

NEWSLETTER

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1. Revenue Ruling on Business Assets Purchase at the Price Lower than the Market Price (Negative Goodwill)

The Revenue Department issued an interesting Revenue Ruling on Business Assets Purchase at the Price Lower than the Market Price (Negative Goodwill). This ruling sheds us more lights on how the Revenue Department views the business assets purchase at the price lower than the market price (negative goodwill).

In this ruling, Company A who was the Buyer and Company B who was the Seller entered into the part of business sale agreement, under which the Seller transferred the property and the liabilities to the Buyer. The purchased property consisted of land, buildings, machine, spare part, raw materials, inventories, account receivables and account payables. Such business sale arose from the worldwide business sale between overseas shareholders and overseas related companies of the Buyer and the Sellers. The business assets sale was priced at Baht 190 Million, while the book value, which the independent appraiser confirmed to be the market price, was Baht 900 Million. Therefore, the Buyer purchased the business assets at the price which is Baht 710 Million lower than the market price. Thus, the fundamental question here is whether purchasing any asset at the price lower than the market price or at discount is considered to be buyer's income equal to such discount (the difference between the market price and the actual purchase price) or not.

The Revenue Department indicated in this ruling that the Buyer had to recognize the difference of Baht 710 Million between the market price and the actual purchase price (negative goodwill) as its income for the whole amount in the year in which the Buyer purchased such business assets. In other word, if a taxpayer purchases any asset at an under-market price or at discount, it is likely that such discount will be deemed as the income of the taxpayer by the Revenue Department.

This interpretation creates some consequences as most buyers will only purchase anything when buyers feel they get a good price or get a discount. Moreover, even if buyers do not pay the tax upon their purchase of any assets at discount, the buyers will eventually have to pay the capital gain tax anyway when the buyers re-sell the assets later on. With this interpretation, a business sale deal (asset deal) will have to be dealt with care.

For more information, please contact us.

TAX UPDATE

2. Largest Tax Stimulus Package in Decade Becomes Effective

After the Cabinet approved the tax stimulus package, it becomes effective now. The Royal Decree Re Exemption of Revenue Taxes (No. 470) is enacted to exempt the personal income tax on the net income of up to Baht 150,000. The Royal Decree Re Reductions and Exemption of Revenue Taxes (No. 471) is enacted to exempt the corporate income tax on the net profit up to Baht 150,000 for a small and medium enterprise with the paid up capital of not exceeding Baht 5 Million.

The Royal Decree Re Reduction of Revenue Taxes (No 472) is enacted to reduce the specific business for the property transaction for 3% to 0.1%. The Notifications of the Ministry of Interior Affairs are prescribed to reduce the transfer registration fee and the mortgage registration fee to 0.01% for:

- 1) land, building or land with building in a licensed housing complex;
- 2) condominium unit; and
- 3) office building.

For more information, please contact us.

LEGAL UPDATE

3. New Guidelines for Foreign Business License Application

The Foreign Business Board issued the new guideline for foreign business license application applicable to certain businesses as follows:

- 1) The services or business with the government sector;
- 2) The service rendered to its own affiliated companies; and
- 3) The installation, repair and maintenance services for machines and equipments.

Previously there was no detailed guideline for those businesses creating a lot of uncertainties for applicants. With this new guideline, the Foreign Business Board would like to clarify the process of the foreign business license applications for such businesses so that the application process is simple, clear and transparent, which gives the confidence to the investors.

For more information, please contact us.

LEGAL UPDATE

4. Amendment Electronic Transactions Law

The National Legislative Assembly enacted the Electronic Transactions Act (No. 2), B.E. 2551. This Act amends the Electronic Transactions Act, B.E. 2544 (2001). The Act makes the provision for the payments of stamp duty on the electronic transactions. Moreover, the Act recognizes the use of the electronic corporate seal, in addition to the use of the electronic signature.

For more information, please contact us.

LEGAL UPDATE

5. New Law on Unsafe Goods

The National Legislative Assembly enacted the Act on Liability for Damage Arisen from Unsafe Goods, B.E. 2551 (2008). While this Act better protects the consumers, it imposes certain burdens on corporate Thailand.

First, the Act simplifies the procedure in which a disgruntled consumer or an injured party can file a lawsuit pertaining to unsafe goods against a manufacturer, a hirer for manufacture, an importer, a seller or a user of trade name, or trademark which makes a injured party to believe that it manufactures or imports the goods.

Second, with the concept of strict liability, the burden of proof greatly shifts to business operators. All an injured party needs to prove is that an injured party suffers the loss from the unsafe good and that an injured party uses or keeps the goods normally.

Third, this Act imposes the joint liability on a manufacturer, a hirer for manufacture, an importer, a seller and a user of trade name or trademark. Forth, this Act introduces the concept of punitive damage on business operators.

For more information, please contact us.

TAX SERVICES - INTERNATIONAL TAX PLANNING

International Tax Planning for Cross Border Transactions

In any cross border transaction, how the parties structure the considerations and features of a transaction will have the significant impact on parties' tax burden on such transaction. Our tax attorneys can help clients structure a cross border transaction and craft a contract to evidence such transaction in the most tax efficient manner, taking full advantage of double taxation agreements and tax incentive under the Revenue Code.

We are familiar with international tax planning strategies including transfer pricing, treaty shopping, thin capitalization, use of conduit offshore company, remittance of business profit and royalty. Only the rightly worded contract and the real economic substance behind a transaction will help the international tax planning withstand any challenge from a tax audit.

International Tax Planning for Cross Border Foreign Direct/Portfolio Investment

If multinational/international companies plan to do business here in Thailand, the choice of entities and structure will have the significant impacts on their tax burdens. Proper international tax planning helps companies minimize their tax burdens as they remit their profit out of the country either as a management fee, a service fee, a royalty, an interest, or a dividend.

Our licensed Thai tax lawyers can advise clients on how to remit their profit out of Thailand in the least possibly taxed way. Generally, we first run economic analysis of our clients' transactions in order to ensure that our proposed structure reflects the economic reality of our clients' transactions. Afterward we help the clients structure their transactions and select their choice of entities in the manner that minimizes their tax burdens, fully taking advantages of double taxation agreements, offshore company, and tax incentives available under the Revenue Code.

International Tax Planning for Local Transactions and Investments

In certain local transactions and investments, the international tax planning may be used to minimize the tax burden of the parties/investors as well. The use of offshore company may be used to minimize the tax liability of certain local transactions and investments.

Our international tax planning services cover:

- Structuring International Transactions, Operations, and Investments
- Remittance of Income Overseas i.e. Business Profits, Royalties, Interests & Dividends
- Transfer Pricing
- Double Taxation Treaties
- Offshore Tax Planning
- Permanent Establishments
- Regional Operating Headquarters

OTHER TAX SERVICES

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

Please contact our attorneys, should you require any tax assistance.

FIRM PROFILE

NARIT & ASSOCIATES is a Bangkok-based international law firm with principal areas of practice on Corporate & Commercial, Mergers & Acquisitions, Tax Planning, Litigation & Dispute Resolution, Business Contracts/Agreements, Real Estate & Construction, Insurance and Employment.

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.

Contact our lawyer to find out how we can help you.

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For more detailed information,
please visit our website at

www.naritlaw.com

CONTACT INFO

OFFICE ADDRESS:
65/31 Chamnan Phenjati Business Center
2nd Floor, Rama IX Road
Huay Khwang, Huay Khwang
Bangkok 10320

TEL: +66 86 785 0793
+66 2248 2872
FAX: +66 2248 2873
E-MAIL: enquiry@naritlaw.com
WEBSITE: www.naritlaw.com