and conditions prescribed by the Director-General;
2. Utilization of money for seeking benefit benefits by way of depositing with banks or purchasing bonds or securities;
3. Any activity designated by the Director-General with the approval of the Minister according to Section 77/1(10)

Service has widely meaning. It is easy to understand by giving the meaning of service is any acts which are not considered as sale of goods it is provision of services.

Provision of services in Thailand means performing services in Thailand regardless of whether the use of such services is made in a foreign country or in Thailand under Section 77/2 paragraph 2 of the Revenue Code

Tax ruling which concern the service perform in Thailand is as follows

Kor khor 0802/ por.8774 dated May, 19 B.E.2536

Thai Corporation as a sale agent who provides service to contact the customer to buy goods from A Corporation located in foreign country. Thai Corporation received a commission from A Corporation. Thai Corporation provided service in Thailand according to section 77/1 Paragraph 2, so this service subject to VAT according to section 77/2(1) of the Revenue Code.

2.5.2 Provision of service performed in the foreign country and used in Thailand

A service which is performed in the foreign country and is made use in Thailand shall be treated as provided in Thailand according to section 77/2 paragraph 3 of the Revenue Code.

Tax ruling which concern the service perform in Thailand is as follows

Kor khor 0802/ por. 17407 dated September, 7 B.E.2536

The Corporation hires the foreign company located in Hong-Kong to advertise the magazine for domestic passengers reading. It only is provision of service performed in foreign country and used in Thailand according to section 77/2 Paragraph 3, so it is subject to VAT according to section 77/2(1) of the Revenue Code.

2.5.3 Provision of services performed in Thailand and used in the foreign country

The tax rate of zero percent shall be applied in computing value added tax on the Provision of services performed in Thailand and used in the foreign country according to section 80/1(2) of the Revenue Code and clause 2(1) of the Notification of the Director-General on VAT (Number 105).

1. Export of goods other than that exempt from value added tax under Section 81(3) of the Revenue Code

2. Provision of services performed in Thailand and used in foreign countries, according to the categories, rules, procedures and conditions, prescribed by the Director-General.

Provision of services performed in Thailand and used in foreign countries includes provision of services performed in Thailand for manufacturing goods in a free zone for export and services performed in a free zone for manufacturing goods for export.

3. Provision of international transport services by aircraft or sea-going vessels by a supplier who is a juristic person.

4. Sale of goods and provision of services to a ministry, sub-ministry, department, local government authority or state enterprise under a foreign loan or assistance project, only in cases which follow the rules, procedures and conditions prescribed by the Director-General.

5. Sale of goods and provision of service to the United Nations Organization, its specialized agencies, an embassy, legation, consulate-general or consulate, only if the sale of goods or provision of services

follows the rules, procedures and conditions prescribed by the Director-General.

6. Sale of goods and provision of services between one bonded warehouse and another, between a bonded warehouse and a supplier carrying on business in an export processing zone, or between one supplier and another each of whom carries on business in an export processing zone, whether or not the same zone, only if such sale of goods or provision of services follow the rules, procedures and conditions prescribed by the Director-General.

A bonded warehouse under the first paragraph means a bonded warehouse under the law governing customs according to section 80/1 of the Revenue Code.

A provision of services performed in Thailand and used in the foreign country always receives zero rated according to section 80/1(2) of the Revenue Code and clause 2(1) of the Notification of the Director-General on VAT (Number 105).

Zero rate for the supplier who sale of goods or provision of services which is provided in the Revenue Code, the supplier has to pay VAT for output tax but the supplier can claim VAT of input tax as a credit, if the exemption applies; the supplier can not claim input tax as a credit. Export of services is considered as zero rated, if all conditions of export of service are fulfilled as follow section 80/1(2) of the Revenue Code and the Notification of the Director-General on VAT (Number 105).

For example: Provide model design service then the contractor used model to build a building in the foreign country. It means building model

was design in Thailand and used in the foreign country so the provider will qualify for zero rate.

The Notification of the Director-General on VAT (Number 105)

Clause2. The following business shall be designate as a business performed in Thailand, but used in a foreign country under section 80/1(2) of the Revenue Code.

“1. The provision of services performed in Thailand to the recipient of services in a foreign country, where the entire services is used in a foreign country.

The provision of services under the first paragraph means any activity not being a sale of goods, performed to seek a valuable benefit but not including tour service in a foreign country.”

Tax rulings which do not regard as export of services subject to zero rate.

Kor khor0811/por./9850 dated October, 12 B.E.2544

The Japan Corporation hires A Corporation to produce plastic bag for export to Japan Corporation. The Japan Corporation hires B Corporation to check quality of goods and made the report then B Corporation sent the report to The Japan Corporation. This is a provision of service performed in Thailand and also used in Thailand. It is not an export of service according to clauses 2(1) of the Notification of The Director-General on VAT (Number 105). The provider will not qualify for zero rate according to section 80/1(2) of the Revenue Code.¹²

¹² Kor khor0701/por./1875 dated February, 25 B.E.2547.
Kor khor 0706/por./5782 dated June, 19B.E. 2546.
Kor khor0811/por./6176 dated July, 10 B.E.2545.

Kor/khor 0811/por./10138 dated October, 22 B.E.2544

Corporation located in the foreign country order goods from B Corporation located in Thailand but B Corporation did not have goods. B Corporation contacts C corporation then C corporation contact D corporation. D corporation is the seller in the foreign country sell goods for B Corporation. C Corporation located in a foreign country received commission as considerations from D corporation located in the foreign country .In this case, C Corporation is a sale agent of D Corporation, so C Corporation has duty to pay VAT from the price of commission received from the foreign country. It is not a provision of service performed in Thailand and used in the foreign country according to section 80/1(2) under the Revenue Code and Clause 2(1) of the Notification of the Director-General on VAT (Number 105.)

Kor khor 0706/por./1310 dated February, 9 B.E.2547

The corporation, as an employee, installs networking system in Thailand to connect with an employer in the United State with a duty to improve application software in order to make the system become more efficient. It is a provision of service performed in Thailand, so the service provider has duty to pay VAT is 7 percent according to section 77/2 and section 80 of the Revenue Code. It is not export of service subject to zero rate according to section 80/1(2) of the Revenue Code.

Kor/khor 0706/por./6172 dated July, 8 B.E.2548

The Corporation open website “www.yahoo.com” to advertise another foreign website. If the user would like to see details or information the user has to log in to this website. The foreign company will pay a consideration to Thai Corporation. It is not a provision of service performed in Thailand and used in foreign country according to section 80/1(2) of the Revenue Code and clause 2(1) of the Notification of the Director-General on VAT (Number 105). Although it is a provision of service performed in Thailand for the recipient who lives in the foreign country but it does

not totally consumed such service in the foreign country because Thai customer might use service by log in to foreign website. So Thai Corporation has duty to pay VAT is 7 percent according to section 80 of the Revenue Code.

Kor/khor 0706/por./11282 dated December, 21 B.E.2547

The Corporation imports the diamond from the contractor in the foreign country. The Corporation cut precious diamond and delivers diamond to Thai Corporation. The Thai Corporation will deliver goods to the contractor in the foreign country. And the Corporation will collect the price of service fee from the contractor. This is a provision of service performed in Thailand and used in Thailand. The Corporation has duty to pay VAT is 7 percent according to section 77/2(1) of the Revenue Code and section 80(2) of the Revenue Code.

Kor/khor 0706/por./3368 dated April 26 B.E. 2548

The Corporation provides advertising and public relations service to The Corporation. Service is sent world wide by create online e-catalog Company profile, and post trade lead. Period of time 3 months, 6 months and advertise Banner in Corporation of website, the recipient might be use service both of Thai and foreign customer. This is not a provision of service performed in Thailand and used in the foreign country so this is not an export of service subject to zero rate according to section 80/1(2) of the Revenue Code.

Tax rulings can be regarded as the provision of services performed in Thailand and used in the foreign country or export of service subject to zero rate.

Kor khor 0706/por./6060 dated June, 26 B.E. 2546

The Corporation provides service about translate and add Thai sound for feature movies program. The corporation will send translated script and Thai sound for the

employee Corporation in order to assemble with foreign feature. It is provision of service performed in Thailand for the foreign customer and totally consumed in the foreign country. So the Corporation will qualify for zero rate according to section 80/1(2) of the Revenue Code and clause 2(1) of the Notification of Director-General on VAT (Number 105).

Kor/khor 0706/por./10785 date December, 13 B.E. 2545

The Corporation provides software and database management to the foreign customer. This includes the improvement of small application software (program) to work in Thailand, the installation of the service through internet or sending the person to work in the foreign country and totally consumed services in the foreign country. It is a provision of service performed in Thailand and used in foreign country. The provider will qualify for zero rate according to section 80/1(2) of the Revenue Code and clause 2(1) of the Notification of the Director-General on VAT (Number 105).

Kor khor 0811/por./6733 dated August, 7 B.E. 2545

The foreign company hires the A Corporation and B Corporation which is Thai Company to accompany with each other for hot oil Recovery business. The A Corporation did the first part of work then send to the B Corporation to do the second part, the first part of work is provision of service according to section 77/1(10) of the Revenue Code which have to pay VAT in Thailand. A Corporation and B Corporation is regarded as employees for Hot oil Recovery business in Thailand for the foreign country, which the recipient live in the foreign country. When the provider sent the report to the foreign customer, service is totally consumed in the foreign country according to section 80/1(2) of the Revenue Code and clause 2(1) of the Notification of the Director-General on VAT (Number 105).

Kor khor 0811/por./4014 dated April, 27 B.E. 2544

The Corporation provides business consulting services to the customer in the foreign country. The Corporation totally consumed service in the foreign country. The Corporation will qualify for zero rate according to section 80/1(2) of the Revenue Code and clause 2 (1) of the Notification of the Director-General on VAT (Number 105).

Kor/khor 0706/por./3368 dated April, 26 B.E. 2548

The Corporation runs an e-commerce business services through website, by exporting and sending the report to the buyer in form of CD-ROM or E-mail. It is a provision of service through e-mail. If the Corporation send report to the foreign customer and the customer totally consumed service in the foreign country, the provider will qualify for zero rate according to section 80/1(2) of the Revenue Code and clause 2(1) of the Notification of the Director-General on VAT (Number 105).

Kor Khor 0706/ Por. /7663 September 8 B.E.2549

A corporation provides internet services to B Corporation in the foreign country as follow:

Customer services, for example, giving credit and risk management, supporting information via e mail and check the correct invoice from the store

Credit card services, in case of the customer pay the price of goods for B Corporation (a recipient) and then a recipient sent credit card information to a corporation (a supplier) to manage with The Bank to pay the price of goods. A Corporation received services fee from B Corporation.

Data –bases management for A Corporation. Data- bases are concerned with customer information that is related with B Corporation's business

B Corporation is a provider in Thailand provided services for the A Corporation in Singapore so this is a provision of services performed in Thailand and totally used in the foreign country. All of services are considered as export of service subject to zero rate. B Corporation is not subject to VAT in Thailand.

Kor Khor 0706/ Por. / 6913 August 16 B.E. 2549

The supplier in Thailand provides services on production of the plate of shoes and sends it to the customer in the foreign country in order to produce shoes. It is a provision of services performed in Thailand and entirely used services in the foreign country according to section 80/1(2) of the Revenue Code and clause 2 (1) of the Notification of the Director-General on VAT (Number105).

The decision of the central tax court regarding export of services

The plaintiff is the service provider about of checking quality of goods for world wild customers. The plaintiff is a services provider for the customer. In this case the supplier does not have to pay VAT for the price of service fee that received from the foreign customer.

The supplier provided services as follow:

1. Services Provider provides checking or specifying the quality of goods by making a report in form of document and sends the report to the customer in the foreign country. The foreign customer buys goods from the manufacturer in Thailand. The customer in a foreign

country hires the service provider to check the quality of goods at the factory of the manufacturer in Thailand.

The manufacturer allowed the service provider to check goods which are prepared for packing and sell to the foreign customer. It is advantages of the customer to consider the price of goods for complete a transaction with the manufacturer in Thailand. When the provider finished checking quality of goods according to the order of the customer in a foreign country and then the service provider made report in form of document and sent it to the foreign customer for consideration. The service provider in Thailand also made the certificate on goods for the foreign customer. Certification of goods and the report are done in Thailand in a form of document for the foreign customer. The provider in Thailand received the service fees from the foreign customer.

2. Provision of services for the government which is the import goods from Thailand. In this case, the foreign customer is a provider as a subsidiary of the corporation in Thailand. When the provider in the foreign country is worked as an employee for the foreign customer then provider in the foreign country informing the provider in Thailand to check or specify goods of the manufacturer in Thailand. And then the provider in Thailand made the report in form of document sent to the provider in the foreign country. The provider in Thailand received service fees from the foreign customer.

3. Checking properties of manufacturer in Thailand. In this case, the customer in the foreign country needs to buy goods from the manufacturer in Thailand. So the foreign customer hires the provider in Thailand to check properties of the factory of the manufacturer in Thailand. Then the provider made a report in form of document sent to the customer in the foreign country.

4. Analyzed the example of goods in the laboratory. The provider in Thailand work as an employee for the foreign customer to check and analyze an example of goods about chemical and science in the laboratory because the foreign customer does not has the expert to analyze goods or does not has the equipments to check goods directly. So the foreign customer hires the provider in Thailand to check the quality of goods. After, the provider finished checking the quality of goods it will sent the report to the foreign customer.

All of 4 services are provision of service performed in Thailand and totally or entirely consumed in the foreign country.

The provider in Thailand received the services fee from the foreign customer so the provider will qualify for zero rates according to section 80/1(2) of the Revenue Code and Clause 2(1) of the Notification of the Director-General on VAT (Number 105).

The decision of the Central Tax Court stated that all of 4 services are provision of services performed in Thailand and used in the foreign country or export of services subject to zero rates with respect to checking to or specifies quality of goods of the manufacture in Thailand for the foreign customer.

The service provider provides services for the foreign customer as follow:

The supplier in Thailand provides checking services or specifies quality of Goods and then makes a report in form of document for the customer in the foreign country.

Provision of service for the governments which is import goods from Thailand by checking properties of the manufacturer in Thailand and then makes a report in form of document to their subsidiary in the foreign country.

Provisions of services for the foreign customer about check or specify the property of the manufacturer in Thailand because of consideration the properties of the factory and goods for export from Thailand to the foreign country and then the provider in Thailand make a report in form of document for the foreign customer.

Analyzes the example of goods in the laboratory and then the service provider make a report to the customer in the foreign country.

From the decision of the Central Tax Court, the provider in Thailand receives the services fee from the customer in the foreign country. So all of 4 services are export of services subject to zero rate according to section 80/1(2) of the Revenue Code and the clause 2(1) of the Notification of the Director-General on VAT (Number 105).

When the provider is worked as an employee for the foreign customer then the provider in Thailand checked or analyzed goods or the example of goods or the place of produce goods and made report about the solution of checking or analyzes then sent reports to the foreign customer. The customer used service by read details in reports for made a decision to have a transaction with the manufacturer in Thailand.

The Central Tax Court views that all 4 services are totally or entirely consumed in the foreign country. The report is the service. The customer in the foreign country only used the result of report is exploited in Thailand to make a decision in order to do transaction with the manufacturer in Thailand. And all of conditions of service are provision of service performed in Thailand and used services in the foreign country and totally consumed service in the foreign country because the transaction between the foreign customer and the provider in Thailand is finished when the customer in the foreign country received report from the provider in Thailand.

The transaction between the manufacturers in Thailand is not related with the service provider in Thailand. The foreign customer already used the content of report when they received the report from the service provider in Thailand.

The foreign customer only used the result of the report is exploited in Thailand. It totally or entirely consumed service in the foreign country according to section 80/1(2) under the Revenue Code and Clause 2(1) of the Notification of the Director-General on VAT (Number 105).



Chapter 3

International principle on export of service

3.1 Origin Principle

Country of origin is the country of manufacture production, or growth where a product comes from.

Country of origin regulation is consistent with the principles of the internal market and enables broadcasters to operate with significant efficiencies.

Country of origin regulation also encourages freedom of information which helps to ensure that the human rights of European citizens are protected.

The "country of origin principle" is a rule that would facilitate the free movement of service providers on a temporary basis to encourage cross-border competition or, more specifically, to encourage individuals or companies to test other markets without first having to establish. What makes this different from the "freedom of establishment" is that the company or individual may provide services to consumers in another Member State on the basis of the laws of its country of establishment origin and without registering with the regulators in the host Member State. The final version of the Directive did not include the Country of Origin Principle but, instead, reminded Member States of the principle of free movement, while accepting inroads when free movement collides with other public interests. However, before making such inroads, authorities have to verify and recognize any protection already provided in the country of origin under the mutual recognition principle, they need to take into account what takes place in other countries before proceeding.

3.2 Destination Principle

The need for action in the field of VAT arose from the "destination principle" applied to transactions between Member States. The rates of VAT and excise applied are those of the country of final consumption; and the entire revenue accrues to that country's Exchequer. The method by which this system was then administered required physical frontier controls. As traded goods left one country, they were "de-taxed" (e.g. in the case of VAT, zero-rated); and were then "re-taxed" on entering another. Complex documentation was necessary for goods transiting Member States. The first would be that the good be taxed in both states, giving rise to double taxation.

The second would be that the good would not be taxed in either state. Both combinations are obviously undesirable. Double taxation is a strong deterrent to inter-state trade, making imported goods more expensive in the importing state, way beyond transportation costs. No taxation at all is just as bad, for it gives imports advantage over domestic production that has no justification on the production efficiency of foreign manufacturers.

We are then left with two possibilities: either the good is taxed only in the state of origin or only in the state of destination. These two approaches to VAT taxation in inter-state trade are called, respectively, origin principle and destination principle. Another way to think of these approaches is to consider that under the destination principle everything that is domestically consumed is taxed, whereas under the origin principle everything that is produced domestically is taxed. This does not mean, though, that any relation exists between the taxation principle employed and the tax base.¹

The character of the VAT is brought to practice by mechanisms that ensure that the tax paid in previous stages is recovered, either through the subtraction method or, as is often the case, the credit method. In a destination-based environment, though, items

¹The George Washington University, in. <http://www.gwu.edu/~ibi/minerva/Spring2001jesus.oliveira.pd>, Access date August 13, 2007.

shipped from one state to another are not subjected to VAT, so no recovery is needed. That means these recovery mechanisms only apply to inter-state trade if the states are subjected to the origin principle.

Under the destination principle, imports are taxed but exports are not. This requires border tax adjustments, for the VAT must be removed from products leaving the state and then added upon entry in the importing state, at the importing state internal rate.

The importing state cannot tax imports means less revenue than that obtained under the destination principle. States that are net exporters of taxable commodities benefit, while those that are net importers suffer, if we compare their revenues with what they would be under the destination principle.²

3.3 Export of services in Singapore

Goods and Services Tax (Abbreviation: **GST**) the current rate is 7 percent. GST increase to 7 percent, the increase was implemented on 1 July 2007 after a period of increased sales by Singaporeans attempting to beat the tax increase, and wariness amongst the lower-income groups.

Singapore's GST is a broad-based consumption tax levied on import of goods, as well as nearly all supplies of goods and services. The only exemptions are for the sales and leases of residential properties and most financial services. Export of goods and international services are zero-rated.

The GST was introduced as part of a larger tax restructuring exercise to enable Singapore to shift its reliance from direct taxes to indirect taxes. The GST also enables the country to sustain a lower income tax rate.

² Wikipedia, in. [http://en.wikipedia.org/wiki/Directive_on_services_in_The Internal market](http://en.wikipedia.org/wiki/Directive_on_services_in_The_Internal_market), Access date Aug 12, 2007.

The government argues that with an ageing population, Singapore's income tax base is expected to decline. With a broad-based GST, the taxation burden will be more evenly spread among the population. Thus, the GST was introduced as part of a larger exercise to put in place a tax structure to see the country into the future.

A value-added tax, like the GST, also has several characters that make it attractive. Being a tax on consumption, and not on income, the tax system inherently encourages savings and investments instead of consumption. The tax also has a self-policing mechanism that discourages evasion, unlike in a retail sales tax system or an income tax system where it would be relatively easier to evade.³

Singapore's GST system was designed to incorporate several key features for better effectiveness and efficiency in compliance and administration for both the businesses and the tax authority. Much attention was also given to designing a system to facilitate compliance.

The guiding principle adopted by IRAS when operationalising the tax was that GST should not have any adverse impact on businesses.

Singapore's GST system is also characterized by several schemes that were put in place to minimize or alleviate any adverse effect the tax might have on the business community. These schemes include the waiver of import GST for major exporters.⁴

3.4 Export of service in Canada

The Canadian **Goods and Services Tax (GST)** is a multi-level value-added tax introduced in Canada on January 1, 1991, by Prime Minister Brian Mulroney and finance minister Michael Wilson. The introduction of the GST was very controversial.

³Wikipedia, in [http://en.wikipedia.org/wiki/Goods_and_Services_Tax_\(Singapore\)](http://en.wikipedia.org/wiki/Goods_and_Services_Tax_(Singapore)), Access date Aug 12, 2007.

⁴The Asian Development Bank, in <http://adb.org/Documents/Events/2004/Fourteenth-Tax-Conference/text-chia.pdf>, Access date Aug 13, 2007.

The tax is a 6% charge (previously 7% before July 1, 2006) on the sale of all goods and services, except certain essentials such as groceries, residential rent, and medical services, and services such as financial services. The tax is levied on each sale. Businesses that purchase goods and services as inputs can claim "input tax credits" (i.e., they deduct from the amount of GST they have collected the amount of GST that they have paid). This avoids "cascading" (i.e., the application of the GST on the same good or service several times as it passes from business to business on its way to the final consumer). In this way, the tax is effectively borne by the final consumer.

Unfortunately, this system is not completely effective, as shown by criminals who defrauded the system by claiming GST input credits for non-existent sales by a fictional company. (1) Exported goods are exempt, while individuals with low incomes can receive a GST rebate calculated in conjunction with their income tax.

In 1997, the provinces of Nova Scotia, New Brunswick, and Newfoundland and Labrador and the Government of Canada merged their respective sales taxes into the Harmonized Sales Tax (HST). In those provinces, the HST rate is 14% (previously 15% before July 1, 2006). HST is administered by the federal government, with revenues divided among participating governments according to a formula. All other provinces continue to impose a separate sales tax at the retail level only, with the exception of Alberta, which does not have a provincial sales tax. In PEI and Quebec, the provincial taxes include the GST in their base. The three territories of Canada (Yukon, Northwest Territories and Nunavut) do not have territorial sales taxes. The government of Quebec administers both the federal GST and the provincial Quebec Sales Tax (QST). It is the only province to administer the federal tax.

Certain services have the tax added in such a way that the total cost is rounded to the nearest multiple of cents, due to limitations in the collection mechanism; for example, payphone calls are taxed so that the cost is a multiple of 5 cents; calls payable at 35 cents or less are not charged GST as the tax is under 2.5 cents.

The tax is a 6% charge on all goods and services except certain items that are either "exempt" or "zero-rated":

For tax-free i.e., "zero-rated" sales, GST is not charged by vendors. However, they are still able to recover any GST paid on purchases used in making the tax-free good or service. This effectively removes all tax from these goods and services.

Tax-free items include basic groceries, prescription drugs and medical devices. Exports are also zero-rated.

For tax-exempt sales, vendors do not charge tax on their sales. By the same token, however, they are not entitled to credits for the GST paid on inputs bought for the purposes of making the exempt good or service. Tax-exempt items include residential rents, health and dental care, educational services, day-care services, legal aid services and financial services.

Fiscally, the GST has accounted for 15% to 17% of total federal tax revenues each year since 1999. This is slightly greater than the annual amount of the Canada Health and Social Transfer itself.

Many also argue that a switch towards heavier consumption taxes on the European model has helped the Canadian economy become more efficient and competitive with lower-priced goods for the international market. However, the effects of the GST in this realm are quite modest, and are regularly swamped by large changes in the exchange rate. It can also be claimed that the transparent nature of the GST has kept Canadians acutely aware of their taxation. This has led to a major change in political culture so that deficit financing is no longer considered an option by the federal and provincial governments.

The GST once again became an issue, as the Conservative Party of Canada reduced the tax by 1% (to 6%) on July 1, 2006 as part of an election promise, and had also promised to reduce it by another 1% at an unspecified point before the end of its full mandate. The Conservative Party won the federal election on January 23, 2006, but by a narrow margin that gives it a weak minority position in Parliament. This leaves some doubt about its ability to carry out major changes, particularly the second percentage point drop in the GST. The first percentage point drop (from 7% to 6%) was presented in the budget tabled in Parliament on May 2, 2006. The Quebec nationalist opposition party, the Bloc Québécois, supported the budget, giving it

passage at the initial vote to approve the budgetary policy. When the legislation enacting the budget was brought forward for final passage, it was accidentally passed by unanimous consent due to parliamentary confusion neither the Liberal Party nor the New Democratic Party had intended to support the budget. On June 22, the budget was given Royal Assent and made law, meaning the first point reduction in the GST as implemented on July 1, 2006.

Much of the reason for the notoriety of the GST in Canada is for reasons of an obscure Constitutional provision. Other countries with a Value Added Tax legislate that posted prices include the tax; thus, consumers are vaguely aware of it but "what they see is what they pay". Canada cannot do this because jurisdiction over most advertising and price-posting is in the domain of the provinces under the British North America Act. The provinces have unanimously chosen to make the GST not be included in the price, similar to their provincial sales taxes. As a result, virtually all prices (except for gas pump prices, taxi meters and a few other things) are shown "pre-GST", at the merchant's choice.⁵

⁵Wikipedia, in [http://en.wikipedia.org/wiki/Goods_and_Services_Tax\(Canada\)](http://en.wikipedia.org/wiki/Goods_and_Services_Tax(Canada)),

Access date August 12, 2007.

Chapter 4

Analysis of the legal problem

4.1 Introduction

Provision of services performed in Thailand and used in the foreign country or export of services subject to zero rate according to section 80/1(2) of the Revenue Code and clause 2(1) of the Notification of the Director General on VAT (Number 105) has problems about interpretation issue especially on the sentence “entire used services in the foreign country”. Some tax rulings which explain the situation that is not regarded as provision of services performed in Thailand and used in the foreign country. Such services are checking the quality of goods and then make a report in form of document and sent to the customer in the foreign country. This is not an export of services subject to zero rated, so the provider is subject to VAT in Thailand because the provider used the result of report and is exploited in Thailand to make a decision and conclude the transaction with the manufacturer in Thailand. The Revenue Department views that this service is partly consumed in Thailand so zero rate can not be applied to this case. But The Revenue Department views that the customer used the result of services and is exploited in Thailand is used services in Thailand so it is not export of services subject to zero rate, the service provider is subject to VAT in Thailand.

The Central tax court views that the supplier provides services about checking and specifying the quality of goods and then makes a report in a form of document sending to the customer in the foreign country. This is a provision of services performed in Thailand and used in the foreign country or export of services subject to zero rate. It is an export of service subject to zero rate, so the provider does not subject to VAT in Thailand.

On the other hand, the decision of Central Tax Court states that the service provider provides services by making a report in a form of the document and then sends it to the customer in the foreign country, and then the customer uses the result of report which is exploited in Thailand. The foreign customer uses the report to make a decision to conclude a transaction with the manufacturer in Thailand. It is an export of service subject to zero rate so the service provider does not subject to VAT in Thailand.

Under the destination principle, goods and services should be subject to VAT in the place where goods and services are used or consumed. So if goods and services are exported, there should be exempt or no taxes on such exported goods or services.

In case of provision of services by making a report in a form of document provided by the supplier in Thailand for the customer in the foreign country after applying this case with the destination principle, some tax rulings as mentioned in chapter 2 which are export of services subject to zero rate are comply with the destination principle and some of tax rulings which are use services in Thailand are not comply with the destination principle.

The decision of Central Tax Court in case of provision of services by making a report in a form of document provided by the supplier in Thailand for the customer in the foreign country is consistent with the destination principle. VAT is collected in the foreign country which is the place where service is used.

The sentence “entire used services in the foreign country” has different interpretation. It is not clear that it is export of services or it is not an export of service. The problem is occurred in the case whether this service should be subject to VAT at 7 percent rate under section 80 of the Revenue Code or to VAT zero percent rate under section 80/1(2) of the Revenue Code and clauses 2(1) of the Notification of the Director-General on VAT (Number 105).

Section 80/1 under the Revenue Code provided that the tax rate of zero percent shall be applied in computing value added tax on the following transactions:

“(2) Provision of services performed in Thailand and used in foreign countries according to the categories, rules, procedures and conditions, prescribed by the Director-General.

Provision of service performed in Thailand and used in foreign countries includes provision of services performed in Thailand for manufacturing goods in an export processing zone for export and services performed in a duty free zone for manufacturing goods for export.”

The Notification of the Director-General on VAT (Number 105)

Clause 2 the following business shall be designated as a business performed in Thailand, but used in a foreign country under section 80/1(2) of the Revenue Code.

“(1)The provision of service performed in Thailand to the recipient of services in a foreign country, where the entire services is used in a foreign country.

The provision of services under the first paragraph means any activity not being a sale of goods, performed to seek a valuable benefit but not including tour services in a foreign country.”

Section 80/1(2) and the Notification of the Director-General on VAT (Number 105) have objective to support exporting of good or services to the other country because it has advantages for economic, so the government give the right to suppliers in Thailand who export goods or services will qualify to zero rate provided that all of requirement are fulfilled.

This means that the supplier who exporting services do not have to pay VAT in Thailand for the services fee that the supplier received from the customer in the foreign country.

The Notification of The Director-General on VAT (Number 105) is the subordinate law. This provision of the subordinate law is not clear for making interpretation. So it has problem for interpretation especially the sentence **“entire consumed service in the foreign country”** in the case of provision of service in a form of the report making in Thailand and used it for making decision in the foreign country to conclude a transaction with the manufacturer in Thailand. The foreign customer uses the original services in the foreign country and uses the result of report which is exploited in Thailand. Under section 80/1(2) of the Revenue Code and clause 2(1) of the Notification of the Director-General on VAT (Number105), this service is partly used in Thailand or totally used in the foreign country. If it is totally used in the foreign country, this service is export of service so the provider does not subject to VAT in Thailand. If it is partly used in Thailand, it is not an export of service so the service provider has to pay VAT in Thailand.

4.2. Analysis the legal problem

In the case of provision of service by making a report in a form of documents provided by the services provider in Thailand for the customer in the foreign country, some tax rulings as mentioned in chapter 3 are not consistent with the destination principle.

The facts are following as:

1. The customer in the foreign country hires the provider to check and specifies the quality of goods.
2. The provider provides detail about the custom tariff for the foreign customer in order to pay custom tariff when the customer import goods to

their country. The provider makes a report in form of document for the customer.

3. The provider provides check the qualification of the manufacturer in Thailand in order to hire to produce goods for export. The provider makes a report and then sends it to the customer in the foreign country.

4. The provider provides analysis goods in the laboratory and then the provider make a report in form of document for the customer in the foreign country.

As examples mentioned above, the provider has to make the report in form of document then he sends it to the customer in the foreign country .The customer used the result of the report to conclude a transaction with the manufacturer in Thailand. The report was done by the provider in Thailand. The customer uses the report in the foreign country in consideration to order goods from the manufacturer in Thailand.

The reason is the foreign customer used the report which is done in Thailand in consideration to conclude a transaction with the manufacturer in Thailand, order goods from the manufacturer in Thailand, used details in the report for collect or pay custom tariffs when the customer imports the goods to their country and use analysis details of the report for his business.

The Revenue Department views that all of services are partly consumed in Thailand. This is not an export of service. The customer used the result of service which is exploited in Thailand. It means some parts of service are partly consumed in Thailand, so it is not export of services subject to zero rate under section 80/1(2) of the Revenue Code and clause 2(1) of the Notification of the Director-General on VAT (Number 105). The service provider has duty to pay VAT 7 percent rate under section 80 of the Revenue Code.

The Central Tax Court has a decision which is comply with the destination principle. The services provider works as an employee for the foreign customer by checking and analysis goods, sample goods and the place where goods is produced. The service provider makes a report in a form of document and then he sends it to the customer or the contractor in the foreign country. The foreign customer uses services are done in a form of document by the provider in Thailand. The customer in the foreign country uses such services by reading a detail from the report. The customer in the foreign country considers the information in the report to make a decision in concluding the transaction.

In the first service, the foreign customer used the report to consider making a decision buy goods or bargaining the price of goods from the manufacturer in Thailand.

In the second service, the foreign customer used the report for consider to collect or pay custom tariffs when he imports the goods from Thailand to his country.

In the third service, the contractor used the report for consider to hire the manufacturer in Thailand in order to produce the goods for export.

In the fourth service, the contractor used the details on the report for their business. Services which are provided by the provider in Thailand are finished since the customer received the report in a form of document from the service provider, the customer makes a decision to buy goods or bargain price of goods with the manufacturer in Thailand, hire the manufacturer in Thailand to produce the goods for imports from Thailand to his country by used the result of the report which is exploited in Thailand.

It is only used the result of service which is exploited in Thailand. The customer does not use the original services. The report is just only one part of the decision of the foreign customer for make a decision with the manufacturer in Thailand. This is an export of services subject to zero rate.

In the case of provision of service by the provider in Thailand, the service provider makes a report in a form of document then he sends it to the customer in the foreign country.

The decision of the Central Tax Court states that it is an export of service because the foreign customer totally consumed a report in the foreign country. Services are a report that was done by the provider in Thailand, and then the foreign customer used the result of reports in the foreign country to make a decision in concluding the transaction with the manufacturer in Thailand.

The transaction between the service provider and the customer is finished since the customer received the report from the services provider and read the details in the report. In the first transaction is totally consumed in the foreign country.

The customer used the result of report to make a decision in concluding the transaction with the manufacturer in Thailand. It is only used the result of the service which is exploited in Thailand. The customer used the report for the other transaction which is not related with the first transaction that is finished since the customer received the report from the service provider in Thailand.

In the second transaction, the customer makes a transaction with the manufacturer in Thailand. The customer orders goods from manufacturer in Thailand. It is not related with the service provider who makes a report.

The second transaction is not used the original services only used the result of the service which is exploited in Thailand. Service is only one part to make a decision in concluding the transaction with the manufacturer in Thailand because many of factors for example, the currency rate, the politic of their country etc. The Central Tax Court views that the foreign customer used the result of report which is exploited in Thailand to make a decision in concluding the transaction with the manufacturer in Thailand is not the provider who provides the service. It is not directly consumed the

original report. This is an export of services subject to zero rate according to section 80/1(2) of the Revenue Code and clause 2(1) of the Notification of the Director-General on VAT (Number 105).

Some tax rulings state that in the case of making a report for the foreign customer is not totally consumed in the foreign country according to section 80/1(2) under the Revenue Code and clause 2(1) of the Notification of the Director-General on VAT (Number 105) so the service provider must be subject to VAT in Thailand



Chapter 5

Conclusion and Recommendations

5.1 Conclusion

Export of services is the provision of services performed in Thailand and used in the foreign country. Service must totally consume in the foreign country.

The main purpose of export of service is not to collect VAT from the service provider because the government needs to support exporters.

Zero rate is the transaction in which the seller collects no output tax and the corresponding input tax is fully refundable. Exports are zero rated according to destination principle. The supplier needs to use zero rate because of many of advantages for them.

Under the Destination principle means goods and services should be subjected to tax especially VAT in the place where goods and services are used or consumed. In the case of goods and services is exported, there should be exempted or no taxes on such exported.

The sentence “used service in foreign country” provided in section 80/1(2) of the Revenue Code, It has the subordinate law provides meaning of used service in the foreign countries that services must entirely or totally consumed in the foreign country. It is actually mean difficult to interpret that what is entirely used services in the foreign country.

Some tax rulings are not consistent with the destination principle especially the case of the customer in the foreign country hires the provider in Thailand check or specifies quality of goods and then the provider send the report to the customer in the

foreign country to make a decision to do any transaction with the manufacturer in Thailand.

Provision of service in a form of document by the provider and send the report to the customer in the foreign country and then the customer used the report in the foreign country to make a decision to buy good or bargain the price of goods from the manufacturer in Thailand. It means that the provider used the result of services which are exploited in Thailand. It is not an export of service subject to zero rate so the provider must be subject to VAT in Thailand because the report is the service which is performed in Thailand and is not totally used in the foreign country according to section 80/1(2) of the Revenue Code and clause 2(1) of the Notification of The Director-General on VAT (Number 105).

The customer in the foreign country has the right to make a decision from the report which is done in Thailand. The customer used service performed in Thailand in the foreign country but the customer does not totally consumed services in the foreign country.

The customer need to order goods from the manufacturer in Thailand, the Revenue Department views that the customer in the foreign country used services performed in Thailand and used the report in the foreign country but used the result of report which is exploited in Thailand to conclude a transaction with the manufacturer in Thailand. It is partly consumed service in Thailand and partly consumed service in the foreign country. Therefore, it is not an export of service according to section 80/1(2) of the Revenue Code and clause 2(1) of the Notification of the Director-General on VAT (Number 105). The service provider has duty to pay VAT in Thailand.

On the other hand, the decision of the Central Tax Court states that provision of services by make a report in a form of document and send the report to the foreign customer in the foreign country. This is an export of service subject to zero rate according to section 80/1(2) of the Revenue Code and clause 2(1) of the Notification

of the Director-General on VAT (Number 105) consequently the service provider will be subject to zero rate.

The services provider provides services for the customer in the foreign country follow as:

1. Provide service about checking or specifying the quality of goods
2. Provide service about checking the rate of customs tariff for imported goods from Thailand to their country.
3. Provide service about checking the properties and the place of manufacturer in Thailand
4. Provide service about checking chemicals and science of the example goods in the laboratory.

All of four services mentioned above are regarded as export of services subject to zero rate.

The customer in the foreign country hires the service provider in Thailand to make all of services by make reports in a form of document and sends reports to the customer in the foreign country.

The provider have to specify or check the quality of goods, check chemicals or science of the example goods in the laboratory , the rate of customs tariff and the place which the manufacture produce goods.

The customer in the foreign country read reports to make a decision in concluding the transaction with the manufacturer in Thailand. It is not related with the service provider who makes reports. It is clear for the first transaction between the foreign customer and the service provider is finished when the customer received reports from the service provider. The service is the report done in form of document by the

provider in Thailand and sends such reports to the customer in the foreign country. All services are totally consumed by the customer in the foreign country. It is an export of services subject to zero rate according to section 80/1(2) of the Revenue Code and clause 2(1) of the Notification of the Director-General on VAT (Number 105).

The customer only used the result of report which is exploited in Thailand by making a decision in concluding the transaction with the manufacturer in Thailand. The customer used the report for the other activities. It is not the directly used original reports which are done by the provider in Thailand. It is only used the result of report which is exploited in Thailand.

All of four services are performed in Thailand and totally used in the foreign country. The service provider exports services to the foreign country so this is an export of services subject to zero rates according to section 80/1(2) of the Revenue Code and clause 2(1) of the Notification of the Director-General on VAT (Number 105). So the service provider does not have duty to pay VAT in Thailand for the price of services fees.

In the case of the customer uses the result of service which is exploited in Thailand. What is the case of service mentioned above should or should not be an export of services subject to zero rate according to section 80/1(2) under the Revenue Code. And what is the definition of totally consumed services in the foreign country under clause 2(1) of the Notification of the Director-General on VAT (Number 105).

5.2 Recommendations

Export of services subject to zero rate should have the meaning as follows:

Provision of service performed in Thailand and used service in the foreign country according to section 80/1(2) of the Revenue Code, the service must be totally consumed in the foreign country under clause 2(1) of the Notification of the Director-

General on VAT(Number 105). Under section 80/1 of the Revenue Code, the tax rate of zero percent shall be applied in computing value added tax on the following transactions:

“(2)Provision of services performed in Thailand and used in foreign countries, according to the categories, rules, procedures and conditions, prescribed by the Director-General.

Provision of service performed in Thailand and used in foreign countries includes provision of services performed in Thailand for manufacturing goods in an export processing zone for export and services performed in a duty free zone for manufacturing goods for export.”

Section 80/1(2) of the Revenue Code is rather clear and easy to understand. On the other hand, the Notification of the Director-General on VAT (Number 105) which is the subordinate law is not rather clear and hard to understand especially the sentence “entirely used service in the foreign country”, so we should add provide more explanation on clause 2(1) of the Notification of the Director-General on VAT (Number 105).

The Notification of the Director-General on VAT (Number 105) should be added the following sentence that “used result of services is not used services in Thailand” For the case of provision of services performed in Thailand and used in the foreign country is export of services subject to zero rate. Then the customer used the result of report which is exploited in Thailand. This is an export of services subject to zero rate. The sentence “entirely used service in the foreign country” should include the case of the recipient use of the result of service which is exploited in Thailand.

It means when the recipient only used the result of service which is exploited in Thailand It means when the recipient only used the result of service which is exploited in Thailand, it is not related with the original services directly so only used the result of service which is exploited in Thailand. Services are export of service

subject to zero rate. The customer used the result of services for making a decision for the other transaction which is not related to original services. It is not the used of service in Thailand.



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