

Abstract

Value added tax (VAT) credit system in Thailand uses the tax invoice system as important evidence. Not only is it for refunding input tax, but it also can be used as evidence against the Revenue Department. The difference shall be tax credit and business persons shall be entitled to tax refund. This easily leads to a cheat on VAT by business persons, both VAT registrants and non-VAT registrants.

A VAT cheat, an economic crime, is often done in a group of juristic persons and has many people jointly committing in a form of “fraud”. Tax avoidance under Section 90/4 of the Revenue code prescribes the punishment for the violator by sentencing up to 7 years and fined not more than Baht 200,000 even though such violator may evade tax in an amount more than the fine. Therefore, it is necessary to additionally apply Section 341 of the Penal Code. Unfortunately the existing Penal Code mentions the punishment so less comparing to the damage. In other words, the current legal prosecution on VAT evasion cannot efficiently handle the violators because the provisions of law concerning procedure are not propitious. Moreover, the laws concerning prosecution are not in a uniform system. Namely, before police can begin their action, the Revenue Department, as a complainant, has to request with collected evidence. Collecting evidence, requiring a number of departments and officers, is a time-consuming process and easy to make mistake; as a result it delays the prosecution process. Further, court procedure bestows the plaintiff to prove beyond reasonable doubt that the defendant really broke the law. This is an obstacle to penalize since the coconspirators doubtlessly do not make any evidence to bind themselves that they involve with the violation. In a nutshell, Thai laws concerning legal procedure lack measures to deal with VAT system violators due to the fact that at present the legal action is a normal process. It has been enforced for a long time but it has never been able to effectively enforce with the VAT coconspirators. The nation consequently loses many billions Baht every year.

From the abovementioned loss, it is essential to adopt a measure to prevent such breach. This author opines that an appropriate measure for solving this tax fraud is the conspiracy offence which is well-known in the common law system. The conspiracy offence in the common law system is the general criminal principle for people while in civil law system it is an exception of law which is used only for specific offence.

Hence, if Thailand revises legal system from the proof beyond reasonable doubt to the conspiracy offence in case of VAT cheat, it will enhance the efficiency in preventing VAT cheat. Conspiracy offence in common law system can be used in a lawsuit and impressively prove the actual offenders because it has important basis. Specifically, an offence is started once the coconspirators agree to commit the offence. The law deems that an agreement to commit is enough to be a crime of conspiracy despite the fact that the coconspirators have not yet committed the act under the agreed objective. The form of agreement can be verbal, written, gesture, signal or symbol. From these reasons, it can say that a crime of conspiracy can prevent tax credit fraud in an efficient manner.