

NEWSLETTER

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INSIDE THIS EDITION

1. Revenue Ruling on Marketing and Sale Promotion
Costs Sharing 1
2. Tax Exemptions for Future Contracts 2

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1. Revenue Ruling on Marketing and Sale Promotion Costs Sharing

In early 2010, the Revenue Department published an interesting revenue ruling that sheds more light on the costs sharing between a parent company and a Thai subsidiary company. Cost sharing is a practice where a multinational corporation prefers to incur a certain expense on a worldwide basis and then asks subsidiary/affiliated companies around the world to foot the bill. So costs sharing between a parent company and a Thai subsidiary company occurs once and a while.

In this revenue ruling, one Japanese parent company engaged one contractor to operate a marketing and sales promotion worldwide. These activities included introduction to products and product technology, answering any questions relating to products to customers, handing out free sample products, preparation and evaluation of product technology, performance of after sale services and other supports. But these activities did not include soliciting any new customer, taking any purchase order from a customer, delivery of products and bill collection.

In this case, no service was rendered by the contractor in Thailand at all. After rendering the services, the contractor would calculate all the expenses and charge the Thai subsidiary company in proportion to the Thai subsidiary's sale of the products. The Thai subsidiary sought the ruling on tax deductibility of these expenses, VAT and withholding tax from the Revenue Department.

First, the department responded that the expenses charged by the contractor to the Thai subsidiary company were the disallowed expenses because these expenses were not incurred for the purpose of generating a profit or for the business exclusively and these expenses were not for the purpose of a business in Thailand. Second, the department also ruled that VAT was not applicable since the service was rendered in Japan and other foreign countries and no service was utilized in Thailand at all. Last, the department deemed that the payment of expenses was exempt from the withholding tax by the double taxation agreement.

In the light of this revenue ruling, Thai subsidiary companies of multinational corporations should be more cautious in sharing any expense with a parent company in a foreign country.

For more details, please contact our lawyers for consultation.

2. Tax Exemptions for Future Contracts

In early September 2010, the government introduces the tax exemptions for future contracts as summarized here below. The future contract is one type of derivative transaction where the parties buy and sell an asset at some point in the future at a predetermined price. To minimize the counterparty risk, typically a customer (trader/investor) is asked to place collateral to secure his or her proper performance of a future contract.

1. A customer who is an individual taxpayer is exempt from personal income tax on any income derived from transferring or taking a transfer of any securities that are used as collateral for the proper performance of a future contract. If the customer receives any sum equivalent to a dividend and allows a future trading representative to deduct tax at the rate of 10%, the customer is allowed to exclude this income from the computation of the annual income for the purpose of paying personal income tax. If the customer receives any sum equivalent to an interest and allows a future trading representative to deduct tax at the rate of 15%, the customer is allowed to exclude this income from the computation of the annual income for the purpose of paying personal income tax.
2. A customer who is a company is exempt from corporate income tax on any income derived from transferring or taking a transfer of any securities that are used as collateral for the proper performance of a future contract provided that the customer must not book the cost of such securities as an expense in computation of the net profit.

A customer who is a company formed under the law of a foreign country without operating any business in Thailand will get the exemption under the previous paragraph if the customer allows a future trading representative to deduct tax at the rate of 10% of the sum equivalent to a dividend and allows a future trading representative to deduct tax at the rate of 15% of the sum equivalent to an interest.

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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For more detailed information,
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