

# NEWSLETTER

No. 69 Edition January 2013

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## TAX UPDATE

### 1. Married Couple May Choose to File a Tax Return Separately or Jointly

As a personal income tax filing season is under the way, the tax computation for a married couple for this year becomes fairer than it was in the past. Prior to this year, any non-employment income of a wife was treated as a husband's income and the husband had to include the non-employment income of the wife as husband's income in a computation of his total income. As a result, the husband's total income would be higher than it otherwise was the case, and this total income would be subject to tax at a higher rate. Wife's non-employment income topped up to husband's own income and a married couple was still subject to the same progress rates as a single was.

Fortunately, in mid 2012, the Constitutional Court ruled the provision of the Revenue Code requiring a married couple to jointly file a tax return unconstitutional because it causes the married couple to be liable for a higher tax. Thus, the government has to amend the provision of the Revenue Code that was held unconstitutional. In compliance with the Constitutional Court's decision, the Cabinet in late December 2012 passes the Emergency Decree Amending the Revenue Code (No. 18) (the "Emergency Decree") to give a married couple choices in filing an income tax return. Under the Emergency Decree, a married couple now has three choices in filing a tax return.

#### **Option 1 Separate Filing**

Each spouse may file a tax return separately from each other and a computation of income tax of each spouse is made separately. Each spouse's total income, not their total income, is subject to income tax at the progressive rates from 10% to 37%. Separate computation will result in lower income tax for the married couple. Separate filing is probably the most recommended option for a married couple who makes high income.

#### **Option 2 Joint Filing**

A married couple may select to file a tax return jointly and a computation of income of both persons is made jointly. Naturally, this joint filing will result in higher tax because the income of both persons is combined first and their total income is subject to income tax at the progressive rates from 10% to 37%.

Why they still keep the joint filing as an option? It sounds unattractive for taxpayers. Well, for some married couples whose income is low, joint filing may be a convenient option. For instance, a low income married couple who is subject to the low tax rate may choose to file a return jointly out of convenience. So they do not have to file two returns.

### **Option 3 Joint Filing for Non-Employment Income**

A married couple may select to file a tax return jointly only for the non-employment income. With this option, one person will file the employment income separately and that person's non-employment income will be filed in the return of his/her spouse.

For high net worth individuals, separate filing is the best option. Once any choice is made, a married couple can never change their mind later for the subsequent years unless the approval from the Revenue Department's Director-General is obtained.

### **Jointly Earned Income**

The Emergency Decree also elaborates how a married couple allocates their jointly earned income if the married couple files a tax return separately from each other. With separate filing, obviously the jointly earned income must be split between a husband and a wife. If the married couple jointly derives any income to the extent that it cannot clearly segregated into husband's income and wife's income, each spouse is deemed to derive 50% of the jointly earned income.

For the income under Section 40 (8), the income derived from business, commerce, agriculture, industry, transportation and other, the married couple may (i) allocate 50% of the income to each spouse, or (ii) allocate the proportion according to their agreement.

Again, once any decision on allocation of income is made, the married couple cannot never change the allocation in the subsequent years unless the approval from the Revenue Department's Director-General is obtained.

For more information, please contact our lawyers for consultation.



Mastering

## COMMERCIAL CONTRACTS

Drafting, Risk Management  
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Dear Executive,

A commercial contract is a legal document that outlines a series of rights and obligations of each contractual party and describes the nature of the business relationship between the parties. A commercial contract is a crucial part of the business world, but largely ignored or puzzled by many business professionals in this part of the world.

### Why a commercial contract is crucial?

This is because one clause in a commercial contract can make a whole lot difference between winning and losing when a dispute cannot be amicably settled. The thin line between winning and losing often translates into making or losing a lot of money. As a matter of fact, a properly drafted contract can help you achieve a lot of purposes:

- ✓ it helps you advance your own agenda;
- ✓ it protects your interest; and
- ✓ it mitigates or even eliminates any potential risk on your side.

Understanding a legal framework of commercial contracts is important even for non-lawyers. You, a business professional, negotiate with customers, suppliers, business partners, business associates and colleagues everyday. But how do you know whatever you put in a contract will be upheld in the court of law?

To become a better negotiator in business in Thailand, you need to know what can be agreed and what cannot be agreed in a commercial contract under Thai law.

This course will walk you through commonly used techniques that mitigate or even eliminate any potential risk and highlight contractual provisions that are unlikely be upheld in court.

This course will also explore in detail the crucial terms and conditions of the distribution agreement, sales contract and the supply contract (hire of work contract), which are ones of the most used commercial contracts.

Last but not least, the last session will cover tax aspects of international contracts. The cross border services agreement is becoming more and more commonplace in corporate Thailand. The contract split is used in a cross border transaction as a way to minimize Thai tax. The double taxation agreement exempts Thai tax on the business profit for an offshore company, but does not exempt Thai tax on the royalty. Obviously, the types of income are terribly important here. How do you word the cross border services agreement so that the tax authority is likely to recognize its income as the business profit, not the royalty?

A two-day intensive training program  
that will deliver

**UNDERSTAND** the legal framework and crucial issues in contract formation

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**IDENTIFY** early contractual risks and how to successfully avoid pitfalls

**GAIN** valuable tax knowledge in dealing with the international contracts and double taxation treaty

**ABSORB** insightful viewpoints from expert trainer's real world experience

Presentations will be in English

### Date & Location

Mon - Tue, 20 - 21 May 2013  
Centara Grand at CentralWorld Bangkok  
999/99 Rama 1 Road,  
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### About the Expert Trainer

Narit Direkwattanachai, LL.M (Cambridge)

- The founder and principal of NARIT & Associates
- An attorney specializing in corporate & commercial, tax and commercial disputes



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For more details,  
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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 10310, THAILAND

**TEL** +66 86 785 0793  
+66 2248 2872

**FAX** +66 2248 2873

**EMAIL** [enquiry@naritlaw.com](mailto:enquiry@naritlaw.com)

**WEBSITE** [www.naritlaw.com](http://www.naritlaw.com)

# NARIT & ASSOCIATES

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