

## NEWSLETTER

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#### UP COMING EVENT

**Mr. Narit Direkwattanachai will be addressing the Asia Business Forum on:**

**Land and Property Law in Thailand 2008 -  
Crucial Legal Concerns in Making Property Sales/Purchase Contracts  
and Operations in Real Estates**

Friday, August 29, 2008  
Centara Grand at Centara World, Bangkok, Thailand

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## TAX UPDATE

### 1. Supreme Court Ruling on Exchanged Cashflows Derived from Interest Rate Swap

In 2007, the Supreme Court gave one interesting ruling on how the Thai tax law treats the exchanged cashflows derived from the interest rate swap. In such case, one Thai company borrowed the money from a foreign lender and was obliged to pay the interest at the floating rate. Such Thai company entered into the interest swap with overseas financial institutions, in which the Thai company exchanged its obligation to pay the interest at whatever the prevailing floating rate was for the obligation to pay the interest at the fixed rate. The Revenue Department argued that the exchanged cashflows between the parties were the interest and were subject to the withholding tax when the Thai company paid foreign financial institutions. The Supreme Court held that such exchanged cashflows derived from the interest rate swap were not an interest and therefore were not subject to the withholding tax when the Thai company made the payment to foreign financial institutions.

For more information, please contact us.

## UP COMING EVENT

Mr. Narit Direkwattanachai will be addressing the Asia Business Forum in the following event and topic:

**LAND & PROPERTY LAW IN THAILAND 2008**  
Panel of High Profile Speakers:

#### SALES / PURCHASE CONTRACTS

**CRUCIAL LEGAL CONCERNS IN MAKING PROPERTY SALES / PURCHASE CONTRACTS AND OPERATIONS IN REAL ESTATES**

\* **Centara Grand at CentralWorld, Bangkok - Thailand**  
**FRIDAY, 29 AUGUST 2008**

- ✓ Understanding relevant legal framework when making sales/ purchase contracts
- ✓ Examining different forms of sales/ purchase contracts and how to use them correctly
- ✓ Special considerations to make in sales/ purchase contracts when there is a foreign contractual party
- ✓ Common mistakes to be avoided

## LABOR LAW UPDATE

### 2. Labor Protection Act (No. 2), B.E. 2551 (2008) Imposes More Burdens on Corporate Thailand

In this month newsletter, we present to you the differences between the Labor Protection Act, B.E. 2541 (1998) and its amendments, the Labor Protection Act (No. 2), B.E. 2551 (2008), which came into force on May 23, 2008. Corporate Thailand as an employer should familiarize itself with this new law. For more information, please contact us.

Issue	Original Act	2008 Amendments
1. Prohibition on employer's taking/demanding for performance collateral and damage collateral, which are not money, from an employee.	Not Applicable. The Original Act's prohibition only applied to the performance collateral and damage collateral that are money.	Applicable
2. An employer is required to treat outsourced employees of a subcontractor in the same manners the employer treats his own employees under the direct employment with the employer and to grant outsourced employees the fair and non-discriminatory benefits and welfares.	Not Applicable	Applicable
3. An employment agreement, work regulations, rules and order of an employer that grants an employer an unfair advantage is subject to court's review.	Not Applicable	Applicable
4. Prohibition on sexual harassment on all employers.	Not applicable. The prohibition is applicable only to female and minor employees.	Applicable
5. Prohibition on pregnant employer's working during the night time.	Prohibited time was 24:00 to 06:00 without any exception	Prohibited time is 22:00 to 06:00 with exceptions
6. Extra severance pay in case of employer's relocation.	50% of regular severance pay	100% of regular severance pay

### TAX SERVICES – MERGERS & ACQUISITIONS TAX STRUCTURING

Our tax lawyers are familiar with mergers and acquisitions deals. We have substantial experiences in representing clients in acquisitions, sales, mergers and restructures of businesses.

A tax consequence of the proposed transaction is one of the major factors that the parties need to understand prior to making the deal. The consideration from the tax perspective can significantly weight in on how the parties would like to structure their deal, either the share sale or the business/asset sale with the payment in either cash or share (or sometimes combinations of both).

#### **FOR ACQUIRER/BUYER**

We advise acquirers/buyers on the tax status of target companies and the tax consequence of the proposed transaction so that acquirers/buyers can make the decision on whether the acquisition should be the business/asset sale or the share sale.

Our effort is made to save the transaction costs for clients. In addition, we advise acquirers/buyers on depreciation and amortization strategies in the deal structure that provide substantial tax advantages once they assume control of the purchased business as well as the tax aspects of financing the purchase.

Looking forward to the future, acquirers/buyers of the business want to acquire the business in the structure that will give them the substantial tax saving when acquirers/buyers exit/sell/dispose the business in the future.

We help acquirers/buyers select the tax efficient structure that suits their needs. In achieving these objectives for our clients, we employ certain tax saving strategies.

#### **FOR SELLER**

As far as tax is concerned, normally the most important issue for the sellers is how to find the legitimate ways to minimize the capital gain tax, VAT, specific business tax, stamp duties and official fees imposed on the sale of business.

Our extensive experiences help us achieve these aims for our clients. It is crucial for sellers to find a tax planning strategy fits the circumstance of their transaction to save the tax, otherwise sellers will find themselves with the huge tax liabilities, which come primarily from realization of the capital gain and the transfer of assets.

### **FOR MERGERS & RESTRUCTURE**

Normally, when companies merge with each other or one company transfers the business to another company, the tax consequences from their merger or business transfer will be numerous, from corporate income tax, VAT, specific business tax, stamp duties and official fees.

Without the proper tax planning, more or less the merger or the business transfer will end up with the significant tax liabilities. These tax liabilities primarily arise from the deemed capital gain and the imposition of VAT/specific business tax on asset transfer.

Therefore, it is important for the relevant parties to structure a merger deal or a business transfer deal in the most tax efficient manner. Our firm can help clients structure the mergers deal or the restructure deal in the least possibly taxed way.

### **OTHER TAX SERVICES**

- International Tax Planning**
- 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 international law firm based in Bangkok, Thailand 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.

## AREAS OF PRACTICE

Corporate & Commercial  
Construction  
Contracts / Agreements  
Employment  
General Counsel Services for Corporate Clients  
Insurance  
Litigation & Dispute Resolution  
Mergers & Acquisitions  
Private Clients  
Real Estate  
Tax  
Work Permit & Immigration

For more detailed information,  
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