

NEWSLETTER

No. 48
Edition November 2010

INSIDE THIS EDITION

1. **New Conditions for Regional Operating Headquarters (ROH) 1**
2. **Life Annuity Premium Tax Deduction up to Baht 200,000 2**

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1. New Conditions for Regional Operating Headquarters (ROH)

The new Royal Decree is enacted to amend the conditions for the regional operating headquarters ("ROH"). ROH is the scheme that Thailand copied from its neighbouring countries to promote Thailand as a regional operation hub for multinational corporations. The scheme has been introduced since 2002. So far it is not terribly successful. Apparently, multinational corporations still prefer other neighbouring countries than Thailand. Therefore, the government attempts to implement any necessary adjustments to the scheme to make it more attractive to multinational corporations.

The Royal Decree introduces the second category of ROH, while conditions of the existing (first) category of ROH are left unchanged. A taxpayer has to choose whether the taxpayer prefers to use the first category or the second category. The second category of ROH offers the following privileges.

1. Expatriate employees' tax is reduced to the flat rate of 15% for 8 years.
2. ROH's tax rate is reduced to 10% of the net profit for the period of 10 years (with a possibility of a 5 year extension) for (i) income derived from ROH's services from an affiliated enterprise in Thailand, (ii) interest income derived from an affiliated enterprise or a foreign branch of ROH only to the extent that ROH borrows the money for the purpose of lending out, and (iii) the royalty received from an affiliated enterprise or a foreign branch or a related company or related partnership of ROH for research and development conducted in Thailand by ROH.

The tax reduction under (ii) and (iii) is applicable only for the year in which the sum of the income from ROH's services derived from an affiliated enterprise in a foreign country or a foreign branch and/or the royalty derived from an affiliated enterprise in a foreign country or a foreign branch or a related company or a related partnership in total accounts for not less than 50% of the total income of ROH.

3. ROH's tax is exempt for 10 years (with a possibility of a 5 year extension) for the income derived from rendering the services of ROH to an affiliated enterprise in a foreign country or a foreign branch of ROH.
4. ROH's tax is exempt for 10 years (with a possibility of a 5 year extension) for the dividend income derived from an affiliated enterprise formed under the law of Thailand or the law of a foreign country, provided that the sum of the income from ROH's services derived from an affiliated enterprise in a foreign country or a foreign branch and/or the royalty derived from an affiliated enterprise in a foreign country or a foreign branch or a related company or a related partnership in total accounts for not less than 50% of the total income of ROH.
5. A company formed under the law of a foreign country without any operation in Thailand will exempt from income tax on any dividend it receives from ROH.

However, in order to qualify these tax privileges ROH must meet specified conditions on the minimum paid up capital, a minimum number of affiliated enterprises/countries receiving the services, the minimum onshore expense, the minimum onshore capital expenditure, the minimum employee qualifications, and the minimum employee compensation. Failure to meet any condition results in the tax privileges will be revoked retroactively with effective from the first year.

For more details, please contact our lawyer for consultation.

TAX UPDATE

2. Life Annuity Premium Tax Deduction up to Baht 200,000

The Cabinet approves the proposal made by the Ministry of Finance to promote the life annuity by offering a tax deduction equal to the amount of a premium that an individual pays for the life annuity up to Baht 200,000 insofar as the amount of the annuity premium does not exceed 15% of the assessable income. The sum of the amount of the annuity premium, the amount contributed to the provident fund, the amount contributed the government pension fund, the amount contributed to the welfare fund under the private school law or any purchase amount of the retirement mutual fund ("RMF") must not exceed Baht 500,000.

Given, the government links the cap on this deduction with a RMF purchase, it does not really offer much of tax saving to an individual who has already purchased RMF units up to the RMF maximum purchase, 15% of the assessable income.

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
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Property/Real Estate Taxes
Commercial Contract Tax Planning
Investment Tax Incentives
Finance and Securities Taxes
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