

# Case Analysis and Judicial Solution of False Compliance of A and B Companies in Shanghai

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## Abstract

Since the Supreme People's Procuratorate pushed out the pilot reform of criminal compliance, it has saved a large number of high-tech enterprises and achieved positive results in governance of corporate crime. However, through the analysis of many cases, including the fake compliance cases of A and B companies in Shanghai, it was found that the hidden dangers of illegal and criminal activities of the enterprises involved in the crime had not been eliminated in time, and the court has made a lenient sentence. Based on this, this paper attempts to start from the trial stage and put forward a series of measures, such as strengthening judge-led judicial review, establishing the compliance adjudication rules in the trial stage, and constructing criminal compliance throughout the trial stage, so as to provide a judicial solution for false compliance cases.

## Keywords

**Criminal Compliance; False Compliance; Unit Crime; Judicial Solution.**

## 1. Basic Case Analysis

The defendant is A medical company in Shanghai (hereinafter referred to as Company A) and a science and technology company in Shanghai (hereinafter referred to as Company B). The defendant Guan XX is the actual controller of A and B.[1]

From 2016 to June 2018, when Guan XX was operating the main business of companies A and B, without any real goods transaction, through the introduction of his friend Xu, he paid the billing fee and had others make up 219 special VAT invoices for the above two companies, with a total value tax of more than 28.87 million yuan. Among them, Tax of 4.19 million has been declared and deducted.

In October 2019, the defendant Guan XX truthfully confessed his criminal acts and paid the taxes of the two companies to the tax authorities in time. Thereafter, Shanghai baoshan district public security organ to A, B, xyz company has carried out A series of investigation, examination, interrogation and other activities, as well as the involved crime types of enterprises, the specific details, such as those involved in the situation and in June 2020 to A, B, xyz company suspected of falsely making out special invoices for value-added tax crimes to the baoshan district of Shanghai procuratorial authority for examination and prosecution.

It should be noted that at this time, the enterprise criminal compliance reform pilot has been in full swing in China. As the "uncle and aunt" of private enterprises, the Supreme People's Procuratorate has actively responded to the people's demands and the needs of The Times in recent years, actively participated in social governance, and promoted the pilot reform of criminal compliance in enterprises as a key work of the SPP in recent years. When asked about the purpose of the first round of pilot reform of corporate criminal compliance, Procurator-General Zhang Jun said in response to netizens' questions that the direct purpose of carrying out the pilot reform of compliance of enterprises involved in crimes is: "To prevent improper handling of a case and the collapse of a company; At the same time, the higher goal is to successfully handle every case, actively create a business environment governed by the law,

and promote the legal operation of enterprises in accordance with regulations. To this end, in March 2020, the SPP launched the first round of trial compliance reform for enterprises involved in crimes in six grassroots procuratorates, including Nanshan in Shenzhen, Pudong in Shanghai and Zhangjiagang in Jiangsu. With the promotion and deployment of the SPP, the procuratorial organs involved in the pilot reform, as well as some procuratorial organs and even local government departments that have not yet been included in the pilot reform, have also actively participated in and explored. In accordance with the law, judicial policies such as "no arrest for those who can avoid arrest, no prosecution for those who can avoid prosecution, and suggestions on probation for those who can avoid actual punishment" and "fewer arrests and judicature and judicature and judicature and judicature" will be implemented for persons involved in private enterprises.

Based on the above judicial policy and reform spirit, the procuratory organ of Baoshan District of Shanghai, after accepting the case, actively visited the enterprises involved in the crime, timely learned about the relevant business situation of the enterprises, and also learned from the local government and tax department about the detailed information of the enterprise's tax payment and local employment. Through investigation, it is found that company A belongs to the medical company in the field of science and technology, and company B belongs to the high-tech company in Shanghai. The independent research and development strength of both companies is very strong, which also plays a great role in promoting the local economic development and employment security. In addition, considering that the actual controller Guan XX, senior executives and employees of the two companies are generally high in education and comprehensive quality, they have strong acceptance, enthusiasm and execution of the construction of the compliance system, so they can ensure the feasibility and effectiveness of the construction of the compliance system to a large extent. At the same time, the procuratorial organs also took into account that the types of crimes involved in the crime belong to the common and high incidence of tax-related crimes in enterprises, and such crimes have an urgent need to handle cases. In addition, the criminal units in this kind of cases can manage standardized operations after compliance rectification and have a high possibility of rejuvenation, which can also maximize the institutional value of compliance of the enterprises involved in the crime. Based on the above theoretical research and practical analysis, the procuratorial organ of Baoshan District of Shanghai urged the enterprises involved in the crime to make compliance commitment and carry out the construction of compliance system.

In the process of compliance rectification of companies A and B, in order to ensure the effectiveness of compliance rectification of the enterprises involved in the crime, the procuratorial organ went to the tax machine for several times to understand the tax payment situation of the enterprises involved in the crime, and verified the tax payment materials of companies A and B provided by the tax authorities and the tax payment situation involved. In addition, the procuratorial organs in the process of the case has been closed so-and-so provided important clues about the criminal detection, through further so-and-so to shut in the examination and prosecution stage merit of supplementary investigation clue, real and effective in ensuring the clues, and be able to save the public security organs after certain judicial resources, identified so-and-so has the merits of the plot.

In November 2020, the procuratorial organs are willing to accept punishment, considering that the enterprises involved in the crime and their directly responsible executives truthfully confess their crimes after the case; Therefore, while urging enterprises to make compliance commitments and carry out compliance construction, we should adhere to and implement judicial policies such as leniency system of guilty plea and punishment, and the suggestion of sentencing suspended sentence without actual punishment, so as to make efforts to let enterprises "survive", "stay" and "operate well", so as to achieve better judicial case handling effect. Thereafter, the procuratorial organ prosecuted Company A, Company B and Guan XX for

the crime of falsely writing VAT special invoice, and promoted the combination of criminal compliance and the application of lenient punishment system. In December, Shanghai Baoshan District People's Court adopted all the sentencing suggestions of the procuratorial organ on the defendant Guan and the enterprises involved in the crime, and finally sentenced Company A to a maximum fine of 150,000 yuan and Company B to a fine of 60,000 yuan respectively for falsely writing special VAT invoices. The defendant Guan was sentenced to 3 years in prison with a 5-year probation.

The court in effect after the verdict, in order to promote enterprise involving crimes deepening, the implementation of the compliance system, avoid the compliance improvement through the motions, and become a mere formality, avoid compliance to "empty talk", "false compliance", involving crimes companies trying to compliance "cosmetic" situations, such as the procuratorial organ with joint tax authorities the door back corporate compliance system, involving crime. Later, in the process of return visits, the procuratorial organs found that the enterprises involved in the crime in the prevention of illegal crimes in the system is not perfect, not implemented, imperfect management, there are illegal and criminal risks need to be eliminated in a timely manner. Therefore, the procuratorial organs made and issued procuratorial suggestions to the enterprises involved in the crime and publicly announced them, suggesting them to further strengthen the consciousness of legal operation in accordance with regulations, strictly control the construction process of the compliance system, and strive to improve the ability of tax planning and cost control. Thereafter, the procuratorial organ received the reply from the enterprises involved in the crime to the procuratorial suggestion, and once again cooperated with the tax department to investigate the construction of the compliance system line of the enterprises involved in the crime. After inspection, found that the related crimes enterprises have gradually establish a compliance audit system, compliance internal investigation system, internal compliance reporting system, such as effective compliance systems, and to hire lawyers, accountants and other compliance professionals to carry on the tax planning, to a certain extent, substantial cost saving the enterprise production and management, improve the overall share of the market.

## 2. Judicial Solution Path

### 2.1. Strengthening Judge-led Judicial Review

Criminal compliance is the product of consultative justice and the embodiment of the concept of "social co-governance", rather than a "one-man show" staged by procuratorial organs and enterprises involved in crimes. From the perspective of comparative law, in terms of how to effectively restrict the discretionary power of procuratorial organs, countries outside the region generally adopt the following two models: one is the internal control model adopted by American prosecutors; the other is the judicial review model formed after correction on the basis of the former.[2] There is no doubt that both models have played a certain role in promoting the development of criminal compliance systems in their respective countries. The main difference between the two is that the former has less restriction on the discretionary power of the procuratorial organ, and judges generally only conduct formal review on the relevant agreements reached between the procuratorial organ and the enterprises involved in the crime, while the latter forms judge-led judicial review to a certain extent. In this regard, some scholars have proposed that, in view of the profound lessons of the abuse of investigation and prosecution power of the compliance law enforcement agencies in the United States, all relevant matters involving the disposition of major interests of enterprises should be the contents of judicial review by judges.[3]

At present, pilot project of criminal compliance reform is in the exploration stage in our country. There are many difficulties, such as the lack of validity of compliance rectification, and the

acceptance standards of compliance rectification are not yet clear, etc. In this case, after the court adopted the sentencing suggestion of the procuratorial organ and made the judgment, the procuratorial organ, in order to further ensure the effectiveness of the compliance rectification of the enterprise involved, then jointly visited the enterprise involved with the tax authority. In the process of return visit, it was found that the compliance rectification of the enterprises involved in the crime had not been in place, especially in the prevention of illegal and criminal behaviors, there were many problems such as the construction of the compliance system is not perfect, not implemented, and the management is not perfect. The procuratorial organ further issued procuratorial suggestions to the enterprises involved in the crime and publicly announced them. As can be seen above, it is difficult to guarantee the effectiveness of compliance rectification in the enterprises involved in the crime in practice, and some enterprises involved in the crime are suspected of trying to achieve "false compliance" in exchange for lenient sentencing by the judicial organs. Based on this, this paper believes that for the cases at the trial stage, the judge should conduct substantive examination on the effectiveness of compliance rectification and other aspects of the enterprise involved in the crime, and then consider whether to give lenient punishment to the enterprise involved and the person responsible. Because once the case of the enterprise involved in the crime enters the trial stage, it means that the procuratorial organ cannot independently deal with the responsibility of the enterprise involved in the crime without prosecution, but can only turn to the road of compliance and lenient sentencing. Ultimately, the legal sentencing range of such enterprises and natural persons involved in the crime is generally high, the difficulty of compliance rectification is relatively large, and the damage caused to the country and society is relatively deep, so it is not suitable to apply the relevant provisions of non-prosecution. In fact, strengthening the substantive examination of judges at the trial stage can not only reduce and avoid the lengthy follow-up review and return visit of procuratorial organs jointly with administrative organs, but also ensure that the compliance rectification of the enterprises involved in the crime is effective to a certain extent.[4]

## **2.2. Establishing the Compliance Adjudication Rules at the Trial Stage**

Compared with the role played by the procuratorial organs in the investigation and prosecution of the enterprises involved in the crime, the space for the court to carry out criminal compliance at the trial stage is very limited. Generally, it mainly focuses on the two aspects of whether the enterprises and the responsible persons involved in the crime should be lenient or decide to apply probation.[5] In this case, the judge on the adoption of procuratorial organs all sentencing recommendations and make effective judgment, after prosecutors follow-up found on sin still corporate compliance rectification is not complete, this not only exposed the procuratorial organ to wade sin defect of corporate compliance improvement effectiveness evaluation and acceptance, also reflects the judge did not play a substantial role in the trial stage, At this time, the judge is to some extent more just the executor of the prosecution's sentencing recommendations, rather than the leader of the trial stage. In view of this, in order to avoid the recurrence of similar "false rectification" of companies A and B, the judge should have his own standards of compliance judgment when lenient punishment or decision to apply probation to the enterprises involved in the crime, rather than blindly adopt the sentencing suggestions of the procuratorial organ.

Specifically for procuratorial organ sentencing recommendations about wade sin enterprise, the court can be divided into the following three conditions: one is all be adopted, namely the judge according to the rules of compliance referee for wading sin enterprise information examination as to substance, found that corporate compliance corrective case involved sin, directly on sentencing recommendations of the procuratorial organ to wade sin enterprise and natural person to make corresponding decision. Two is part of the adoption, that is, the judge

only to their recognition of the part to be adopted, do not recognize the part of the law to make a judgment; Third, all will not be adopted; That is, if the compliance rectification of the enterprise is inconsistent with the actual situation, the judge can directly make a judgment according to law. In addition, for the above judgments, if the court finds that the facts are wrong, it can refer the case to the judicial committee for handling. After the judicial committee has discussed and decided to start a retrial, the ruling rules of revoking the original judgment can still be applied to the compliance cases of the enterprises involved in the crime. For example, in this case, the procuratorial organ later carried out a compliance investigation and found that the above situation was due to the lack of voluntary compliance by Guan XX, the actual controller of the company, who tried to obtain "leniency" from the judicial organ through "false compliance". At this time, the court can start the trial supervision procedure according to law on the grounds of ascertaining factual errors, and then cancel the effective judgment on the enterprise involved and the responsible person, or even increase the punishment of the responsible person according to the judgment rules.

### **2.3. Constructing Criminal Compliance Throughout the Trial Stage**

As mentioned above, considering the limited participation of judges in the trial stage, it will further affect whether criminal compliance incentive measures can be applied to enterprises involved in further crimes. This paper holds that, at the trial stage, the judge can also initiate criminal compliance against the enterprises involved after listening to the opinions of the procuratorial organs and obtaining the consent of the enterprises involved and their responsible persons. In this case, the enterprises involved in the crime falsely wrote special VAT invoices totalling 219 copies and the amount of tax was huge, totaling more than 28.87 million yuan, which is a typical felony unit crime case. Wade sin enterprise belongs to falsely making out special invoices for VAT falsely making out the amount paid huge situation, however, the procuratorial organs in consideration of A and B company belongs to high-tech private enterprises, local and close XXX as A and B company actual controllers, once sentenced ShiXing for entrepreneurs, could seriously affect the enterprise production and operation as well as social employment problem. Based on this, the procuratorial organ should give Guan a lighter punishment within the legal scope as far as possible when submitting the sentencing recommendations to the court, and then provide the prerequisite for the court to apply the relevant provisions of probation. However, if the procuratorial organs in the investigation, prosecution stage appear omissions, does not apply to criminal crimes involved enterprise and natural person compliance, but directly to Sue, judge at this time if it does not take the initiative to apply the criminal incentives, is likely to affect on the lawful rights and interests of the enterprise, leading to "different connection with the sentence" "the same crime different punishment" and so on.

In addition, both criminal compliance and leniency of guilty plea are products of consultative justice, and they have certain homology in the system level. Specifically, the lenient system of guilty plea is based on the criminal suspect and defendant subjectively admitting the crime and objectively accepting the punishment as the applicable premise, and the system runs through the investigation, prosecution, trial and litigation stage. Similarly, criminal compliance, when applied, is also based on the premise that the enterprise and the natural person involved in the crime confess their guilt and pay the penalty, and stop the criminal behavior. At the same time, before the start of criminal compliance, the judicial authorities will also conduct a comprehensive assessment of the tax payment, job creation and social damage caused by the enterprises involved in the crime, and finally decide whether to initiate criminal compliance against the enterprises involved. It should be noted that, compared with the lenient system of confession and punishment, the starting conditions of criminal compliance procedures are stricter, more attention is paid to the joint participation of multiple subjects, and more in line

with the core concept of public-private cooperation and "co-governance" of criminal compliance. In view of this, the investigation, prosecution and even trial stage can be the initiation stage of criminal compliance.

### 3. Conclusion

The pilot reform of criminal compliance is another important measure taken by the Supreme People's Procuratorate to take an active part in social governance, optimize the business environment for enterprises and modernize the social governance system, following the nationwide pilot reform of the leniency system for guilty plea and punishment in 2016. Both the criminal compliance plan made before and the compliance system construction carried out after the crime, while consuming the resources of enterprises such as human resources, property and other resources, also play the role of escort for enterprises to realize the "going to sea" strategy and sustainable and healthy development in the future. Unfortunately, the pilot reform lasted for a short time, the scope and object of the enterprise pilot was very limited, and the judicial organs failed to form too much experience and successful practices that can be used for reference, which led to the reform pilot in the process of practice, such as false compliance and other practical problems. The author believes that, in the trial stage, it is necessary for the judicial organs to exert judicial initiative, through strengthening judge-led judicial review, establishing the compliance adjudication rules in the trial stage, and constructing criminal compliance throughout the trial stage, to better improve the quality and efficiency of the criminal compliance reform practice.

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