

NEWSLETTER

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1. Tax Cut for Listed Company Expires at the End of 2010

Despite the repeated call to make a listed company tax cut permanent from listed companies, the Revenue Department and the Ministry of Finance so far are still quite reluctant to make the listed company tax cut permanent. The tax authority is more than happy to provide the tax cut to the listed companies only on a temporary basis.

The tax cut for a majority of existing listed companies will expire at the end of 2010 unless the current administration renews it for another period of time, say three or five years. Under the existing package, a tax rate of existing companies listed on the main board of the Stock Exchange of Thailand ("SET") is reduced from 30% to 25% for the net profit up to Baht 300 Million and a tax rate of existing companies listed on the secondary board, the Market for Alternative Investment ("MAI"), of the SET is reduced from 30% to 20% for the net profit up to Baht 20 Million. Without the renewal of a tax cut, these SET and MAI listed companies will have to pay corporate income tax at the full rate of 30% of the net profit.

Various administrations come and go, but all of them keep renewing a listed company tax cut whenever it expires during their times in office so far to the extent that some believe that the government makes the implicit pledge to keep renewing a tax cut for listed companies. Well, the implicit pledge may no longer be held. At present, it is still unclear whether the current administration will renew this tax cut or not. Given the high ranking official of the Ministry of Finance has discussed with the media recently about the possibility of the increase in a VAT rate from 7% to 8% and cancellation of a long term fund ("LTF") tax deduction for individual taxpayers, understandably some executives of listed companies are concerned that the tax reduction package may not be renewed.

For more details, please contact our lawyer for consultation.

TAX UPDATE

2. Revenue Ruling on Tax Deductibility of Interest on Loan Taken to Purchase Securities

In late 2009, the Revenue Department issues one interesting ruling on tax deductibility of interest on a loan taken to purchase securities. In the ruling, Company A was a holding company. Company A had taken a loan from a lender to use the loan proceeds to invest in the securities that were not registered in the stock exchange. As a result, Company A had to pay the interest on the loan taken to purchase the securities. Company A asked the department about the tax deductibility of the interest on the loan taken to purchase the securities. The department replied that any interest on the loan that is due on the date that the property can be used (by Company A) may be deducted from the computation of the net profit of Company A.

For more details, please contact our lawyers for consultation.

DISPUTE RESOLUTION

DEBT COLLECTION

Debt collection seems to be one of the troubles many businesses face in Thailand. Our firm can assist clients on debt collection resulting from either trade debt or borrower's default on payment of the loan. If the lawyer's demand notice still yields no positive result, our firm is ready to represent client to take further legal action to the court or file the claim to the arbitration body.

After the completion of court or arbitration process, we can assist clients on debt recovery as follows:

- Asset search
- Asset recovery
- Enforcement of judgment or enforcement of arbitration award

SHAREHOLDER'S DISPUTES

Our firm has experience and expertise in representing both majority shareholder/partner and minority shareholder/partner in the shareholders' disputes/partnership disputes. Eventually, the shareholders' disputes/partnership disputes have to be resolved one way or another, either through a lengthy negotiation that yields a settlement satisfactory to both parties, pursuing any legal actions (courtroom) to revoke certain corporate actions, and even filing a criminal charge against the counterparty.

We also assist clients in the following matters:

- Corporate fraud
- Investment fraud
- Finance

BREACH OF CONTRACT/MISREPRESENTATION

In the business world, another area of disputes is breach of contract, misrepresentation and wrongful inducement. Our firm can advise and represent clients on these issues. Typically, a non-default party has two options either to enforce the default party to perform the obligations and claim any damage for a delay of performance or to exercise the right to terminate the contract and claim for any damage suffered by the non-default party. The non-default party may request the court to impose the injunction on the default party, requiring the default party to do or refrain from doing certain things.

BANKRUPTCY & BUSINESS REORGANIZATION

Whenever the court has order the debtor to be under an absolute receivership or a business reorganization, the creditor may ask for repayment of his debt only by complying with the procedure prescribed in the bankruptcy law even though the creditor may be a judgment creditor, or a creditor who has filed a civil action which is, however, still under trial.

The creditor must take an action within the deadline otherwise the claim for repayment of debt will be invalidated by the bankruptcy law. Once any counterparty is on the verge of bankruptcy, the creditor is recommended to have an eye on debtor's possible financial demise.

We can assist the creditor file the claim for repayment of debt to preserve creditor's right.

LABOR DISPUTES

We can advise and represent clients on the labor disputes which typically arise in the following circumstances.

- Employee's fraud and misappropriation of employer's assets
- Employee's unauthorized use of employer's assets, information and trade secret
- Termination, layoff, restructuring (downsizing), severance pay and notice payment
- Lawful termination and unfair termination

TAX DISPUTE

We advise and represent clients on a variety of tax disputes from the Revenue Department to the Customs Department. Our services cover:

1. Making representations on behalf of clients to tax a relevant tax authority in the pre-assessment stage;
2. Providing advice concerning the legality of tax assessment made by a relevant tax authority;
3. Preparation of notice of objection to tax assessments and request for re-determination to the tax appellate body; and
4. Representation in the tax court.

CONSTRUCTION & REAL ESTATE DISPUTES

The problem between the contractor and the owner seems to happen all the times. Some disputes could be settled right away, while other unavoidably may have to make their way to courtroom or arbitration. Our firm can assist either contractor or owner (hirer) in the construction dispute arising from below situations:

- Contractor's delay in completion of work according the milestones
- Delivered work is different from the agreed specifications
- Delivered work fails to meet the agreed standards
- Owner's delay in payment of the construction price to the contractor for no good reason
- Owner's delay in delivery of the construction site to the contractor
- Owner's insisting to use the unusable designs despite the protest by the contractor
- Use of the engineering consultant who is less than neutral and fair
- Owner's refusal to accept the delivery of work from the contractor on the ground of small defects
- An effort by the owner to bargain the contraction price long after the contract has been sealed
- Parties' disagreement over the price increase and the additional time for the additional scope of work

With respect to the real estate disputes, a real estate developer might fall behind the construction schedule, the problem between a property buyer and a developer may arise from time to time.

OTHER BUSINESS DISPUTES

In addition to the above matters, we can advise and represent client on other business disputes, i.e. unfair business practice, business tort claim, trade secret and intellectual property, corporate fraud, investment fraud, finance, and international sales disputes.

Contact our lawyers without delay if you have or about to have any dispute before the dispute (likely) goes bad and gets worse.

NARIT & ASSOCIATES

Attorneys at Law

CORPORATE & COMMERCIAL,
DISPUTE RESOLUTION & TAX

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

THE FIRM

NARIT & Associates is a Bangkok-based international law firm serving both Thai and foreign companies by combining international perspectives with profound local expertise, in the areas of corporate & commercial, mergers & acquisitions, tax, real estate & construction, commercial dispute and general practice.

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.



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

CORPORATE & COMMERCIAL

Business Setup
Construction
Contracts/Agreements
Employment
General Counsel Services
Mergers & Acquisitions
Real Estate

DISPUTE RESOLUTION

Debt Collection
Shareholder's Dispute
Breach of Contract/Misrepresentation
Bankruptcy & Business Reorganization
Labor Disputes
Construction & Real Estate Disputes
Other Business Disputes

TAX

International Tax Planning
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
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