

# NEWSLETTER

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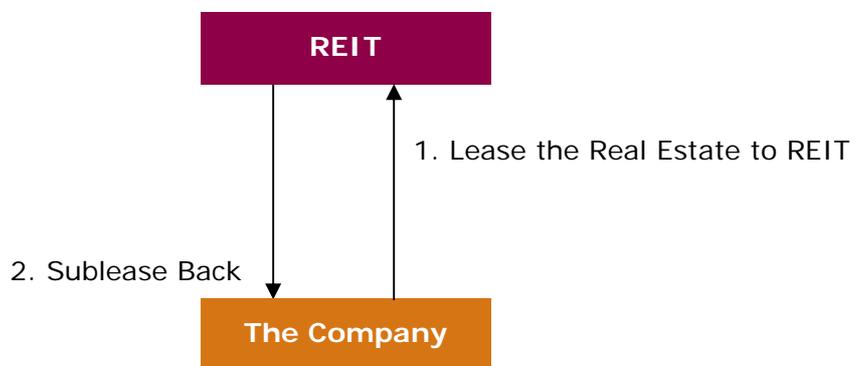
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## TAX UPDATE

### 1. Revenue Ruling on Lease Back Structure for Real Estate Investment Trust

The Revenue Department issues an interesting revenue ruling on the lease back structure for the Real Estate Investment Trust (REIT) in the category of leasehold. Initially the company owned and used the immovable property for its operations. In order to raise finance for the company, the company sold the 30 year leasehold of such immovable property to the leasehold REIT, which was formed accordingly, while the company still held some investment units in such REIT.



In seeking this ruling, the company asked the Revenue Department whether it was possible for the company to lease the immovable property to the REIT and for the REIT to sublease such immovable property back to the company. It seems that the Revenue Department does not recognize this lease back structure. The Revenue Department rules that both REIT and company did not intend to genuinely deliver the possession of the real estate under the lease and that such agreement was made without any genuine intention to be binding under the terms of the lease. Therefore, the company had no right to book the rental as its income and the expense in the computation of profit and loss of the company.

Even though this ruling is directly applicable to the leasehold REITs in general, it sheds us more lights on how the Revenue Department may view the similar lease and lease back arrangements in other types of transactions.

For more information, please contact us.

## TAX/REAL ESTATE UPDATE

### 2. Tax Deductibility of Official Fee Imposed on Registration of Land Lease

In the recent Supreme Court decision, the court gave the opinion on the tax deductibility of official fee imposed on the registration of land lease, in which a corporate taxpayer leased out the land to a lessee and registered such land lease with the land registry office.

The court decided that the official fee incurred in registration of the land lease, which was paid for the purpose of generating the land rental income, was not disbursed to generate any capital of the lessor (landlord), and such official fee was not deemed a disallowed expense in the category of capital expenditure. Therefore, the lessor (landlord) could not capitalize such official fee expense.

For more information, please contact us.

## LEGAL UPDATE

### 3. Appointment of a Proxy of a Director for Attending a Meeting of Board of Directors of Limited Company and Passing the Circular Resolution of Board of Directors Are No Longer Allowed under the New Notification of the Department of Business Development

The Department of Business Development issues the new Notification Re Registration of Articles of Association of Limited Company under the Civil and Commercial Code. In this notification, the department concludes as follows:

1. Under the Civil and Commercial Code, the Articles of Association of a limited company cannot stipulate to allow a director to appoint a proxy to attend a meeting of board of directors as the directorship of a limited company must have the qualifications that are purely personal to the director and the director must act by himself and cannot appoint any other person to act as a director. As a result, the department will no longer accept to register the Articles of Association with the provision allowing the appointment of a proxy of a director for attending a meeting of board of directors.

2. Under the Civil and Commercial Code, the Articles of Association of a limited company cannot adopt the provision that allows a board of directors to pass the circular resolution as the law sets out the meeting procedure in order to allow the directors to exchange the opinions among themselves. Therefore, the department will no longer accept to register the Articles of Association with the provision allowing the use of the circular resolution of the Board of Directors.

Moreover, the department encourages the limited companies whose Articles of Association are contrary to these latest interpretations to change their Articles of Association to take out such provisions.

While the prohibition on the use of the circular resolution of a board of directors will likely to have an impact on limited companies across the board, the prohibition of the appointment of a proxy of a director for attending a meeting of board of directors will likely to have the significant impact on foreign-own companies or Thai-foreign joint venture companies with significant number of non-resident directors as those non-resident directors can no longer cast their vote in the meetings of boards of directors by proxy.

For more information, please contact us.

#### LEGAL UPDATE

### 4. Royal Decree on Supervision of Electronic Payment Services

In order to better regulate the electronic payment services, the Royal Decree on Supervision of Electronic Payment Services is recently enacted by virtue of the Electronic Transactions Act, B.E. 2544 (2001). The Royal Decree grants the power to the Bank of Thailand to regulate the electronic payment services business.

The Royal Decree categorizes the electronic payment services into three types. For the first type, the operators must notify the Bank of Thailand prior to rendering the services. For the second type, the operators must register with the Bank of Thailand prior to rendering the services. For the third type, the operators must obtain the permit from the Bank of Thailand prior to rendering the services.

For more information, please contact us.

### 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  
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Real Estate  
Tax  
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