

## NEWSLETTER

No. 28  
Edition March 2009

### INSIDE THIS EDITION

1. **New Ruling of the Board of Taxation on Loss Carry Forward of BOI Business and Non-BOI Business** ..... 1
2. **Revenue Ruling on Tax Treatment of Severance Payment and Payment from a Provident Fund** ..... 2
3. **Changes to the Qualifications of Independent Directors of Listed Companies** ..... 3

### UP COMING EVENTS

**Labor Law and HR Restructuring in the Turbulent Business Environment -  
Tax Issues in Employment and Remuneration**

Friday, April 24, 2009

Centara Hotel at CentralWorld, Bangkok, Thailand

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.

## 1. New Ruling of the Board of Taxation on Loss Carry Forward of BOI Business and Non-BOI Business

The Board of Taxation recently issues the new ruling on the loss carry forward of the BOI Business and the non-BOI Business. The Thai government grants the tax and non-tax privileges to a business operator who makes government's preferred investments. The Board of Investment ("BOI") runs this BOI scheme. Typically, during the BOI promotion period, a company who receives the BOI promotion will enjoy the corporate income tax holiday. If a company with BOI privilege operates both BOI business and non-BOI business, normally the account books of both businesses must be segregated. The Board of Taxation rules as follows:

1. In the event that a company operates the BOI business with more than one project receiving the BOI promotion, the company must calculate the income and the expenses of all BOI projects to figure out whether the BOI business posts a profit or a loss. If the BOI business of the company reports a net loss, the company has the right to carry forward the losses incurred during the corporate income tax exemption years to offset the net profits of the BOI business that incur in the later years after the expiration of the corporate income tax exemption period up to 5 years.
2. If the BOI business posts the loss and after expiration of the corporate income tax exemption period, the company is still entitled to the 50% corporate income tax reduction for the period of not exceeding 5 years from the expiration of the tax exemption period, the company will have both BOI business, which is entitled to the 50% corporate income tax reduction, and non-BOI business. In such case, the company shall have the right to carry forward the previous losses of the BOI business to offset the net profit of the BOI business, which is entitled to the 50% corporate income tax reduction first. If there is still any remaining loss of the BOI business, the remaining loss may be offset with the net profit of the non-BOI business.

For more information, please contact us.

## 2. Revenue Ruling on Tax Treatment of Severance Payment and Payment from a Provident Fund

Under the Revenue Code, whenever an employment of an employee is terminated by an employer, a terminated employee may choose to exclude a single payment received from an employer by reason of termination from the computation of personal income tax of other incomes that an employee receives and pay the personal income tax on such single payment according to the specific formula separately from other incomes. A right to exclude an income from the computation of personal income tax with other incomes is definitely beneficial to a terminated employee as the personal income tax on the income received by reason of termination will be computed separately from the personal income tax of other incomes, rather than top up other incomes of such terminated employee, which will result in a higher tax bracket because of the progressive tax rate of the personal income tax.

In the event that a terminated employee is also a member of a provident fund, an asset management company who manages the provident fund also makes the payment of the employee's contribution, employer's contribution, returns on investment from the employee's contribution and returns on investment from employer's contribution to the terminated employee. In general, the amount received from the provident fund will be taxable unless the conditions of exemption are fulfilled. So a terminated employee will receive two payments, one from an employer and one from an asset management company that manages the provident fund.

In the tax ruling, Mr. Sor received two payments by reason of termination of employment. Mr. Sor received one payment from the provident fund, which is made by an asset management company in 2006 and received another payment from an employer in 2007. The Revenue Department held that Mr. Sor had the right to exclude the income derived from the payment by reason of termination from the computation of personal income tax of other incomes in 2006 only for the payment made in 2006 (first payment only). But Mr. Sor did not have the right to exclude the income derived from the payment made in 2007 by reason of termination from the computation of personal income tax of other incomes in 2007 because the Revenue Code and the Notification of Director-General of the Revenue Department only allows a terminated employee to exclude the income received by reason of termination from computation of personal income tax of other incomes and pay the personal income tax on such income based on the different formula in only the first year in which the payments are made.

This revenue ruling seems to be inconsistent with the Supreme Court Decision, which held that a terminated employee had the right to exclude the payments received by reason of termination from the computation of personal income tax of other incomes in both years. The Supreme Court reasoned that even though the right to exclude the income received by reason of termination from computation of tax of other and to pay the tax based on the different formula can only be exercised by a taxpayer in the first year in which the payments were made only, in the circumstance there were the two payers of incomes, the employer and the provident fund. One payment was made by the employer and another payment was made by the provident funds. The employer and the provident fund were different and separate legal entities.

For more information, please contact us.


#### LEGAL UPDATE

### 3. Changes to the Qualifications of Independent Directors of Listed Companies

The Securities and Exchange Commission ("SEC") acting in the capacity of the Capital Market Supervisory Board issues the Notification of Capital Market Supervisory Board Re Applying for Permission and Granting Permission for Initial Offering of Shares. This Notification changes the qualifications of listed companies. Former civil servants and former advisors of government agencies will no longer be disqualified to be independent directors of listed companies where such government agencies are majority shareholders or controllers parties.

For more information, please contact us.

## UP COMING EVENTS



**LABOR LAW and HR Restructuring**  
in the Turbulent Business Environment

Industry Forum  
23-24 April 2009 @ Centara Hotel at CentralWorld

11.30 **Tax issues in employment and remuneration**

- Recent developments of taxation of employment
- Tax planning issues: expatriate employees vs. overseas Thai employees
- Employers' common mistakes in payroll taxes
- Understanding tax liability of a terminated employee
- Tax saving ideas: How to optimize the tax deductions/allowances and the tax exemptions available to the employees?

**Guest Speaker:** Mr. Narit Direkwattanachai, Principal  
**Narit & Associates**

### Speaker Profile

Mr. Narit Direkwattanachai is the Principal at **NARIT & Associates**, a Bangkok-based international law firm with main areas of practice in Corporate & Commercial, Mergers & Acquisitions, Tax, Real Estate, Construction and Commercial Dispute. Mr. Direkwattanachai earned an LLB (1st class honors) from **Chulalongkorn University**, an LLM (Chevening Scholar) from the **University of Cambridge**, UK and an MBA in Finance (GRSP Scholar) from the **Georgia Institute of Technology**, USA.

Having the right balance between his financial literacy and legal expertise, Mr. Direkwattanachai regularly advises publicly held companies, Thai subsidiaries of multinational corporations and foreign investors across a broad range of matters, including acquisitions of local companies, formation of joint venture companies, investment/divestment, international sales, distributorship, commercial contract tax planning, transfer pricing, cross border tax planning, remittance of profit and tax dispute.

Prior to establishing **NARIT & Associates**, Mr. Direkwattanachai worked with **Baker & McKenzie**, Bangkok office, **Baker & McKenzie**, Sydney office, and the Investment Banking Group of **DBS Bank**, Singapore. He can be reached at [narit@naritlaw.com](mailto:narit@naritlaw.com)

### GENERAL COUNSEL SERVICES

### OUTSOURCED LEGAL SERVICES AT COST SAVING, FIXED RATE

General Counsel Services arrangement is a great solution for corporate companies who do not have in-house lawyers or have a stretched legal department, but require additional legal support in the cost-effective and flexible way.

NARIT & Associates proudly presents our General Counsel Services, unique outsourced in-house general counsel legal services, a new approach to your business at more affordable rates. General Counsel Services is a unique arrangement in which for a monthly fixed retainer fee, the clients are provided with the legal services that are traditionally rendered by the in-house legal counsels.

General Counsel Services brings the best of both worlds together, namely all the benefits and comfort of having in-house legal counsel as well as outsourcing flexibility and expertise of outside law firms. Corporate clients are benefited from an unlimited access to our legal advice, raising any legal questions to us as many as they wish.

#### LAW FIRM EXPERTISE AT A FIXED FEE

We offer the expertise of traditional international law firms at a fixed fee.

#### COST SAVING

Outsourced general counsel services costs the company less than hiring a fulltime in-house legal counsel. The lower costs and the other benefits of in-house general counsel can be achieved without the need to add another (expensive) person to the company payroll with its associated concerns and overhead costs.

#### HAND-ON SUPPORT

We provide full-time support from a team of experienced legal professionals in the most cost-effective way.

#### FLEXIBILITY

The company fully benefits from all flexibility and cost effectiveness of the outsourcing approach offered by our General Counsel Services.

#### CONTINUITY

Your outsourced general counsel from us is well acquainted with your business issues facing your company and consequently provides focused, relevant, practical, and cost effective legal advice that is becoming increasingly crucial to your business.

**PART-TIME GENERAL COUNSEL**

If your legal needs do not justify hiring a full time in-house general counsel, all you need is part-time legal advice on various business issues, our General Counsel Services can fill the gap to satisfy your need.

**EASY BUDGETING**

You can precisely and conveniently budget for legal fees, without worrying about the meter running or incurring additional costs.

**IN-HOUSE ATTORNEY'S BENEFITS**

You have the advantages of an in-house attorney at a reasonable monthly rate.

**AVAILABILITY OF TEMPORARY SERVICES**

Temporary general counsel services are also available to fill in the gap when your permanent general counsel takes her maternity leave, is on prolonged sick leave or leaves a job.

**TAILOR MADE**

We structure our general counsel scheme based entirely on your particular needs. So your retainer scheme or project based scheme is tailor made to meet your particular needs.

**OTHER LEGAL SERVICES**

- Corporate & Commercial**
- Construction**
- Contracts/Agreements**
- Employment**
- Insurance**
- Litigation & Dispute Resolution**
- Mergers & Acquisitions**
- Notarial Services**
- Private Clients**
- Real Estate**
- Work Permit & Immigration**

Please contact our attorney, should you require any legal assistance.

# NARIT & ASSOCIATES

Attorneys at Law

## LEGAL AND TAX SERVICES

BANGKOK, THAILAND

### 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,  
please visit our website at

[www.naritlaw.com](http://www.naritlaw.com)

### CONTACT INFO

OFFICE ADDRESS:  
65/31 Chamnan Phenjati Business Center  
2<sup>nd</sup> 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](mailto:enquiry@naritlaw.com)  
WEBSITE: [www.naritlaw.com](http://www.naritlaw.com)