

Gökçe –

Objection!

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THE CRIME OF ISSUING AND USING FALSE INVOICES



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Nowadays, financial crimes have become an increasingly wide-spreading crime group within the frame of rapidly emerging commercial life and relationships. Especially, the crime of issuing or using false invoices is quite common. Indeed, dozens of people have been detained for this crime in recent operations and it has been determined that the state suffered nearly TRY 200 million loss due to the creation of false invoices of around one million TRY.

What is False Invoice? Why Is It Issued or Used?

Pursuant to Article 359 of the Tax Procedure Law numbered 213, false invoices can be briefly defined as an invoice that are issued even though there is no real legal relationship. In this context, if the transaction subject to the false invoice does not reflect the actual situation, it is considered as a false invoice. The crime of issuing and using false invoices has been regulated under Article 359 of the Law. According to the aforementioned Law, the manner in which the crime is conducted is described as “(...) issuing or using misleading documents in respect of their content (...)”. As a matter of fact, in the same article, the false document is defined as “a document that is based on a actual transaction or situation but reflects it in a way that is contrary to the actual situation in terms of its nature or quantity, is a misleading document in respect of its content”.

The perpetrator acts with intent to avoid taxes in order to make unfair profits or to pay less tax or no tax when issuing false invoices. In relation to taxpayers using false invoices, they benefit from discount they are not entitled in order to pay less tax or no tax by overstating expenses and lowering their tax bases. Although there is no actual transaction or situation, the document that is issued as if there were, is a false document. For instance, the action of issuing invoices, as if the goods or services are purchased although aren't purchased, is falsification and the invoice issued is false document. The documents that were issued falsely or were obtained from taxpayers without their consent are also false document.

In terms of the perpetrator who is accused of issuing or using the false invoices, it is most important to prove that the commercial transaction subject to the invoices reflects a real commercial relationship. In this context, every evidence that can prove a real of commercial relationship should be submitted to the judicial authorities. Therefore, it is highly recommended to quickly and correctly collect the required commercial information and documents, to closely follow the process of investigation and then prosecution, to submit as soon as possible, all evidence that prove the commercial relationship, to hand in special technical academic report, if needed, and to receive the professional legal advice throughout the process.

What Penal Sanction Does the Tax Procedure Law Have for the Crime of Issuing and Using False Invoices?

The sanction of the act of issuing or using false invoices has been set forth as a prison sentence of eighteen months to three years as per Article 359 of the Tax Procedure Law. In addition, it is stated in Article 360 of such law that if the confederate participating in the commission of the crimes written under Article 359 of the Law do not have any interest in committing such crimes, the prison sentence for them will be reduced by-half.

Furthermore, in the event of committing the crime more than once within a calendar year, the prison sentence may be increased from one-quarter to three-quarters by punishing a single penalty in accordance with the successive offence provisions of Article 43 of the Turkish Criminal Law. If the acts of issuing or using false invoices are performed in different calendar years, the acts within each year are considered to be a separate crime and punishment for each year is considered for a separate crime.

Answers. Not theories.

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Gokce Attorney Partnership is an Istanbul-based law firm offering legal services across a broad range of practice areas including mergers and acquisitions, joint ventures, private equity and venture capital transactions, banking and finance, capital markets, insurance, technology, media, telecoms and internet, e-commerce, data protection, intellectual property, regulatory, debt recovery, real property, and commercial litigation. Please visit our web site at www.gokce.av.tr for further information on our legal staff and expertise.

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