On the Cognizance of the Defendant's Status in the Crime of Falsely Issuing VAT Invoices in China

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Abstract: *The status of defendant is the basis of criminal punishment, and the status of defendant in the crime of false VAT (value added tax) invoicing in China includes principal, accessory and coercion. In criminal justice, the improper operation and characterization of "handled separately" have led to the misidentification of principal, accessory and coercion, which violates the principle of criminality and punishment. In judicial practice, the status of the defendant can be defined on the basis of facts such as the initiator of the criminal intent, the level of participation, the rights and interests of the "shareholders", the actual income and the identity of the proxy bookkeeper. In particular, the degree of knowledge of the agent bookkeeper must be determined according to whether it constitutes a joint crime, the agency bookkeeping agency and the enterprise commissioned agency contract rights and obligations are not clear as the factual basis for the agent bookkeeper constitute a principal offender.*

Key words: *China; Crime of falsely issuing VAT invoices; Defendant status; Factual basis*

Introduction

Fraudulent VAT invoice crime is a high crime of taxation in China, and the crime coefficient of Chinese enterprises belongs to 5A level. VAT is an important tax for Chinese enterprises, and VAT invoices have the function of offsetting the tax burden of enterprises. As a result, maliciously reducing the tax burden of enterprises by falsely invoicing VAT invoices has become a basic way for enterprises to evade taxes. And with the increase of China's tax supervision and the improvement of the level of informationization of tax enforcement, a large number of tax violations of falsely invoicing VAT invoices have been handed over to judicial organs for treatment. How to define the status and role of each party in the fraudulent invoicing and to reasonably impose punishment according to the severity of the parties' behavior has become an important and difficult issue in combating fraudulent VAT invoicing crimes in China according to law.

Definition of basic concepts

Concept of VAT

Concept of the crime of false VAT invoicing

The crime of false invoicing of VAT invoices belongs to the crime of false invoicing, which mainly includes the crime of issuing special VAT invoices, the crime of fraudulent export tax refunds and the crime of false invoicing, etc. The core behavior of the crime of false invoicing is "false invoicing". The so-called "false invoicing" refers to the invoices issued by the invoicing party in order to obtain illegal income or other personal benefits, without the sale of goods or the provision of the situation, or although there is the sale of goods or the provision of taxable services, but the content of the invoice to the invoiced person is not true.

(1) issuing VAT invoices for others, for oneself, or for others; (2) issuing VAT invoices for others, for oneself, or for others in untrue quantities or amounts, even though goods have been purchased or sold, or taxable services have been provided or accepted; and (3) issuing VAT invoices for oneself on behalf of others, even though actual business activities have been carried out. In judicial practice, types (2) and (3) are common because of the existence of actual real business activities, and it is necessary to distinguish which invoices belong to false issuance and which invoices belong to normal issuance. In summary, the act of "false invoicing" includes four ways: one is false invoicing for others, the second is false invoicing for oneself, and the fourth is false invoicing by introducing others.

The concept of defendant status

The status of the defendant includes principal, accessory, and coerced accomplice . According to the provisions of Article 25 (1) of the Criminal Law of the People's Republic of China, joint criminality refers to the joint intentional commission of a crime by two or more persons. Article 26, paragraph 1 of the Criminal Law of the People's Republic of China provides that a person who organizes or leads a criminal group to carry out criminal activities or plays a major role in a common crime is a principal offender, and the principal offender shall be punished with a heavier penalty.Principal offender including two categories:First, the organization or leadership of a criminal group to carry out criminal activities criminalThe first is to organize and lead the criminal group to carry out criminal activities, that is, the criminal group in the prime mover The second is the other criminals who play a major role in the joint crime, that is, in addition to criminal group In addition to the primary elements of the common crime in the formation, implementation and completion of the common crime to play a decisive or important role in the criminal elements. Whether a criminal plays a major role should be judged from the subjective and objective aspects. According to paragraph 1 of Article 27 of the Criminal Law, those who play a secondary or auxiliary role in a joint crime are accessory offender the criminal should be mitigated, reduced or exempted from punishment. Accomplice includes two kinds of people: one is a criminal who plays a secondary role in a joint crime, that is, a criminal who plays a secondary role to the formation of a joint crime and the implementation and completion of a joint criminal act; the second is a criminal who plays a secondary role in a joint crime, that is, a criminal who provides favorable conditions for a joint crime, usually accessory offender . The distinction between principal and accessory is based on the

size of the role played by the joint crime. The main culprit is the central figure in the joint crime, without the main culprit it is impossible to establish a joint crime. In a joint crime, the phenomenon of only the principal (must be two or more) and no accomplice exists, while the phenomenon of only the accomplice and no principal cannot exist. According to Article 28 of the Criminal Law, the coerced accomplice It is a person who is coerced to participate in a crime, i.e., a person who participates in a joint crime not entirely voluntarily under the threat of another person and plays a lesser role in the joint crime. If the perpetrator initially participates in a joint crime because of coercion, but later changes and actively commits the criminal act and plays a major role in the joint crime, it is inappropriate to be considered a coerced accomplice. For a coerced accomplice, he should be punished in accordance with his criminal circumstances mitigated punishment or exemption from punishment.

The crime of falsely issuing VAT invoices belongs to unit crimes, and unit crimes refer to acts committed by companies, enterprises, institutions, organs and groups that endanger society and should be subject to criminal liability according to law. China's criminal law on unit crimes implements a double punishment system, in which the unit is sentenced to a fine, and the directly responsible supervisors and other directly responsible persons in the unit crimes shall be punished with corresponding penalties respectively according to their status, role and circumstances of the crime in the unit crimes. In the punishment of unit crimes, there is a problem of how to distinguish the directly responsible supervisors and other directly responsible persons as principals and accomplices.

The person directly responsible for the supervisor is generally the principal offender. The person directly responsible for the competent person and other directly responsible person's, in general the former than the latter's role, the former can be identified as the principal offender, the latter can be identified as an accessory. The person directly in charge is the person who plays the role of deciding, approving, authorizing and conniving to command the crime committed by the unit, and is generally the person in charge of the unit, including the legal representative, and in tax crimes, usually also includes the person in charge of finance, etc. It should be noted that in the unit crime, for the unit leader assigned or ordered to participate in the implementation of certain criminal acts, generally not as directly responsible for criminal liability. Financial personnel assigned by the leadership or ordered to participate in the implementation of certain criminal acts, but no crime knowingly and intentionally, and not necessarily as a directly responsible person subject to criminal punishment, should not be held criminally responsible.

In the case of unit crimes, it is not necessary to distinguish between principal and accessory. The Supreme People's Court on September 28, 2000, "on the issue of whether to distinguish between principals and accomplices in the trial of unit crime cases for their directly responsible supervisors and other directly responsible personnel" provides: "In the trial of intentional crime cases of the unit, the directly responsible supervisors and other directly responsible personnel may not be distinguished as principals and accomplices. Directly responsible personnel, may not distinguish between the main offenders, accessories, in accordance with their role in the unit crime sentenced to punishment.

When the interests of investors and shareholders are involved behind the false VAT invoices, and the investors and shareholders threaten and entice the finance personnel in pursuit of their interests, and the finance

personnel cannot turn the situation around by offering corrective opinions, the finance personnel can use the minutes of the shareholders' meeting as the basis for exemption from liability.

Problems in Judicial Determination of the Status of Defendants in the Crime of False VAT Invoicing

The improper operation of "separate case treatment" leads to the wrong identification of the principal and accomplice.

"Separate case" is a way to deal with joint criminals who have not been brought to justice in Chinese criminal proceedings. The term "separate case processing" refers to the process of handling criminal cases, for the suspected joint crime In the process of handling a criminal case, some suspects who are suspected of committing a crime or who are implicated in the case cannot be or should not be treated with other co-offenders due to special provisions of the law or special circumstances of the case.Suspect in the process of the criminal case, for the suspected case or a part of the suspects involved in the case, due to special provisions of the law or special circumstances of the case, can not or should not be treated with other cases with the same case, and separated from the case alone or with other cases. The "separate case" is not explicitly provided for in the Criminal Procedure Law of the People's Republic of China, but it is common in judicial practice and occupies a certain proportion. In the case of false VAT invoicing, the co-perpetrators of the "separate case" are generally the parties who absconded from the crime. The defendants who have returned to the case first often shift the responsibility to the absconding party for the purpose of avoiding their own legal risks, and the judicial authorities, limited by the limitations of evidence, may make a determination unfavorable to the absconding party and identify the absconding party as the main offender.

Improper characterization leads to the wrong identification of the principal and accomplice.

If the perpetrator of the crime is a unit crime or an individual crime, if the wrong characterization is made, it will affect the determination of the role size of the perpetrator. In the case of false VAT invoicing, the introducer provided supply and demand information and invoicing contact for the invoicing unit and the invoiced unit, and the invoicing unit and the invoiced unit constituted a joint crime, and the introducer, as an intermediary, had an equal civil relationship with the invoicing unit and the invoiced unit, and was not an employee of the invoicing unit and the invoiced unit, and his act could not be considered as a unit crime, but should be considered as an individual crime. In general, the introducer should be identified as an accessory, not because the introducer earns the difference in invoicing fees as a unit directly responsible for the personnel. If the perpetrator of the crime is incorrectly characterized, the introducer and other perpetrators can easily be incorrectly identified as the principal offender.

Analysis of the Basis for Judicial Determination of the Status of Defendants in the Crime of False VAT Invoicing

Distinguish the role of the perpetrator in the formation of the joint criminal intent from whether he or she is the initiator of the criminal intent.

The subject of the fraudulent VAT invoicing is generally a unit crime, and the proposers of the criminal intent of the unit crime are generally the legal representatives, principals and shareholders of the unit. The confessions of the co-perpetrators are the key evidence to determine about the proposer of criminal intent. Based on the confessions of the co-perpetrators, it is possible to determine which defendant initiated the false VAT invoicing, based on what considerations, and which defendant was invited to participate at the same time; regarding the profit sharing of the parties for the false invoicing cooperation, and where the false invoicing business was conducted. The confessions of the co-perpetrators are used to distinguish between those who initiated the crime and those who participated in it.

In Liu Moumou, Ji Moumou false value-added invoices in (1), as the criminal intent initiator Liu Moumou is the legal representative of the company, Liu Moumou take advantage of the co-defendant Ji Moumou at large opportunity to push all the responsibility to in Ji Moumou, the results of the court found Liu Moumou as an accessory. Lawyer defense using the criminal intent of the proposer for liu moumou, objectively, ji moumou does not have the conditions to bring up the criminal intent. First of all, ji moumou in the participation of false open to false open business before, and the company has no association, and its management of the company, decision-making rights, therefore, by ji moumou proposed to jicheng company as the main body of the false open low possibility. Secondly, Ji Moumou has not been in contact with the company's financial and taxation business, and does not understand the relevant business development, therefore, Ji Moumou lacks the ability to bring up the offense. Judging from the objective circumstances, Ji's relevant statements about the initiation of criminal intent, i.e., first Liu's proposal to cooperate in the false issuance of VAT invoices and Lai's proposal to set up a business location at a certain place, are highly credible. Accordingly, Liu was found to be the initiator of the criminal intent, while Ji played a secondary role in the formation of the joint criminal intent. The defense of this case achieved good results and maintained legal justice.

In the process of falsely issuing VAT invoices, the parties are identified according to their level of involvement.

On the whole, the legal representative, shareholders and the actual controller of the company have decision-making power over the company and play a key role in the establishment of the company and the development of the invoicing business, which are decision-making roles. The key role of the above-mentioned personnel is mainly reflected in the following: firstly, the legal representative must authorize and provide relevant material documents (including business license, official seal, etc.) for the false invoicing business to be carried out; secondly, the main staff of the company after its establishment, such as operators, accountants and other personnel, are appointed by the legal representative, shareholders and the de facto controller, and carry out the false invoicing business by instructing the employees of the company to The false opening

business. Third, the size of the role is defined in terms of the division of specific work in the course of specific business development. The person who is fully responsible for the specific business of false invoicing of VAT invoices is the main person responsible for the work content such as applying for invoices, issuing invoicing work, purchasing input invoices, tax deduction, providing fund return account, completing fund return, providing false proof of purchase and sale, and deciding the invoicing amount. Fourth, although the co-perpetrator is nominally responsible for the business, in the actual process of false invoicing, he or she is only involved in the preliminary contact work and is not responsible for the work of finding invoice buyers or the work of false invoicing. The role assumed by the perpetrator is substitutable and can be replaced by any person. Although the perpetrator participated in the act of falsely issuing VAT invoices, he did not participate in the key acts of implementing the falsely issuing VAT invoices such as falsely issuing line invoices, developing invoice buyers and returning funds. The perpetrator should be found to have played only a minor role in the production of the criminal results.

In Liu Moumou and Ji Moumou's false invoicing of value-added invoices, Ji Moumou was involved in the whole process, including: (1)Ji Moumou went to Guangxi with Liu Moumou to attend the expo to exchange with other companies in the process, Huikang source company took the initiative to ask whether there were input invoices. After that, Liu arranged for Ji to contact with Huikang source company. (2)After Hui Kang Yuan Company informed Ji Moumou of the information of the invoice recipient subject, then Lai Shaomeng arranged the accountant to contact Hui Kang Yuan Company, including the handover of invoices and expenses. (3) During the period, Huikang source company occasionally contacted Ji, specifically requesting to increase the invoicing amount, but because the specific invoicing amount was arranged by Lai, it was not a matter that Ji could coordinate. Although Ji Moumou had contacted Huikang Yuan Company, it did not play a major role in the business of false invoicing, as reflected in the following aspects: first, Huikang Yuan Company was decided to cooperate by Liu Moumou, not found or actively contacted by Ji Moumou; second, the invoicing information passed by Ji Moumou was limited, and it was only mechanically conveyed; third, compared with Liu Moumou and Lai Moumou, Ji Moumou was involved in the whole criminal process of false VAT invoicing. Third, compared with Liu and Lai, Ji was the least involved in the whole criminal process of false VAT invoicing, and he acted under the domination of Liu.

In terms of the final distribution of benefits, the parties are entitled to "shareholder" rights and actual income.

The shareholders' agreed interests and actual proceeds are the basic criteria for measuring the size of the subjective evil of the parties' crimes and the harmful consequences of their actions. As a profit-making crime, a large profit means a large harm and the dominant role played is large. In practice, the parties agreed in advance to the distribution plan and the final distribution of benefits there are different. The actual distribution of benefits is higher than the agreed one, which reflects the dominant position and advantage of the co-perpetrator in the whole business of false VAT invoicing, while the actual distribution of benefits is lower than the agreed one, which reflects the subordinate position of the co-perpetrator. A joint criminal who does not enjoy the benefits as agreed in the allocation scheme shall be deemed as an accessory.

The unit agent bookkeeping and tax preparation of the financial staff to identify the

problem

The 1993 amendment to the Accounting Law of the People's Republic of China added the provision of "agency bookkeeping", allowing units that do not have the conditions to set up separate accounting institutions or accounting staff to entrust the relevant accounting service institutions to carry out agency bookkeeping, which for the first time established the legal status of agency bookkeeping business in China. The agency bookkeeping agency and the enterprise is a cooperative relationship between equal subjects, the enterprise should be responsible for the authenticity of accounting information. In practice, the agent bookkeeper is the agent for the enterprise to make tax declaration, the agent bookkeeper does not participate in the actual operation of the company, and the agent bookkeeper has no prior knowledge of whether the enterprise has actual sale and purchase transactions, but only acts as a company accountant to apply for VAT invoices for the enterprise, and the enterprise uses the agent bookkeeper to commit the act of false invoicing, and the person in charge of the actual operation of the enterprise should be considered as the principal. The fact that the agency bookkeeper has no clear agreement on the rights and obligations of the contract with the enterprise cannot be taken as the basis for the fact that the agency bookkeeper constitutes the principal offender.

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