

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

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 129, paragraph 1), Habitual Tax Evasion (Tax Evader Punishment Act, Article 3, paragraph 4, Basic Law on Local Tax, Article 129, paragraph 5), Tax Evasion Under 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), Violating Tax Invoice, etc. Issuing Duty Under Aggravated Punishment Act (Aggravated Punishment Act, Article 8-2, paragraph 1).

■ Abbreviations

- Aggravated Punishment Act: Act concerning Aggravated Punishment, etc. of Specific Crimes

I. TYPES OF OFFENSE AND SENTENCING PERIODS

01¹ GENERAL TAX EVASION

Type	Classification	Mitigated Sentencing Range	Standard Sentencing Range	Aggravated Sentencing Range
1	Less than 300 million won	- 8months	6months - 10months	8months - 1yr 2months
2	More than 300 million won, less than 500 million won	6 months - 1 yr	8 months - 1 yr 2 months	1 yr - 2 yrs
3	More than 500 million won	8 months - 1 yr 6 months	1 yr - 2 yrs	1 yr 6 months - 2 yrs 6 months

- ▷ 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"> ● Passive Participation Resulting From Outside Pressure ● Cases Where Profits Gained From the Offense is Not Substantial ● Offense Evidently Committed As a Result of Postponing Tax Payments ● Willful Negligence of Tax Evasion 	<ul style="list-style-type: none"> ● Premeditated and Organized Crime ● Prolonged and Repeated Commission of the Crime for More than 2 Years ● Instigating the Subordinate Person to Commit the Offense
Special Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> ● Those with Hearing and Speaking Impairments ● Those with Mental Incapacity ● Voluntary Surrender to Investigative Agencies, Cases of Whistle-Blowing of Corruption, or Modifying Tax Reports or Filing Taxes After the Deadline ● Payment Substantially Made on the Evaded Tax Amount 	<ul style="list-style-type: none"> ● Repeated Offenses of Same Type under the Criminal Act ● Habitual Offender ● Offense Committed Through 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
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> ● Tax Evasion Committed As a Result of Financial Distress ● Portion of the Tax Evaded is Collected or is Expected to be Collected ● Passive Participation 	<ul style="list-style-type: none"> ● Concealing Property to Avoid Payment of the Evaded Tax ● Continued Offense Notwithstanding the Written Warnings, Financial Audits or Actual Survey by the Tax Service ● Offense Committed As a Result of Collusion with the Revenue Officer ● Obstructing Tax Investigation
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> ● Expresses Sincere Remorse ● No Prior Criminal History ● There is Genuine Efforts to Pay the Evaded Tax 	<ul style="list-style-type: none"> ● Repeated Offenses of Different Type under the Criminal Act, Criminal History of Imprisonment by the Same Type of Offenses or by Crime of Violence that Does not Constitute Repeated Offense under the Criminal Act (This Applies When the Criminal History is Within Ten Years After Completion of Sentence)

02¹ TAX EVASION UNDER 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 months - 2 yrs 6 months	2 yrs - 4 yrs	3 yrs - 5 yrs
2	More than 1 billion won, Less than 20 billion won	2 yrs 6 months - 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"> ● Passive Participation Resulting From Outside Pressure ● Cases Where Profits Gained From the Offense is Not Substantial ● Offense Evidently Committed As a Result of Postponing Tax Payments ● Willful Negligence of Tax Evasion 	<ul style="list-style-type: none"> ● Premeditated and Organized Crime ● Instigating the Subordinate Person to Commit the Offense
Special Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> ● Those with Hearing and Speaking Impairments ● Those with Mental Incapacity ● Voluntary Surrender to Investigative Agencies, Cases of Whistle-Blowing of Corruption, or Modifying Tax Reports or Filing Taxes After the Deadline ● Payment Substantially Made on the Amount of Tax Evaded 	<ul style="list-style-type: none"> ● Repeated Offenses of Same Type under the Criminal Act ● Offense Committed Through 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
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> ● Tax Evasion Committed As a Result of Financial Distress ● Portion of the Tax Evaded is Collected or is Expected to be Collected ● Passive Participation 	<ul style="list-style-type: none"> ● Concealing Property to Avoid Evaded Tax Payment ● Continued Offense Notwithstanding the Written Warnings, Financial Audits or Actual Survey by the Tax Service ● Offense Committed As a Result of Collusion with the Revenue Officer ● Obstructing Tax Investigation
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> ● Expresses Sincere Remorse ● No Prior Criminal History ● There is Genuine Efforts to Pay the Evaded Tax 	<ul style="list-style-type: none"> ● Repeated Offenses of Different Type under the Criminal Act, Criminal History of Imprisonment by the Same Type of Offenses or by Crime of Violence that Does not Constitute Repeated Offense under the Criminal Act (This Applies When the Criminal History is Within Ten Years After Completion of Sentence)

03¹ 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 months	6 months - 1 yr	10 months - 1 yr 2 months
2	More than 3 billion won, less than 5 billion won	6 months - 1 yr	8 months - 1yr 2 months	1 yr - 2 yrs
3	More than 5 billion won	8 months - 1 yr 6 months	1 yr - 2 yrs	1 yr 6 months - 2 yrs 6 months



Classification		Mitigating Factor	Aggravating Factor
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> ● Passive Participation Resulting From Outside Pressure ● Cases Where Profits Gained From the Offense is Not Substantial ● Absence of Purpose to Commit Tax Evasion or Absence of the Tax Evasion 	<ul style="list-style-type: none"> ● Premeditated and Organized Crime ● Prolonged and Repeated Commission of the Crime for Profit (Type 1) ● Instigating the Subordinate Person to Commit the Offense
Special Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> ● Those with Hearing and Speaking Impairments ● Those with Mental Incapacity ● Voluntary Surrender to Investigative Agencies, Cases of Whistle-Blowing of Corruption 	<ul style="list-style-type: none"> ● Repeated Offenses of Same Type under the Criminal Act ● Offense Committed Through 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
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> ● Offender Failed to Consume or Retain Substantial Amount of Profit from the Crime ● Passive Participation 	<ul style="list-style-type: none"> ● Offense Committed As a Result of Collusion with the Revenue Officer ● Obstructing Tax Investigation ● Demanding False Tax Invoices to Clients Using their Standing in Business Relations As an Advantage Such As Threatening to End Business Relations
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> ● Expresses Sincere Remorse ● No Prior Criminal History 	<ul style="list-style-type: none"> ● Repeated Offenses of Different Type under the Criminal Act, Criminal History of Imprisonment by the Same Type of Offenses or by Crime of Violence that Does not Constitute Repeated Offense under the Criminal Act (This Applies When the Criminal History is Within Ten Years After Completion of Sentence)

04¹ GIVING OR RECEIVING FALSE TAX INVOICES UNDER THE AGGRAVATED PUNISHMENT ACT

Type	Classification	Mitigated Sentencing Range	Standard Sentencing Range	Aggravated Sentencing Range
1	Less than 300 million won	6 months - 1 yr 6 months	1 yr - 2 yrs	1 yr 6 months - 3 yrs
2	More than 300million won, less than 500 million won	1 yr 6 months - 2 yrs 6 months	2 yrs - 4 yrs	3 yrs - 5 yrs
3	More than 500 million 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"> ● Passive Participation Resulting From Outside Pressure ● Cases Where Profits Gained From the Offense is Not Substantial ● Absence of Purpose to Commit Tax Evasion or Absence of the Tax Evasion 	<ul style="list-style-type: none"> ● Premeditated and Organized Crime ● Instigating the Subordinate Person to Commit the Offense
Special Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> ● Those with Hearing and Speaking Impairments ● Those with Mental Incapacity ● Voluntary Surrender to Investigative Agencies, Cases of Whistle-Blowing of Corruption 	<ul style="list-style-type: none"> ● Repeated Offenses of Same Type under the Criminal Act ● Offense Committed Through 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
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> ● Offender Failed to Consume or Retain Substantial Amount of Profit from the Crime ● Passive Participation 	<ul style="list-style-type: none"> ● Offense Committed As a Result of Collusion with the Revenue Officer ● Obstructing Tax Investigation ● Demanding False Tax Invoices to Clients Using their Standing in Business Relations As an Advantage Such As Threatening to End Business Relations
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> ● Expresses Sincere Remorse ● No Prior Criminal History 	<ul style="list-style-type: none"> ● Repeated Offenses of Different Type under the Criminal Act, Criminal History of Imprisonment by the Same Type of Offenses or by Crime of Violence that Does not Constitute Repeated Offense under the Criminal Act (This Applies When the Criminal History is Within Ten Years After Completion of Sentence)

[DEFINITION OF OFFENSES]

01 | GENERAL TAX EVASION

- This applies to cases with one or more of the following factors:
 - Type 1: This means cases where the amount of the tax evaded, refunded or deducted (hereinafter called ‘Evaded Tax Amount, etc.’) is less than 300 million won;
 - Type 2: This means cases where the Evaded Tax Amount, etc. is more than 300 million won but less than 500 million won; or
 - Type 3: This means cases where the Evaded Tax Amount, etc. 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, etc. is more than 500 million won.
- This means offenses with following elements of offenses as prescribed in the applicable law (applies to all offenses).

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 129, 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 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 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 129, paragraph 1, Second Sentence	Imprisonment Not Exceeding 3 Years or Fine Not Exceeding 3 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 129, 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 129, paragraph 1



02 | TAX EVASION UNDER AGGRAVATED PUNISHMENT ACT

- Type 1: This means cases where the amount of the tax evaded, refunded or deducted (hereinafter called ‘Evaded Tax Amount, etc.’) is more than 500 million won but less than a billion won yearly;
- Type 2: This means cases where the Evaded Tax Amount, etc. is more than a billion won but less than 20 billion won yearly; or
- Type 3: This means cases where the Evaded Tax Amount, etc. is more than 20 billion won yearly.

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	3 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	5 Years or More of Imprisonment and 2 to 5 Times the Evaded Tax Amount as Fine Concurrently Imposed

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

- Type 1: This means cases where 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 called “Supply Prices or Sales and Purchase Price Total) is less than 3 billion won.
- Type 2: This means cases where the supply prices total or the sales and purchase prices total amount exceeds 3 billion won, but less than 5 billion won; or
- Type 3: This means cases where the supply prices total or the sales and purchase prices total exceeds 5 billion won.

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 3 Years or Fine Not Exceeding 3 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 3 Years or Fine Not Exceeding 3 Times the Calculated Tax As Applied to the Value-Added Tax Rate of the Supply Price (This May Be Concurrently Imposed)

04¹ GIVING OR RECEIVING FALSE TAX INVOICES UNDER THE AGGRAVATED PUNISHMENT ACT

- Type 1: This means cases where 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 called “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. This is same for the below.)
- Type 2: This means cases where the supply prices total or the sales and purchase prices total amount exceeds 5 billion won, but less than 30 billion won; or
- Type 3: This means cases where the supply prices total or the sales and purchase prices total exceeds 30 billion won.

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	3 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



[DEFINITION OF SENTENCING FACTORS]

01 | GENERAL TAX EVASION/TAX EVASION UNDER AGGRAVATED PUNISHMENT ACT

1. 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 actual transaction occurred, the offender falsified the tax invoices because of failure to receive one; or
 - Other cases with comparable factors.

2. OFFENSE EVIDENTLY COMMITTED AS A RESULT OF POSTPONING TAX PAYMENTS

- This means cases where 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*.

3. PREMEDITATED AND ORGANIZED CRIME

- This means cases with one or more of the following factors:
 - Means and methods for the commission of the offense was meticulously done in-advance;
 - Multiple persons involved in an organized manner for the purpose of committing the offense;
 - Meticulous preparing of concealment of the evidence; or
 - Other cases with comparable factors.

4. CASES OF WHISTLE-BLOWING OF CORRUPTION

- This means cases where 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.

5. MODIFYING TAX REPORTS OR FILING TAXES AFTER THE DEADLINE

- This means cases where the offender files a modified tax report within 2 years after the legal deadline according to Basic Law on National Taxes, Article 45 (or Basic Law on Local Taxes, Article 50), or files a modified tax report within 6 months after the legal deadline according to Basic Law on National Taxes, Article 45-3 (or Basic Law on Local Taxes, Article 52).

6. PAYMENT SUBSTANTIALLY MADE ON THE EVADED TAX AMOUNT

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

7. PORTION OF THE TAX EVADED IS COLLECTED OR IS EXPECTED TO BE COLLECTED

- This means cases where disposition for arrears was executed on the offender's property so that more than 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).

8. PASSIVE PARTICIPATION

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



9. CONCEALING PROPERTY TO AVOID EVADED TAX PAYMENT

- This means cases where 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 Tax Evaders Punishment Act, Article 7, or Basic Law on Local Taxes, Article 130.

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

1. PASSIVE PARTICIPATION RESULTING FROM OUTSIDE PRESSURE

- 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; or
 - Other cases with comparable factors.

2. ABSENCE OF PURPOSE TO COMMIT TAX EVASION OR ABSENCE OF THE TAX EVASION

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

3. PREMEDITATED AND ORGANIZED CRIME

- This means cases where one or more of the following factors apply:
 - Means and methods for the commission of the offense was meticulously done in-advance;
 - Multiple persons involved in an organized manner for the purpose of committing the offense;
 - Meticulous preparing of concealment of the evidence; or
 - Other cases with comparable factors.

4. CASES OF WHISTLE-BLOWING OF CORRUPTION

- This means cases where 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.

5. PASSIVE PARTICIPATION

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



[ASSESSING PRINCIPLES APPLICABLE TO THE SENTENCING FACTORS]

01¹ DETERMINING APPROPRIATE SENTENCING RANGE

- In determining the appropriate sentencing range, the judge must only consider the special sentencing determinants.
- However, in cases involving more than two special sentencing determinant, the applicable sentencing range is adjusted after assessing the factors as set forth below:
 - ① The same number of conduct factor shall be considered with greater significance than the actor/etc. factor. However, this shall be assessed equally to the victim or the family member of the deceased victim's objection to the punishment.
 - ② Each factor within the relevant categories of conduct or actor/etc. factors should be treated as equal.
 - ③ If the applicable sentencing range is unable to be determined by the aforementioned principles ①, ②, the judge is to decide the applicable sentencing range through a comprehensive comparison and assessment based on the principles set forth in ①, ②.
- It is recommended that when the assessment reveals greater aggravating factors to select the aggravated zone, the mitigating factors is greater to select the mitigating zone, and the same number of aggravating factors and mitigating factors to select the standard zone as a sentencing range.

02¹ DETERMINING THE APPLICABLE SENTENCE

- The judge should select the proper point within the sentencing range as assessed in accordance with the above principles, along with the special sentencing determinant and general sentencing determinant taken together.

[GENERAL APPLICATION PRINCIPLES]

01 | SPECIAL ADJUSTMENTS TO THE SENTENCING RANGE

- ① In cases where the aggravating factor is selected and the assessment of the special sentencing determinant reveals only two or more special aggravating factors or the special sentencing determinant outnumbers the special mitigating determinant by two or more, then the sentencing range should be increased up to 1/2 from the maximum level. If this results in a maximum level that exceeds twenty-five years, then the judge may impose a life imprisonment.
- ② For cases where the mitigating factor is selected as a result of assessment of the special sentencing determinant, and there are two or more special mitigating determinant or the special mitigating determinant outnumbers the special aggravating determinant by two or more, the sentencing range should be decreased up to 1/2 from the minimum level.

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

When the sentencing range under this guideline conflicts with the range drawn in accordance with the aggravation and mitigation of applicable law, the sentencing range prescribed by applicable law governs.

03 | APPLICATION OF STATUTORY MITIGATING FACTORS AS DISCRETIONARY

When the judge declines to apply the optional mitigation factor under the applicable law as listed in the sentencing table of this guideline, this shall be considered as the discretion for mitigation.



[GUIDELINE ON MULTI-COUNT CONVICTIONS]

01 | APPLICABLE SCOPE

- This part on multi-count convictions applies to concurrent crimes prescribed in the first part of Article 37 of the Criminal Act as set forth in this sentencing guideline. However, in cases of this article's concurrent crimes where offenses that fall within and outside of the sentencing guidelines are involved, the minimum level should be the minimum of the sentencing range of the offense that is set forth in this sentencing guideline.

02 | DETERMINING BASE OFFENSE

- The “base offense” means the most severe offense that result after the selection of penalty and statutory aggravation and mitigation. However, in cases where the maximum sentencing range is lower than that of the maximum sentencing range of the other counts as provided in this guideline, then such other count becomes the base offense.

03 | CALCULATING SENTENCING RANGE OF MULTI-COUNT CONVICTIONS OF THE SAME OFFENSE

- For purposes of calculating sentencing range for multi-count conviction cases with the different offense, the judge shall apply the following principles unless the offenses are deemed as a single offense under the sentencing guideline:
 - ① In setting the sentencing range, take into account the sum of total amount of tax evaded or supply prices, and select the appropriate sentencing range by considering all relevant factors.
 - ② However, as a result of total summation, if the applicable offense type is one level higher than the most severe single offense among the multi-count offenses, then the minimum sentencing range should be reduced to 1/3 of the minimum sentencing range. If the applicable offense type is two or more levels higher than

the most severe single offense among the multi-count offenses, then the minimum sentencing range should be reduced to 1/2 of the minimum sentencing range by applying the minimum sentencing range of the most severe single offense among the multi-count offense.

- For multi-count convictions of different type of offenses involving multi-count conviction of crimes of general tax evasion, aggravated punishment of tax evasion, receiving false tax invoices, aggravated punishment of receiving false tax invoices, apply the following principles for calculation.

04¹ CALCULATING SENTENCING RANGE OF MULTI-COUNT CONVICTIONS OF DIFFERENT OFFENSES

- For purposes of calculating sentencing range for multi-count conviction cases with the different offense, the judge shall apply the following principles unless the offenses are deemed as a single offense under the sentencing guideline:
 - ① In setting sentencing range for an offender convicted of two counts, the sentencing range should be the total sum of the maximum sentencing range of the base offense and the 1/2 of the maximum sentencing range of the second count.
 - ② In setting sentencing range for an offender convicted of three or more counts, the sentencing range should be the total sum of the following: (1) maximum sentencing range of the base offense, (2) 1/2 of the maximum sentencing range of the count with the highest sentencing range, and (3) 1/3 of the maximum sentencing range of the remaining count with the second highest sentencing range.
 - ③ For cases where the minimum sentencing range of the other count is higher than that of the base offense, the minimum sentencing range resulting from the multi-count offense should be the minimum sentencing range of the other count.
- However, when the multi-count conviction is composed of two or more offense of extortion and other different offenses, first set the sentencing range for multi-count conviction of the same offense and then use the resulted point range to calculate the sentencing range for multi-count conviction with different offenses.

II. GUIDELINE ON SUSPENSION OF SENTENCE

01¹ TAX EVASION

Classification	Adverse	Affirmative
Primary Consideration Factor	<ul style="list-style-type: none"> ● Premeditated and Organized Crime ● Prolonged and Repeated Commission of the Crime for More than 2 Years ● Offense Committed Through 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 ● Criminal History of the Same Offense (Imposing of Suspension of Sentence or More Severe Punishment Within Five Years; or More than Three Incidents of Fines) 	<ul style="list-style-type: none"> ● Passive Participation Resulting From Outside Pressure ● Profit Gained From the Offense is Not Substantial ● Offense Evidently Committed As a Result of Postponing Tax Payments ● Payment Substantially Made on the Evaded Tax Amount ● No Prior Criminal History ● Voluntary Surrender to Investigative Agencies, Cases of Whistle-Blowing of Corruption, or Modifying Tax Reports or Filing Taxes After the Deadline
General Consideration Factor	<ul style="list-style-type: none"> ● Two or More Criminal History on Suspension of Sentence or for a Greater Offense ● Lack of Social Ties ● Absence of Remorse ● Active Participation as an Accomplice ● Concealing Property to Avoid Payment of the Evaded Tax ● Continued Offense Notwithstanding the Written Warnings, Financial Audits or Actual Survey by the Tax Service ● Offense Committed As a Result of Collusion with the Revenue Officer ● Obstructing Tax Investigation or Destroying Evidence or Attempting to Destroy Evidence ● There is Genuine Efforts to Pay the Evaded Tax 	<ul style="list-style-type: none"> ● Tax Evasion Committed As a Result of Financial Distress ● Portion of the Tax Evaded is Collected or is Expected to be Collected ● Strongly-Established Social Ties ● Expresses Sincere Remorse ● No Criminal History of Suspension of Sentence or Imposing of Other Sentences More Severe ● Cases of Old-Aged Offenders ● Passive Participation As an Accomplice ● Physically-ill Offenders ● Cases where the Arrest of the Offender would Cause Severe Hardship to the Offender's Dependent Family Member

02¹ OFFENSE OF GIVING OR RECEIVING FALSE TAX INVOICES, ETC.

Classification	Adverse	Affirmative
<p style="text-align: center;">Primary Consideration Factor</p>	<ul style="list-style-type: none"> ● Premeditated and Organized Crime ● Repeated Commission of the Crime for Profit (Type 1 Crimes of Giving or Receiving False Tax Invoices, etc.) ● Offense Committed Through 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 ● Criminal History of the Same Offense (Imposing of Suspension of Sentence or More Severe Punishment Within Five Years; or More than Three Incidents of Fines) 	<ul style="list-style-type: none"> ● Passive Participation Resulting From Outside Pressure ● Profit Gained From the Offense is Not Substantial ● Offense Evidently Committed As a Result of Postponing Tax Payments ● No Prior Criminal History ● Voluntary Surrender to Investigative Agencies, Cases of Whistle-Blowing of Corruption, or Modifying Tax Reports or Filing Taxes After the Deadline
<p style="text-align: center;">General Consideration Factor</p>	<ul style="list-style-type: none"> ● Two or More Criminal History on Suspension of Sentence or for a Greater Offense ● Lack of Social Ties ● Absence of Remorse ● Active Participation as an Accomplice ● Offense Committed As a Result of Collusion with the Revenue Officer ● Obstructing Tax Investigation or Destroying Evidence or Attempting to Destroy Evidence 	<ul style="list-style-type: none"> ● Tax Payments on False Sales Amounts ● Offender Failed to Consume or Retain Substantial Amount of Profit from the Crime ● Strongly-Established Social Ties ● Expresses Sincere Remorse ● No Criminal History of Suspension of Sentence or Imposing of Other Sentences More Severe ● Cases of Old-Aged Offenders ● Passive Participation As an Accomplice ● Physically-ill Offenders ● Cases where the Arrest of the Offender would Cause Severe Hardship to the Offender's Dependent Family Member



[DEFINITIONS OF CONSIDERATION FACTORS FOR SUSPENSION OF SENTENCE]

- In cases where the consideration factors for suspension of sentence of sentencing 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 involving suspension of sentence, calculate from the date the defendant's suspension of sentence was affirmed up to the date of the commission of the offense. In cases imposing imprisonment, calculate from the final date of the completion of the sentence up to the date of the commission of the offense.

[ASSESSING PRINCIPLES APPLICABLE TO THE SENTENCING FACTORS]

- For cases where the imposing penalty is imprisonment, in deciding whether the suspension of sentence is appropriate, the primary consideration factor should be taken into account with greater importance than the general consideration factors. This is further specified as follows:
 - ① In cases where only two or more primary affirmative factors exist or when primary affirmative factors outnumber the major adverse factor by two or more, suspension of sentence is recommended.
 - ② In cases where two or more primary adverse factors exist or when primary adverse factors outnumber the primary affirmative factor by two or more, imprisonment is recommended.
 - ③ In cases other than ①, ②, or even if cases of ①, ②, if the difference between the number of general adverse(affirmative) factors and general affirmative (adverse) factors is greater than that of adverse and affirmative factors of the primary consideration, then the judge shall decide whether to suspend the sentencing after assessing and comprehensively taking into account the factors listed under the suspension of sentence section.