

NEWSLETTER

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1. Tax Cut for Corporate Thailand Becomes Effective

In December 2011, the new administration keeps the campaign promise by cutting the rate of corporate income tax from 30% to 23% in 2012 and 20% in 2013. However, this turns out to be both good news and bad news for companies. It is good that finally the corporate income tax rate does come down, but this tax cut is the temporary measure, not the permanent measure – that's the bad news. 20% rate is only applicable for two years (2013 and 2014), not forever. By 2015 if this tax cut is not renewed, the rate will automatically go back to 30%.

Income tax for a small and medium enterprise (SME) with the paid up capital of not exceeding Baht 5 Million and the annual sales of not exceeding Baht 30 Million is exempt for the first Baht 150,000 net profit and the rate is reduced to 15% for the next Baht 850,000 next profit. Any net profit in excess of Baht 1 Million is subject to 23% income tax in 2012 and 20% income tax in 2013 and thereafter. For the SME's, 20% rate is the permanent measure without any expiry date.

Table on CIT and Effective Tax Rate

CIT Rate	Net Profit (Baht)	After CIT Profit	10% Withholding Tax on Dividend Payment	Net Amount After CIT and Withholding Tax	Effective Tax Rate of Individual Shareholder
30%	100	$100 - 30 = 70$	$70 \times 10\% = 7$	$70 - 7 = 63$	$30 + 7 = 37\%$
23%	100	$100 - 23 = 77$	$77 \times 10\% = 7.7$	$77 - 7.7 = 69.3$	$23 + 7.7 = 30.7\%$
20%	100	$100 - 20 = 80$	$80 \times 10\% = 8$	$80 - 8 = 72$	$20 + 8 = 28\%$

As shown on the table above, with the tax rate of 20%, the effective tax rate for an individual shareholder of a company will be 28% of the net profit as there is 10% withholding tax on the dividend payment. 28% is way lower than 37%, which is the existing highest rate of personal income tax. Apparently, looking only for the tax rates perspective, it is more tax efficient to operate as a limited company than does as an individual person. Unless the government cuts the highest rate of personal income tax from 37% to 28%, many high paid individuals may decide to swift from operating or working as an individual person to operating through a limited company.

In light of the reduced corporate income tax rate, the logical choice for the government is to reduce personal income tax rate in the same manner, otherwise people in the top tax bracket of 37% may decide to swift to a company. However, the plan for personal income tax rate reduction is not finalized yet.

There will be no more special privilege for listed companies.

For more details, please contact our lawyer for consultation.

LEGAL UPDATE

2. New Anti-Corruption Regulation for Government Contractors

The Anti-Corruption Commission, the independent agency under the Constitution, introduces a new measure with a view to tackling a corruption problem in the government's procurement. In an effort to trace the cash flows of kickback money, the Anti-Corruption Commission issues the Notification Re Criteria and Methods for Making and Filing the Income and Expenses Account of the Project that a Person or Juristic Person Being the Party with the State Agency, B.E. 2554 (the "Notification"), imposing the reporting requirement on government contractors. This new measure will affect many in corporate Thailand.

1. Reporting Requirement

The Notification provides that any person, either individual person or juristic person, who is a party to the contract with a state agency (the "Government Contractor") with the contract value that is equal to or higher than the specified amount must file the detailed income and expenses account to the Revenue Department along with an annual tax filing. With more disclosure, it may be easier to trace any payment of kickback money.

2. Minimum Value of Government Contract

This Notification applies to any Government Contractor having a government contract with the value of Baht 2 Million or higher for April 1, 2012 to March 31, 2013. From April 1, 2013 and thereafter, this Notification applies to any Government Contractor having a government contract with the value of Baht 500,000 or higher.

3. Sanction

Any Government Contractor who disobeys this report requirement will be blacklisted from entering into any contract with the state agency until the Government Contractor files the detailed income and expense account to the Revenue Department.

For more details, please contact our lawyer for consultation.

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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 DISPUTES

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

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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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