

NEWSLETTER

No. 113 Edition September 2016

INSIDE THIS EDITION

- 1. Overseas Expat Recruitment is Now Regulated 1**
- 2. Bonus Payment Is Deductible Expense 2**
- 3. International Marketing Fee is deemed Royalty 3**

Disclaimer: The materials on this document have been prepared for 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.

LEGAL UPDATE

1. Overseas Expat Recruitment is Now Regulated

As Thailand is relying more and more on foreign workers, the government steps in to regulate a recruitment of foreign workers from overseas. The Recruitment of Aliens for Working with Employers in the Country Emergency Decree, B.E. 2559 (2016)) (the "Emergency Decree") is enacted to control the flow of foreign workers who are brought to work in Thailand. The Emergency Decree will apply to a situation where a multinational corporation brings in expatriates to work in Thailand. The Emergency Decree will regulate migration of foreign workers to Thailand in two circumstances.

1. Regulation on Thailand-Based Employer

Any Thailand-based company who wishes to bring foreign workers (including expatriates) to work in Thailand must obtain permission from the Director General of the Department of Employment, Ministry of Labor (the "Director General"). The company must place collateral with the Director General to settle expenses arising from employer's failure to transport any foreign worker back to a home country at an end of an assignment.

Recruiting a foreign worker from overseas to work in Thailand now imposes additional responsibility on a company. Whenever the foreign workers is dismissed, the foreign workers resigns from a job or completes an employment term, the company must notify the Director General and be responsible for transporting the foreign worker to one's home country within 7 days from the date that the foreign worker no longer works with the company.

This Emergency Decree could be construed to apply to a recruitment of an expatriate from a foreign country to work in Thailand. This means whenever a multinational corporation brings in an expatriate from overseas, the multinational corporation must obtain the Director General's permission, place collateral with the Director General and be responsible for returning the expatriate to a home country at an end of an assignment.

2. Regulation on Recruitment Company

Any person who wishes to engage in business of recruiting foreign workers to work in Thailand must obtain a permission from the Director General. The operator must place collateral with the Director General to secure its proper compliance with this Emergency Decree. The operator must be a Thai owned company.

For more information, please contact our lawyers for consultation.

TAX UPDATE

2. Bonus Payment Is Deductible Expense

Section 65 ter (19) of the Revenue Code disallows any expense payable from profits received after the end of the accounting period as deductible expense for computation of net profits/losses for a tax purpose. Normally, a company will specify an amount of the bonus for employees after the company's management learns of company's operating result. It could be argued that the bonus is company's disallowed (or non-deductible) expense under Section 65 ter(19) for a purpose of computing net profits/losses and corporate income tax because it is computed at the end of the year. In a B.E. 2557 (2014) Supreme Court judgment, it was held that a payment of the bonus was not a disallowed expense under Section 65 ter(19) because the company considered the revenue of the company in determining the amount of the bonus. The court concluded that the court did not find that the company paid the bonus from the profits received after the end of the accounting period.

For more information, please contact our lawyers for consultation.

3. International Marketing Fee is deemed Royalty

Normally, a subsidiary company of a multinational corporation in Thailand pays certain types of expenses to its parent company or its affiliated company in a foreign country. Typically, the payment is exempt from 15% withholding income tax by a relevant double taxation agreement between Thailand and the foreign country if (i) the payment is for the business profit, not the royalty, and (ii) the foreign company does not have any permanent establishment in Thailand. (The royalty payment is generally not exempt from 15% withholding tax, but might be reduced by certain double taxation agreements.) Multinational corporations tend to structure the payment as the business profit to take advantage of tax exemption offered by double taxation agreements. A market research fee is commonly used and understood to be a business profit, not a royalty which is subject to withholding tax.

In one B.E. 2557 (2014) Supreme Court judgment, a payment of an international marketing fee was held to be the royalty because the court took a closer look at the actual nature of the transaction. In that case, a foreign provider furnished a Thai company with advertisement leaflets, catalogs and advertisement documents to support the Thai company's marketing effort. Such advertisement leaflets, books and pictures belonged to the foreign provider, but the Thai company had the right to use them. A provision of the marketing support required the technical knowhow of the products. The Thai company could not prove to the court any provision of the international marketing service besides a license to use the aforementioned marketing materials. Even if the parties called it the international marketing service, the court held that the payment of consideration to the foreign provider was for the rights to copy and publish the work that has a copyright to the public. In conclusion, the Thailand-Sweden double taxation agreement did not exempt 15% withholding tax on the payment of the international marketing fee

For more information, please contact our lawyers for consultation.

NARIT & ASSOCIATES

Attorneys at Law

CORPORATE & COMMERCIAL,
DISPUTE RESOLUTION & TAX
BANGKOK, THAILAND

CORPORATE & COMMERCIAL

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

DISPUTE RESOLUTION

Debt Collection
Shareholder Disputes
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
Wealth Tax Management

Learn more about
Corporate & Commercial,
Dispute Resolution & Tax Services from
NARIT & ASSOCIATES
Visit www.naritlaw.com

