

NEWSLETTER

No. 78 Edition October 2013

INSIDE THIS EDITION

1. **New Regulation on Labor Court Procedure 1**
2. **Revenue Ruling on Reimbursement of Payment Advanced
by Thai Subsidiary Company for Overseas Related
Company 2**

Disclaimer: The materials on this document have been prepared to informational purposes only and are not intended to be legal advice. The reader should not act in any way on the basis of the information without seeking where necessary appropriate professional advice concerning their own individual circumstances. NARIT & ASSOCIATES assumes no responsibility for, and disclaims all liabilities (including responsibility for any action or inaction taken) to the fullest extent permitted by law.

LEGAL UPDATE

1. New Regulation on Labor Court Procedure

The New Regulations of the Labor Court Re Procedure in the Labor Court (the “New Regulations”) are enacted in an effort to modernize the procedure in a labor court. There are certain developments in the New Regulations. First, the New Regulations explicitly recognize the use of the written testimony of a witness instead of attorney’s asking his own witness, a practice that has already been recognized in a civil case by the Civil Procedural Code. Secondly, the examination of a witness who is located outside a court or overseas may be conducted through a video conference. Third, any non-Thai documentary evidence that is nonessential may be admissible in the procedure without a need to submit its Thai translation. Removing a Thai translation requirement will save a lot of time.

For more information, please contact our lawyers for consultation.

1

LEGAL UPDATE

2. Revenue Ruling on Reimbursement of Payment Advanced by Thai Subsidiary Company for Overseas Related Company

From time to time, an overseas related company may request its Thai subsidiary company to procure certain services or goods in Thailand for the overseas related company. Most likely, the overseas related company may ask a Thai subsidiary company to advance the payments for such services or goods with a promise that those payments will be reimbursed at a later point.

1. Necessity of Charging Procurement Services Fee

Typically, when the Thai subsidiary company is requested to enter into this kind of procurement arrangement, the Thai subsidiary company should charge the overseas related company the procurement services fee at a market rate. This is to avoid any issue of providing the free procurement services with an assessment officer of the Revenue Department, which the

assessment officer has the power to assess the services fee at the market rate and charge additional income tax on the assessed income accordingly.

2. Necessity of Deducting Withholding Tax upon Payment of Services Fee to the Services Providers

One 2013 revenue ruling raises an interesting point that the Thai subsidiary company who advances the payment of the services fee to the service provider in Thailand on behalf of the overseas related company must deduct any withholding tax on such payment to the services provider if the withholding tax is applicable.

In general, according to the principles of public international law if the overseas related company makes any payment of the services fee directly to any services provider in Thailand, the Thai Revenue Code cannot apply beyond the Thai borders to require the overseas related company located outside a Thai jurisdiction to deduct any withholding tax on the payment of the services fee to the services provider in Thailand. But this ruling seems to imply that if the overseas related company engages the Thai subsidiary company to make the payment for the overseas related company, then the withholding tax must be deducted by the Thai subsidiary company upon the payment of the services fee to the services provider in Thailand. The ruling concludes that this withholding tax requirement is applicable regardless of whether the service provider in Thailand issues a receipt to the overseas related company or the Thai subsidiary company.

3. No Recognition of Income Upon Thai Subsidiary Company's Getting Reimbursed by the Overseas Related Company

The same ruling confirms that when the Thai subsidiary company first advances the payment of the services fee to any services provider in Thailand on behalf of the overseas related company, the Thai subsidiary company may not deduct the services fee as its deductible expense in a computation of a net profit. In other words, the Thai subsidiary company cannot recognize such payment as its expense. Of course, it is just an advance. Likewise, when the Thai subsidiary company gets reimbursed of such services fee by the overseas subsidiary company, the Thai subsidiary company does not have to recognize such reimbursement as its income either.

For more information, please contact our lawyers for consultation.

NARIT & ASSOCIATES

Attorneys at Law

CORPORATE & COMMERCIAL,
DISPUTE RESOLUTION & TAX
BANGKOK, THAILAND

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
Corporate Tax Compliance
Transfer Pricing
Tax Restructuring
Tax Dispute
International Expatriate Services
Wealth Tax Management

Learn more about
Corporate & Commercial,
Dispute Resolution & Tax Services from
NARIT & ASSOCIATES

Visit www.naritlaw.com

