

# TAX INSIGHT: UNEXPECTED OUTCOMES FROM UNAUTHORISED TAX INVOICES

**W**hen you consider the documents in the value-added tax (VAT) system, the tax invoice is one of the most significant for both a supplier and a buyer. To claim input tax from the Revenue Department, the buyer must be able to show the tax invoice and prove to the officer that it contains the particulars stated in the law. Therefore, the supplier is required to issue the correct tax invoice to the buyer as stipulated by law.

This is not as straightforward as it seems. One of the concerns is the issuance of the tax invoice without authorisation. Section 86/13 of the Revenue Code provides that a person, (1) who is not a VAT registrant or (2) is not entitled to issue a tax invoice, would not be allowed to issue a tax invoice, a debit note or a credit note. Therefore, the supplier must understand when he has the right to issue the tax invoice to his buyer because this requirement might not occur every time during the course of business.

There are a number of circumstances in which a VAT registrant cannot issue a VAT invoice. One example occurs where the registrant sells goods that are exempt from VAT. Another example is where the registrant enters into a sales contract with Party A but is asked to issue the VAT invoice to party B. As there is no contract with or sale to Party B the invoice issued to that party is not valid.

The penalties for issuing a tax invoice when not permitted are severe. They include a penalty of twice the amount of VAT stated on the invoice. In addition, criminal penalties may apply if the invoice was issued with the intention of evading or attempting to evade paying VAT.

In the case of the supplier issuing a credit note to a buyer, from a business

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standpoint, there should be no difficulties especially when there has been a reduction in price. However, when the supplier issues the credit note resulting in a reduction of price and the related output tax for the VAT calculation, the Revenue officer will come to monitor this transaction very closely.

Problems arise in situations where the price is uncertain. In certain type of businesses, the sales price can't be determined at the time of the delivery of goods. The sales price on the tax invoice is therefore calculated from the estimated price and the parties agree the supplier will issue either a debit or credit note to the buyer for any price adjustment.

Usually, the Revenue officer refers to the conditions for the issuance of the credit note under the Revenue Code. When the transaction doesn't fall within the specifics of the Revenue Code, the Revenue officer can challenge the deficiency of the output tax, and the issuance of the credit note without authority.

The supplier could be liable for a penalty, twice the amount of the VAT that appears on that credit note. Even worse, this could bring about a criminal offence against the supplier as forging a document under the Criminal Code.

In contrast, one of the Central Tax Court decisions in 2011 ruled that the supplier had not issued the credit note without authorisation even though he issued the credit note to the buyer but

did not comply with the conditions as specified in the Revenue Code. Because the supplier is a VAT registrant, it was decided that the supplier was liable to pay a penalty equal to the amount of the deficient output tax only, as he had filed a tax return incorrectly affecting the amount of the output tax.

This decision could result in the officer questioning how to determine a case where the supplier issues the tax invoice/credit note without authorisation. When the supplier is a VAT registrant and there is no intention to evade or attempt to evade payment of VAT, it should not be decided that the supplier has issued the tax invoice/credit note without authorisation.

Because the true purpose of the law is to eliminate the fraudulent tax invoices, and debit and credit notes, it gives rise to the question whether the interpretation of the law by the officer is impartial to those who mistakenly issue such documents.

From our experience, the Revenue Department has rigorously ruled the standard of what is regarded as issuing the tax invoice/credit note without authorisation by not acknowledging the facts that the supplier is the VAT registrant and does not intend to issue the tax invoice/credit note to evade the tax payment.

Thus, the facts in each case should be taken into account by the taxpayer as well as resorting to the court cases and Revenue Department rulings in order to determine whether the process for the issuance of the tax invoice/credit by the management or the accounting team has been made without authorisation.

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