

# NEWSLETTER

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## TAX UPDATE

### 1. Introduction of PIT Exemption of Capital Gain Derived from Sale of ASEAN Stock on ASEAN Linkage

The Royal Decree is enacted to exempt the personal income tax (PIT) on the capital gain derived from the sale of the securities listed in a securities exchange in a member country of the Association of South East Asian Nations ("ASEAN") through the system that the Stock Exchange of Thailand provides for connecting the trading with a securities exchange in an ASEAN member country. This exemption is not applicable to the capital gain derived from the sale of a treasury bill, a treasury bond, a bill or a corporate bond.

The purposes of this tax exemption are to give the incentive and to promote the investment in the securities exchanges in the ASEAN countries, which will reduce an access cost to a securities exchange and increase the trading volume in the Stock Exchange of Thailand and the other ASEAN securities exchanges.

This Royal Decree also equalizes the taxation on the capital gain derived from the sale of the ASEAN stock with the taxation on the capital gain derived from the sale of the SET listed stock, which is exempt from PIT.

For more details, please contact our lawyer for consultation.

## TAX UPDATE

### 2. Joint Filing of Tax Return by Married Couple is Ruled Unconstitutional

Section 57 ter of the Revenue Code treats the income of the wife as income of the husband for the purpose of collection of income tax from a married couple. It also imposes the duty and liability to file a return on the husband if the married couple lives together throughout the calendar year. Effectively, the married couple jointly filing a tax return will be subject to the higher tax because the Revenue Code applies the same personal income tax schedule to both single taxpayer and a married couple.

Section 57 quique allows a wife who earns an income from an employment to file the income from an employment separately from that of the husband, provided that other non-employment incomes are still deemed the incomes of the husband.

Obviously this joint filing sounds unfair in the present context when equality is promoted, but it used to fit pretty well in a historical context because at the time provisions were enacted most women did not work outside home.

Earlier this year, the Constitutional Court ruled that Section 57 ter and Section 57 quique unconstitutional, reversing the 2002 decision of the Constitutional Court under the now repealed 1997 Constitution. The Constitutional Court cited that Section 57 ter caused the married couple to pay the higher tax than the tax that the couple would have to pay were they not married. The Constitutional Court also cited that Section 57 quique, which only allowed a wife to file an income derived from an employment separately from that of a husband, did not support the equality of a man and woman and was the discrimination against the person due to the difference in the status after getting married. This means these two Sections can no longer apply to the taxpayers who are the married couples.

To give a tax payer a better understanding of the implications of this decision, the Revenue Department issues the Clarification Note Re Operating Guideline for Collecting the Personal Income Tax from a Husband and a Wife. We have summarized the Clarification Note in the table presented on the next page. Eventually, companies will have to make some adjustments to the withholding tax deduction on the payment of the salary to the employees who benefit from this decision. Especially for employees with minor childs, each earning spouse can now claim 100% of the child deduction and the child education deduction, which previously can only be allowed to claim half of them.

For more details, please contact our lawyer for consultation.

**Table: Tax Deductions for Married Couple**

Type of Deduction	Only One Spouse Earns Income	Both Spouses Earn Income
1. Personal Deduction	Baht 30,000 for one earning spouse	Baht 30,000 for each earning spouse
2. Spouse Deduction	Baht 30,000 for one earning spouse	N/A
3. Child Deduction	Baht 15,000 for one earning spouse	Baht 15,000 for each spouse
4. Child Education Deduction	Baht 2,000 for one earning spouse	Baht 2,000 for each spouse
5. Life Insurance Deduction	Baht 10,000 for one earning spouse Baht 10,000 for a non-earning spouse	Baht 10,000 for each spouse
6. Provident Fund Contribution Deduction	Baht 10,000 for one earning spouse	Baht 10,000 for each spouse
7. Home Loan Interest Deduction	Baht 10,000 for one earning spouse for the interest on the loan taken by the earning spouse or the loan jointly taken by the earning spouse and a non-earning spouse.	Baht 10,000 for each spouse for the interest on the loan taken prior to the marriage Baht 5,000 for each spouse for the interest on the loan taken jointly by both spouses during the marriage

## 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

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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## CORPORATE & COMMERCIAL

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## DISPUTE RESOLUTION

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