

NEWSLETTER

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1. Income Tax Exemption for Shareholders in Entire Business Transfer or Amalgamation is No Longer Applicable for Cash Deal

To support the consolidation in Thailand, the government provides the income tax exemption for both corporate and individual shareholders in the entire business transfer and the amalgamation. Under the existing rule any gain a shareholder (either corporate or individual) derives from a company transferring its entire business to another company or a company's amalgamation with another company is exempt from income tax.

However, to limit the application of the income tax exemption for the shareholders, the Royal Decree (No. 542) B.E. 2555 and the Ministerial Regulation No. 291 (B.E. 2555) impose one additional condition for the tax exemption. Under the additional condition, a shareholder (either corporate or individual) shall be exempt from income tax on the income derived from a company transferring its entire business to another company or a company's amalgamation with another company by transferring the shares in exchange of the shares in a transferee company or a new amalgamated company as the case may be.

Consequently, if the consideration that the shareholder receives is not the shares in a transferee company in case of the entire business transfer or the shares in a new amalgamated company in case of amalgamation, the tax exemption is no longer applicable.

For more information, 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 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.



NARIT & ASSOCIATES

Attorneys at Law

CORPORATE & COMMERCIAL,
DISPUTE RESOLUTION & TAX
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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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B A N G K O K , T H A I L A N D

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Contracts/Agreements
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General Counsel Services
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Debt Collection
Shareholder Disputes
Breach of Contract/Misrepresentation
Bankruptcy & Business Reorganization
Labor Disputes
Construction & Real Estate Disputes
Other Business Disputes

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