

Administrative Litigation Bill of Complaint

Plaintiff: Fake Design Culture Limited

Address: No. 258 Caochangdi Village, Cuigezhuang Township, Chaoyang District,
Beijing

Legal Representative: Lu Qing

Defendant: Beijing Local Taxation Bureau Second Investigation Branch

Address: Block C3, No. 12 Yumin Road, Chaoyang District, Beijing

Legal Representative: Guo Zhuming

Litigation claims:

1. We request that the Beijing Local Taxation Bureau Second Investigation Branch Tax Inspection Settlement Decision (Er Ji Shui Ji Chu [2011] No. 63) issued by the defendant be annulled in accordance with the law; [and]
2. That litigation costs associated with this case be borne by the defendant.

Facts and Reasons:

Following a tax inspection by the defendant of the plaintiff's tax-related matters from November 29, 2000, to December 31, 2010, the defendant issued Beijing Local Taxation Bureau Second Investigation Branch Tax Inspection Settlement Decision (Er Ji Shui Ji Chu [2011] No. 63) (hereafter "Tax Inspection Settlement Decision"). After administrative review, the administrative review authority has ruled to uphold the original decision.

The plaintiff believes that the defendant's Tax Inspection Settlement Decision was issued in error, with specific regard to the following reasons:

I. The main evidence is inadequate

- 1. The evidence is inadequate to substantiate the defendant's findings of fact*

Evidence is lacking for the defendant's finding of fact regarding insufficient payment of stamp duty, sales tax, urban maintenance and construction tax, education surtax, and enterprise income tax by the plaintiff.

(1) The defendant found that the plaintiff "earned a total of 15,823,724.36 yuan in taxable income" under items "Boya Garden," "Three Shadows Centre," and "Naga" but "did not record it in the accounts" and "never made a tax declaration." Based on this, the defendant demanded that the plaintiff pay 4,344,497.64 yuan in enterprise income tax. However, there is no evidence that shows that the defendant's findings regarding these items have any direct relationship to the plaintiff's income.

(2) The defendant directly used figures recorded in the account books to derive the sales tax, urban maintenance and construction tax, and education surtax that the plaintiff should pay, without ever verifying the corresponding facts. The account books are a manual record or log, and the figures recorded therein should not be used directly as evidence without the corresponding original vouchers to serve as corroboration.

(3) The defendant overlooked the plaintiff's true costs, leading to serious inaccuracies in the figures. In carrying out an "audit collection," the defendant should have verified the plaintiff's true costs. But the defendant instead neglected to collect evidence beneficial to the plaintiff.

(4) In its Tax Inspection Settlement Decision, the defendant notified the defendant of the amounts of tax and late fees that it should pay without ever making its calculation process clear, leaving the plaintiff only to know what it should do without knowing why. Such carelessness in handling the case is most unconvincing!

2. Evidence collected by the defendant is inadmissible because of procedural violations

According to the Supervision Form for Serious Tax Violation Cases (Jing Di Shui

Ji Du [2011] No. 7) issued to the defendant by the Beijing Local Tax Bureau on April 6, 2011, the tax case against the plaintiff had been transferred from the public security organ for handling by the tax authority. Therefore, after April 6, 2011, the public security agency should not have intervened further in this administrative case concerning taxation. Evidence collected by the public security agency, as an improper body [for handling this case], should not be used as evidence in the defendant's Tax Inspection Settlement Decision against the plaintiff. However, the evidence relied upon by the defendant in making its Tax Inspection Settlement Decision against the plaintiff did indeed include records of the public security agency's interrogation of the plaintiff's shareholder, Liu Zhenggang, and accountant, Hu Mingfen, that were carried out after April 6, 2011. Therefore, said documents are inadmissible as evidence and cannot be used as a basis for the tax authority's administrative action.

Even with respect to materials collected by the public security organ before April 6, 2011, according to Article 70 of the Supreme People's Court's Regulations Concerning Several Questions of Evidence in Administrative Litigation (Fa Shi [2002] No. 21) ("Facts confirmed in an effective people's court decision or ruling by an arbitration body may be used as the basis of a determination."), the defendant cannot use as the basis of its determination any materials collected or produced by the public security organ, an investigatory authority, without those materials being first confirmed by a people's court.

3. There are no original documents for any of the evidentiary materials used as the basis of the defendant's Tax Inspection Settlement Decision

On March 27, 2012, the plaintiff went to the administrative review authority to review the evidentiary materials used as the basis of the defendant's Tax Inspection Settlement Decision, but all the documents were photocopies. The defendant made a specific administrative action based solely on photocopies, but it is impossible for the plaintiff to confirm the authenticity, legitimacy, or relevance of the evidence.

II. Laws and regulations were applied in error

Given that the defendant lacked evidence for its finding of fact, laws and regulations were of course applied in error upon this false factual basis. Even from the level of legal technicalities, there were the following errors:

1. Errors in applying the Tax Administration Law

It is clear from the documents that the defendant submitted to the administrative review authority that the defendant was never able to collect in a comprehensive or clear manner relevant cost information or income and expense vouchers said to be related to the plaintiff. According to Article 35 (“Should a taxpayer fall into one of the following cases, the tax authorities shall have the right to assess the amount of tax payable: [. . .] [4] Although account books are kept, account entries are messy and information of costs, and vouchers on income and expenses are incomplete, making account inspection difficult.”) of the **Law of the People’s Republic of China on Tax Administration (hereafter “Tax Administration Law”)** and Article 3 (“Should a taxpayer fall into one of the following cases, assessment will be carried out of enterprise income tax: [. . .] [4] Although account books are kept, account entries are messy and information of costs, and vouchers on income and expenses are incomplete, making account inspection difficult.”) of the (Trial) Measures for Verification Collection of Enterprise Income Tax (Guo Shui Fa [2008] No. 30), the defendant should have used the method of “assessment collection” instead of mistakenly using “audit collection.”

2. The normative document upon which the defendant based its decision lacks legitimacy

The plaintiff maintains that the normative document upon which the defendant’s Tax Inspection Settlement Decision was based, Beijing Local Taxation Bureau Notice Regarding Clarification of Several Policy Issues Related to Enterprise Income Tax (Jing Di Shui Qi [2002] No. 526), lacks legitimacy and the people’s court should not recognize it as valid.

According to Article 5 (“The taxable income amount shall be an enterprise’s total income amount of each tax year, after deducting tax-free and tax-exempt incomes and the remaining amount after each deduction item as well as the permitted remedies for losses of the previous year[s].”) and Article 22 (“The income tax payable shall be the balance of taxable income multiplied by the applicable tax rate, less any tax deductions and exemptions as provided for by this law under the provisions regarding tax preferential treatment.”) of the Enterprise Income Tax Law of the People’s Republic of China (hereafter “Enterprise Income Tax Law”), the basic taxation-law concepts of “taxable income” and “tax payable” are rigorous, standardized terms in taxation law with specific, defined connotations; however, the terms “repayable income” and “repayable enterprise income tax” invented in Article 5 of the “Jing Di Shui Qi (2002) No. 526” document do not correspond to the connotations of these basic concepts, causing their “definedness” to lack all “definition.” On this point, Article 9 of the Rules for Drafting Normative Documents Related to Taxation states: “In drafting normative documents related to taxation, the content shall be specific and clear, the internal logic shall be rigorous, the language standardized, concise, and accurate, and the provisions operable.” In the State Administration of Taxation Notice on Issues Concerning the Launch of Cleanup Work Targeting Normative Documents Related to Taxation within the National Taxation System (Guo Shui Han [2006] No. 872), such lack of rigor is treated as “unreasonable provisions” and “non-normative.”

According to Article 5 (“The taxable income amount shall be an enterprise’s total income amount of each tax year, after deducting tax-free and tax-exempt incomes and the remaining amount after each deduction item as well as the permitted carry-forward loss of the previous year(s).”) and Article 8 (“Reasonable expenditure actually incurred in connection with the income of an enterprise, including costs, expenses, taxes, losses and other payments, may be deducted when computing taxable income.”) of the Enterprise Income Tax Law, “deductions,” one of the key elements in computing “taxable income,” should include a total of seven items: “costs,” “expenses,” “taxes,” and “losses and other payments,” as well as “tax-free income,”

“tax-exempt income,” and “permitted carry-forward loss of the previous year(s).” However, the only “deductions” allowed as key elements of the computation according to Article 5 of the “Jing Di Shui Qi (2002) No. 526” document are the three items of “costs,” “expenses,” and “taxes,” stripping taxpayers of a large amount of their rights and deviating from current law.

At the same time, Article 5 of the “Jing Di Shui Qi (2002) No. 526” document also conflicts with specific rules and regulations. According to Article 1 (“According to Article 5 of the Enterprise Income Tax Law of the PRC [hereafter, ‘Enterprise Income Tax Law’], adjustments to the amount of taxable income made by a taxation authority during an audit of an enterprise’s tax situation for previous years, whenever an enterprise incurs losses for previous years and those losses fall under the category of those permitted to carry forward under the Enterprise Income Tax Law, those losses shall be permitted to be carried forward as adjustments to the amount of taxable income. If there is excess after a loss is carried forward, the enterprise income tax payable shall be calculated according to the provisions of the Enterprise Income Tax Law. In inspecting adjustments to the amount of taxable income, decisions and fines shall be carried out based on the circumstances and in accordance with the relevant provisions of the Tax Administration Law of the PRC.”) and Article 2 (“These regulations are effective from 1 December 2010. Any previous matters [including those from year 2008 and before] not yet resolved shall be handled according to these regulations.”) of the State Administration of Taxation’s Notice on Problems in Handling Inspection of Adjustments to Taxable Income Amount by Carry-Forward Losses from Previous Years (Notice No. 20 of year 2010), checking the adjustments to deductions in the “amount of taxable income” should be done in accordance with Article 5 of the Enterprise Income Tax, which of course means including “losses.” But Article 5 of the “Jing Di Shui Qi (2002) Number 526” document states that these “deductions” do not include “losses.”

According to Article 9 of the Rules for Implementation of the Enterprise Income Tax of the PRC (hereafter “Enterprise Income Tax Implementation Rules”)

(“The calculation of the taxable amount of an enterprise shall as a matter of principle be based on the accrual method of accounting, with income and expenditures for the current period treated as such regardless of whether the item has been received or paid; income and expenditures not from the current period shall not be treated as income and expenditures from the current period, even if the item in question has been received or paid during the current period, unless otherwise provided for by these regulations or other regulations from a competent department of finance or taxation under the State Council.”), the “amount of taxable income” should be calculated according to the principles of the “accrual basis,” meaning that expenses from the current period, no matter whether an item has been paid, should be allowed to be deducted; it should not be calculated according to the “matching” principle of accounting used in Article 5 of the “Jing Di Shui Qi (2002) No. 526” document.

With respect to deductions in the calculation of the “amount of taxable income,” the Enterprise Income Tax Implementation Regulations judge expenditures according to the standards of “relevance and reasonableness,” a method that employs knowledge and experience and makes judgments based on intelligence. However, the “Jing Di Shui Qi (2002) No. 526” document uses a standard of “identifiability” in judging expenditures, a method that relies not on intelligence but on the naked eye.

Furthermore, on September 26, 2011, the Beijing Local Taxation Bureau issued Notice of Catalog of Current and Effective Taxation Normative Documents Announced by the Beijing Local Taxation Bureau (Phase 1) (Beijing Local Taxation Bureau year 2011 announcement no. 14). The “Jing Di Shui Qi (2002) No. 526” document was not included in that catalog. According to Article 2(1)(b) (“After cleanup work has concluded, each provincial taxation authority shall publish a catalog of documents that continue to be in force [including provisions no longer valid or repealed], documents invalid or repealed in their entirety, and clauses that are invalid or have been repealed; taxation normative documents that have not been listed in the catalog of documents continuing to be in force may not serve as the basis of taxation enforcement.”) of the State Administration on Taxation’s Notice on Issues Concerning

the Launch of Cleanup Work Targeting Provincial Taxation Authorities' Normative Documents (Guo Shui Han [2011] No. 60), the "Jing Di Shui Qi (2002) No. 526" document should not serve as the basis for any taxation enforcement document issued after September 26, 2011. But unfortunately, it continues to serve as the basis for taxation enforcement in the Tax Inspection Settlement Decision issued against the plaintiff on November 1, 2011.

III. Violations of legal procedure

According to Article 54(2) ("[After hearing a case, the court may] rule to revoke or partially revoke a specific administrative act, or else rule the defendant to make a new administrative act if a specific administrative act has been taken in one of the following circumstances: . . . 3. it violated legal procedures; 4. it was made through exceeding authority; or 5. it was an abuse of authority.") of the Administrative Procedure Law of the PRC (hereafter "Administrative Procedure Law") and Article 24 ("When carrying out an inspection, evidence that can confirm the facts of the case shall be collected in accordance with legal limits on authority and procedures.") of the Tax Inspection Work Procedures (Guo Shui Fa [2009] No. 157), an action decision taken against the plaintiff by the defendant should have sufficient evidence, and said evidence should be lawful in nature, which includes having been obtained through legal procedures. If the defendant collects evidence in violation of legal procedure, said evidence should not be used as the factual basis of a specific administrative action. At the same time, if there are violations of legal procedure at the time that the defendant is carrying out a specific administrative action, that specific administrative action should be annulled in accordance with the law. As for the defendant in this case, its enforcement of the law involved serious violations of legal procedure, exceeding of authority, and abuses of power, and its action decision should of course be annulled in accordance with the law.

1. Seriously unlawful procedures [including] early intervention by the public security

department, joint action by public security and taxation [agencies], and arresting before carrying out an audit

(1) Facts

The plaintiff first received the defendant's Tax Inspection Notice on April 8, 2011; however, prior to this, the concerned parties Ai Weiwei, Wen Tao, and Hu Mingfen had already been detained by public security organs. After April 8, 2011, the public security organs detained Liu Zhenggang and Zhang Jinsong. Specific facts are as follows:

On the morning of April 3, 2011, Ai Weiwei was taken away by the police at the Capital International Airport before completing border-exit formalities. Up until June 22, when Ai Weiwei was "released on bail pending further investigation" and returned home, his family never received any official notification and were unable to know the charges alleged, what coercive measures had be taken, or where he was in custody.

At 12 noon on April 3, 2011, the Beijing Public Security Bureau carried out a search lasting nearly 12 hours on the house of Ai Weiwei located at No. 258, Caochangdi, Chaoyang District, seizing 127 items including computers, portable hard drives, CDs and books. The inventory of items seized was issued in the name of the Chaoyang District Branch of the Beijing Public Security Bureau. Ten people from Ai Weiwei Studio were brought to Nan'gao Police Station for questioning until the early morning [of the next day].

At 2 p.m. on April 3, 2011, Ai Weiwei's assistant Wen Tao was forced into a black Buick by four men in civilian clothes and taken away. Having lost contact with him, his family went to the Nan'gao Police Station responsible for the area where the incident occurred and reported a case of kidnapping. On the evening of June 24, Wen Tao was sent home by Beijing public security officers, who demanded that he not discuss details of his detention publicly or have any contact with Ai Weiwei. During Wen Tao's disappearance, his family members did not receive any paperwork. Wen Tao himself still does not know why he was detained for 83 days.

At approximately 11:30 p.m. on April 6, 2011, the defendant and the Beijing

Public Security Bureau went to Beijing Huxin Financial Accounting Services Co., Ltd. (hereafter “Huxin Company”), which had been entrusted to keep the plaintiff’s accounts, and seized the original vouchers, accounting vouchers, tax vouchers, balance sheets, income statements and other accounting documents of the plaintiff [dating] from 2000 to February 2011. At 12:47 a.m. [on April 7], Xinhua News Agency issued a report in English, stating: “Ai Weiwei is being investigated according to law on suspicion of economic crimes.”

On April 7, 2011, the Beijing Economic Crime Investigation Unit brought the plaintiff’s accountant, Hu Mingfen, who had been visiting relatives in Lanzhou, back to Beijing, at which point Hu Mingfen lost contact with family. Until June 13, when she was “released on bail pending further investigation,” her family never received any official paperwork [regarding her whereabouts].

At 3 p.m. on April 8, 2011, the defendant and Beijing public security organs went to the plaintiff’s accounts office and searched and seized all financial and accounting documents, contracts and seals and other items from 2005 to 2010. At this time, the defendant made a record of its questioning of Zhang Jinsong, Ai Weiwei’s driver, and for the first time issued the plaintiff a Tax Inspection Notice and Inquiry Notice, and the plaintiff’s legal representative, Lu Qing, was required to go to the Beijing Local Taxation Bureau on April 12 for questioning.

At 7 p.m. on April 9, 2011, Liu Zhenggang, a shareholder of the plaintiff, was forcibly taken away by four men in civilian clothes from his residential community in Haidian District and taken to an unknown location. His wife then reported a kidnapping case to the Dazhongsi Police Station in Haidian District. On June 11, when Liu Zhenggang was “released on bail pending further investigation,” his family members had not yet received any official paperwork [concerning his whereabouts].

At 1 a.m. on April 10, 2011, Zhang Jinsong lost contact after leaving his friends. His family went to Nan’gao Police Station in Chaoyang District to report his disappearance. On June 23, Zhang Jinsong was “released on bail pending further

investigation.” Prior to that, his family members did not know his whereabouts and never received any official paperwork.

At 9:30 a.m. on April 12, 2011, only after three raids and the “disappearance” of five persons did the defendant conduct its first questioning of Lu Qing, the plaintiff’s legal representative.

On May 20, 2011, Xinhua News Agency issued a news brief, saying, “Xinhua News Agency reporters have learned from Beijing public security organs that, after further investigation of the case of Ai Weiwei’s suspected economic crimes, the public security organs have initially identified that Fake Design Culture Development Ltd., which is actually controlled by Ai Weiwei, has committed criminal activity such as evasion of huge amounts of taxes and intentional destruction of accounting documents.” (<http://goo.gl/aCGwC>)

On the evening of June 22, 2011, after detention of 81 days, Ai Weiwei was “released on bail pending further investigation” without any official explanation to the family. At 10:15 that night, Xinhuanet issued a short news item in both Chinese and English, saying: “Reporters have learned from the Beijing public security organs that the public security organ carried out an investigation of Ai Weiwei in accordance with the law on suspicion of economic crimes and discovered that Beijing Fake Cultural Development Limited, which is actually controlled by him, carried out criminal acts such as evasion of a large amount of tax and intentional destruction of accounting documents. In light of Ai Weiwei’s good attitude in admitting his crimes and the fact that he suffers from chronic illness, combined with his multiple expressions of willingness to pay the taxes owed, Ai Weiwei has been released on bail pending further investigation in accordance with the law.”

The above facts show that the close cooperation between the defendant and the public security organs is directly related to the plaintiff’s tax case.

(2) Procedural error 1: Early intervention in the tax evasion case by the public security organs

According to Article 201(1) (“Where any taxpayer files false tax returns by

cheating or concealment or fails to file tax returns, and the amount of evaded taxes is relatively large and accounts for more than 10 percent of the taxes owed, he shall be sentenced to fixed-term imprisonment not more than three years or penal detention, and be fined; or if the amount is huge and accounts for more than 30 percent of the taxes owed, he shall be sentenced to fixed-term imprisonment not less than three years but not more than seven years, and be fined”) and Article 201(4) (“Where any taxpayer who committed the act as described in Paragraph 1 has made up the payable taxes and paid the late fine after the tax authority sent down the notice of tax recovery according to law, he shall not be subject to criminal liability if he has already been administratively punished; however, an exception will be made for any person who has already been criminally punished in five years for evading tax payment or who has been administratively punished by the tax authorities two or more times”) of the Criminal Law of the People’s Republic of China (hereafter “Criminal Law”) as amended on February 28, 2009, administrative sanction by the tax authorities has become a prepositional condition for the public security organs to initiate a judicial procedure.

According to Article 57(1) of the Notice of the Supreme People’s Procuratorate and the Ministry of Public Security on Issuing the Provisions (II) of the Supreme People’s Procuratorate and the Ministry of Public Security on the Standards for Filing Criminal Cases under the Jurisdiction of the Public Security Organs for Investigation and Prosecution, promulgated on May 7, 2010: “Tax evasion cases (Article 201 of the Criminal Law): For any tax evasion involving one of the following circumstances, a case will be filed for investigation and prosecution: (1) A taxpayer files false tax returns through cheating or concealment or fails to file tax returns, the amount of evaded taxes is more than 50,000 yuan and accounts for more than 10 percent of the taxes owed and, after the tax authority issues a notice of tax recovery according to law, fails to make up the taxes owed or pay the late fine or refuses to be administratively punished; (2) A taxpayer has already been criminally punished in five years for evading tax payment or has been administratively punished by the tax authorities two

or more times, and has evaded taxes, with the amount of evaded taxes being more than 50,000 yuan and accounting for more than 10 percent of the taxes owed; (3) A withholding agent fails to pay or fails to pay in full the withheld or collected taxes by cheating or concealment, and the amount is more than 50,000 yuan.” The plaintiff was established on November 29, 2000, had no record of criminal or administrative punishment before this tax case, did not commit the action of “after the tax authority issues a notice of tax recovery according to law, failing to make up the taxes owed or pay the late fine or refusing to be administratively punished,” and thus did not meet the above standard for filing a case by the public security organs. Therefore, the defendant’s cooperation in the early intervention by the public security organs and auditing the accounts through seizure of people are excessive, power-abusing, and serious illegal acts, the evidence obtained in violation of legal procedures is unlawful, and the defendant’s Tax Inspection Settlement Decision made in violation of legal procedure should be annulled.

(3) Procedure error 2: Joint handling of the case by tax authorities and public security organs

The joint handling of the case by the defendant and the public security organs is not only a formal error; it is also a serious blurring of the boundary between administrative and judicial authority and a complete deviation from the provisions of the Criminal Procedure Law of the PRC regarding strict procedures for the filing of criminal cases and encourages an ordinary administrative body like the defendant to arrogate to itself powers to restrict personal liberty and carry out searches that the Tax Administration Law has never given to tax authorities. If all administrative organs are allowed to handle cases “jointly” with public security organs, then any administrative organ effectively has the power to deprive individuals of their liberty.

2. Before the tax inspection, the defendant did not fulfill notification obligations in accordance with the law

According to Article 22(1) of the Tax Inspection Work Procedures (Guo Shui Fa [2009] No. 157): “Before inspection, the target of the inspection shall be informed of the inspection time and necessary materials to prepare, unless prior notice would impede the inspection.”

However, late at night on April 6, 2011, when there was no obstacle to inspection, the defendant failed to inform the plaintiff according to legal procedures and went ahead to the plaintiff’s entrusted bookkeeper, the Huxin Company, and retrieved the plaintiff’s accounting documents [covering the period] from the founding of the company in 2000 until February 2011.

3. The defendant failed to issue a tax inspection certificate or Tax Inspection Notice in accordance with the law

According to Article 59 of the Tax Administration Law of the PRC (“When conducting tax inspection, the officials sent by the tax authorities shall produce tax inspection permit and tax inspection notice, and shall have the duty to protect the confidentiality of the persons under inspection; when the tax inspection permit and tax inspection notice are not produced, the persons subject to inspection shall have the right to refuse to accept the inspection.”) and Article 22(2) of the Tax Inspection Work Procedures (Guo Shui Fa [2009] No. 157) (“The inspection shall be executed by two or more inspectors, who should show a tax inspection permit and Tax Inspection Notice to the target of the inspection.”), it is necessary legal procedure for tax inspectors to show permits and legal tax documents to the target of an inspection.

However, late on the night of April 6, 2011, when retrieving accounting materials from Huxin Company, the defendant violated legal procedure by failing to produce a tax inspection permit and Tax Inspection Notice.

4. The defendant committed a serious violation of legal procedure in retrieving the plaintiff’s accounting documents

According to Article 25 of the Tax Inspection Work Procedures (Guo Shui Fa [2009] No. 157), “When retrieving account books, accounting vouchers, statements

and other relevant information, a Notice for Retrieving Account Books and Documents should be issued to the target of the inspection and an Inventory of Retrieved Account Books and Documents completed for the target's signature after being checked and confirmed." According to Article 26 of the same procedures, "When it is necessary to retrieve original documents as evidence, a Dedicated Receipt for Retrieval of Evidence should be issued to the relevant party, who should check it and confirm with a signature," "when it is necessary to take an issued invoice for inspection, an Invoice Exchange Receipt should be issued to the work unit or individual who is being inspected," and "when it is necessary to take blank invoices for inspection, a Blank Invoice Retrieval and Inspection Receipt should be issued to the work unit or individual who is being inspected."

However, when retrieving accounting materials from Huxin Company and the plaintiff, the defendant failed to issue a Notice for Retrieving Account Books and Documents or complete an Inventory of Retrieved Account Books and Documents to be given to the plaintiff for checking and confirmation. When retrieving original documents as evidence and examining invoices from the Huxin Company and the plaintiff, the defendant never issued a Dedicated Receipt for Retrieval of Evidence, a Invoice Exchange Receipt, or a Blank Invoice Retrieval and Inspection Receipt.

5. The accounting materials of the plaintiff retrieved by the defendant were not returned within the statutory time limit

According to Article 86 of Rules for the Implementation of the Tax Administration Law of the PRC ("A taxation authority exercising its powers of office provided under the provisions of item [1] of Article 54 of the Tax Administration Law may do so at the business premises of a taxpayer or tax-withholding agent. If deemed necessary and subject to approval by the head of a taxation authority at county level or above, the taxation authority may also demand that the taxpayer's or tax withholding agent's account books, accounting documentation, statements and other relevant documents of the previous accounting year be submitted for examination. In so doing,

however, the taxation authority must provide the taxpayer or tax withholding agent with a detailed list of the items taken and shall return them intact within three months; in special cases, the taxation authority may return the taxpayer's or tax withholding agent's account books, accounting documentation, statements and other relevant materials of the current accounting year for examination, which must be returned by the taxation authority within 30 days.”) and Article 25(2) of the Tax Inspection Work Procedures (Guo Shui Fa [2009] No. 157) (“Retrieval of the taxpayer's or tax withholding agent's account books, accounting documentation, statements and other relevant documents of the previous accounting year shall be approved the head of a taxation authority and [the documents] shall be returned within three months; retrieval of the taxpayer's or tax withholding agent's account books, accounting documentation, statements and other relevant documents of the current accounting year shall be subject to approval by the head of a taxation authority at city and autonomous prefecture level or above and they must be returned within 30 days.”), any of the plaintiff's prior-year accounting documents retrieved by the defendant should have been returned intact within three months; any of the plaintiff's current-year accounting documents retrieved by the defendant should have been returned within 30 days.

However, the defendant did not return all the retrieved accounting documents in accordance with the law at the time that the aforementioned statutory time limit expired, and, moreover, has to date not yet returned them, which not only seriously affects the plaintiff's production and business activities, but also substantially impedes the defendant's rights to reconsideration and litigation.

6. The defendant did not carry out its examination and hearings in accordance with legal procedure

According to Article 40 (“In the course of an inspection, inspection personnel should produce a signed, dated Tax Inspection Working Draft to record the facts of the case and collect the relevant evidentiary documents.”), Article 42 (“After the inspection is completed, a Tax Inspection Report should be produced on the basis of

the Tax Inspection Working Draft and related documents and inspected by responsible persons at the inspection authority.”), and Article 43 (“When an inspection is concluded, the inspection authority shall send the Tax Inspection Report, Tax Inspection Working Draft, and related evidentiary documents to the hearing body within five working days for a hearing and take care of the handover procedures.”) of the Tax Inspection Work Procedures (Guo Shui Fa [2009] No. 157), the defendant should, in the course of a tax inspection, produce such legally required documents as a Tax Inspection Working Draft and Tax Inspection Report and use these as the basis of a hearing.

However, in this case, the basis for the defendant’s Tax Inspection Settlement Decision against the plaintiff lacked a Tax Inspection Working Draft and Tax Inspection Report.

IV. The defendant exceeded its authority

The “concealed income” found by the defendant includes: 1,107,716 yuan for decoration under “Boya Gardens,” 928, 118.36 yuan for decoration under “Naga,” and 4,507,890 yuan under “Three Shadows Centre.” Since the plaintiff does not have relevant qualifications in the construction industry, then even if the above decoration income belong to the plaintiff, it would qualify as operations “without obtaining qualifications.”

According to Article 6 (“The competent construction administrative department under the State Council shall exercise unified supervision and regulation over construction activities throughout the country.”) and Article 65(3) (“[An organization] that contracts projects without a certificate of qualification shall be banned and fined, with any illegal income confiscated.”) of the Construction Law of the PRC, the authority to manage and punish income of “an organization which contracts projects without a certificate of qualification” rests with the administrative departments of construction under the State Council, instead of with tax authorities.

The plaintiff maintains that the Tax Inspection Settlement Decision issued by the

defendant lacks a basis in fact and in law, and it seriously infringes upon the legitimate rights and interests of the plaintiff. We hereby file suit with your court and request that the court find in favor of the plaintiff's litigation claims.

Sincerely,

Plaintiff: Fake Design Culture Development Ltd.

Legal representative: Lu Qing

April 13, 2012

Beijing Chaoyang District People's Court