

NARIT & ASSOCIATES

Attorneys at Law

LEGAL AND TAX SERVICES

B A N G K O K , T H A I L A N D

NEWSLETTER

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INVESTMENT TAX UPDATE

1. No More Dividend Tax Credit for Individual Shareholders of Company Paying the Petroleum Income Tax according to the New Ruling of Board of Taxation

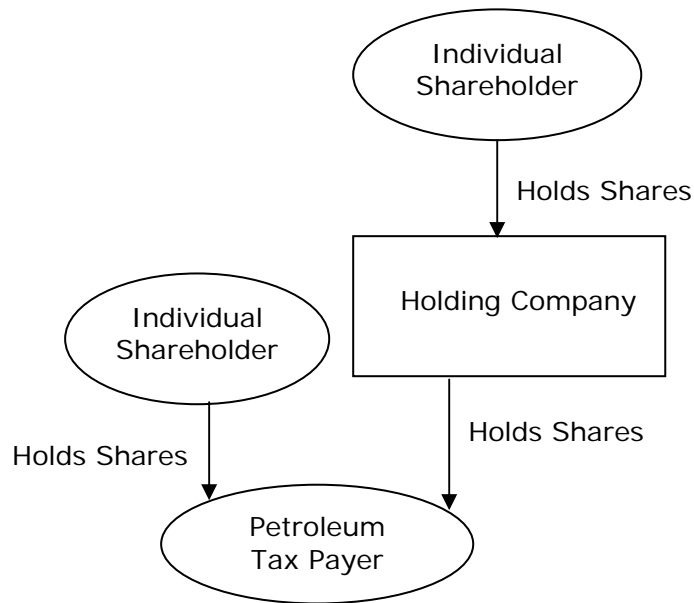
Up to this year, individual shareholders of a petroleum company paying the petroleum income tax always received the dividend tax credit for the petroleum income tax that such petroleum company has already paid to the government. For example, when the petroleum company pays the petroleum income tax at the rate of 50%, then the remaining 50% profit is paid to the individual shareholders. On top of that, the 10% withholding tax still applies to the remaining 50% profit, so the individual shareholders will be left only with 45% of the profit of the petroleum company.

Up to the point where the Board of Taxation issues this new ruling, the Revenue Department tended to agree that an individual shareholder of such petroleum company was entitled to receive the dividend tax credit based on his tax bracket. It is noted that even a taxpayer of a top tax bracket (37%) still could benefit from this dividend tax credit because after the withholding tax, such individual shareholder would end up paying the tax at the rate of 55% of the profit that the petroleum company earns.

Table 1: Dividend Tax Credit

| Tax Bracket | Effective Tax Rate After Withholding Tax on Dividend Payment | Dividend Tax Credit Previously Eligible for Tax Refund |
|--------------------|---|---|
| 10% | 55% | 45% |
| 20% | 55% | 35% |
| 30% | 55% | 25% |
| 37% | 55% | 18% |

As shown above in Table 1: Dividend Tax Credit, even a 37% bracket taxpayer could still claim the dividend tax credit of approximately 18% of the profit of the petroleum company. The Revenue Department also construed that an individual shareholder of a holding company who owns shares in a petroleum company was still entitled to receive the dividend tax credit on the 50% petroleum income tax that the petroleum company pays to the government.



Based on the previous interpretations of the Revenue Department, both individual shareholder of the holding company and individual shareholder of the petroleum tax payer would be entitled to receive the dividend tax credit on the profit that the petroleum taxpayer pays the petroleum income tax at the rate of 50%.

However, the Board of Taxation rules that an individual shareholder of the petroleum taxpayer and an individual shareholder of the holding company will no longer be entitled to receive the dividend tax credit on the profit that the petroleum taxpayer pays the petroleum income tax at the rate of 50%. The Board of Taxation states that the petroleum income tax is not the income tax under the Revenue Code. Therefore, an individual shareholder is not entitled to receive the dividend tax credit. We think the theoretical explanation of denial of the tax credit in this case might be that part of the petroleum income tax is not an income tax, but compensation paid to the government for taking the petroleum from the natural resources.

What does this ruling means to equity investors? The answer is there will be no more dividend tax credit from PTTEP dividend and some part of PTT dividend derived from the income that PTTEP pays the petroleum income tax.

For more information, please contact us.

LEGAL UPDATE

2. Department of Business Development Issues the Warning on Holding General Meetings of Limited Companies

The Department of Business Development issues the warning on holding general meetings of limited companies. The department reminds that the Amendment to the Partnership and Company Law will have come into force on July 1, 2008. The department warns limited companies to hold general meetings in accordance with the new law, otherwise a resolution of a general meeting may become legally invalid and might cause problem to business of a company. Therefore, the department makes the statements as follows:

1. Notice of the summoning of a general meeting for adopting ordinary resolution(s) shall be both published at least once in a local newspaper and be sent by registered mail no later than 7 days before the date fixed for the meeting.
2. Notice of the summoning of a general meeting for adopting extraordinary resolution(s) shall be both published at least once in a local newspaper and be sent by registered mail no later than 14 days before the date fixed for the meeting.
3. Existing Articles of Association contrary to the new law will have been invalid. Companies should amend the Articles of Association to be consistent with the new law.

NARIT & ASSOCIATES can assist with:

- Updating your company Articles of Association to be consistent with the new law.
- Restructuring the shareholding of your company to reflect the fact that the new law reduces the statutory minimum number of shareholders.
- Providing legal advice on Corporate Compliance.

For more information, please contact our attorney or email us at enquiry@naritlaw.com

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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Litigation & Dispute Resolution
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Work Permit & Immigration

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