

# NEWSLETTER

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Wishing You  
a Very Merry Christmas  
and  
a Healthy & Prosperous  
New Year 2013

**NARIT & ASSOCIATES**  
Attorneys at Law



## Season's Greetings - Year 2013

Dear Valued & Perspective Clients, Friends and Colleagues,

As year 2013 approaches, on behalf of NARIT & Associates, I take great pleasure in conveying our warmest greetings to you all, and wish you and your loved ones a happy, healthy and successful New Year!

Looking back on year 2012, it has been a challenging, busy but rewarding period for all of us at NARIT & Associates. We are grateful for the opportunities and trust given by our clients to continuously serve their legal needs throughout the year. Particularly in the litigation area, our firm has been receiving an increased demand from current and new clients to represent them in their legal disputes, allowing us to build experiences and expertise, as well as reputation in this area of law. It was also fully understood and appreciated by our clients that our English speaking talents have made us possible to work efficiently with and to support them with a seamless communication, which is crucial in this non-English speaking litigious business environment.

During the last year, our firm had also successfully conducted legal training on commercial contracts opened for public. Due to increased demand and popularity of our legal seminar, we have also decided to offer this unique training program to Corporate Clients as an in-house training. We have received good feedbacks from the participants allowing us to keep improving our materials and stay close to the need of Corporate Clients.

Looking ahead to 2013, we are ready to keep up with the expectations and committed to the success of our clients. Once again, thank you and we look forward to your continuing support in the coming year.

Sincerely yours,

Narit Direkwattanachai

## TAX UPDATE

### 1. Cabinet to Approve the Proposal to Cut Personal Income Tax' Top Bracket to 35%

The cabinet just approves the Ministry of Finance's proposal to reduce the rates of personal income tax, under which the rate for the people in the top bracket will be reduced from 37% to only 35%. For the complete picture to the proposed tax rate as compared to the existing tax rate, please see the tables provided on the next page. This tax cut turns out to be much smaller than it was initially expected and will only relieve an income tax burden of individuals by a small scale.

Traditionally, the Revenue Code attempts to tax a person similarly either a person earns the income as a sole proprietor or a shareholder in a company. The highest rate for both options was set at the same rate at 37%. This equal taxation is no longer maintained.

In 2013 the corporate income tax rate will be reduced from 30% in 2011 to 20%. But personal income tax's top bracket will only be reduced to 35% from 37%. In other words, the government has already significantly cut corporate income tax, while it plans to minimally reduce personal income tax.

Due to this imbalance, many of individual taxpayers who pay a significant amount of their total income in the top bracket (35%) will be able to save tax by changing the way they earn the income from an individual to a company. Any individual earning Baht 6 Million a year or higher in salary income or employment income will be better off setting up a personal service company to derive the same amount of income on their behalf. Given the introduction of the new personal income tax schedule, it might be a good time to review your tax planning strategies.

For more details, please contact our lawyer for consultation.

### Existing Personal Income Tax Schedule

Net Income (Baht)	Rate
Not exceeding 150,000	0%
Exceeding 150,000 to 500,000	10%
Exceeding 500,000 to 1,000,000	20%
Exceeding 1,000,000 to 4,000,000	30%
Exceeding 4,000,000	37%

### Proposed Personal Income Tax Schedule

Net Income (Baht)	Rate
Not exceeding Baht 150,000	0%
Exceeding 150,000 to 300,000	5%
Exceeding 300,000 to 500,000	10%
Exceeding 500,000 to 700,000	15%
Exceeding 700,000 to 1,000,000	20%
Exceeding 1,000,000 to 2,000,000	25%
Exceeding 2,000,000 to 4,000,000	30%
Exceeding 4,000,000	35%

## 2. Stricter Incorporation Rules for Investigation of Use of Thai Nominee Shareholders

The Department of Business Development realizes that foreigners engage in the prohibited activities without a foreign business license under the Foreign Business Act, B.E. 2542 (1999) (the "Act") by setting up a partnership or limited company with a Thai individual holding partnership interest or company shares in trust on behalf of foreign beneficial owners. In light with this practice, the Central Partnership and Company Registry Office issues the Instruction No. 205/2555 to apply even stricter requirements on registration of a partnership and a limited company to discourage the use of Thai nominee shareholder/partner.

The Instruction No. 205/2555 requires incorporator/partners to supply a bank statement to certify or indicate the financial standing of a Thai partner or a Thai shareholder in the amount equal to the invested amount in order to register a partnership or a limited company with the department in the circumstances summarized in the below table.

Existing Rules	New Rules (January 2, 2013 and thereafter)
1. A partnership or a limited company has a Thai partner/ shareholder holding an interest at least 40% but less than 50% of a capital.	1. A partnership or a limited company has a Thai partner/ shareholder holding an interest less than 50% of a capital.
2. A partnership or a limited company has a Thai partner/ shareholder holding an interest less than 40% of a capital, but has a foreigner as an authorized signatory of the partnership or the limited company.	2. A limited company without any foreign shareholder has a foreigner as an authorized director who can singly or jointly sign to bind the company.

These new rules are applicable to a partnership/company that files for a registration on January 2, 2012 and thereafter. The move indicates that the department as a regulator under the Act becomes stricter in its audit on the use of Thai nominee. For more information, please contact our lawyers for consultation.

### 3. Amendment to Tax Law is Proposed to Better Investigate Transfer Pricing Practice

Transfer pricing is a practice conducted by multinational corporations (“MNC”) to transfer the profits from one affiliated company of an MNC in a high taxed jurisdiction to another affiliated company of the same MNC in a low taxed or no tax jurisdiction. Typically, assessment officers of the Revenue Department are out there to catch any abusive transfer pricing. But the department faces the difficulties in getting the information of some companies so its tax collection obviously becomes less effective. The department is pushing for the amendment to the Revenue Code to authorize the department to exchange the information on an international level to seek the facts pertaining to transfer pricing. At present, the Revenue Code prohibits revenue officials from disclosing the business of a taxpayer or any persons related to the taxpayer.

The most famous destinations for setting up offshore companies happen to be the Cayman Islands and the British Virgin Islands, which the department focuses its audit effort, because there is a high chance of tax evasion.

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  
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.



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CORPORATE & COMMERCIAL,  
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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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