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Constituent Elements and Legal Boundaries of the Crime of Falsely Issuing Special VAT Invoices

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Abstract. With China's tax collection and management transforming from invoice-based supervision to data-based supervision, the identification of the crime of falsely issuing special VAT invoices is undergoing a paradigm reconstruction from formal judgment to substantive judgment. The long-standing formalistic conviction logic has led to an excessive expansion of criminal crackdowns, which deviates from the restraint of criminal law. The issuance of the judicial interpretations on tax crimes by the Supreme People's Court and the Supreme People's Procuratorate in 2024 has clarified the core position of the purpose of tax fraud and tax loss in crime identification. Through legal analysis, this paper points out that criminal imputation should be based on the actual damage to the national tax creditor's rights. Subjectively, this crime is a specific purpose offender with a broken purpose, and the purpose of illegal possession must be possessed. Objectively, a penetrating review should be adopted to determine the actual tax loss. Combined with typical scenarios such as affiliated operation and flexible employment, this paper demonstrates the applicable path of substantive interpretation, and puts forward suggestions on improving the identification of unit crimes and the compliance exemption mechanism, aiming to achieve the legal balance between maintaining tax security and protecting the business environment.

Keywords: crime of falsely issuing special VAT invoices, substantive interpretation, purpose of tax fraud, tax loss, restraint of criminal law, corporate compliance

1. Introduction

1.1. Research background and significance of the topic

In the modern tax governance system, special VAT invoices are not only proofs of commercial transactions, but also legal documents for the state to exercise the power of tax deduction. With the development of the Golden Tax Phase IV Project, China's tax collection and management is undergoing a digital transformation from controlling tax by invoices to governing tax by data. The nature of invoices has changed from simple accounting documents to core tax data carriers. However, the crime of falsely issuing special VAT invoices (hereinafter referred to as false invoicing crime) shows a trend of professionalism, concealment and complexity in practice. The traditional formal regulation based on invoice consistency faces serious challenges.

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This research has important significance. At the theoretical level, this study discusses why the judgment of false invoicing crime has changed from formal judgment to substantive judgment. It helps to deepen the research on the harmfulness of administrative violations. It also clarifies the boundary between administrative violations and criminal crimes. At the practical level, the 2024 Interpretation issued in 2024 stipulates two core conditions. They are the purpose of tax fraud and tax loss. When handling cases, judges need to look through the complex appearance of transactions and accurately judge these two core elements. This is not only to protect national tax funds, but also to protect the legitimate operation of enterprises. At the same time, it also implements the principle of restraint in criminal law.

1.2. Overview of domestic and foreign research

In terms of domestic research, scholars have discussed the legal interests damaged by false invoicing crime. This discussion has changed from single legal interest to dual legal interests [1]. Most early scholars supported the "management order theory". They believed that this crime aims to protect the state's management power over invoices. As long as a person violates invoice management regulations, he commits the crime. However, with the progress of the rule of law, scholars represented by Chen Xingliang pointed out that the crime of falsely issuing special invoices is essentially a special kind of fraud crime. Its core legal interest should be national tax interests rather than simple administrative order [2]. Professor Zhang Mingkai further put forward that if a person falsely issues invoices but has no purpose of defrauding taxes, and is willing to pay the corresponding taxes subjectively and actually pays them, he should not be convicted of this crime [3, 4]. In addition, through the analysis of acting as an agent for issuing invoices truthfully, Professor Li Hong emphasized that criminal law should be restrained when intervening in economic activities, and advocated establishing a substantive evaluation system centered on tax loss [5]. Judicial practice also emphasizes identifying the nature of crimes accurately and distinguishing the crime of falsely issuing special VAT invoices correctly [6]. In terms of foreign research, civil law countries such as Germany rely heavily on the theory of Steueranspruch (tax claim) in their criminal codes and relevant tax laws to regulate VAT fraud. The Federal Supreme Court of Germany emphasizes a principle in judicial precedents. Criminal sanctions can only be applied by courts when an act causes substantial Steuerverkürzung (tax reduction). This reflects the auxiliary status of criminal law as the backing law of administrative law [7]. Although common law countries such as the United States have no corresponding specific crime, their judicial organs generally adopt the Economic Substance Doctrine when dealing with similar tax evasion cases [8]. According to this doctrine, if a transaction lacks a legitimate Business Purpose and has no economic substance other than tax benefits, its formal compliance cannot be a reason for exemption from criminal liability.

1.3. Research methods and main problems to be solved

This paper adopts the literature research method and normative analysis method. It systematically sorts out the evolution of the identification standards for false invoicing crime in China. This research focuses on three core problems. First, how to overcome the formalistic conviction tendency in the past. How to implement the principle of restraint in criminal law in judicial practice. Second, current transaction modes are increasingly complex, such as Internet platforms and affiliated operation. In these complex chains, how can judicial organs build a scientific evidence presumption model? How can judicial organs look through appearances to accurately determine the purpose of tax fraud and tax loss. Third, under the framework of the 2024 Interpretation, how to coordinate the

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evaluation system of the crime of falsely issuing special invoices and the crime of falsely issuing ordinary invoices.

2. The boundary between administrative illegal acts and criminal crimes

In China's tax supervision system, not all acts of falsely issuing invoices constitute criminal crimes. There is a clear classification between administrative illegal acts and criminal crimes for such acts. This distinction is not only reflected in the severity of punishment, but also reflects the essential difference between the two legal liability systems. There are significant differences between them in the protected legal interests and constituent elements.

2.1. The formal authenticity standard for administrative illegal acts

At the administrative law level, the identification of false invoice issuance mainly depends on whether the form of the invoice is authentic. According to Article 21 of the Measures for the Administration of Invoices of the People's Republic of China, any act of issuing invoices inconsistent with the actual business operations for others, for oneself, asking others to issue for oneself or introducing others to issue such invoices constitutes false issuance in the sense of administrative law.

The main purpose of administrative management is to maintain invoice order. Since special VAT invoices are legal certificates for tax deduction, the contents of invoices must be consistent with actual economic activities, which is the basis for tax authorities to conduct supervision. Therefore, the constitution of administrative illegality does not require the party to have the intention of tax fraud, nor does it require the state to suffer actual tax losses. As long as the act damages the authenticity of invoices, tax authorities may require tax supplementation and impose fines.

2.2. The substantive legal interest infringement standard for criminal crimes

Different from the extensive management of administrative law, the identification of the crime of falsely issuing special VAT invoices by criminal law is relatively restrained. Criminal law pays more attention to whether the act causes substantive damage. In the past, scholars had different views on the protected object of this crime. Now, after the issuance of the 2024 Interpretation, judicial organs have clarified new standards. This crime not only damages the invoice management order, but more importantly, harms the national tax interests.

This means that the identification of criminal crimes cannot only look at the surface illegality. If an act, although in the form of false invoice issuance, does not aim at the economic result of defrauding national tax (such as falsely increasing performance, financing loans, deducting excess costs instead of input tax amount, etc.), it shall not be subject to criminal punishment due to the lack of substantive infringement on tax claims. This transformation from the subordination of administrative illegality to the independence of criminal illegality is the key legal logic for distinguishing between crime and non-crime.

2.3. The restraint of criminal law and the possibility of expectation

The boundary between administrative illegal acts and criminal crimes essentially reflects the restraint of criminal law. As the last line of defense for social governance, criminal law should not be simply reduced to an extension of administrative management. In market economic activities, there are many gray areas, such as individual operators operating under the affiliation of enterprises.

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In such scenarios, although there are formal defects in the subject identity of invoice issuance, if the transaction is substantially authentic and relevant taxes have been paid in full, the national tax revenue will not be damaged.

From the perspective of the possibility of expectation, in a complex business environment, the institutional cost of requiring enterprises to strictly abide by absolute invoice procedures is often too high. Therefore, the 2024 Interpretation has raised the conviction standard, which clearly stipulates the two core conditions of the purpose of tax fraud and actual losses. This leaves a buffer space between administrative illegal acts and criminal crimes.

3. Trend of substantive interpretation of constituent elements of false invoicing crimes

With increasingly complex economic activities, merely examining the form of invoices can hardly meet regulatory needs. Judicial practice is gradually shifting from focusing on form to focusing on substance, so as to more accurately define the boundary between administrative violations and criminal crimes.

3.1. Substantive identification of subjective purpose elements

The establishment of the crime of falsely issuing special VAT invoices must have the specific purpose of tax fraud. Even if the issuer does not deduct taxes personally, as long as it intends to let others deduct and cause national tax losses, it constitutes this crime. In the past, judicial organs tended to expand conviction standards, often equating the issuance of untrue invoices directly with the purpose of tax fraud. The *Interpretation on Tax Crimes* implemented in 2024 has made a clear definition on this, excluding acts not aimed at tax fraud from crimes. For example, falsely issuing invoices for financing or beautifying financial statements lacks subjective malice of illegally possessing national taxes, so there is no need for criminal punishment.

However, judging the subjective purpose of the actor cannot only rely on his oral statements. Judicial organs need to conduct substantive review combined with objective evidence. For professional intermediaries who charge high fees and specialize in false invoicing, if they know that the recipient will use invoices to defraud taxes but still allow harmful results to occur, such indirect intent should also be identified as having the purpose of tax fraud. Taking real affiliated operation as an example, if the party asks others to issue invoices in accordance with industry practices and has paid full taxes, its core demand is normal operation rather than tax evasion. At this time, the actor lacks malice to infringe tax interests and should not be identified as having criminal purpose.

Taking the typical scenario of affiliated operation as an example, the logic of substantive identification is: if the affiliated party asks the affiliated party to issue invoices based on real business activities to solve industry access qualifications or follow industry practices, and the affiliated party has paid relevant taxes to the state in full, its original intention is to complete normal tax circulation through affiliation, rather than evading tax obligations. At this time, the actor subjectively lacks malice to infringe national tax claims, and should be identified as not having the subjective purpose element of this crime.

3.2. Substantive judgment of objective damage results

In objective constituent elements, scientifically identifying tax losses is an objective standard to distinguish administrative illegal acts from criminal crimes. At present, the perspective of judicial review has shifted from isolated single transactions to the analysis of the integrity of the VAT

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deduction chain. The core of VAT lies in the circulation of tax burden in each link. Sometimes the issuer has paid full taxes, but if the recipient is not a real transaction counterpart, its illegal acquisition of deduction right still undermines the foundation of the tax system.

In substantive judgment, a penetrating analysis method should be introduced. Judicial organs need to compare the total input and output tax of enterprises in a specific period. If the overall tax payment of an enterprise is consistent with the actual business scale and does not use false invoicing to deduct taxes payable, it should not be identified as causing substantive tax losses. At the same time, we need to be alert to "illusory tax losses". For example, in circular trade, even if the transaction is fictitious, as long as VAT is paid in accordance with the law in all links and no state treasury funds are obtained, national tax interests are not actually damaged. Forced conviction at this time violates the principle of substantive taxation.

3.3. Typical cases of the substantive trend

"Surplus invoice" cases centrally reflect the transformation from formal review to substantive review. In such cases, the issuer pays taxes based on real transactions, but transfers them illegally to a third party because the actual buyer does not need invoices. Although the issuer fulfills its tax obligation, the invoice deduction right has strict legal ownership, and such transfer is essentially an illegal transaction of deduction right. Its core harm is to provide conditions for third parties to defraud taxes. Therefore, judicial evaluation is no longer limited to the tax payment of the issuer, but focuses on whether the recipient illegally encroaches on national taxes.

In addition, the recent frequent false invoicing cases of flexible employment platforms are also an important test of substantive review. Some platforms only issue invoices on behalf of others without real business and fund settlement, essentially becoming "invoice factories". This requires judicial organs to penetrate the cloak of Internet technology and deeply explore the authenticity of business logic. If the underlying labor relationship is completely forged, even if the invoicing process is formally compliant, it constitutes a crime due to the lack of real legal relationship support. Tracing from formal compliance to business substance is the core essence of the current transformation of tax criminal justice.

4. Application of judicial interpretation and its difficult problems

The issuance of the 2024 Interpretation is of great significance. It unifies case-handling standards and corrects past deviations of only focusing on form. However, no matter how clear legal provisions are, actual case handling remains complex. Under the new requirement of emphasizing substance, how to establish a strict evidence chain and how to coordinate the relationship between different charges are still major challenges at present.

4.1. Raising of conviction standards and return of the restraint of criminal law

The 2024 Interpretation raises the filing amount for the crime of falsely issuing invoices. This is not only a change in numbers, but also a reflection of the principle of caution in criminal law. The new regulation also precisely narrows the scope of crackdown. If there is no purpose of tax fraud and no national tax loss is caused (such as only for financing or falsely increasing performance), it does not constitute a crime.

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4.2. Evidence presumption of subjective purpose identification and procedural justice

Although the purpose of tax fraud is the core of conviction, people's real intentions are often hidden. When no one admits directly, judges can only infer from indirect evidence. Such inference requires multi-angle evidence review: first, check whether the underlying transaction is real and whether there is capital and goods flow. Second, check how benefits are distributed and whether invoicing fees are unreasonably high. Finally, check the professional ability and industry status of the party. For example, for a flexible employment platform, if the platform has fulfilled its review obligation and has not obtained improper shares, its intent of tax fraud cannot be arbitrarily identified.

4.3. Systematic coordination between the crime of falsely issuing special invoices and the crime of falsely issuing ordinary invoices

A current controversial focus in the judicial field is: whether the crime of falsely issuing ordinary invoices should also apply the substantive standards of tax fraud purpose and tax loss by reference?

If the crime of falsely issuing special invoices with greater social harm has established a substantive judgment path, while the relatively less harmful crime of falsely issuing ordinary invoices (Article 205-1 of the Criminal Law) still adheres to formal standards, it may lead to a logical paradox of severe punishment for minor crimes. Although ordinary invoices do not have a direct deduction function, they are often used to falsely increase costs to evade corporate income tax, and their substantive social harm also points to the impairment of national tax interests.

Therefore, the identification of the crime of falsely issuing ordinary invoices must also examine substantive harm. If the party only acts to deal with administrative procedures and the state has not actually lost taxes, punishment should not be imposed easily. Measures such as non-prosecution can be adopted to reflect the restraint of criminal law.

4.4. Dynamic identification of tax loss and connection between administrative and criminal justice

In complex transaction structures, the calculation of tax loss often involves cross-year and cross-regional tax circulation. To solve this problem, tax authorities and judicial organs must strengthen cooperation. Professional appraisals from tax authorities can serve as important references for case handling. Meanwhile, when calculating losses, opportunities for remedy should be given to the party. If the party takes the initiative to repay taxes and pleads guilty before judgment, lenient punishment should be considered.

5. Liability allocation and compliance exemption from the perspective of unit crime

In tax-related criminal cases, the identification of the nature of the criminal subject is crucial. It directly affects the application of criminal punishment and the scope of property recovery. Most false invoice cases occur in enterprise operations. Judicial organs must accurately distinguish unit crime from individual crime.

5.1. Substantive review of unit crime and denial of shell companies

The identification of unit crime cannot only stay in formal review. Formally, the unit must be established in accordance with the law. Substantively, the criminal act must reflect the overall will of

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the unit. In addition, illegal gains must mainly belong to the unit and cannot be illegally possessed by individuals.

In judicial practice, a large number of "shell companies" are often encountered. These companies have the appearance of a unit but lack real business activities. They are established only for profit by falsely issuing invoices. In this case, penetrating review should be conducted to deny their subject qualification of unit crime. If a company is reduced to a mere criminal tool, the actual controller must be held responsible according to individual crime.

5.2. Gradient liability division of direct responsible persons

After identifying unit crime, the criminal law applies the principle of dual punishment. However, the distinction between persons in charge and other responsible persons should not be mechanical. Persons in charge are usually leaders who have decision-making and command power over false invoicing acts. Other responsible persons are employees who undertake specific business and actively participate in false invoicing with full knowledge.

When allocating criminal liability, judges should fully consider the professional cognition and participation degree of the actor. Some grassroots financial personnel only operate in accordance with superior instructions and do not obtain additional illegal benefits. Such personnel have less subjective malice and social harm. Under the standard of substantive review, the court may identify them as accomplices in accordance with the law. If the criminal circumstances are minor, judicial organs may even make a decision of non-prosecution or exemption from punishment.

5.3. Criminal compliance and enterprise substantive exemption mechanism

In recent years, the compliance reform of enterprises involved in cases has provided a new governance path. Some enterprises still have normal production and operation, and are only involved in cases due to management loopholes. For such enterprises, judicial organs should prudently apply compulsory measures.

The unit involved can actively pay back taxes after the case to make up for national losses. At the same time, the unit needs to establish a strict invoice review compliance system. After passing the evaluation by a third-party organization, the procuratorial organ may make a non-prosecution decision in accordance with the law. This mechanism no longer simply pursues economic punishment, but guides enterprises to operate legally through system restoration, and eliminates the causes of crime from the source.

5.4. Recovery of illegal gains and legal interest restoration

The disposal of illegal gains is an important part of case handling. For false invoicing crimes, the scope of recovery should be strictly limited to the reduced taxes and illegally obtained invoicing fees. Judicial organs should not expand it unlimitedly to the legitimate income of enterprises.

At the sentencing level, judges should establish the orientation of legal interest restoration. Judges should take active return of illegal gains and plea of guilty and punishment as the basis for lenient punishment. Judicial organs encourage the defendant unit to take the initiative to correct errors through economic means.

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6. Conclusion

We can see that China's tax criminal justice is undergoing profound changes. Judicial evaluation is shifting from formal logic to economic substance. This is not only an adjustment of legal technology, but also a return to the principle of restraint of criminal law and the theory of legal interest protection.

First, the boundary between administrative illegal acts and criminal crimes must be based on the substantive damage to tax revenue. The core of administrative management is to maintain invoice management order, while the premise of criminal sanctions is that the national financial interests suffer actual damage. In other words, some acts, although in the form of false invoicing, do not damage the VAT deduction chain. The parties do not have the purpose of illegally possessing national taxes either. Judicial organs should firmly exclude such acts from criminal prosecution.

Second, the 2024 Interpretation has established the standard of substantive review, which provides clear guidance for solving practical problems such as affiliated operation, financing false invoicing and flexible employment platforms. When handling cases, judicial organs should adhere to penetrating review. Judges need to comprehensively analyze evidence such as transaction background, capital flow and subjective cognition. Judges must accurately identify the essential harm of criminal acts. This can avoid hurting normal commercial innovation due to over-reliance on invoice form.

Finally, in the identification and liability allocation of unit crimes, judicial organs should introduce a criminal compliance mechanism. This mechanism can be used as a tool for institutional restoration. Promote the involved enterprises to carry out compliance rectification and strive for non-prosecution decisions, repair the damaged tax order, and achieve a balance between punishing crimes and protecting enterprise development.

Looking forward, China's tax criminal rule of law should further strengthen the institutional connection between administrative law enforcement and criminal justice. Relevant departments should build an in-depth cooperation mechanism between tax big data and criminal justice. This can improve the ability to accurately crack down on professional crimes. At the same time, on the basis of adhering to substantive review, judicial organs should continue to explore the internal coordination of the crime and punishment system to ensure that the evaluation standards of the crime of falsely issuing special invoices and related crimes are consistent. Only in this way can the country build a fair, transparent and dynamic legal business environment while maintaining tax security.

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