

NEWSLETTER

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1. Conditions for 2010 Tax Free Partial Business Transfer for Restructure within the Group of Companies

In late April 2010, the government issued the Royal Decree to exempt VAT, specific business tax and stamp duty on partial business transfer insofar as the conditions set out by the Director-General of the Revenue Department are fulfilled and the transfer occurs in 2010. In late August, 2010 the Director-General of the Revenue Department just issues the criteria, methods and conditions for such tax free transfer as summarized here below.

1. It must be a transfer of part of a business of a public limited company or a limited company formed under the law of Thailand and a transferor and a transferee must be affiliated companies. Such affiliation must continue not less than six months from December 31, 2010.
2. A transferee company must have the registered and paid up capital of not less than the net price of transferred assets.
3. Both transferor and transferee must notify and submit an organizational restructure plan to increase efficiency along with a list of transferred assets to a revenue office in the form set out by the Director-General.
4. A transfer must be completed within December 31, 2010.
5. A transferred property must be related to a type of a transferring business, which is not a sale as an ordinary business, and a transferee must utilize in the same manner or a related business.
6. If a transferor is a VAT registrant, a transferee must be a VAT registrant too and a transferee must bring goods or property to use in such VAT business.
7. A transferor must not transfer property without any consideration or with a consideration at an under-market rate without any reasonable cause on the transfer date.
8. Both transferor and transferee must not owe the Revenue Department anyone, unless the collateral has been provided.

9. Auditors of both transferor and transferee must be qualified under the relevant regulations.

Given the conditions come out just four months before the deadline, any group of companies wishing to exploit this option must take actions real quick.

For more details, please contact our lawyer for consultation.

TAX & REAL ESTATE UPDATE

2. Department of Land Circular Letter on Specific Business Tax on Jointly Owned Property

Whenever an ordinary person sells immovable property within five years from the date of acquisition, tax law imposes specific business tax on the seller unless any of exceptions applies. Effectively, this means an individual property owner has to either hold the property for at least five years from the date of acquisition or pay specific business tax to the government. There is a practical problem whether this five year threshold applies to the jointly owned property or not. Many land registry offices have sought the advice from the Department of Land on whether the land registry offices have to collect specific business tax on the jointly owned property that is sold after five years from the date of acquisition as an ordinary partnership or not. The Department of Land has consulted with the Revenue Department and received the answers as summarized here below.

1. If co-owners jointly acquire a land plot along with a house without segregating the area under the ownership of each co-owner, they shall be deemed to be co-owners who have the equal interest in the property. If the co-owners sell the property after five years from the date of acquisition, their sale of the property is not subject to specific business tax.
2. If a husband and a wife who are registered for marriage first acquire a land plot or a land plot along with a house and then sell the property after the period of five years from the date of acquisition, the sale of the property is not subject to specific business tax.

3. In the event where many persons own and occupy a land plot along with a house jointly for the period exceeding five years from the date of acquisition, then some co-owner sells his or her interest in the jointly owned property that the co-owner has acquired the ownership for more than five years from the date of acquisition, such sale of the property is not subject to specific business tax.

For more details, please contact our lawyers for consultation.

TAX UPDATE

3. Revenue Ruling Re Withholding Tax on Assigned Claims

Earlier this year, the Revenue Department issues an interesting ruling that sheds us more lights on withholding tax on assigned claims. Typically, tax law imposes withholding tax on specified incomes and only to the extent that a payer of income and a recipient of income are clearly specified by tax law. To determine whether withholding tax is applicable or not in certain circumstance depends on who is the income recipient. Well, who is a recipient of the income in the eye of tax law if an original creditor transfers/assigns a claim to another transferee/assignee and the transferee/assignee happens to receive the payment of such assigned claim?

In this case, a Thai company owed the management control assistance fee to S company, a Japanese company, and owed the construction price to Sor company, another Thai company. Later on, Sor company assigned the right to receive the construction price to N company, another Japanese company. Eventually, both creditors, S company and N company, assigned their claims to O company, a Hong Kong company. The Revenue Department ruled that even if the claims were transferred/assigned to O company, the original creditors, S company and Sor company are deemed to derive the income whenever the debtor company pays off those debts to O company. Based on this ruling, it is implied that the withholding tax on the payment of those assigned debts must be determined as if the original creditors, S company and Sor company were to receive the income. It seems that the assignment of claims does not have any impact on the withholding tax to be imposed on the original creditors.

For more details, please contact our lawyers for consultation.

DISPUTE RESOLUTION

DEBT COLLECTION

Debt collection seems to be one of the troubles many businesses face in Thailand. Our firm can assist clients on debt collection resulting from either trade debt or borrower's default on payment of the loan. If the lawyer's demand notice still yields no positive result, our firm is ready to represent client to take further legal action to the court or file the claim to the arbitration body.

After the completion of court or arbitration process, we can assist clients on debt recovery as follows:

- Asset search
- Asset recovery
- Enforcement of judgment or enforcement of arbitration award

SHAREHOLDER'S DISPUTES

Our firm has experience and expertise in representing both majority shareholder/partner and minority shareholder/partner in the shareholders' disputes/partnership disputes. Eventually, the shareholders' disputes/partnership disputes have to be resolved one way or another, either through a lengthy negotiation that yields a settlement satisfactory to both parties, pursuing any legal actions (courtroom) to revoke certain corporate actions, and even filing a criminal charge against the counterparty.

We also assist clients in the following matters:

- Corporate fraud
- Investment fraud
- Finance

BREACH OF CONTRACT/MISREPRESENTATION

In the business world, another area of disputes is breach of contract, misrepresentation and wrongful inducement. Our firm can advise and represent clients on these issues. Typically, a non-default party has two options either to enforce the default party to perform the obligations and claim any damage for a delay of performance or to exercise the right to terminate the contract and claim for any damage suffered by the non-default party. The non-default party may request the court to impose the injunction on the default party, requiring the default party to do or refrain from doing certain things.

BANKRUPTCY & BUSINESS REORGANIZATION

Whenever the court has order the debtor to be under an absolute receivership or a business reorganization, the creditor may ask for repayment of his debt only by complying with the procedure prescribed in the bankruptcy law even though the creditor may be a judgment creditor, or a creditor who has filed a civil action which is, however, still under trial.

The creditor must take an action within the deadline otherwise the claim for repayment of debt will be invalidated by the bankruptcy law. Once any counterparty is on the verge of bankruptcy, the creditor is recommended to have an eye on debtor's possible financial demise.

We can assist the creditor file the claim for repayment of debt to preserve creditor's right.

LABOR DISPUTES

We can advise and represent clients on the labor disputes which typically arise in the following circumstances.

- Employee's fraud and misappropriation of employer's assets
- Employee's unauthorized use of employer's assets, information and trade secret
- Termination, layoff, restructuring (downsizing), severance pay and notice payment
- Lawful termination and unfair termination

TAX DISPUTE

We advise and represent clients on a variety of tax disputes from the Revenue Department to the Customs Department. Our services cover:

1. Making representations on behalf of clients to tax a relevant tax authority in the pre-assessment stage;
2. Providing advice concerning the legality of tax assessment made by a relevant tax authority;
3. Preparation of notice of objection to tax assessments and request for re-determination to the tax appellate body; and
4. Representation in the tax court.

CONSTRUCTION & REAL ESTATE DISPUTES

The problem between the contractor and the owner seems to happen all the times. Some disputes could be settled right away, while other unavoidably may have to make their way to courtroom or arbitration. Our firm can assist either contractor or owner (hirer) in the construction dispute arising from below situations:

- Contractor's delay in completion of work according the milestones
- Delivered work is different from the agreed specifications
- Delivered work fails to meet the agreed standards
- Owner's delay in payment of the construction price to the contractor for no good reason
- Owner's delay in delivery of the construction site to the contractor
- Owner's insisting to use the unusable designs despite the protest by the contractor
- Use of the engineering consultant who is less than neutral and fair
- Owner's refusal to accept the delivery of work from the contractor on the ground of small defects
- An effort by the owner to bargain the contraction price long after the contract has been sealed
- Parties' disagreement over the price increase and the additional time for the additional scope of work

With respect to the real estate disputes, a real estate developer might fall behind the construction schedule, the problem between a property buyer and a developer may arise from time to time.

OTHER BUSINESS DISPUTES

In addition to the above matters, we can advise and represent client on other business disputes, i.e. unfair business practice, business tort claim, trade secret and intellectual property, corporate fraud, investment fraud, finance, and international sales disputes.

Contact our lawyers without delay if you have or about to have any dispute before the dispute (likely) goes bad and gets worse.

NARIT & ASSOCIATES

Attorneys at Law

CORPORATE & COMMERCIAL,
DISPUTE RESOLUTION & TAX

B A N G K O K , T H A I L A N D

THE FIRM

NARIT & Associates is a Bangkok-based international law firm serving both Thai and foreign companies by combining international perspectives with profound local expertise, in the areas of corporate & commercial, mergers & acquisitions, tax, real estate & construction, commercial dispute and general practice.

We have experiences in advising our clients, from publicly held companies, Thai subsidiaries of multinational corporations to foreign and private investors, across a broad range of matters, including acquisitions of local companies, formation of joint venture companies, international sales, investment/divestment, distributorship, commercial contract tax planning, cross border tax planning, transfer pricing, remittance of profit and tax dispute.

As we aspire to be a fast growing legal service provider in Thailand, we are pleased to offer our high quality legal services at a very competitive rate, as compared to those of other international law firms.



OFFICE ADDRESS

65/31 Chamnan Phenjati Business Center
2nd Floor, Rama IX Road,
Huay Khwang, Huay Khwang,
Bangkok 10320, THAILAND

TEL +66 86 785 0793
+66 2248 2872

FAX +66 2248 2873

EMAIL enquiry@naritlaw.com

WEBSITE www.naritlaw.com

NARIT & ASSOCIATES

Attorneys at Law

CORPORATE & COMMERCIAL,
DISPUTE RESOLUTION & TAX

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General Counsel Services
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