

THE STUDY ON THE USE OF ILLEGALLY ISSUED TAX INVOICES FOR TAX CREDITS AT THE CENTRAL AUDIT OPERATIONS DIVISION, REVENUE DEPARTMENT

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Abstract

The objectives of this research were to study the concepts and principles of Value Added Tax, including illegal issuing of invoices, to study the rules and procedures related to the tax invoice issuance for further development guidelines, and to seek preventive measures for illegal tax invoice issuance and for the use of illegal tax invoice. This research study is a qualitative research. Data were collected from tax textbooks, theses, articles, and also electronic data in order to be analyzed for recommendations and solutions to the problems. The study found that there have been practices, regulations and criminal proceeding for illegal invoice issuance. After checking the list with high volumes and consecutive sales with the system of the Central Audit Operations Division, there are two types of the lists. One must be verified by allowing users to prove all the bill payment while the other does not have to be verified due to clear faults. Issuing illegal tax invoices nowadays is caused by complexity and complications, with legal gaps that affect entrepreneur's tax credit refund. This leads to difficulties in tax collection due to several procedures of Tax Return Investigations. If the process is enhanced continuously, the illegal tax invoice issuance problems will be gradually decreased while entrepreneurs' tax payment will be increased.

Keywords: Tax Invoice, Illegally, Tax Credit, The Revenue Department

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Introduction

In 1992, Thailand adopted the Value Added Tax System in place of trade taxes in order to comply with the changing economic and social conditions. The VAT system requires VAT registered businesses to collect taxes from buyers or service recipients and pay to the government (Devarajan, Jitsuchon, & Sussangkarn, 1991). Tax that a business collects from a person who buys a product or service is called "sales tax". When the business has purchased any products or services from other registered operators, VAT will also be charged. The type of taxes is called "input tax". If it is the input tax that has arisen from the purchase of goods or services for business operations, the business has the right to deduct from the sales tax. "Tax invoice" shall be kept as evidences for investigation since tax invoice indicates that the input tax has been paid (Revenue Department, 1997).

Therefore, input tax shown on tax invoices has economic value since it can be used for tax deduction or tax return in case the sales tax is less than the input tax. At present, many registered businesses seek unlawful advantages from tax benefits provided by the state, for instance, issuing invoices under the name of another business operator to use as an evidence showing that he has purchased a product or service, and use the false tax invoice for tax calculation. Moreover, with no purchase of products or services, some business operators may purchase tax invoices from other operators to alleviate the tax burden. These acts are against the regulations for the issuance and the use of tax invoices under the Revenue Code and cause the state to lose benefits from tax revenue. In consequence, tax invoice issuers and users are liable for retroactive tax, penalties, additional charges, and criminal charges (Clark, 1976).

Therefore, the researcher aimed to study the use of illegally issued tax invoices to claim tax credits at the Central Audit Operations Division, the Revenue Department, and to study the concepts, principles of tax invoice issuance, and to study relevant rules and procedures to find preventive measures for the use of unlawful tax invoices.

Research Objectives

1. To study concepts, principles of VAT, and the lawful issuance of tax invoices.
2. To study rules and procedures related to the issuance of tax invoices for further development.
3. To find solutions and preventive measures for the issuance and the use of illegal tax invoice.

Research Framework

This study concentrated on using illegally issued invoices to claim tax credits with and without verification, including the issuance and the use of illegal invoices, liability for issuing tax invoices without rights, liability for the use of false tax invoices or illegal issued tax invoices, techniques for inspecting tax invoices, including various standards of government agencies and

private sectors used in practice but affect business operators and tax administration. For example, illegally issued tax invoices that "shall be verified" requires the user to prove every payment, and illegally issued tax invoices that do not need to be verified. The eight industry groups are

1. Agriculture and food industry (agribusiness, and food & beverages)
2. Consumer products (fashion, home & office products, and personal products & pharmaceutical)
3. Industrials (automotive, industrial materials, packaging machinery, paper and printing materials, petrochemicals & chemicals, and steel)
4. Property & Construction (construction materials business)
5. Industries relating to the producers of construction material, the developers and managers of real estates, as well as the construction and engineering services (construction business)
6. Services (commerce)
7. Technology (electronic components business)
8. Resources (energy and mining business)

Benefits from Research

Practical Benefits

1. To understand the concepts and principles related to VAT, including the issuance of tax invoices.
2. To understand the legal measures for using illegally issued tax invoices to claim tax credit.
3. To obtain solutions to issuing illegal tax invoices and to improve existing measures to be more effective.

Academic benefits

1. The knowledge is important for further studies in the use of illegal tax invoices to claim tax credits.

Concepts / Theories and Related Research

1. Guidelines for checking false tax invoices

In VAT system, tax invoice is a financial evidence to claim for tax or tax returns; therefore, it is very important for taxpayers. If tax payers use illegally issued tax invoices to claim for tax credits or tax returns, tax is unable to be collected which causes damages to the State. False tax invoices are issued on purpose to avoid paying tax which leads to serious offenses. Issuing false tax invoices is the problem that must be inspected. There shall be preventive measures for taxpayers not to use false tax invoices. (Revenue Department, 2016)

2. Regulations and guidelines for tax invoices (Revenue Department, 2020)

The Revenue Code Section 89 (7) imposed civil liability on "false tax invoice", and Section 90/4 (7) imposes criminal liability.

Section 89 (7) Using false tax invoice in tax calculation partly or wholly, shall be liable to tax twice the amount of tax on such invoice;

In the case where the user of the tax invoice fails to identify the issuer of the tax invoice, such tax invoice shall be deemed false tax invoice”

Section 90/4 The following persons failing to comply with the provisions stated below shall be sentenced from 3 months up to 7 years and fined 2,000 up to 200,000 Baht.

3. Purpose and Necessity of Taxation

- 1) To use as expenses for national development.
- 2) To allocate and distribute national income.
- 3) To be used a tool in business policy and economic stability.

4. Adam Smith's Principles of Good Taxation (1776)

Adam Smith's good taxation principles have been accepted by tax theorists as well as general tax scholars. The principles are the foundation of these four concepts as follows

- 1) All people in each country shall sacrifice income or their economic interests to support the administration of the government because all citizens obtain benefits and protection from the government.
- 2) The nature, forms, and the amount that is subject to taxation that each individual must pay shall be certain, not ambiguous, and clear.
- 3) Tax shall be collected on the date, time, place that is convenient for taxpayers. Convenience shall be provided to taxpayers.
- 4) All taxes collected shall be the least burden to taxpayers, but the optimal income to the government.

5. VAT concepts and principles

Wisuttipat (2004) has expanded the concept of VAT collection as follows:

- 1) Value added tax is collected based on consumption or expenditure. Therefore, the government collects the tax when the private person consumes or pay for any product it, whether in the form of purchasing goods or services, or importing products for consumption in the country. The reason that consumption is used as a base for tax collection is due to tax policy. Therefore, taxes should be collected from many bases that do not cause negative feelings towards private tax collection and taxation from multiple bases will help to reduce double taxation.
- 2) Value added tax is an indirect tax. Tax burden is usually pushed on to those involved in the next phase. The amount is not considered as business cost that the business operator must handle but those who are actually liable is the end consumer. VAT, an indirect tax, is difficult to avoid since taxation occurs when a product or service is exchanged and the amount of tax is included in the price of a product or service that consumers must pay as if it were part of such product or service.

Research Methodology

Tax invoice is an evidence of value added tax systems that registered businesses and individuals shall issue and hand over to consumers promptly. Tax invoice must show the information of the buyer, date and time of purchase, quantity, price and VAT or sales tax that shall be collected. For business operators as a buyer or importer, tax invoice is however an evidence to prove that the business operator has paid or should have to pay VAT within each tax month, and is also an evidence for VAT refunds in the event that the purchase tax amount is greater than the sales tax.

False Tax Invoice Investigation

There are two methods to check a false tax invoice (Revenue Department, 2016).

1. To inspect the issuer of illegally issued tax invoice.
2. To inspect the users of illegally issued tax invoices.

Characteristics of False Tax Invoices

1. Significant abnormal characteristics, such as the value of the goods/valued added tax is unusually high, the information in accordance with Section 86/4 is incomplete, or taxpayer identification number belongs to another person.

2. Goods or services are not related to the business.
3. Product price and value added tax are rounded off or high number.
4. An invoice with many copies has been used consecutively for a certain period of time.
5. The characteristics, forms, styles, and/or the texture of the tax invoice are similar or the same.
6. Tax invoices are filled and signed with the same or similar handwriting.
7. Tax invoices are issued by those residing in different provinces, but the tax invoices formats are the same or similar.

Central Audit Operations Division's False Tax Invoice Detection Procedures (Revenue Department, 2016)

1. Check the status of the issuing juristic person whether it is deserted / discontinued / still in operation / no information from the database of the Department of Business Development. (BOL data will be updated.)

2. Check the status of the illegal tax invoice issuer whether it is VAT registered.

3. Check the list of illegal tax invoice issuers on the system of the Central Audit Operations Division.

4. Verify tax invoices.

5. Search and seize documents.

When false tax invoice is found, the authority shall

- inspect the operation of VAT only,
- seize the input tax report and input tax invoice,
- check rapidly and keep the false tax invoice when found,

- inform the tax payer to prove the invoice and payment method,
- assume that the false tax invoice has been pulled out, if it is not found, and the tax invoice and its report were changed. The authority shall check the tax invoice whether the purchase amount matches the data that the Central Audit Operations Division received or not. It shall be verified with the issuer, and the buyer shall prove,
- in case the false tax invoice is not found, but there is a blank in the input tax report and the amount missing is equal to the tax invoice. The authority shall investigate the facts.
- in case the evidence is cash or A/C Payee Only checks, request the bank for a copy of the front and back of the check in order to check whether the specified amount was deposited, transferred, or withdrawn to whom.

VAT Fraud Liability

Vat fraud occurs in several businesses, including those who are not business operators in VAT system. Most VAT fraud that have been detected share similar characteristics.

1. Business operators with a place of business

- have business operations,
- are registered as a juristic person,
- are registered in VAT system.

2. Business operators that have their residence as a place of business

- may or may not have real business operations,
- may or may not be registered as a juristic person,
- may or may not be registered in VAT system.

3. Business operators with no place of business

- have no place of business operations,
- are not registered as a juristic person,
- are not registered in VAT system.

4. Business operators sell many products at the same time, but gradually deliver goods and hand over invoices and delivery invoices, as the evidences, to the buyer. When all the goods have been delivered as ordered, the seller will re-issue the invoice with the whole receipt again; therefore, the buyer obtains invoices more than the actual price of the goods.

5. Exporters normally establish two exporting companies to operate during start-up period, and later establish more companies without any exporting operations. The business owner will appoint his employees to be directors, falsify customs documents issued by the Customs Department, and use false tax invoices as input tax as the export cost in order to request VAT refund from the Revenue Department.

Persons Responsible for Tax Invoice Issuance

1. VAT registrant (Section 86 of the Revenue Code) (Revenue Department, 2020).

2. Non-government auctioneers that auction the property of VAT registered business. They can issue tax invoices on behalf of the VAT registrant.

3. Agents, according to the agency appointment contract as specified by law, of the business registered in the Kingdom of Thailand who get appointed to sell and passed the goods to.

4. Agents of the business registered outside the Kingdom of Thailand who has been approved by the Director-General of the Revenue Department.

5. Business operators outside the Kingdom of Thailand who enter into business, provide goods or services occasionally in the Kingdom of Thailand in compliance with the rules, procedures and conditions.

6. VAT registrant whose name has been delisted from VAT registration system has acted in compliance with rules, procedures and conditions.

7. VAT exempted businesses that request for VAT registration and get approved to pay VAT by calculating sales tax deducted by input tax in each tax month.

Types of information found on the illegal tax invoice issuer list system

Non-verification

It is assumed that tax invoice is illegally issued or unable to be verified. For example, the place of business or the business operators cannot be found; therefore, the tax invoice user has the burden of proof and specify the tax invoice issuer. According to Section 89 (7) of the Revenue Code, if the user cannot identify the issuer, the user shall be liable to tax twice the amount of tax on such invoice.

Verification

Data must be appropriately verified (Grieve, 2012). Therefore, the tax invoices shall be verified and proved that they are legally issued by investigating the users of tax invoices to get facts about the purchase of goods, payment and obtaining tax invoices. The information together with the tax invoice will be submitted for verified. If the result shows that the invoices are not correct, tax invoice users shall have the burden of proof and specify the issuer. If the user cannot identify the issuer, such tax invoice is considered as false tax invoice and the user shall be liable to tax twice the amount of tax on such invoice according to Section 89 (7) of the Revenue Code.

Data analysis

Criteria and reasons of the eight industry groups in terms of using illegal tax invoices for tax credits and VAT refunds, together with their practice, guidelines, regulations, laws, criminal proceedings for false tax invoices were analyzed. The eight industry groups consist of 1. agriculture and food industry (agribusiness, food and beverages) 2. consumer products (fashion, home and office products, and personal products & pharmaceutical) 3. industrials (automotive, industrial materials, packaging machinery, paper and printing materials, petrochemicals & chemicals, and steel) 4. property & construction (construction materials business) 5. industries relating to the producers of construction material, the developers and managers of real estates, as well as the construction and

engineering services (construction business) 6. services (commerce) 7. technology (electronic components business) and 8. resources (energy and mining business).

The registration process in each industry groups is different at the beginning. According to the law, there shall be at least 3 persons investing five baht per share. Registration can start at 15.00 baht up to 1,000,000.00 baht or more depending on the company. Companies in each industry group differently use illegal issued tax invoices for tax credits. This affects the Revenue Department in terms of revenue collection (Rao, 2016).

Due to illegal tax invoices for tax credits, the Central Audit Operations Division has compiled various information, analyzed and shown the process to inspect the list of tax invoice issuers as in the picture.

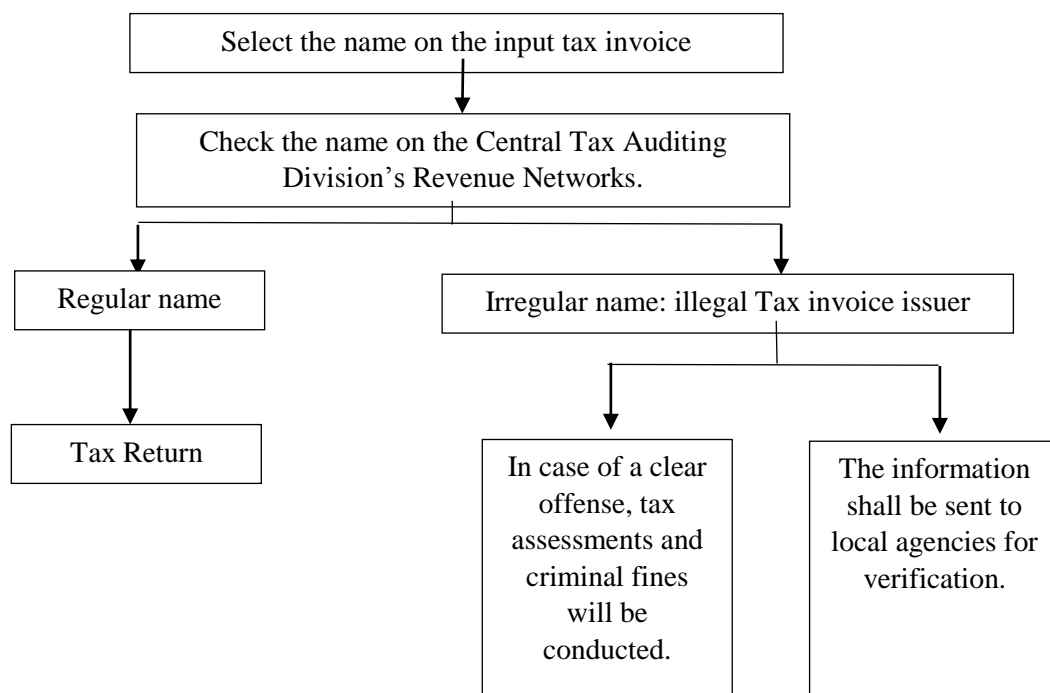


Figure 1 The process of tax invoice issuer verification.

From the study of the use of illegally issued tax invoices for tax credit, the Central Audit Operations Division begins the process with the selection of names on the input tax invoice. After that, it will lead to the process of checking the names on the Revenue Network of Central Audit Operations Division. The names will be divided into regular and irregular ones which are illegally issued. Illegal tax invoice issuance can be considered in 2 cases which are 1) in the case of a clear offense, tax assessment and criminal fines will be conducted, and 2) in the event that a verification procedure is needed, information shall be sent to different local agencies for verification, and the investigation will be seriously proceeded as follows:

Add the name of the business operator to the list of illegal tax invoice issuers

In the event that the tax issuer has suspicious behaviors, such as he has no business operations, issues sales tax invoices without the right to issue, or his tax invoice is falsified by another

person, this shall be reported to the Central Audit Operations Division to add the name to the list of illegal tax invoice issuers.

In case no place of business is found, or the business has been ceased,

1. Product/Service characteristics
2. Investigate by inquiring persons or nearby businesses whether there was any business operation and when it was ceased.
3. Withdraw and remove the name from VAT registrant list.
4. Notification of business relocation.
5. Relevant documents, such as place of business photos, copies of tax invoices, copies of testimony, and VAT investigation report.
6. Business operator information, such as corporate information, VAT registration information, business owner's information, directors or business partners's information, and types of business.
7. Information for filing all tax returns.

In case there is no operation at the business place,

1. Business operator information, such as corporate information, VAT registration information, business owner's information, directors or business partners's information, and types of business.
2. Legal reports and tax invoice preparation.
3. Random tax invoice verification, its results or the results of tax invoice verification.
4. Investigation data from inquiring persons or nearby businesses.
5. Information for filing all tax returns.

Results

From the study of using illegal tax invoices to claim for tax credits, it is found that there are still issues about the prevention and suppression of VAT fraud by using tax invoices. The research issues were found in the eight industry groups.

1. It is unable to know whether tax invoices used for tax returns are legally issued or not. Therefore, such tax invoices shall go through the investigation process of the Revenue Department.
2. The process to indicate whether it is legally issued tax invoices is clear sources of such invoices issued when there is a purchase. The tax invoices can be used to claim tax credits.
3. There is a solution and preventive measures to using illegally issued tax invoices to claim tax credits. There should be a study on the use of invoices, transparency, honesty, and regulations and law relevant to entrepreneurship and taxation.

1. Procedures and laws

Procedures and laws can prevent and suppress corruption. The Revenue Department imposes an operational verification procedure by verifying tax invoices. Officials must conduct a preliminary

investigation of the name of tax invoice issuers on the Intranet network, which is an efficient, reliable, convenient, fast, and modern method for VAT returns. Verifying tax invoices is a part of the investigation procedures. Officials are required to verify documents and evidences relevant to input tax invoices for tax returns. In case tax invoices are sent to different local agencies for verification, the process shall be done within 60 days from the date of acceptance.

2. Business Operators

VAT returns that business operators have claimed are delayed because their tax invoices need to be verified. Officials are required to investigate the irregularities of the input tax invoices that the business operators used to claim for tax returns by checking them on the Revenue Department's system. If the verification shows that the tax invoices are legally issued, the business operators can receive VAT returns. However, if tax invoices are found, tax assessments which include fines, additional penalties, and legal actions must be conducted. The VAT return claimant must bring documents and evidence to prove. If the business operator submits the VAT return form (P.P.30) to receive VAT returns in cash and has been inspected, the business operator has to bring the documents to the authorities for tax return verification. Documents and evidence that shall be checked depends on the nature of the business. Business operators that, without dishonesty, use illegally issued tax invoices to claim tax returns in the form of cash or tax credits may lack of legal knowledge. However, business operators that have the intention to illegally issue tax invoices do not have business operations, or they may also have other businesses in order to issue tax invoices under a credible name and sell them to other registered businesses that need tax invoices.

3. Tax Collection

VAT investigators must have knowledge and the ability to collect taxes. The current issues are that officials still lack work experience and the authority lack of skilled personnel. The important limitation that causes the VAT system to be inefficient is due to the inability to control the source of tax invoice issuance; large business operators, manufacturers, importers, wholesalers, large service providers to issue tax invoices and control the use of tax invoices to be continuous and concise. This results inefficiency of tax collection which causes incomplete tax collection and damages every year. Even though the Revenue Department has implemented measures to prevent and suppress illegally issued tax invoices, there are still VAT evasion by issuing false tax invoices.

Dicussion

Tax evasion by using illegal tax invoices reduces the income of the government and cause unfairness to other business operators who act in good faith. This issue cannot be resolved in a timely manner and lead to confusion among business operators. The Revenue Department has set up a tax management system to suppress the offense of tax evasion, namely the investigation of VAT operations. If the offense is found, tax assessment, fines, and additional penalties and taxes. According to the list of illegal tax invoice issuers, there are two types. The first type is that no

verification is needed if there is a clear offense. With the preliminary information which indicates that the business operator has issued tax invoices despite no operations and the Revenue Department has withdrawn its the VAT registration, it is assumed that such tax invoices were illegally issued. Tax invoice user must indentify the issuer. If the user of tax invoice fails to identify the issuer of the tax invoice, such tax invoice shall be deemed false tax invoice and the user shall be liable to tax twice the amount of tax on such invoice according to Section 87 (7) of the Revenue Code. The second type is that the tax invoices need to be verified. In case the business operator that has a place of business falsifies tax invoices, or issues tax invoices without actual purchases, the tax invoices shall be submitted for verification to prove that they are legally issued (Revenue Department, 1997).

Suggestions

Since the existing measures cannot prevent and suppress illegally using and issuing tax invoices for VAT returns, business operators and consumers shall also be involved in solving such problem. The solutions to issuing and using illegal tax invoices are as follows

1. Procedures and laws

In case of submitting illegally issued tax invoices to various departments for verification, the process shall be done within 60 days from the date of acceptance. The regulation relevant to the process of notifying the verification results should be improved by allowing the results to be notified via the email system since it reduces the working time and facilitates honest business operators. With this improvement, the officials can proceed the tax assessment timely. In terms of laws, VAT registrant shall submit a tax return (P.P.30) with a copy of the input tax report, sales tax report, and a copy of the tax invoice as evidence in VAT calculation. Moreover, there should not be VAT returns in cash, but in tax credit only, except for exporters who are responsible for zero tax, or certain businesses only.

2. Business Operators

There should be law amendments by increasing penalties. Ethics training seminars, and cooperation from stakeholders to monitor the behavior of business operators that are likely to commit offenses, and publicizing prosecution should be conducted.

3. Tax Collection

The law should empower of the Revenue Department officials in be able to arrest the offenders as other department officials such as Excise Department, Customs Department. This would increase the efficiency of suppressing VAT fraud.

For knowledge and competence of the Revenue Officials, training courses on criminal prosecution are necessary for responsible officials in order to gain more knowledge and understanding in criminal evidence. The officials should be trained to be able to consider the legal issues. Academic seminars for agencies involved in tax litigation help increase knowledge and operational efficiency. Technology training helps the officials improve their potential. The officials should understand the

business environment, service providing, working efficiently and transparently. Awareness about taxation should be concentrated on from the youth to the adult level by providing tax-related activities and courses at school, campaigns that allow citizens and the private sector to participate and express their opinions. If tax-related information is publicized on all kinds of media and channels, this can help promote the positive image of the organization, raise positive attitude towards taxation Publicize all media, and citizens will get information relating to state welfare resulting from paying taxes to the government.

Tax evasion with the use of illegally issued tax invoices is one of the major problems in Thailand that causes enormous losses in government revenue. This destroys the taxation system, and impairs competition in the same business group which directly affect the economy. At present, the exact amount of damage has not yet been determined. The Revenue Department should therefore have revised laws and operational procedures in order to prevent wrongdoing acts, so that tax collection will be proceeded efficiently and fairly. In addition to the development of various technologies to prevent the evasion of taxation, attitude towards taxation must be taken into consideration. Positive attitude towards taxation should be educated from elementary education to higher education which can lead to the voluntary taxation for public interest. If everyone has good awareness of taxation, the Revenue Department's tax collection will be more efficient and effective. This will lead to sustainable tax base development.

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