

## NEWSLETTER

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## 1. Conditions for Tax-Free Business Transfer

As the Thai economy contracts, a corporate restructure becomes necessary for many business operators in the country. Since May 2009, the government has been offering the VAT, specific business tax and stamp duty exemptions for limited companies and public companies that transfer a part of a business to each other, provided such transfer must be completed by 2009.

The Director-General of the Revenue Department issues the notification to lay down the conditions for the tax-free business transfer. It looks like the Revenue Department intends to limit the scope of the tax exemptions only to a business transfer between related companies. In other word, these tax privileges are available to a transfer of a part of a business between related companies (companies under the same group) only.

Apparently, this condition leaves many business transfers unqualified for the tax exemptions, unless certain changes are made to qualify a transferor company and a transferee company as related companies for the purpose of these tax exemptions.

Among other conditions laid down by the Revenue Department is the condition that property to be transferred must be related to the type of the business that is transferred that is not the sale normally carried out. A transferee company must use such transferred property to carry out the similar business or the related business.

As far as formalities are concerned, prior to any business transfer, a transferor company and a transferee company must jointly execute and file certain documents to the Director-General of the Revenue Department to qualify their transaction for these tax exemptions.

These tax privileges will be quite useful for those companies who plan to undertake any restructure within their own group in 2009, provided all conditions are fulfilled strictly. Should you require further information on qualifications for the tax-free business transfer, please feel free to contact us.

## TAX UPDATE

### 2. Tax Refund for any Person who Sold a Property before Continued Reduction of Specific Business Tax Became Effective

The Revenue Department announces that any person who registered a sale of an immovable property in a commercial manner or for profit during March 29, 2009 to May 18, 2009 now has the right to claim back the difference between the amount of specific business tax calculated at a regular rate (full rate) and the amount of specific business tax calculated at a reduced rate as the reduction of specific business tax has been extended for one more year. During the period, the previous reduction of specific business tax had already expired, but the continued reduction of specific business tax had not been published in the royal gazette yet.

Consequently, any person who wished to sell a property during the period had to pay the specific business tax at the regular rate first. After publication of the royal decree in the royal gazette, a property seller may now claim back the difference between the full rate and the reduced rate at a local revenue office where a business operator is located or where a taxpayer has a domicile.

For more information, please contact us.

## LEGAL UPDATE

### 3. Clarification Note on the Practical Guidelines for Serving a Notice Calling for a General Meeting of Shareholders of a Limited Company

The Department of Business Development issues the interesting clarification note on the practical guidelines for serving a notice calling for a general meeting of shareholders of a limited company.

The department acknowledges the practical problems caused by the recent amendment to company law that requires every limited company to serve a notice calling for a general meeting of shareholders by registered mail with an acknowledgement of receipt to all shareholders whose names appear in the register of shareholders and to publish the notice in a local newspaper at least once.

First, a limited company must publish the notice in a local newspaper, which causes both problem and burden in practice. For most companies in Thailand, the notice can be served in an easy manner, i.e. notifying by a letter, notifying over the telephone or serving the meeting notice directly to shareholders. Consequently, the statutory requirement for a newspaper publication of the notice effectively creates an unnecessary burden to begin with.

Besides, during May of every year, that limited companies and public limited companies with the total number of over 200,000 have to call an annual general meeting of shareholders concurrently, the space of newspaper is insufficient to cover all publications. Many companies are afraid that an annual general meeting of shareholders called without a proper newspaper publication will be void and may cause them be criminally liable for noncompliance of the law.

The Department of Business Development is currently drafting a new amendment to change the criteria by removing the newspaper publication requirement except for the case where a limited company has a bearer shares. At present, the draft has passed the process of gathering the opinions from the related parties. The department was expected to propose the draft to the Ministry of Commerce in early July.

Second, with respect to the legality of serving a meeting notice, the two provisions of company law deal with the notice to shareholders. Section 1175 sets forth the criteria specifically for serving the notice of a general meeting of shareholders. Section 1244 prescribes the general principle for serving any notice by a company to shareholders. For clarification, the department notifies that the correct method of serving the notice of a general meeting of shareholders can be accomplished in 2 ways. The first option is to serve the notice by registered mail with an acknowledgement of receipt to shareholders. Or the second option is to deliver the notice to shareholders directly. However, for the second option if any shareholder refuses to accept the notice, a company must serve the notice by registered mail with an acknowledgement of receipt.

For more information, please contact us.

## LEGAL UPDATE

### 4. Clarification Note on the Non-Cash Payment for Share Subscription in the Capital Increase of a Limited Company and a Public Limited Company

The Department of Business Development issues the clarification note on the non-cash payment for share subscription in the capital increase of a limited company and a public limited company. The department all too often receives an inquiry whether a limited company or a public company may accept any other property rather than the cash as the payment for share subscription in the capital increase or not under company law.

To resolve this confusion, the department confirms that either limited company or public limited company may accept any other property rather than the cash as the payment for share subscription in the capital increase as provided in the relevant statutes.

For more information, please contact us.

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

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

# NARIT & ASSOCIATES

Attorneys at Law

LEGAL AND TAX SERVICES

BANGKOK, THAILAND

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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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