

# NEWSLETTER

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## 1. First Home Tax Deduction

To keep the campaign promise, the new administration just introduces the first home tax deduction for a buyer. An individual taxpayer will be exempt from the income tax for the amount equal to the income tax computed from the net income before any tax credit insofar as the amount does not exceed 10% of the value of immovable property.

An individual taxpayer who is entitled to this deduction must comply with the following conditions:

1. Immovable property must be a land plot with a building or a condominium unit.
2. The payment of the property price and the registration of transfer must be completed during the period from September 21, 2011 to December 31, 2012.
3. A taxpayer must exercise the tax exemption right for the first time within five years from the year in which the registration takes place and must exercise the tax exemption right for five years consecutively in the same amount in each tax year.
4. A taxpayer must be a first time buyer of a home (who has never had any ownership in immovable property that is a land plot with a building or a condominium unit for the residential use).
5. A taxpayer must own immovable property for the period of not less than five years from the ownership transfer date.
6. Immovable property must be brand new.
7. A taxpayer has never claimed for the home loan interest deduction.
8. A taxpayer has never claimed for the tax free exchange for residential property.
9. Immovable property must be used for taxpayer's own residence and the price must not exceed Baht 5 Million.

For more details, please contact our lawyer for consultation.

## TAX UPDATE

### 2. Supreme Court's Ruling: Free Use of Car vs. Car Allowance

Many companies provide the free use of cars to their employees, depending on the level of seniority and importance. As an alternative to the free use of cars, some companies choose to provide the car allowance in cash to employees instead. From employees' perspective, both choices are quite similar to each other. However, the Supreme Court recently clarified the tax consequences of both choices could be way different from each other.

The Supreme Court held that while the car allowance, the payment given to an employee in lieu of providing the car, is considered the assessable income of the employee, the free use of the car is not deemed the assessable income of the employee. In reaching this decision, the court carefully drew the line between the free use of car and the car allowance. The employee theoretically can utilize the car allowance for whatever purpose the employee wishes to do without any restriction whatsoever. On the other hand, when the employee chooses to receive the free use of car, the employee has to use the car in performing the employee's roles or assigned work that is directly related to the employee's position and for other matters that are appropriate for the employee's position. Essentially, the employee has to use the car for the benefit of the employer organization. With these restrictions, the free use of car is not the assessable income of the employee.

In summary, the Supreme Court stated that the right to receive the car allowance is significantly different from the right to use a car. Even though this Supreme Court's decision is involved with the public sector, the logic drawn by the court could be used in the private sector as well.

For more details, please contact our lawyer for consultation.

## LEGAL UPDATE

### 3. Board of Investment's Flood Relief Measures

The Office of the Board of Investment introduces certain flood relief measures for BOI promoted companies as summarized on the next page.

### **1. BOI Opens its Offices Everyday**

The BOI promoted company can contact BOI office everyday, including weekend.

### **2. Relaxation of the Regular Rules.**

#### **Investment Incentives for Machinery and Raw materials**

- Machinery and raw materials can be moved from the factory to another location or exported in case of emergencies, and permission can be sought from the BOI later.
- BOI promoted companies are entitled to duty-free importation to replace damaged machinery. Raw materials imported under duty free importation that are damaged by the flooding can be counted as part of waste allowance and no tax burden applies.
- Raw materials under duty free importation that are still useable can be transferred to another BOI promoted project that is still entitled to Section 36.
- BOI promoted companies affected by flooding are allowed to outsource some manufacturing process on a temporary basis to avoid any business interruptions.

#### **Facilitation Regarding Visa & Work Permits**

- Permission to bringing in experts to Thailand for not more than 30 days without non-immigrant B visa. Application can be submitted by email.
- If the experts stay in Thailand for more than 30 days, the BOI offers facilitation in obtaining non-immigrant B visa and expedited procedure in approving the entry and short-term stay.
- Expedited and relaxed procedure for issuing documents to replace the lost or damaged ones.
- Permission for foreigners to report to Immigration every 90 days by telephone, fax, sms or email.
- Expats under flood-affected BOI promoted projects who enter Thailand without a non-immigrant B visa can apply for a non-immigration B visa at the One-Stop Service Center for Visa and Work Permit.

### **3. Information on Space for Warehouses and Factories.**

BOI has gathered information on available space for warehouses and factories that can be utilized by flood affected companies.

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.

### 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

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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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## CORPORATE & COMMERCIAL

Business Setup  
Construction  
Contracts/Agreements  
Employment  
General Counsel Services  
Mergers & Acquisitions  
Real Estate

## DISPUTE RESOLUTION

Debt Collection  
Shareholder Disputes  
Breach of Contract/Misrepresentation  
Bankruptcy & Business Reorganization  
Labor Disputes  
Construction & Real Estate Disputes  
Other Business Disputes

## TAX

International Tax Planning  
Mergers & Acquisitions Tax Structuring  
Property/Real Estate Taxes  
Commercial Contract Tax Planning  
Investment Tax Incentives  
Finance and Securities Taxes  
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