



TMI EYES No. 3 Fake Tax Invoices

The use/issuance of invalid/fake tax invoices has long been an issue under the Thai value-added tax (“VAT”) regime. Yet, TMI is still dealing with the fake tax invoice issue, which creates the most severe tax liabilities. Particularly, the Revenue Department is more often pressing criminal charges against both the issuers and the users. In this article, TMI will discuss the consequences of the Revenue Department treating a tax invoice as “fake.” We will also discuss minimizing the risk of authorities suspecting tax invoices as fake.

Tax Invoices

Tax invoices are the most important among VAT documents. Tax invoices serve as evidence of tax collection and payment, allow cross-examination of tax amounts, and signal tax compliance between the seller/service provider and its customers, among other purposes.

Tax invoices can be valuable keepsakes. One who pays a price of Baht 500 million with creditable/refundable input tax of Baht 35 million, for example, would likely keep their tax invoice under lock and key. A loss of the tax invoice could mean a loss of the input tax, effectively money.

Unclaimable Input Tax

VAT operators calculate their VAT payable, refundable, or creditable, by deducting claimable input tax from output tax.

VAT operators are, however, prohibited from including “non-claimable” input tax in their monthly VAT calculation. “Non-claimable” means input taxes in tax invoices issued by one who is otherwise unauthorized to issue tax invoices, according to the Revenue Code.

The Revenue Department deems one unauthorized to issue tax invoices if the suspect is a non-VAT operator or is a VAT operator who collects output tax from its customers but does not remit the VAT to the Revenue Department.

Fake Tax Invoices

The Revenue Code does not provide a statutory definition for the term “fake” with respect to tax invoices. Nevertheless, the Revenue Department treats tax invoices issued by unauthorized persons as “fake” because the issuer (who also collects the VAT based on the invoice) does not remit such VAT to the authority. The Revenue Department, in this instance, perceives itself as the injured party due to the loss of VAT revenue.

Consequently, where the authority cannot reclaim the tax owed by the issuer, it will hold the VAT operator who used the input tax in their VAT calculation responsible for that loss.

Readers should note that the Revenue Department usually discovers that the issuer did not remit the VAT during its verification of input VAT of the operator who requested the VAT refund. Such discoveries have never been easier due to the digital transformation of the Revenue Department's tax collection system.

TMI has recently dealt with allegations by the Thai Revenue Department over the use of "fake" tax invoices. In practice, one of the hard cases is that the Revenue Officers generally presume that tax invoices are fake if the issuer, a registered VAT operator (who collects output tax from customers), fails to remit the VAT to the authority. Further, the Revenue Department is prone to not only bring civil but also criminal charges against the VAT operators.

Minimize Risks of Using Fake Tax Invoices

It is the time the VAT operators must implement their best practices to minimize the risk of being challenged for using fake tax invoices to prove the validity of their tax invoices and their good intent. Among other evidence, the VAT operator should be able to show it applied reasonable effort to check the VAT status of its suppliers (particularly for high-value transactions), used the goods and services indicated in the tax invoices in the course of its business, and knowingly took no part in fraud.

The taxpayer should first verify whether its suppliers are valid VAT operators at the Revenue Department website (currently at <https://cmsinter.rd.go.th/313.html>). If valid, the taxpayer should keep a screenshot of the search results. The taxpayer should conduct this check more than once during the course of the transaction.

VAT operators should verify the actual, physical place of businesses of the suppliers, and their reliability and competency to do the work. (Where an issuer of allegedly fake tax invoices operates from an unlikely location, e.g. an uninhabited commercial building, the Revenue Department would most likely excuse the VAT operator under audit.)

VAT operators should also regularly request updated VAT Registration Certificates (Phor. Por.20) from their suppliers.

Lastly, among other efforts, VAT operators should keep accurate records of the use of the goods or services, purchased from their suppliers, in the course of their own VAT business.

VAT Liabilities

VAT operators who use "fake" tax invoices are liable to, in addition to the tax shortfall, regulatory penalties at the rate of 200% of the input tax stated in the tax invoice, and penalties of 100% of the VAT incorrectly paid or remitted.

VAT operators are also subject to a 1.5% monthly VAT surcharge in the case of shortfalls, possibly imprisonment from 3 months to 7 years, and a monetary fine of Baht 2,000 - 200,000, all according to the Revenue Code.



Daiki Koso, Partner and Monchai Varatthan, Partner, TMI Associates (Thailand) Co., Ltd.


** This Article is for general informational purposes only and does not constitute legal or tax professional advice. Readers are urged to thoroughly review the information before acting upon it. TMI accepts no responsibility whatsoever with respect to the use of this information*




 bangkok@tmi.gr.jp

Tokyo | Nagoya | Osaka | Kyoto | Kobe | Fukuoka | Shanghai | Beijing |
Yangon | Singapore | Ho Chi Minh City | Hanoi | Phnom Penh | Bangkok
| Jakarta* | Kuala Lumpur* | Silicon Valley | London | Paris | Brussels

*Affiliated office

 Sathorn Square Office Tower, 22nd Floor, unit 2212,
North Sathorn Rd., Silom, Bangkok, Bangkok 10500

 Facebook: TMI Associates – Thailand
Instagram: tmibkk
LinkedIn: TMI Associates (Thailand)