

NEWSLETTER

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1. Tax Package for Trust for Transactions in Capital Market Act B.E. 2550 (2007)

Since Thailand converted to the civil law system from the English common law system, which was previously used in then Siam, Thai law no longer recognized the use of trust. In 2007, the Trust for Transactions in Capital Mark Act, B.E. 2550 (2007) (the "Act") was enacted, allowing the use of trust in the capital market.

The trustee will be a registered holder, but not a beneficial owner, of the shares. Once the trustee receives the dividend from a company, the trustee will remit to a beneficiary in form of a payment in lieu of the dividend. The tax treatment for the situation where an individual shareholder holds the share directly in a company is definitely different from the situation where an individual shareholder holds the shares through a trustee.

In February 2012, the government introduces the tax exemption package in order to close disparity. Of course, some disparity between the two situations still exists. But at least the government tries to close the gap to make the use of trust more appealing to the investing public.

1. Tax Reduction for a Beneficiary

Any individual person who holds a unit in the trust that in turn invests the money in the company, receives the payment in lieu of a dividend from the trust and allows the trustee to deduct 10% withholding tax shall be exempt from paying any additional tax on this income. Basically, a beneficiary (individual person) will be subject to income tax at the rate of 10% instead of the progress rates, which could be higher than 10%.

2. Tax Exemption for a Trustee

A trustee shall be exempt from corporate income tax on the income derived from the trust, except for the fees or other benefits that the trustee derives from providing the trustee service. Obviously, a trustee holds the shares in trust for a beneficiary should not be subject to the income derived from the trust that the trust has to pass over the beneficiary.

3. Tax Exemption for a Trust Settlor (Founder)

A trust settlor (founder) shall be exempt from corporate income on the payment in lieu of a dividend or the dividend derived from a company formed under the laws of Thailand under these conditions.

- 3.1 In the event that a trust settlor who is a company formed under the laws of Thailand takes transfer back the shares that have been transferred to the trustee either entirely or partially, the trust settlor shall be exempt from corporate income tax on 50% of the payment in lieu of a dividend or the dividend received.
- 3.2 If a trust settlor under 3.1 that is either a listed company or a company holding the shares in the dividend paying company not less than 25% of the voting shares of the dividend paying company and the dividend paying company does not hold the shares in the trust settlor either directly or indirectly, the trust settlor shall be exempt from corporate income tax on 100% of the payment in lieu of a dividend or the dividend received.

A trust settlor must hold the shares that yield the payment in lieu of a dividend or the dividend not less than 3 months counting from the share acquisition date to the date that the dividend income is derived and still hold the shares for the period of 3 months from the date that the dividend income is derived. Calculation of the period shall include the period that a trust settlor transfers the shares to a trustee until the date that the trust settlor takes transfer of the shares back from the trustee.

4. Corporate Income Tax, VAT, Specific Business Tax and Stamp Duty Exemptions for a Trust Settlor (Founder)

A trust settlor shall be exempt from corporate income tax, VAT, specific business tax and stamp duty from the value of tax base, income and execution of instruments that arise from or in connection with the transfer or creation of any real rights or any rights in property between a trust settlor and a trustee or between one trustee and another trustee in case of the change of the trustee according to a written trust instrument.

For more details, please contact our lawyer for consultation.

2. Relaxation of Conditions for Tax Exemption on Dividend for Merger and Entire Business Transfer

If one company (the "corporate shareholder") holds the shares in another company (the "operating company"), the corporate shareholder typically receive the dividend from the operating company in return of the investment.

The operating company shall be subject to corporate income tax at the rate of 23% for this year (2012) and 20% for the subsequent years of the net profit. So the remaining profit (77%) may be distributed to the corporate shareholder. Under the existing rules, the corporate shareholder shall be exempt from corporate income tax on the dividend income derived from the operating company under these conditions.

1. The corporate shareholder must be either a listed company or a holding company who owns the shares in the operating company not less than 25% of the voting shares and the operating company must not hold any shares in the corporate shareholder either directly or indirectly.
2. The corporate shareholder must hold the shares in the operating company at least 3 months prior to the dividend announcement date and at least 3 months after the dividend announcement date.

In the merger of two companies or the entire business transfer, the six month holding period condition (second condition) will be difficult to fulfill as a combined entity in the merger or a transferee company in the entire business transfer just takes transfer of the shares in the operating company and may have no control whatsoever on when the dividend is distributed by the operating operation company. So the Royal Decree is enacted in order to facilitate the fulfillment of the six month holding period condition (second condition). The Royal Decree provides that the period that an existing company in the merger or a transferor company in the entire business transfer holds the share shall be included in the computation of the three months plus three month period.

For more details, please contact our lawyer 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.

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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 DISPUTES

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.



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CORPORATE & COMMERCIAL,
DISPUTE RESOLUTION & TAX
BANGKOK, THAILAND

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.

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