

China Insight – Chinese Tax Regulation Update

Circular Number	Issuance Date	Effective Date	Topic	What is new?
Fa Shi [2024] No. 4 released jointly by the Supreme People's Court and the Supreme People's Procuratorate	2024-03-15	2024-03-20	Interpretation of the criminal cases of jeopardizing the tax collection and administration	<p>The Circular was released for interpreting the issues relating to the criminal cases of jeopardizing the tax collection and administration under the PRC Criminal Law. The Circular has made a big step forward in helping with the identification and sentencing of the crimes relating to tax collection and administration.</p> <p>The following main interpretations are made by the Circular:</p> <ul style="list-style-type: none"> "Means of cheating and concealment" adopted for making false tax declarations shall be interpreted as the situations such as counterfeiting, hiding or destroying the accounting vouchers, hiding the incomes or properties through signing fake contracts or splitting the incomes or properties by using others' names, declaring fake expenses or input taxes or other deductible items against the tax base, providing fake documents to acquire the tax breaks and making fake tax bases. "Failing to make tax declarations" for those taxpayers without registration with the relevant authorities shall be interpreted as the behavior of failing to make tax declarations for the taxable activities after the tax authorities inform them to make tax declarations. Tax withholding agents shall be regarded to have withheld or collected the taxes when they undertake the tax payment for the tax subjects and pay the after-tax incomes to the tax subjects.

				<ul style="list-style-type: none"> • The tax amount avoided for payment over RMB 100,000 shall be regarded to be "relatively large" and over RMB 500,000 be "huge". • "Tax payable amount" does not include the taxes levied by the Customs offices and the provisional tax prepayments. The "proportion of tax amount avoided for payment accounting for the tax payable amount" shall be calculated based on the tax year or the year before the tax avoidance behavior occurs in case the tax period is not determined based on the tax year. In case the tax avoidance behavior occurs in several tax years, the tax avoidance crime is committed once the tax amount avoided for payment and the proportion of tax amount avoided for payment accounting for the tax payable amount exceed the thresholds in any tax year. • The situation of refusing the tax payment by means of violence or threatening shall be considered "severe" if the person acts as the principal for leading a group for tax refusal or the person deliberately hurts others and cause minor injury to others. • The "means of property transfer or concealment" adopted for avoiding tax collection from the tax authorities includes such situations as giving up the credit right at maturity, transferring the properties for free, making transactions based on apparently unreasonable prices, hiding properties and failing to fulfil the tax obligations and circumventing the supervision from the tax authorities. • "Making fake export declarations or using other means for cheating" for defrauding the export tax refund shall be interpreted as such situations as declaring export tax refund based on the invoices obtained through illegal means, declaring the export transactions without taxation as taxed transactions, declaring export tax refund in others' name, making false elements to increase the export amount for declaration, fabricating the export background for export tax refund declaration through making false documents, making duplicated export tax refund declaration by transferring the exported goods or the same types of exported goods back to China for re-export and making false declaration of the functions and the use of the exported goods in order to make the non-refundable export become refundable. • The tax refund amount received through cheating over RMB 100,000 shall be regarded to be
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				<p>"relatively large", over RMB 500,000 be "huge" and over RMB 5 million be "extremely huge".</p> <ul style="list-style-type: none"> • "Other severe situations" of cheating for export tax refund shall be considered to include such situations as making false export tax refund declarations more than three times within two years and defrauding the tax refund of more than RMB 300,000, cheating for tax refund again after ever being subject to criminal punishment or being subject to administrative punishment more than twice within five years and defrauding the tax refund of more than RMB 300,000 and defrauding the tax refund of more than RMB 300,000 which cannot be recovered before public prosecution. "Other extremely severe situations" of cheating for export tax refund shall be considered to include the situations similar to "other severe situations", but the defrauded tax refund amount increases from RMB 300,000 to RMB 3 million. • "False issuance of special VAT invoices or other invoices for export tax refund or tax credit" shall be considered to include such situations as issuing such invoices without actual business transactions, issuing invoices with the tax amounts higher than the amounts that should have been used for credit or refund, issuing such invoices for non-creditable transactions through fabricating the transaction parties and illegally tamper the information of such invoices. • The tax amount over RMB 100,000 of falsely issued special VAT invoices or other invoices for export tax refund or tax credit shall be sentenced according to the Criminal Law. The falsely issued amount over RMB 500,000 shall be regarded to be "huge" and over RMB 5 million be "extremely huge". • "Other severe situations" and "other extremely severe situations" of falsely issuing special VAT invoices or other invoices for export tax refund or tax credit are similar to the relevant situations of cheating for export tax refund. • "Severe situations" of falsely issuing normal invoices shall be considered to include such situations as falsely issuing invoices with the amount of more than RMB 500,000, falsely issuing more than 100 invoices with the amount of more than RMB 300,000 or falsely issuing invoices again after ever being subject to criminal punishment or being subject to administrative punishment more than twice within five years with the invoice amount reaching 60% of the above criteria. The behavior shall be considered
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				<p>"extremely severe situations" if the invoice amount is more than RMB 2.5 million, more than 500 invoices with the amount of more than RMB 1.5 million are issued or the person falsely issues invoices again after ever being subject to criminal punishment or being subject to administrative punishment more than twice within five years with the invoice amount reaching 60% of the above criteria.</p> <ul style="list-style-type: none"> • "Forging or selling forged special VAT invoices" shall be considered to include the situations that the tax amount of the forged invoices is higher than RMB 100,000, more than 10 invoices with the tax amount of more than RMB 60,000 are forged or sold or the illegal income is higher than RMB 10,000. • The tax amount of higher than RMB 500,000 of the forged invoices or higher than RMB 300,000 with more than 50 forged invoices shall be considered "relatively large". "Other severe situations" of forging or selling forged special VAT invoices shall be considered to include the situations that a person has such misconducts again with "relatively large" tax amounts after ever being subject to criminal punishment or being subject to administrative punishment more than twice within five years and the tax amount of the invoices reaches 60% of the above criteria or the illegal income is higher than RMB 50,000. The tax amount of higher than RMB 5 million of the forged invoices or higher than RMB 3 million with more than 500 forged invoices shall be considered "huge". "Other extremely severe situations" of forging or selling forged special VAT invoices shall be considered to include the situations that a person has such misconducts again with "huge" tax amounts after ever being subject to criminal punishment or being subject to administrative punishment more than twice within five years and the tax amount of the invoices reaches 60% of the above criteria or the illegal income is higher than RMB 500,000. • The interpretations of the elements for the crime of "forging or selling forged special VAT invoices" also apply to the elements of the crime of "illegally selling special VAT invoices". "Illegally purchasing special VAT invoices or purchasing forged special VAT invoices" shall be considered to include the situations that the tax amount of the invoices is higher than RMB 200,000 or higher than RMB 100,000 with more than 20 invoices involved. Selling the purchased forged special VAT invoices shall be evaluated based on the criteria of "selling forged special VAT invoices". The heavier punishment imposed on the crime of
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				<p>"illegally purchasing special VAT invoices" and "falsely issuing special VAT invoices" or "defrauding export tax refund" shall apply if the person illegally purchases the special VAT invoices for tax credit or export tax refund.</p> <ul style="list-style-type: none"> • "Forging, illegally making other normal invoices or selling such forged or illegally made normal invoices for tax credit or export tax refund" shall be considered to include the situations that the tax amount available for refund or credit is higher than RMB 100,000 or higher than RMB 60,000 with more than 10 invoices involved or the illegal income is higher than RMB 10,000. The tax amount available for refund or credit of higher than RMB 500,000 of the forged or illegally made invoices or higher than RMB 300,000 with more than 50 forged or illegally made invoices shall be considered "huge". The tax amount available for refund or credit of higher than RMB 5 million of the forged or illegally made invoices or higher than RMB 3 million with more than 500 forged or illegally made invoices shall be considered "extremely huge". • "Forging, illegally making other normal invoices or selling such forged or illegally made normal invoices (not for tax credit or export tax refund)" shall be considered to include the situations that the invoice amount is higher than RMB 500,000 or higher than RMB 300,000 with more than 100 invoices involved or the illegal income is higher than RMB 10,000. "Severe situations" of forging, illegally making other normal invoices or selling such forged or illegally made normal invoices (not for tax credit or export tax refund) shall be considered to include the situations that the invoice amount is higher than RMB 2.5 million or higher than RMB 1.5 million with more than 500 invoices involved or the illegal income is higher than RMB 50,000. • The tax amount over RMB 500,000 of the forged special VAT invoices or other invoices held by a person for export tax refund or tax credit or over RMB 250,000 with more than 50 invoices involved shall be regarded to be "relatively large". The amount over RMB 1 million of the other forged invoices held by a person (not for export tax refund or tax credit) or over RMB 500,000 with more than 100 invoices involved shall be regarded to be "relatively large". In case the number of invoices, the tax amount or the invoice amount reaches five times the criteria above, the amount shall be regarded to be "huge".
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In case you have questions or for further information, please contact the author of this newsletter:



Gilbert Shen
Counsel
Head of Tax Practice Area Group
CMS, China

T + 86 21 6289 6363
E Gilbert.Shen@cmslegal.cn

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CMS Hasche Sigle Shanghai
Representative Office (Germany)
3108 Plaza 66, Tower 2
1266 Nanjing Road West
Shanghai 200040, China

CMS Cameron McKenna LLP Beijing
Representative Office (UK)
Room 1909, China Youth Plaza,
No. 19 Dongsanhuan North Road,
Chaoyang District
Beijing 100026, China