



TMI EYES No. 11: STAMP DUTY

In this article, TMI discusses stamp duty, which is often overlooked by business operators. And, once they are aware of the stamp duty, it not only comes with the stamp duty shortfall but also a very hefty surcharge. TMI provides information about stamp duty under the Revenue Code, frequent mistakes, and issues.

What is Stamp Duty

Stamp Duty is a type of tax imposed on documentary instruments designated by the Revenue Code. Section 103 of the Revenue Code defines “instrument” as any document chargeable with a duty. Thus, only instruments listed in the Stamp Duty Schedule are subject to stamp duty at their corresponding rates. For example, transfers of land are taxed at the rate of 0.5% of the transfer price; leases of land at the rate of 0.1% of the lease fee; transfers of shares at the rate of 0.1% of the transfer price; loan agreements at the rate of 0.1% (capped at Baht 10,000); and hire-of-work agreements at the rate of 0.1% of the fees, among others.

The Revenue Department and the Tax Court interpret the “instrument” upon which stamp duty is levied as formal agreements to which two or more parties sign. According to these authorities, an “instrument” includes correspondence documents that incorporate an agreement, such as purchase orders and invoices, but does not include unilateral documents, e.g. evidence of a loan signed only by the borrower.

However, it is noted that the Supreme Court ruled in a ruling no. 427/2565 (2022) that the service order was only evidence of a legal transaction. The service order itself was not a “hire-of-work” agreement. Therefore, a service order was not subject to stamp duty.

In any case, where a stamp duty is required to be paid, the s liable to the stamp duty are commonly one of the parties associated with the particular instrument. The liable person can pay stamp duty in many ways, e.g. (1) affixing stamps to the document (2) using stamps impressed on a paper, (3) paying in cash by using Form Aor. Sor. 4, (4) e-payment through the website of the Revenue Department. (Readers should study more details about stamp duty payments, e.g. stamp duty for certain instruments be paid in cash, e.g. transfers of land, hire-of-work with fees at the rate of Baht 1 million or more, and payment via the website of the Revenue Department for e-documents.)

(There are some arguments that e-documents should not be subject to stamp duty under the current stamp duty laws).

Typically, stamp duty is owed upon instruments listed in the stamp duty schedule at the time of execution. Where an instrument is executed in Thailand, stamp duty must be paid by the above procedures within, at most, 15 days from the execution date. Instruments executed outside of Thailand are not subject to Stamp

Duty until being brought into Thailand. The first holder of the instrument in Thailand must pay the entire required Stamp Duty within 30 days of receiving the instrument, under Section 111 of the Revenue Code. Late payment of stamp duty can incur surcharges, e.g. two times of stamp duty owed for the late payment of 16-90 days, and five times the stamp duty owed for a payment after 90 days. Apart from the taxpayers voluntarily pay stamp duty and surcharge mentioned above. If the non-stamp duty payment is found during a tax investigation, Revenue Officers can impose a surcharge of up to six times the amount of stamp duty owed.

Stamp Duty on Hire-of-Work Agreement

Hire-of-work agreements pose the greatest stamp duty tax risk. Even business people acutely aware of stamp duty obligations often find themselves in a quandary of stamp duty surcharges because they misunderstand the ambiguous nature of hire-of-work agreements. Theoretically, a hire-of-work agreement is defined under the Civil and Commercial Code but in practice, the Revenue Department broadly defines hire-of-work. As such most service agreements (e.g. warehousing service agreements and support services agreements) become considered hire-of-work.

Stamp Duty payable on a hire-of-work agreement is 0.1% of a remuneration fee. If the remuneration is not known at the time of execution of the contract, the Stamp Duty must be paid on an estimate of the remuneration.

Among other common misconceptions among taxpayers are the method by which fees are estimated for purposes of paying for stamp duty, and whether one can pay stamp duty upon each interval of fee payment.

TMI's note

All business operators must always keep in mind and ask themselves every time they make an instrument/agreement whether or not they are subject to stamp duty. They need to understand the nature of the agreements into which they enter, among other reasons, to know whether the agreements/instruments are subject to stamp duty. They then need to ensure that they correctly pay stamp duty to avoid surcharges of up to six times the duty owed, in addition to the Stamp Duty.

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