

Promulgated on February 4, 2013. Effective on July 1, 2013.

# Chapter 21

## Crimes Related to Taxation

This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Tax Evasion (Tax Evader Punishment Act, Article 3, paragraph 1, Basic Law on Local Tax, Article 102, paragraph 1), Habitual Tax Evasion (Tax Evader Punishment Act, Article 3, paragraph 4, Basic Law on Local Tax, Article 102, paragraph 5), Tax Evasion under the Aggravated Punishment Act (Aggravated Punishment Act, Article 8, paragraph 1), Violating Tax Invoice, etc. Issuing Duty (Tax Evader Punishment Act, Article 10, paragraph 3, 4), and Violating Tax Invoice, etc. Issuing Duty under the Aggravated Punishment Act (Aggravated Punishment Act, Article 8-2, paragraph 1).

### ► Abbreviations

Aggravated Punishment Act: Act on Aggravated Punishment, etc. of Specific Crimes

## PART A — TYPES OF OFFENSES AND SENTENCING PERIODS

### 01 | GENERAL TAX EVASION

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Less than 300 million won	- 8 mos.	6 mos. - 10 mos.	8 mos. - 1 yr. 2 mos.
2	More than 300 million won, less than 500 million won	6 mos. - 1 yr.	8 mos. - 1 yr. 2 mos.	1 yr. - 2 yrs.
3	More than 500 million won	8 mos. - 1 yr. 6 mos.	1 yr. - 2 yrs.	1 yr. 6 mos. - 2 yrs. 6 mos.

- ▷ For cases where the amount of tax evasion and etc. involves more than 300 million won and less than 500 million won, and is more than 30% of the filed or paid taxes, or more than 30% of the tax amount which shall be determined and notified by the government falls within Type 3.



CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>Offender's passive participation resulting from outside pressure</li> <li>Cases where profits gained from the offense are not substantial</li> <li>Offense evidently was committed as a result of postponing tax payments</li> <li>Willful negligence of tax evasion</li> </ul>	<ul style="list-style-type: none"> <li>Premeditated and organized crime</li> <li>Prolonged and repeated commission of the crime for more than two years</li> <li>Instigating the subordinate person to commit the offense</li> </ul>
Special Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> <li>Those with hearing and speaking impairments</li> <li>Those with mental incapacity</li> <li>Voluntary surrender to investigative agencies, cases of whistleblowing of corruption, or modifying tax reports or filing taxes after the deadline</li> <li>Payment substantially made on the evaded tax amount</li> </ul>	<ul style="list-style-type: none"> <li>Repeated offenses of the same type under the Criminal Act</li> <li>Habitual offender</li> <li>Offense committed through the act of coordinating, arranging, instigating by tax accountants, certified public accountants, or attorney-at-law who conducts taxation business by proxy arrangements, or offense committed by a revenue officer</li> </ul>
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>Tax evasion committed as a result of financial distress</li> <li>Portion of the tax evaded is collected or is expected to be collected</li> <li>Offender's passive participation</li> </ul>	<ul style="list-style-type: none"> <li>Concealing property to avoid payment of the evaded tax</li> <li>Continued offense notwithstanding the written warnings, financial audits, or actual survey by the tax service</li> <li>Offense committed as a result of collusion with the revenue officer</li> <li>Obstructing tax investigation</li> </ul>
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> <li>Expresses sincere remorse</li> <li>No prior criminal history</li> <li>There are genuine efforts to pay the evaded tax</li> </ul>	<ul style="list-style-type: none"> <li>Repeated offenses of the different type under the Criminal Act, the criminal history of imprisonment by the same type of offenses or by the crime of violence that does not constitute a repeated offense under the Criminal Act (This applies when the criminal history is within ten years after completion of sentence)</li> </ul>

## 02<sup>1</sup> TAX EVASION UNDER THE AGGRAVATED PUNISHMENT ACT

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	More than 500 million won, less than a billion won	1 yr. 6 mos. - 2 yrs. 6 mos.	2 yrs. - 4 yrs.	3 yrs. - 5 yrs.
2	More than 1 billion won, less than 20 billion won	2 yrs. 6 mos. - 5 yrs.	4 yrs. - 6 yrs.	5 yrs. - 8 yrs.
3	More than 20 billion won	4 yrs. - 7 yrs.	5 yrs. - 9 yrs.	8 yrs. - 12 yrs.



CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>Offender's passive participation resulting from outside pressure</li> <li>Cases where profits gained from the offense are not substantial</li> <li>Offense evidently committed as a result of postponing tax payments</li> <li>Willful negligence of tax evasion</li> </ul>	<ul style="list-style-type: none"> <li>Premeditated and organized crime</li> <li>Instigating the subordinate person to commit the offense</li> </ul>
Special Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> <li>Those with hearing and speaking impairments</li> <li>Those with mental incapacity</li> <li>Voluntary surrender to investigative agencies, cases of whistleblowing of corruption, or modifying tax reports or filing taxes after the deadline</li> <li>Payment substantially made on the amount of tax evaded</li> </ul>	<ul style="list-style-type: none"> <li>Repeated offenses of the same type under the Criminal Act</li> <li>Offense committed through the act of coordinating, arranging, instigating by tax accountants, certified public accountants, or attorney-at-law who conducts taxation business by proxy arrangements, or offense committed by a revenue officer</li> </ul>
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>Tax evasion committed as a result of financial distress</li> <li>Portion of the tax evaded is collected or is expected to be collected</li> <li>Offender's passive participation</li> </ul>	<ul style="list-style-type: none"> <li>Concealing property to avoid evaded tax payment</li> <li>Continued offense notwithstanding the written warnings, financial audits, or actual survey by the tax service</li> <li>Offense committed as a result of collusion with the revenue officer</li> <li>Obstructing tax investigation</li> </ul>
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> <li>Expresses sincere remorse</li> <li>No prior criminal history</li> <li>There are genuine efforts to pay the evaded tax</li> </ul>	<ul style="list-style-type: none"> <li>Repeated offenses of the different type under the Criminal Act, the criminal history of imprisonment by the same type of offenses or by the crime of violence that does not constitute a repeated offense under the Criminal Act (This applies when the criminal history is within ten years after completion of sentence)</li> </ul>

## 03 | GENERAL OFFENSE OF GIVING OR RECEIVING FALSE TAX INVOICES, ETC.

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Less than 3 billion won	- 10 mos.	6 mos. - 1 yr.	10 mos. - 1 yr. 2 mos.
2	More than 3 billion won, less than 5 billion won	6 mos. - 1 yr.	8 mos. - 1 yr. 2 mos.	1 yr. - 2 yrs.
3	More than 5 billion won	8 mos. - 1 yr. 6 mos.	1 yr. - 2 yrs.	1 yr. 6 mos. - 2 yrs. 6 mos.



CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>Offender's passive participation resulting from outside pressure</li> <li>Cases where profits gained from the offense are not substantial</li> <li>Absence of purpose to commit tax evasion or absence of the tax evasion</li> </ul>	<ul style="list-style-type: none"> <li>Premeditated and organized crime</li> <li>Prolonged and repeated commission of the crime for profit (Type 1)</li> <li>Instigating the subordinate person to commit the offense</li> </ul>
Special Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> <li>Those with hearing and speaking impairments</li> <li>Those with mental incapacity</li> <li>Voluntary surrender to investigative agencies, cases of whistleblowing of corruption</li> </ul>	<ul style="list-style-type: none"> <li>Repeated offenses of the same type under the Criminal Act</li> <li>Offense committed through the act of coordinating, arranging, instigating by tax accountants, certified public accountants, or attorney-at-law who conducts taxation business by proxy arrangements, or offense committed by a revenue officer</li> </ul>
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>Offender failed to consume or retain a substantial amount of profit from the crime</li> <li>Offender's passive participation</li> </ul>	<ul style="list-style-type: none"> <li>Offense committed as a result of collusion with the revenue officer</li> <li>Obstructing tax investigation</li> <li>Demanding false tax invoices to clients using their standing in business relations as an advantage, such as threatening to end business relations</li> </ul>
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> <li>Expresses sincere remorse</li> <li>No prior criminal history</li> </ul>	<ul style="list-style-type: none"> <li>Repeated offenses of the different type under the Criminal Act, the criminal history of imprisonment by the same type of offenses or by the crime of violence that does not constitute a repeated offense under the Criminal Act (This applies when the criminal history is within ten years after completion of sentence)</li> </ul>

## 04<sup>1</sup> GIVING OR RECEIVING FALSE TAX INVOICES UNDER THE AGGRAVATED PUNISHMENT ACT

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	More than 3 billion won, less than 5 billion won	6 mos. - 1 yr. 6 mos.	1 yr. - 2 yrs.	1 yr. 6 mos. - 3 yrs.
2	More than 5 billion won, less than 30 billion won	1 yr. 6 mos. - 2 yrs. 6 mos.	2 yrs. - 4 yrs.	3 yrs. - 5 yrs.
3	More than 30 billion won	2 yrs. - 4 yrs.	3 yrs. - 6 yrs.	5 yrs. - 7 yrs.





CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>Offender's passive participation resulting from outside pressure</li> <li>Cases where profits gained from the offense are not substantial</li> <li>Absence of purpose to commit tax evasion or absence of the tax evasion</li> </ul>	<ul style="list-style-type: none"> <li>Premeditated and organized crime</li> <li>Instigating the subordinate person to commit the offense</li> </ul>
Special Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> <li>Those with hearing and speaking impairments</li> <li>Those with mental incapacity</li> <li>Voluntary surrender to investigative agencies, cases of whistleblowing of corruption</li> </ul>	<ul style="list-style-type: none"> <li>Repeated offenses of the same type under the Criminal Act</li> <li>Offense committed through the act of coordinating, arranging, instigating by tax accountants, certified public accountants, or attorney-at-law who conducts taxation business by proxy arrangements, or offense committed by a revenue officer</li> </ul>
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>Offender failed to consume or retain a substantial amount of profit from the crime</li> <li>Offender's passive participation</li> </ul>	<ul style="list-style-type: none"> <li>Offense committed as a result of collusion with the revenue officer</li> <li>Obstructing tax investigation</li> <li>Demanding false tax invoices to clients using their standing in business relations as an advantage, such as threatening to end business relations</li> </ul>
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> <li>Expresses sincere remorse</li> <li>No prior criminal history</li> </ul>	<ul style="list-style-type: none"> <li>Repeated offenses of the different type under the Criminal Act, the criminal history of imprisonment by the same type of offenses or by the crime of violence that does not constitute a repeated offense under the Criminal Act (This applies when the criminal history is within ten years after completion of sentence)</li> </ul>

## DEFINITION OF OFFENSES

### 01 | GENERAL TAX EVASION

ELEMENTS OF OFFENSE	APPLICABLE LAW	SENTENCE
General tax evasion where the evaded tax amount is less than 500 million won	Tax Evaders Punishment Act, Article 3, paragraph 1, main text, Basic Law on Local Tax, Article 102, paragraph 1, main text	Imprisonment Not Exceeding 2 Years or Fine Not Exceeding Twice the Evaded Tax Amount (This May Be Concurrently Imposed)
General tax evasion where ① the evaded tax amount is more than 300 million won and less than 500 million won, and evaded tax amount is more than 30/100 of the reported tax, ② the evaded tax amount is more than 500 million won	Tax Evaders Punishment Act, Article 3, paragraph 1, second sentence, Basic Law on Local Tax, Article 102, paragraph 1, second sentence	Imprisonment Not Exceeding three years or Fine Not Exceeding three times the Evaded Tax Amount (This May Be Concurrently Imposed)
Habitual tax evasion	Tax Evaders Punishment Act, Article 3, paragraph 4, Basic Law on Local Tax, Article 102, paragraph 5	Multiply 1.5 to the Sentencing Range Set Forth in Tax Evaders Punishment Act, Article 3, paragraph 1 and in Basic Law on Local Tax, Article 102, paragraph 1

- This applies to cases with one or more of the following factors:
  - Type 1: This indicates cases in which the amount of the tax evaded, refunded, or deducted (hereinafter called 'Evaded Tax Amount') is less than 300 million won
  - Type 2: This indicates cases in which the evaded tax amount are more than 300 million won but less than 500 million won
  - Type 3: This indicates cases in which the evaded tax amount is more than 300 million won, less than 500 million won, and the evaded tax amount is more than 30/100 of the tax to be reported, or more than 30/100 of the tax amount which shall be determined and notified by the government, or where the evaded tax amount is more than 500 million won
- This means offenses with the following elements of offenses as prescribed in the applicable law (This applies to all offenses).



## 02 | TAX EVASION UNDER AGGRAVATED PUNISHMENT ACT

ELEMENTS OF OFFENSE	APPLICABLE LAW	SENTENCE
Evaded tax amount is 500 million won or more and less than 1 billion won annually	Aggravated Punishment Act, Article 8, paragraph 1, subparagraph 2	Three years or more, or life imprisonment and 2 to 5 times the evaded tax amount as fine concurrently imposed
Evaded tax amount is more than 1 billion won annually	Aggravated Punishment Act, Article 8, paragraph 1, subparagraph 1	Five years or more of imprisonment and 2 to 5 times the evaded tax amount as fine concurrently imposed

- Type 1: This indicates cases in which the amount of the tax evaded, refunded or deducted (hereinafter called 'evaded tax amount') is more than 500 million won but less than a billion won yearly.
- Type 2: This indicates cases in which the evaded tax amount is more than a billion won but less than 20 billion won yearly.
- Type 3: This indicates cases in which the evaded tax amount is more than 20 billion won yearly.

## 03 | GENERAL OFFENSE OF GIVING OR RECEIVING FALSE TAX INVOICES, ETC.

ELEMENTS OF OFFENSE	APPLICABLE LAW	SENTENCE
Issuing or being issued a tax invoice without actually furnishing the goods or services or submitting falsified information on the tax invoice sum table per sales and purchase	Tax Evaders Punishment Act, Article 10, paragraph 3	Imprisonment not exceeding three years or fine not exceeding three times the calculated tax as applied to the value-added tax rate of the supply price (This may be concurrently imposed)
Brokering or commissioning the aforementioned conducts	Tax Evaders Punishment Act, Article 10, paragraph 4	Imprisonment not exceeding three years or fine not exceeding three times the calculated tax as applied to the value-added tax rate of the supply price (This may be concurrently imposed)

- Type 1: This indicates cases in which the supply prices entered in tax invoices bills issued without supplying or being supplied with goods or services, the supply prices entered in the tax invoices sum table per sales, tax invoices sum table per purchase, or the sales and purchase price total (hereinafter “Supply Prices or Sales and Purchase Price Total”) is less than 3 billion won.
- Type 2: This indicates cases in which the supply prices total or the sales and purchase prices total amount exceeds 3 billion won, but less than 5 billion won.
- Type 3: This indicates cases in which the supply prices total or the sales and purchase prices total exceeds 5 billion won.

## 04<sup>1</sup> GIVING OR RECEIVING FALSE TAX INVOICES UNDER THE AGGRAVATED PUNISHMENT ACT

ELEMENTS OF OFFENSE	APPLICABLE LAW	SENTENCE
Conducts committed to gain profit and the total supply price amount exceeds 3 billion won or more and less than 5 billion won	Aggravated Punishment Act, Article 8-2, paragraph 1, subparagraph 2	1 year or more imprisonment and 2 to 5 times the calculated tax as applied to the value-added tax rate of the supply price concurrently imposed
Conducts committed to gain profit and the total supply price amount exceeds 5 billion won or more	Aggravated Punishment Act, Article 8-2, paragraph 1, subparagraph 1	Three years or more imprisonment and 2 to 5 times the calculated tax as applied to the value-added tax rate of the supply price concurrently imposed

- Type 1: This indicates cases in which the supply prices entered in tax invoices bills issued without supplying or being supplied with goods or services for profit, the supply prices entered in the tax invoices sum table per sales, tax invoices sum table per purchase, or the sales and purchase price total (hereinafter “Supply Prices or Sales and Purchase Price Total”) exceeds 3 billion won, but less than 5 billion won (This includes cases of brokering or commissioning and is same as below.).
- Type 2: This indicates cases in which the supply prices total or the sales and purchase prices total amount exceeds 5 billion won, but less than 30 billion won.
- Type 3: This indicates cases in which the supply prices total or the sales and purchase prices total exceeds 30 billion won.



## DEFINITION OF SENTENCING FACTORS

### ▶ GENERAL TAX EVASION/TAX EVASION UNDER THE AGGRAVATED PUNISHMENT ACT

#### 01 | PROFITS GAINED FROM THE OFFENSE IS NOT SUBSTANTIAL

- This applies to cases where the amount of profit gained by the offender is not substantial compared to the amount of tax evaded, and one or more of the following factors apply:
  - The profit gained from the tax evasion did not benefit the offender
  - Even though an actual transaction occurred, the offender falsified the tax invoices because of failure to receive an invoice
  - Other cases with comparable factors

#### 02 | OFFENSE WAS COMMITTED AS A RESULT OF DELAYED TAX PAYMENTS

- This indicates cases in which the timing of the tax payment was postponed by manipulating the earnings of profits or deductible expenses period used for calculating fiscal year of corporate tax, income tax, or value-added taxes.
  - \* This factor does not apply to cases where the *profits gained from the offense is not substantial*.

#### 03 | PREMEDITATED AND ORGANIZED CRIME

- This means cases with one or more of the following factors:
  - The means and methods for the commission of the offense was meticulously done in advance

- There were multiple persons involved in an organized manner for the purpose of committing the offense
- There was meticulous preparing of concealment of the evidence
- Other cases with comparable factors

## 04 | CASES OF WHISTLEBLOWING

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- This indicates cases in which the police investigation or tax audit was initiated through the voluntary report of an offender who participated in the structural tax evasion with the intent to end the offense.

## 05 | MODIFYING TAX REPORTS OR FILING TAXES AFTER THE DEADLINE

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- This indicates cases in which the offender files a modified tax report within two years after the legal deadline according to the Basic Law on National Taxes, Article 45 (or Basic Law on Local Taxes, Article 49), or files a modified tax report within six months. after the legal deadline according to the Basic Law on National Taxes, Article 45-3 (or the Basic Law on Local Taxes, Article 51).

## 06 | PAYMENT SUBSTANTIALLY MADE ON THE EVADED TAX AMOUNT

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- This means cases with one or more of the following factors:
  - When the offender voluntarily has paid more than  $\frac{2}{3}$  of the evaded tax (including appropriating the national tax refund according to the Basic Law on National Taxes, Article 51)
  - When there is a that the offender will voluntarily pay more than  $\frac{2}{3}$  amount of the evaded tax by providing security or promising to pay through installments
  - Other cases with comparable factors.



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## 07 | A PORTION OF THE TAX EVADED IS COLLECTED OR IS EXPECTED TO BE COLLECTED

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- This indicates cases in which disposition for arrears was executed on the offender's property so that more than  $\frac{1}{3}$  of the evaded tax was collected, or expected to be collected (including appropriating the national tax refund according to the Basic Law on National Taxes, Article 51).

## 08 | OFFENDER'S PASSIVE PARTICIPATION

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- This indicates cases in which the nature of participation in the commission of the offense was passive or the offender had a limited role.

## 09 | CONCEALING PROPERTY TO AVOID EVADED TAX PAYMENT

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- This indicates cases in which the offender deliberately concealed his property and interfered with tax collection.
- However, this does not apply to cases where the offender's conduct constitutes other offenses, such as those falling under the Tax Evaders Punishment Act, Article 7, or the Basic Law on Local Taxes, Article 103.

## ▶ GENERAL OFFENSE OF GIVING OR RECEIVING FALSE TAX INVOICES, ETC./GIVING OR RECEIVING FALSE TAX INVOICES UNDER THE AGGRAVATED PUNISHMENT ACT

### 01 | OFFENDER'S PASSIVE PARTICIPATION RESULTING FROM OUTSIDE PRESSURE

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- This applies to cases where one or more of the following factors apply:
  - Cases where the offender issued false tax invoices due to the customer's request in order to maintain business relationship
  - Other cases with comparable factors.

### 02 | ABSENCE OF PURPOSE TO COMMIT TAX EVASION OR ABSENCE OF THE TAX EVASION

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- This means the cases where the offender committed an offense related to false tax invoices merely for overstating the invoice, and there is no purpose of committing the tax evasion, or the tax evasion did not occur.

### 03 | PREMEDITATED AND ORGANIZED CRIME

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- This indicates cases in which one or more of the following factors apply:
  - The means and methods for the commission of the offense were meticulously done in advance
  - There were multiple persons involved in an organized manner to commit the offense
  - There was meticulous preparing of concealment of the evidence
  - Other cases with comparable factors





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## 04<sup>1</sup> CASES OF WHISTLEBLOWING OF CORRUPTION

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- This indicates cases in which the police investigation or tax audit was initiated through the voluntary report of an offender who participated in the structural tax evasion with the intent to end the offense.

## 05<sup>1</sup> OFFENDER'S PASSIVE PARTICIPATION

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- This indicates cases in which the nature of participation in the commission of the offense was passive or the offender had a limited role.

## ASSESSING PRINCIPLES APPLICABLE TO SENTENCING FACTORS

### 01 | DETERMINING THE SENTENCING RANGE

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- When determining the appropriate sentencing range, the court must consider only the special sentencing determinants.
- However, in cases involving more than two special sentencing determinants, the applicable sentencing range is adjusted after assessing the factors as set forth below:
  - ① The same number of conduct factors shall be considered with greater significance than the actor or other factors.
  - ② The same number of conduct factors reciprocally, or the actor or other factors reciprocally shall be treated as the same.
  - ③ If the sentencing range applicable cannot be determined by the aforementioned principles in ① and ②, the court is to decide the sentencing range by a comprehensive comparison and an assessment based on the principles set forth in ① and ②.
- After an assessment, if a greater number of aggravating factors than the mitigating factors exist, then the aggravating zone is recommended when determining the sentencing range. If a greater number of mitigating factors exist, then a mitigating sentencing range is recommended. For other cases, the standard sentencing range is recommended.

### 02 | DETERMINING THE SENTENCE APPLICABLE

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- In determining the sentence, the court should consider comprehensively both the general and special sentencing determinants that are within the sentencing range as assessed under above 1.



## GENERAL APPLICATION PRINCIPLES

### 01 | SPECIAL ADJUSTMENTS TO THE SENTENCING RANGE

- ① When only two or more special aggravating factors apply, or the special sentencing determinant outnumber the special mitigating determinants by two or more, then increase the maximum level of the recommended sentencing range up to  $\frac{1}{2}$ .
- ② When only two or more special mitigating factors apply, or the special sentencing determinant outnumber the special aggravating determinants by two or more, then reduce the minimum level of the recommended sentencing range down to  $\frac{1}{2}$ .

### 02 | RELATION BETWEEN THE RECOMMENDED SENTENCING RANGE UNDER THE GUIDELINES AND THE APPLICABLE SENTENCING RANGE BY LAW

- When the sentencing range under this guideline conflicts with the range determined according to the aggravation and mitigation of the applicable law, the sentencing range prescribed by the applicable law shall govern.

### 03 | APPLICATION OF STATUTORY MITIGATING FACTORS AS DISCRETIONARY

- When the court declines to apply a permissive mitigating factor under applicable law as listed in this guideline's sentencing table, the factor shall be treated as a discretionary mitigating factor.

## GUIDELINES ON SENTENCING MULTIPLE OFFENSES

### 01 | APPLICABLE SCOPE

- This section applies to concurrent crimes prescribed in the first part of Article 37 of the Criminal Act. However, when concurrent crimes under the first part of Article 37 of the Criminal Act involve an offense set forth in the sentencing guidelines, as well as an offense the sentencing guidelines do not cover, then the minimum level should be the minimum of the sentencing range of the offense that is set forth in this sentencing guideline.

### 02 | DETERMINING THE BASE OFFENSE

- The “base offense” indicates the most severe offense that results after selecting the penalty and determining the statutory aggravation and mitigation. However, in cases in which the maximum sentencing range is lower than that of the maximum sentencing range of the other offense as set forth in this guideline, the offense resulting in the concurrent crime becomes the base offense.

### 03 | DETERMINING THE SENTENCE OF AN OFFENDER OF MULTIPLE OFFENSES OF THE SAME TYPE

- In cases in which an offender of the same type of offense among the general tax evasion offenses, among the tax evasion under the Special Aggravated Crime Act, among the receiving false tax invoice, among the receiving false tax invoice under the Special Aggravated Criminal Act is involved, the court shall apply the following principles:
  - ① In setting the sentencing range for an offender convicted of two offenses, the sentencing range should be the total sum of total amount of tax evaded or supply prices, and select the appropriate sentencing range by considering all relevant factors.



- ② In setting the sentencing range for an offender convicted of three or more offenses, the sentencing range should be the total sum of the following: (1) of the maximum sentencing range of the base offense, sum of  $\frac{1}{2}$  of the maximum sentencing range of the offense with the highest sentencing range, and (2)  $\frac{1}{3}$  of the maximum sentencing range of the remaining offense with the second-highest sentencing range.
- In cases in which an offender of the same type of offense among the general tax evasion offenses, among the tax evasion under the Act on the Aggravated Punishment of Specific Crimes, among the receiving false tax invoice, among the receiving false tax invoice under the Act on the Aggravated Punishment of Specific Crimes is involved, the court shall apply the following principles:

## 04 | DETERMINING THE SENTENCE OF AN OFFENDER CONVICTED OF MULTIPLE OFFENSES OF THE DIFFERENT TYPE

- For multiple offenses of different types of offenses involving general tax evasion offenses, tax evasion under the Act on the Aggravated Punishment of Specific Crimes, receiving false tax invoice, receiving false tax invoice under the Act on the Aggravated Punishment of Specific Crimes, then apply the following principles:
  - ① In setting sentencing range for an offender convicted of two offenses, the sentencing range should be the total sum of the maximum sentencing range of the base offense and the  $\frac{1}{2}$  of the maximum sentencing range of the second offense.
  - ② In setting the sentencing range for an offender convicted of three or more offenses, the sentencing range should be the total sum of the following: (1) of the maximum sentencing range of the base offense, sum of  $\frac{1}{2}$  of the maximum sentencing range of the offense with the highest sentencing range, and (2) sum of  $\frac{1}{3}$  of the maximum sentencing range of the remaining count with the second-highest sentencing range.
  - ③ For cases in which the minimum sentencing range of the other offense is higher than that of the base offense, the minimum sentencing range resulting from the multiple offense should be the minimum sentencing range of the other offense.

- However, in cases in which an offender convicted of multiple offenses involving general tax evasion offenses, tax evasion under the Act on the Aggravated Punishment of Specific Crimes, receiving false tax invoice, receiving false tax invoice under the Act on the Aggravated Punishment of Specific Crimes, first set the sentencing range for the offense of the same type as mentioned, and then use the resulted point range to calculate the sentencing range for multiple offenses of the different type of offense.



# PART B — GUIDELINE ON SUSPENDING A SENTENCE

## 01 | TAX EVASION


CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Consideration Factor	<ul style="list-style-type: none"> <li>• Premeditated and organized crime</li> <li>• Prolonged and repeated commission of the crime for more than two years</li> <li>• Offense was committed through the act of coordinating, arranging, instigating by tax accountants, certified public accountants, or attorney-at-law who conducts taxation business by proxy arrangements, or offense committed by a revenue officer</li> <li>• A criminal history of the same offense (imposing suspension of a sentence or a more severe punishment within five years; or more than three incidents of fines) exists</li> </ul>	<ul style="list-style-type: none"> <li>• Offender's passive participation resulting from outside pressure</li> <li>• Profit gained from the offense is not substantial</li> <li>• Offense committed as a result of postponing tax payments</li> <li>• Payment substantially made on the evaded tax amount</li> <li>• No prior criminal history</li> <li>• Voluntary surrender to investigative agencies, cases of whistleblowing of corruption, or modifying tax reports or filing taxes after the deadline</li> </ul>
General Consideration Factor	<ul style="list-style-type: none"> <li>• Two or more criminal history on the suspension of sentence or for a greater offense</li> <li>• Lack of social ties</li> <li>• Absence of remorse</li> <li>• Active participation as an accomplice</li> <li>• Concealing property to avoid payment of the evaded tax</li> <li>• Continued offense notwithstanding the written warnings, financial audits, or actual survey by the tax service</li> <li>• Offense was committed as a result of collusion with the revenue officer</li> <li>• Obstructing tax investigation or destroying evidence, or attempting to destroy evidence</li> <li>• There are genuine efforts to pay the evaded tax</li> </ul>	<ul style="list-style-type: none"> <li>• Tax evasion was committed as a result of financial distress</li> <li>• Portion of the tax evaded is collected or is expected to be collected</li> <li>• Strongly established social ties</li> <li>• Expresses sincere remorse</li> <li>• No criminal history of the suspension of sentence or imposing of other sentences more severe</li> <li>• Cases of elderly offenders</li> <li>• Offender's passive participation as an accomplice</li> <li>• Physically ill offenders</li> <li>• Cases where the arrest of the offender would cause severe hardship to the offender's dependent family member</li> </ul>

## 02<sup>1</sup> OFFENSES OF GIVING OR RECEIVING FALSE TAX INVOICES, ETC.

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Consideration Factor	<ul style="list-style-type: none"> <li>• Premeditated and organized crime</li> <li>• Repeated commission of the crime for profit (Type 1 crimes of giving or receiving false tax invoices, etc.)</li> <li>• Offense committed through the act of coordinating, arranging, instigating by tax accountants, certified public accountants, or attorney-at-law who conducts taxation business by proxy arrangements, or offense committed by a revenue officer</li> <li>• A criminal history of the same offense (imposing suspension of a sentence or a more severe punishment within five years; or more than three incidents of fines) exists</li> </ul>	<ul style="list-style-type: none"> <li>• Offender's passive participation resulting from external pressure</li> <li>• Profit gained from the offense is not substantial</li> <li>• Offense committed as a result of postponing tax payments</li> <li>• No prior criminal history</li> <li>• Voluntary surrender to investigative agencies, cases of whistleblowing of corruption, or modifying tax reports or filing taxes after the deadline</li> </ul>
General Consideration Factor	<ul style="list-style-type: none"> <li>• Two or more criminal history on the suspension of sentence or for a greater offense</li> <li>• Lack of social ties</li> <li>• Absence of remorse</li> <li>• Active participation as an accomplice</li> <li>• Offense committed as a result of collusion with the revenue officer</li> <li>• Demanding false tax invoices to clients using their standing in business relations as an advantage, such as threatening to end business relations</li> <li>• Obstructing tax investigation or destroying evidence, or attempting to destroy evidence</li> </ul>	<ul style="list-style-type: none"> <li>• Tax payments on false sales amounts</li> <li>• Offender failed to consume or retain a substantial amount of profit from the crime</li> <li>• Strongly established social ties</li> <li>• Expresses sincere remorse</li> <li>• No criminal history of the suspension of sentence or imposing of other sentences more severe</li> <li>• Cases of elderly offenders</li> <li>• Offender's passive participation as an accomplice</li> <li>• Physically ill offenders</li> <li>• Cases where the arrest of the offender would cause severe hardship to the offender's dependent family member</li> </ul>



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## DEFINITIONS OF FACTORS TO CONSIDER IN SUSPENDING A SENTENCE

- In cases in which the factors to consider in suspending a sentence and the sentencing factors are identical, refer to the definitions set forth in the *Definition of Sentencing Factors*.
- Determining Criminal History
  - Prior criminal history is calculated as follows: In cases that involve a suspension of the sentence, the prior criminal history is calculated from the date the defendant's suspension of the sentence was affirmed until the date of the commission of the offense. In cases imposing imprisonment, prior criminal history is calculated from the final date of the completion of the sentence up to the date the offense was committed.

## ASSESSING PRINCIPLES APPLICABLE TO THE FACTORS TO CONSIDER IN SUSPENDING A SENTENCE

- In deciding whether the suspension of a sentence is appropriate in cases in which imprisonment is imposed, the court should give the primary consideration factor greater importance than the general consideration factors. The following principles should be considered:
  - ① In cases in which only two or more primary affirmative factors exist or when the primary affirmative factors outnumber the major adverse factors by two or more, it is recommended to suspend the sentence.
  - ② In cases in which two or more primary adverse factors exist or when the primary adverse factors outnumber the primary affirmative factor by two or more, imprisonment is recommended.
  - ③ In cases in which ① or ② apply, but the difference between the number of general adverse (affirmative) factors and general affirmative (adverse) factors is greater than the difference between the number of primary affirmative (adverse) factors and primary adverse (affirmative) factors, or in cases other than ① or ②, the court shall decide whether to suspend the sentence after comparing and assessing the factors listed under the suspension of sentence section comprehensively.