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Insight: A Comparative Analysis of the Late Payment Penalty under Tax Collection and Administration Law and Administrative Compulsion Law

By Ryan Yan

There have been several judicial cases where the second paragraph of Article 45 of the *Administrative Compulsion Law of the People's Republic of China* (hereinafter referred to as the "Administrative Compulsion Law"), which stipulates that "the amount of additional fines or late payment penalty shall not exceed the amount of the monetary payment obligation," has been cited to argue that although Article 32 of the *Tax Collection and Administration Law of the People's Republic of China (2015 Revision)* (hereinafter referred to as the "Tax Collection and Administration Law") prescribes that a late payment penalty of 0.05% per day shall be charged based on the amount of tax owned,¹ the late payment penalty should be limited to a maximum of one time the overdue tax amount.² At the same time, there are cases advocating the opposite view.³ These conflicting cases have led to confusion regarding the distinction of the late payment penalty under the two different laws.

The late payment penalty mentioned in Article 32 of the Tax Collection and Administration Law and that referred to in the second paragraph of Article 45 of the Administrative Compulsion Law are fundamentally different. This article will first analyze the essence of the two penalties from the perspectives of their legal foundations, application stages, legal functions and calculation bases. Then, it will provide the author's view on recent judicial practices, followed by an in-depth analysis of the late payment penalty under the Administrative Compulsion Law. Finally, the dangers of confusing the two types of late payment penalty will be highlighted at the end.

1. The Essence of the Two Late Payment Penalties

1.1 Different Legal Foundations

The late payment penalty under the Tax Collection and Administration Law⁴ is directly

¹ Article 32 of the Tax Collection Administration Law of the People's Republic of China (2015 Amendment): "Where a taxpayer fails to pay taxes or a withholding agent fails to remit taxes within a prescribed time limit, the tax authority shall, in addition to ordering the taxpayer or withholding agent to pay or remit the taxes within a specified time limit, impose a late payment penalty at the rate of 0.05% per day of the amount of taxes in arrears from the date the tax payment is overdue."

² Refer to the case of the Miyi County Tax Service of the State Taxation Administration v. a Mining Limited Company in Panzhihua City regarding a bankruptcy creditor confirmation dispute [(2024) Chuan 3402 Min Chu 413, Judgment Date: March 11, 2024, Court: Hui Li People's Court], the case of the a Nanjing District Tax Service of the State Administration of Taxation v. Nanjing company regarding a bankruptcy creditor confirmation dispute [Court: Nanjing Intermediate People's Court, Jiangsu Province, Case No. (2023) Su 01 Min Zhong 6513, Cause: Bankruptcy creditor confirmation dispute, Judgment Date: July 25, 2023], and the case of Jinan Intermediate People's Court in a bankruptcy creditor confirmation dispute [(2019) Lu 01 Min Zhong 4926].

³ Refer to the case of Li Cuiping v. Beijing Haidian District Tax Service of the State Taxation Administration and its Sixth Taxation Office regarding the collection of taxes and administrative reconsideration [(2022-05-24 | Beijing First Intermediate People's Court | Second Instance | (2022) Jing 01 Xing Zhong 207)], the case of Shenzhen High-Tech Zone Development and Construction Company v. Shenzhen Nanshan District Local Tax Service regarding an appeal on tax administrative enforcement measures [(2014) Shen Zhong Fa Xing Zhong Zi 196], and the case of Hainan Yake Film and Television Program Production Co., Ltd. v. First Inspection Bureau of Hainan Provincial Local Tax Service concerning other administrative actions [(2017) Qiong 0106 Xing Chu 2].

⁴ *Administrative Compulsion Law of the People's Republic of China*, Chapter 4 *Administrative Enforcement Procedures of Administrative Authorities*, Section 2 *Execution of Monetary Payment Obligations*, Article 45,

based on legal provisions and arises from the failure to fulfill legal obligations. According to Article 25, Paragraph 1 of the Tax Collection and Administration Law, "taxpayers must, in accordance with the provisions of laws, administrative regulations, or tax authorities' regulations, submit tax declarations, accounting statements, and other required tax materials," tax payment is a legal obligation that taxpayers should voluntarily fulfill. Failure to comply with the law will trigger the "late payment penalty" as stipulated in Article 32 of the Tax Collection and Administration Law.

The late payment penalty mentioned in the Administrative Compulsion Law is part of administrative enforcement and arises from failure to comply with administrative decisions. As Professor Ying Songnian pointed out in his article "Administrative Compulsory Execution," "the refusal to fulfill administrative obligations is the premise of administrative compulsory execution. However, the legal foundation for the obligation that gives rise to administrative compulsory execution has been long debated. Historically, legal systems of some countries have advocated both administrative decisions and legal provisions as the foundation of administrative enforcement. Recently, the trend in administrative compulsory execution leans toward basing it solely on administrative decisions, no longer directly on legal provisions."⁵ Furthermore, Paragraph 3, Article 2 of the *Administrative Compulsion Law* provides that "administrative compulsory execution refers to the act of an administrative authority or a people's court upon application, forcibly enforcing the obligations of a citizen, legal entity, or other organization that fails to comply with an administrative decision." Thus, in China, administrative compulsory execution is based on administrative decisions, arising from failure to comply with such decisions.

1.2 Different Stages

The two types of late payment penalties occur at different stages and are presented in different forms of documentation.

The late payment penalty under the Tax Collection and Administration Law is an administrative decision, it occurs when the party fails to fulfill the legal obligation of tax payment and is presented in the form of the Tax Administrative Decision. According to Article 107 of the *Implementation Rules of the Tax Collection and Administration Law (2016 Revision)* [State Council Order No. 666], the format of tax documents is prescribed by the State Taxation Administration. These documents include: Tax Enforcement Decision, Tax Administrative Decision, Tax Administrative Penalties Decision, etc.⁶ For

Paragraph 1: "Where the administrative authority makes an administrative decision imposing a monetary payment obligation in accordance with the law, and the party fails to perform within the prescribed time, the administrative authority may impose additional fines or a late payment penalty in accordance with the law. The standards for such fines or penalties must be communicated to the party." Paragraph 2: "The amount of the additional fine or late payment penalty shall not exceed the amount of the monetary payment obligation."

⁵ Ying Songnian: 'Administrative Compulsory Enforcement', *Chinese Journal of Law*, 1998, Issue 3.

⁶ Article 107 of the *Implementation Rules for the Tax Collection and Administration Law of the People's Republic of China (2016 Revision)* [State Council Order No. 666] specifies that the format of tax documents shall be established by the State Administration of Taxation. The term "tax documents" as used in these rules includes the following: (I) Tax Matter Notification (II) Rectification Order Notice (III) Tax Preservation Measures Decision (IV) Tax Enforcement Decision (V) Tax Inspection Notice (VI) Tax Administrative Decision (VII) Tax Administrative Penalty Decision (VIII) Administrative Reconsideration Decision (IX) Other Tax Documents

instance, the *Announcement of the State Taxation Administration on Revising Certain Tax Enforcement Documents (2024)* [State Taxation Administration Announcement No. 1 of 2024] prescribes the statutory format of Tax Administrative Decision as following: "...you (company) must pay the above taxes and late payment penalties into the treasury within X days from the receipt of this decision, and make the necessary accounting adjustments. If not paid in time, it will be enforced according to Article 40 of the *Tax Collection and Administration Law*."

The late payment penalty under the Administrative Compulsion Law is a compulsory enforcement decision, it occurs when the party fails to comply with the administrative decision even after being notified and has no legitimate reason. This late payment penalty is presented in the form of the Compulsory Enforcement Decision.⁷

1.3 Different Legal Functions

According to Article 14 of the *Tax Administrative Review Rules (2018 Revision)*⁸, "taxation actions" and "compulsory enforcement actions" are two distinct administrative actions in administrative review, based on the fundamental difference between voluntary and forced tax collection methods. The level of compliance by taxpayers in these two methods is fundamentally different, which leads to distinct procedural differences in their execution.

The late payment penalty under Tax Collection and Administration Law belongs to the

⁷ *Administrative Compulsion Law of the People's Republic of China*, Article 35: "Before making a decision on compulsory enforcement, the administrative authority shall notify the party in advance to fulfill the obligation. The notification shall be made in writing and include the following items: The deadline for fulfilling the obligation; The manner of fulfilling the obligation; Specific amount and payment methods if any monetary payment obligation is involved; The party's right to make a statement and defense in accordance with the law." Article 36: "Upon receiving the notification, the party has the right to make a statement and defense. The administrative authority shall fully consider the party's opinions, record and review any facts, reasons, and evidence presented by the party. If the facts, reasons, or evidence presented by the party are valid, the administrative authority shall adopt them." Article 37: "If the party fails to fulfill the administrative decision after receiving the notification and has no valid reason, the administrative authority may make a decision on compulsory enforcement. The decision on compulsory enforcement shall be made in writing and specify: The name and address of the party; The reasons and legal basis for the compulsory enforcement; The method and time of compulsory enforcement; The ways of and deadlines for applying for administrative reconsideration or filing an administrative lawsuit; The name, seal, and date of the administrative authority.

During the notification period, if there is evidence of signs of property being transferred or concealed, the administrative authority may make a decision on immediate compulsory enforcement."

⁸ Article 14 of the *Tax Administrative Reconsideration Rules (2018 Revision)* [Order No. 44 of the State Taxation Administration of the People's Republic of China]: "The administrative reconsideration authority shall accept applications for administrative reconsideration submitted by applicants who are dissatisfied with the following specific administrative actions taken by the tax authorities: (I) Taxation actions, including the determination of taxpayers, taxable subjects, taxable scope, tax reductions, exemptions, refunds, tax credit deductions, applicable tax rates, tax basis, taxation stage, tax periods, tax locations, and tax collection methods, as well as actions such as the collection of taxes, late payment penalties, withholding obligations, and actions conducted by units or individuals entrusted by the tax authorities to withhold, collect, or levy taxes. (II) Administrative licenses and approvals. (III) Invoice management actions, including the sale, collection, and issuance of invoices. (IV) Tax preservation measures and compulsory enforcement actions. (V) Administrative penalties, including: Fines; Confiscation of property and illegal gains; Suspension of export tax rebate rights. (VI) Actions that fail to lawfully perform the following duties: Issuing tax registrations; Issuing tax payment certificates, certificates of tax compliance for outbound business activities; Administrative compensation; Administrative rewards; Other actions of failing to lawfully perform duties. (VII) Qualification recognition actions. (VIII) Actions of not lawfully confirming tax guarantees. (IX) Specific administrative actions in government information disclosure. (X) Tax credit rating actions. (XI) Notifying immigration authorities to restrict exit. (XII) Other specific administrative actions."

"taxation action" category mentioned above, and its function is to encourage taxpayers to voluntarily fulfill their legal obligations. While this late payment penalty has a certain deterrent effect, this method still expects taxpayers to voluntarily comply, aiming to restore or rebuild trust between the taxpayer and the tax authority. It is a natural extension of the tax payment process and does not directly enter the compulsory execution phase.

On the other hand, the late payment penalty under Administrative Compulsion Law belongs to the "compulsory enforcement actions" category, it is part of the forced collection process and functions to compel taxpayers to fulfill the administrative decision. The prerequisite for this forced action is that the taxpayer not only disregards the law but also ignores the warnings and reminders from the tax authority, thus destroying the foundation of trust between the taxpayer and the tax authority. Therefore, the situation of voluntary compliance no longer exists, leading to the only option of forced execution.

1.4 Different Calculation Bases

The late payment penalty under Tax Collection and Administration Law is calculated based on the amount of tax owed, with the standard being a daily interest of 0.05%¹, starting from the day after the tax payment deadline.⁹ The late payment penalty under Administrative Compulsion Law is calculated based on the monetary payment obligation of the administrative decision, and the standard is limited to the amount of the monetary payment obligation⁴, starting from the day the compulsory execution decision is made.⁷

2. Case Analysis

According to publicly available information, only a few courts in the national judicial system considered the two types of late payment penalty the same in nature. In the case "the Miyi County Tax Service of the State Taxation Administration v. a Mining Limited Company in Panzhihua City regarding a bankruptcy creditor confirmation dispute [(2024) Chuan 3402 Min Chu 413], the court's main reasoning was as follows: First, the late payment penalty is an amount charged by the tax authority in addition to the taxpayer's tax obligations, it constitutes one of the compulsory enforcement measures provided by the Administrative Compulsion Law. Therefore, the provisions of the Administrative Compulsion Law must be applied by the tax authority. Second, the tax collection and management authority must be acted appropriately to avoid undue financial burdens on the taxpayer. Hence, the amount of the late payment penalty added to overdue taxes should not exceed the tax amount itself.¹⁰ Similar rulings, such as those from the Nanjing

⁹ Article 75 of the *Implementing Rules of the Tax Collection and Administration Law of the People's Republic of China (2016 Revision)*:

The period for the imposition of late payment penalties, as stipulated in Article 32 of the *Tax Collection and Administration Law*, starts from the day following the expiration of the tax payment deadline as prescribed by laws, administrative regulations, or determined by the tax authorities in accordance with laws and regulations, ends on the actual date of payment or discharge of taxes by the taxpayer or withholding agent.

¹⁰ See the court's opinion in the case of "Miyi County Tax Service of the State Taxation Administration v. a Mining Limited Company in Panzhihua City regarding a bankruptcy creditor confirmation dispute [(2024) Chuan 3402 Min Chu 413]":

The court stated that "The law stipulates that tax authorities may impose late payment penalties in addition to overdue taxes. Therefore, the late payment penalty is an extra amount added by the tax authority to the taxpayer's tax obligations to urge the taxpayer to fulfill the obligation. According to Paragraph 3, Article 2 of the

Intermediate People's Court in Jiangsu Province and the Jinan Intermediate People's Court in Shandong Province, follow similar reasoning.

The core rationale of these rulings is that the late payment penalty, being an additional obligation beyond the tax debt, is viewed as part of the compulsory enforcement process. However, this logic is flawed. Although the late payment penalty in administrative decisions is an additional obligation beyond the tax debt, it does not constitute an enforcement action. As previously stated, during this stage, the tax collection method is still voluntary, with the expectation that the taxpayer will comply voluntarily. Only when the taxpayer refuses to fulfill the monetary obligation specified in the administrative decision will an additional late payment penalty be imposed by a compulsory enforcement decision, and this late payment penalty represents further obligations. This distinction will be elaborated upon in the next section of this article.

Regarding the appropriateness of administrative actions, this is only relevant in discretionary contexts, and not in cases governed by clear legal provisions. The two types of late payment penalty are explicitly mandated by Article 32 of the Tax Collection and Administration Law and Article 45 of the Administrative Compulsion Law respectively, leaving no room for discretion. Therefore, any discussion of the appropriateness of administrative actions, divorced from the clear legal requirements, undermines the principle of tax legality.

3. Additional Monetary Payment Obligation

3.1 The Interchangeability of Fine and Late Payment Penalty in the Administrative

Administrative Compulsion Law of the People's Republic of China, administrative enforcement refers to the actions taken by administrative agencies, or the actions applied for by administrative agencies to the people's courts, to force individuals, legal persons, or other organizations that fail to fulfill administrative decisions to perform their obligations in accordance with the law. Therefore, imposing a late payment penalty is one of the enforcement actions established by the Administrative Compulsion Law. It is a coercive act by the administrative agency, which places a certain ongoing monetary obligation on the party that fails to fulfill their duties on time, in order to compel them to fulfill their obligations. The imposition of late payment penalties by the tax authority to force taxpayers to fulfill their obligation to pay taxes constitutes an administrative enforcement action by the tax authority. For tax collection, the Tax Collection and Administration Law provides that tax authorities may take actions such as imposing late payment penalties, tax preservation measures, and compulsory enforcement measures. For actions related to administrative enforcement by the tax authorities, unless specifically exempted by law, they must also comply with the provisions of the Administrative Compulsion Law. As a general procedural law governing the establishment and implementation of administrative enforcement by administrative agencies, the Administrative Compulsion Law uniformly regulates administrative enforcement by clearly defining the types, conditions for implementation, and procedures for such actions. Article 45 of the Administrative Compulsion Law of the People's Republic of China states: 'When an administrative agency makes an administrative decision requiring monetary payment, and the party fails to fulfill the obligation on time, the administrative agency may impose fines or late payment penalties in accordance with the law. The standard for imposing fines or late payment penalties must be communicated to the party.' The Tax Collection and Administration Law and its implementation regulations set the start and end dates and calculation standards for the late payment penalty. The Administrative Compulsion Law specifies the restrictive provisions that must be followed by administrative agencies when implementing this action, which must be applied accordingly. Therefore, the imposition of late payment penalties by the tax authority meets the conditions for application under Article 45 of the Administrative Compulsion Law and must comply with the restriction that the penalty amount cannot exceed the amount of the monetary obligation. Furthermore, when implementing tax collection and administration actions, the tax authority must act appropriately. The restriction that late payment penalties must not exceed the amount of monetary obligation ensures a balance between urging the obligor to pay taxes and avoiding an excessive monetary burden on the party. It also ensures that tax authorities actively perform their duties and take other enforcement actions promptly, improving administrative efficiency and aligning with the objectives of tax collection management. Therefore, the amount of the late payment penalty imposed by the tax authority on overdue taxes must not exceed the amount of the taxes due."

Compulsion Law

The 'late payment penalty' and 'fine' as referred to in Article 45 of the Administrative Compulsion Law are essentially the same in nature, both representing an additional monetary obligation. A review of all the provisions in the Administrative Compulsion Law that mention late payment penalties reveals that they always mention fines in conjunction, with the term 'fine or late payment penalty' being consistently used, which indicates their interchangeable nature¹¹.

This equivalence in nature between the late payment penalty and fine is significant because it provides a foundation for understanding their roles in administrative enforcement. In particular, the concept of the fine and its subsequent enforcement actions, as outlined in the Administrative Penalty Law, offers useful insight into the late payment penalty under the Administrative Compulsion Law. The following section will examine how fines and additional fines are structured and enforced, helping to clarify the enforcement of late payment penalties.

3.2 The Concept of Additional Fine in the Administrative Penalty Law

Article 72 of the *Administrative Penalty Law of the People's Republic of China (2021 Revision)* stipulates that if a party fails to pay a fine on time, the administrative authority that issued the administrative penalty decision may impose an additional fine of 3% of the original fine amount per day, but the amount of the additional fine shall not exceed the original fine amount.¹² Furthermore, the *Supreme People's Court's reply regarding whether additional fines imposed during the litigation period should be counted ([2005] Xingtazi No. 29)* states that "according to the relevant provisions of the *Administrative Litigation Law of the People's Republic of China*, the additional fine for failure to fulfill an administrative penalty decision is an enforcement penalty, and should not be counted during the litigation period." Thus, two different types of fines at different stages are involved here. The fine imposed by the administrative penalty decision is part of the decision itself, commonly referred to as the administrative penalty; whereas the additional fine, as an enforcement penalty resulting from failure to fulfill that administrative penalty decision, is a further fine imposed on top of the original fine. This additional fine shall not

¹¹ The application of fines is relatively broad. Both monetary fines and personal penalties may be imposed as either a fixed amount or a daily percentage-based fine. However, in actual administrative enforcement practice, administrative penalties are often imposed as a fixed amount, and additional fines can only be levied as a daily surcharge of 3% of the fine amount. Whether in the administrative decision stage or the compulsory enforcement stage, late payment penalties generally apply to monetary fines and are rarely used in the context of personal penalties.

¹² Article 72 of the *Administrative Penalty Law of the People's Republic of China (2021 Revision)*
If the party fails to fulfill the administrative penalty decision within the prescribed period, the administrative authority that made the decision may take the following measures:

- (I) If the fine is not paid by the due date, a daily surcharge of 3% of the fine amount will be added, the total amount of the surcharge does not exceed the original fine amount;
- (II) In accordance with legal provisions, the seized or detained property may be sold at auction, legally disposed of, or the frozen deposits or remittances may be used to offset the fine;
- (III) Other administrative enforcement measures as stipulated by law may be taken;
- (IV) The administrative authority may apply to the People's Court for compulsory enforcement in accordance with the provisions of the *Administrative Compulsion Law of the People's Republic of China*.

If the administrative authority approves a delay or installment payment plan for the fine, the deadline for applying to the People's Court for compulsory enforcement shall be calculated from the end of the delayed or installment payment period.

exceed the amount of the original fine imposed by the administrative penalty decision.

3.3 Late Payment Penalty as an Additional Monetary Payment Obligation under the Administrative Compulsion Law

In the case that the tax authority makes a tax administrative decision in accordance with Article 32 of the Tax Collection Administration Law because a taxpayer fails to pay taxes, or a withholding agent fails to remit taxes within a prescribed period, the monetary payment obligation imposed by this administrative decision includes both the tax owned and the late payment penalty¹.

When the party concerned fails to perform this monetary payment obligation within the prescribed time, as aforementioned, a compulsory enforcement decision imposing an additional late payment penalty will be made by the administrative authority according to Article 45 of the Administrative Compulsion Law⁴, which resulting in an additional monetary payment obligation. In this case, two different types of late payment penalty at different stages are involved. The first type of late payment, imposed by the administrative decision, is included in the initial monetary payment obligation together with the tax owned; whereas the second type of late payment penalty, imposed by the compulsory enforcement decision as an additional monetary payment obligation, is a further late payment penalty imposed on top of the initial monetary payment obligation. However, as mentioned earlier, in such cases of compulsory enforcement, there is no longer a foundation of trust between the taxpayer and the tax authority, with the characteristic of one party forcing the other. Therefore, to protect legitimate rights and interests from being excessively violated, the second paragraph of Article 45 of the Administrative Compulsion Law stipulates that the additional fines or late payment penalty shall not exceed the amount of the monetary payment obligation.

3.4 Misconception in Legal Academia

There is a misconception in legal academia that the lack of a cap on the late payment penalty under the Tax Collection and Administration Law implies that there is no upper limit on the monetary payment obligation. Consequently, it is mistakenly assumed that the additional late payment penalty under the Administrative Compulsion Law, which calculated based on the monetary payment obligation, likewise has no upper limit. This understanding clearly leads to the erroneous conclusion that the second paragraph of Article 45 of the *Administrative Compulsory Law* does not apply.

If the additional late payment penalty under the Administrative Compulsion Law is calculated using the Fixed Penalty Method, the late payment penalty imposed by the administrative decision is clear on the day the compulsory enforcement decision is made, and therefore the amount of monetary payment obligation is likewise clear. In accordance with the second paragraph of Article 45 of the Administrative Compulsion Law, a fixed amount of additional late payment penalty can then be determined within the amount of the monetary payment obligation.

If the additional late payment penalty is calculated using the Percentage-Based Method, the amount of monetary payment obligation increases as the late payment penalty

increases. Not until the execution of the compulsory enforcement decision will the late payment penalty attain a fixed amount and will the monetary payment obligation then be determined. Since the additional late payment penalty is determined based on the monetary payment obligation, its amount will likewise only be established upon the execution of the compulsory enforcement decision.

Depending on the applicable rate of the additional late payment penalty, the taxpayer's actual payment time and the timing of the tax authority's enforcement actions, the additional late payment penalty may or may not exceed the amount of monetary payment obligation. If, at the time of executing the compulsory enforcement decision, the additional late payment penalty calculated exceeds the amount of the monetary payment obligation, the limitation set forth in Article 45, Paragraph 2 of the Administrative Compulsion Law still applies. As the provision does not limit its application to the act of issuing the compulsory enforcement decision, it can also be applied at the execution stage, ensuring that the penalty does not exceed the established monetary obligation.

4. The Dangers of Confusing the Two Types of Late Payment Penalty

4.1 Legal Implication: Confusion in the Application of *Article 88 of the Tax Collection and Administration Law of the People's Republic of China (2015 Amendment)*

Article 88 of the Tax Collection and Administration Law clearly distinguishes between administrative decisions and compulsory enforcement actions. Specifically, the tax payment and late payment penalty under administrative decisions are subject to an administrative review procedure before litigation; whereas the late payment penalty under compulsory enforcement decisions do not require such a pre-litigation review, and the parties may directly file a lawsuit with the people's court.¹³ Therefore, confusing the "late payment penalty" under the Tax Collection and Administration Law with the "late payment penalty" under the Administrative Compulsion Law will inevitably lead to confusion in applying Article 88 of the Tax Collection and Administration Law.

4.2 Rule-of-Law Risks

The "late payment penalty" under the Tax Collection and Administration Law and the "late payment penalty" under the Administrative Compulsion Law play distinct roles at different stages, with self-payment and compulsory payment complementing each other. Confusing these two penalties will result in either an overemphasis on the latter while

¹³ Article 88 of the Tax Collection and Administration Law of the People's Republic of China (2015 Amendment): Paragraph 1: When a taxpayer, withholding agent, or taxpayer guarantor has a dispute with the tax authority regarding tax matters, they must first pay or deposit the tax and late payment penalty, or provide the corresponding guarantee, in accordance with the tax authority's tax decision, and then may apply for administrative reconsideration in accordance with the law. If dissatisfied with the administrative reconsideration decision, they may file a lawsuit with the people's court.

Paragraph 2: If the parties are dissatisfied with the tax authority's penalty decision, enforcement measures, or tax preservation measures, they may apply for administrative reconsideration in accordance with the law, or they may file a lawsuit with the people's court.

Paragraph 3: If the parties do not apply for administrative reconsideration or file a lawsuit with the people's court within the prescribed period, and do not comply with the tax authority's penalty decision, the tax authority that made the penalty decision may adopt the compulsory enforcement measures as provided in Article 40 of this law, or apply to the people's court for compulsory enforcement.

neglecting the former, or vice versa, both of which would have serious negative consequences for the rule of law.

Overemphasis on the latter (compulsory enforcement): This would transform a clear legal provision into a discretionary decision, weakening the stability and predictability of the legal system. It would also convert voluntary compliance into enforcement, eroding the guiding and educational functions of legal norms and leaving only the coercive function. This would undermine the core self-reporting and self-payment system established by the tax collection and administration system.

Overemphasis on the former (administrative decision): This would lead to the failure to implement the decision, seriously undermining the authority and seriousness of the legal system. For example, if the late payment penalty under Article 32 of the Tax Collection and Administration Law were used as the sole basis for calculating late payment penalties, and the compulsory enforcement procedure were not initiated when it should be, it could result in missed opportunities to recover public funds in time while the taxpayer still has the ability to pay. In extreme cases, this may lead to the inability to recover public funds due to the bankruptcy of the taxpayer.

5. Legislative Aspect

The State Taxation Administration of China has suggested to the National People's Congress that the "late payment penalty" under the current Tax Collection and Administration Law be renamed as "tax interest," as it serves as compensation for the occupation of state tax funds and has an interest-like nature, distinguishing it from the "late payment penalty" under the Administrative Compulsion Law.¹⁴ However, despite the State Council's Legal Affairs Office seeking public opinion on the draft of the revised Tax Collection and Administration Law since 2015, there has been no substantial progress.

6. Conclusion

The "late payment penalty" under the Tax Collection and Administration Law and the "late payment penalty" under the Administrative Compulsion Law are based on distinct legal foundations, applied at different stages, and serve different functions, with voluntary compliance and compulsory enforcement complementing to each other. Confusing these two types of late payment penalty leads to serious negative consequences to the rule of

¹⁴ Notice from the General Office of the State Taxation Administration on Soliciting Opinions on the Revised Draft of the Tax Collection and Administration Law (Draft for Public Comment) [State Taxation Administration Office Letter [2014] No. 577]

The notice points out that with the formal implementation of the Administrative Compulsion Law in 2012, there exists a connection issue between the "late payment penalty" under the current Tax Collection and Administration Law and the "late payment penalty" under the Administrative Compulsion Law. The "late payment penalty" under the current Tax Collection and Administration Law is of an interest nature and serves as compensation for the occupation of state tax funds. It is automatically added in accordance with tax law provisions when payment is overdue. In contrast, the "late payment penalty" under the Administrative Compulsion Law is a compulsory enforcement measure that is imposed when the party fails to comply with the administrative decision. There is a conflict between the provisions on "late payment penalties" in the current Tax Collection and Administration Law and the Administrative Compulsion Law. To maintain consistency between legal provisions and restore the true nature of the tax late payment penalty, this revision of the law will rename the "tax late payment penalty" to "tax interest." If the taxpayer fails to fulfill the tax payment decision made by the tax authority, the provisions of the Administrative Compulsion Law will apply, and a late payment penalty of 0.5% per day will be imposed.

law. Judicial authorities should uphold judicial principles, resist those undesirable judicial practices that aim at attracting public attention by creating viral cases.

Q&A: Can the Court Seize Property with a Pending Registration?

By Xueying Chen

(I) Can the Court Seize, Attach, or Freeze Property with a Pending Registration?

According to Article 15 of the Regulations on Property Seizure, Attachment, and Freezing by People's Courts in Civil Enforcement (Judicial Interpretation No. 21 [2020]) issued by the Supreme People's Court, a court may seize, attach, or freeze property that has been subject to a pending registration, under certain circumstances. Specifically, if the judgment debtor sells a property to a third party who has paid part or all of the purchase price and taken actual possession of the property, but the property title transfer has not yet been registered, the court may take enforcement measures such as seizure, attachment, or freezing. However, if the third party has paid the full purchase price and taken actual possession of the property without fault, the court shall not seize, attach, or freeze the property.

Additionally, according to Article 30 of the Provisions on Handling Cases in Objections and Reconsiderations of Execution (Judicial Interpretation No. 21 [2020]) issued by the Supreme People's Court, in cases involving the enforcement of monetary claims, if a property subject to a pending registration has been seized, the purchaser may file an objection to the disposition of the property. The court should support such an objection. If the property meets the conditions for property rights registration, and the purchaser files a request for exclusion from enforcement, the court should also support the exclusion.

Therefore, even if a property has been subject to a pending registration, a court may still seize or take other enforcement actions, particularly if no valid objection or exclusion from enforcement has been raised or supported. Reference case: (2021) Supreme Court Civil Final 466.

(II) Can the Court Enforce Execution on Property with a Pending Registration?

The key issue regarding whether the court can enforce execution on property with a preliminary registration lies in whether the purchaser has acquired the property for residential purposes.

(1) Purchasers of Commercial Housing for Residential Purposes

According to Article 2 of the *Supreme People's Court's Reply on Issues Concerning the Protection of Consumers' Rights in the Purchase of Commercial Housing*:

"A consumer purchasing commercial housing for residential purposes and having paid the full price has the right to prioritize the delivery of their property over construction project claims, mortgage rights, and other debts. Consumers who have only paid part of

the price, but have paid the remaining amount before the conclusion of the first-instance court hearing, may also apply the above provisions."

It should be noted that for the exclusion of enforcement related to monetary debts, the purchaser must not have other properties available for residential use. According to Article 29 of the *Supreme People's Court's Provisions on the Handling of Objections and Reconsideration in Execution Cases*: "*In the execution of monetary debts, if the purchaser raises an objection to the commercial housing registered under the name of the real estate developer being executed upon, and if the following conditions are met, the People's Court should support the objection:*

- *A valid written sale contract was signed before the property was sealed by the court;*
- *The purchased commercial housing is for residential use and the buyer has no other properties available for residential use;*
- *The amount paid exceeds 50% of the total contract price."*

The interpretation of "*having no other residential properties*" can be understood based on Article 125 of the *National Court's Civil and Commercial Trial Work Conference Minutes* (hereinafter referred to as the "Ninth Civil Minutes"), which stipulates that the consumer must not have any residential properties within the same administrative district (city or county) as the involved property.

Reference Case: (2023) Supreme Court Civil Final 261

(2) Purchasers of Commercial Housing for Non-Residential Purposes

According to Article 126 of the *Ninth Civil Minutes*, the above preferential rights aim to protect consumers' living rights in response to irregularities in the pre-sale of commercial housing. Therefore, only those purchasers who meet the conditions of Article 125 of the *Ninth Civil Minutes* are entitled to such preferential rights. If a purchaser acquires the property for investment, speculation, or non-residential purposes, these preferential rights do not apply.

In cases where the purchaser has not acquired the property for residential purposes, the court may proceed with enforcement on the property with pending registration based on the priority of established mortgage rights or other secured monetary claims. Although the pending registration carries certain property rights effects, it is still considered a claim under civil law rather than a proprietary right and is subordinated to the priority of established security interests and preferential claims.

Reference Cases: (2021) Xiang Min Final 119, (2020) Gan Min Final 109

Regulatory Updates

1. Administrative Measures for Financial Leasing Companies

Effective from November 1, 2024

To regulate the business conduct of financial leasing companies, mitigate financial risks,

and promote their stable operation and high-quality development, these Measures are formulated in accordance with the *Banking Supervision Law* and other relevant laws and regulations. The main contents of these Measures are as follows:

1.1 Improvement of the Major Shareholder System

The minimum registered capital requirement for financial leasing companies is raised to 1 billion RMB (or its equivalent in freely convertible currency) to strengthen their risk-resistance capacity. New categories of major shareholders include state-owned capital, state-owned financial capital, and foreign manufacturing enterprises. Market access standards are appropriately raised, including total assets, operating income, registered capital, and minimum shareholding ratios for major shareholders.

1.2 Strengthening Business Classification Supervision

To further clarify the scope of core and specialized business activities, the Measures categorize businesses based on their risk levels and required professional expertise. Non-core and non-essential activities are to be excluded, and strict tiered supervision is applied.

1.3 Strengthening Corporate Governance Supervision

The Measures further specify regulatory requirements concerning the party-building of financial leasing companies, the "three meetings and one level" system, shareholder obligations, remuneration management, related party transactions, and information disclosure.

1.4 Strengthening Risk Management

Clear regulatory requirements are outlined regarding the capital adequacy, credit risk, liquidity risk, operational risk, and major related-party transactions of financial leasing companies. The Measures optimize additional regulatory indicators and specify the requirements for regulatory ratings and enforcement actions.

1.5 Regulating Cross-border Leasing Business

The Measures establish rules for the operation of cross-border financing leases, stipulating that financial leasing companies manage overseas project companies as specialized businesses.

1.6 Improving Business Operation Rules

Financial leasing companies must select appropriate leased assets, ensuring clear ownership, specificity, disposability, economic value, and income generation potential.

2. Interpretation of Several Legal Issues Regarding Criminal Cases of Refusal to Execute Judgments or Rulings

Effective from December 1, 2024

To severely punish the crime of refusal to execute judgments, which has elicited strong public responses, and to effectively protect the legitimate rights of successful litigants, the Supreme People's Court and the Supreme People's Procuratorate jointly issued this interpretation. The main contents include the following:

2.1 Clarification of “Able to Execute but Refuses to Execute, with Severe Circumstances”

These circumstances primarily include:

- Maliciously disposing of property rights without compensation by abandoning claims or collateral, maliciously extending the maturity of a debt, or disposing of property rights through fraudulent settlements or false transfers, which prevent the execution of judgments or rulings;
- Engaging in acts that maliciously diminish assets subject to liability, such as acquiring another's property at an unreasonably high price or providing guarantees for another person's debts, reducing the assets available to fulfill the judgment or ruling, leading to its non-enforcement;
- Refusing to fulfill obligations, such as assisting in the exercise of personal rights, even after coercive measures (e.g., fines or detention) have been taken, thereby preventing enforcement of the judgment or ruling, with particularly severe circumstances;
- Obstructing enforcement personnel from entering the execution site by means such as intimidation, verbal abuse, mob disturbances, or threats, resulting in the inability to carry out enforcement, with particularly severe circumstances;
- And other similar situations.

2.2 Clarification of “Particularly Serious Circumstances”

This includes: obstruction of enforcement through fraudulent litigation, arbitration, or notarization, causing the judgment or ruling to be unenforceable; organizing groups to interfere with the execution process; using violent methods such as siege, detention, or assault against enforcement personnel, preventing the execution of judgments; and causing serious consequences such as suicide or self-harm of the applicant due to refusal to execute the judgment; and other particularly serious circumstances.

2.3 Hiding or transferring assets before the judgment or ruling becomes effective may constitute the crime of refusing to execute a judgment or ruling.

If a person, in order to evade execution obligations, engages in acts such as hiding or transferring assets after the commencement of litigation and before the judgment becomes effective, and if these actions are verified to be true after the judgment or ruling becomes effective, and the person refuses to comply with the execution upon being required to do so, criminal liability for the crime of refusing to execute a judgment or ruling may be pursued.

2.4 The Criminal Liability of Third Parties for Assisting in Hiding or Transferring Assets

If a third party, knowing that an individual who is obligated to execute a judgment or ruling has the ability to comply but refuses to do so, conspires with the obligated individual and assists in hiding or transferring assets or other acts of refusal to execute, resulting in the inability to enforce the judgment or ruling, the third party may be prosecuted as an accomplice for the crime of refusing to execute a judgment or ruling.

2.5 Aggravating Circumstances

If a person refuses to comply with a judgment or ruling requiring the payment of support fees, medical expenses, or labor remuneration, and such refusal constitutes a criminal offense, the person shall be subject to a more severe penalty in accordance with the law.

3. Measures for Joint Punishment of Telecommunications Network Fraud and Related Illegal Activities

Effective from December 1, 2024

In order to combat and govern telecommunications network fraud and its related crimes, these Measures are formulated in accordance with the *Anti-Telecommunications Network Fraud Law* and other related laws and regulations. The main contents are as follows:

3.1 Scope of Punishment

Persons criminally liable for telecommunications network fraud and related crimes; individuals, organizations, or entities identified as engaging in the illegal buying, selling, renting, or lending of phone cards, IoT cards, fixed-line telephones, telecom lines, SMS ports, bank accounts, payment accounts, digital RMB wallets, internet accounts, etc.

3.2 Punitive Measures

Comprehensive measures including financial sanctions, telecommunications network restrictions, and credit sanctions will be applied, while ensuring the basic financial and communication services required for the punished individuals' living needs.

- *Financial Sanctions:*

- 1) Restrictions on non-counter withdrawal functions of bank accounts and digital RMB wallets held by the punished individual.
- 2) Restrictions on payment account services, with account balances transferable only to the individual's bank account with the same name.
- 3) Suspension of opening new payment accounts or real-name digital RMB wallets for the individual. Newly opened bank accounts shall comply with the requirements set forth in Paragraph 1 of this Article.

- *Telecommunications Network Sanctions:*

- 1) Restrictions on functions and services associated with phone cards, IoT cards,

fixed-line telecom lines, SMS ports, etc., under the name of the subject of punishment, including but not limited to transfer and other related services;

- 2) Restrictions on the use of internet accounts registered under the phone cards held by the subject of punishment that is identified as having fraud risk, as well as related business operations.

- *Credit Sanctions:*

- 1) Individuals will be included in the “seriously untrustworthy subject list” of telecommunications network fraud and shared on the national credit information platform.
- 2) Information on these individuals will be publicly disclosed through the “Credit China” website and included in the financial credit information database.

3.3 Duration of Punishment

The duration of punishment for different subjects will be 2 or 3 years, with a maximum continuous punishment period of 5 years if the subject is included in the sanction list multiple times within the same duration.

4. *Pre-school Education Law of the People's Republic of China*

Adopted on November 8, 2024, and effective from June 1, 2025

In order to ensure that children of the appropriate age receive pre-school education, standardize the implementation of pre-school education, and promote its universal and safe high-quality development, this Law is formulated in accordance with the Constitution. The main contents of the Law include:

4.1 Public Welfare and Inclusiveness

The state will promote the popularization of pre-school education, building a public service system that is comprehensive, well-distributed, inclusive, safe, and of high quality, with particular emphasis on the needs of ethnic minorities, border areas, underdeveloped regions, and vulnerable groups such as orphans, children with disabilities, and left-behind children.

4.2 Government Leadership and Guarantee Mechanism

The Law stipulates that the primary source of funding for pre-school education shall be from government investment, supplemented by reasonable family contributions and diversified funding channels. It also defines the sharing mechanism for pre-school education fiscal input and subsidies.

4.3 Child-Centered, Improving Care and Education Quality

Local governments at various levels shall facilitate the access of children to pre-school education near their parents' or guardians' workplace or residence. No form of entrance examination or testing is allowed for children entering pre-school. Pre-school activities

shall be regulated, with a focus on combining care with education, and no primary school curricula should be taught.

4.4 Teacher Quality Enhancement

- Strengthen staffing arrangements. The Law requires that kindergartens and their organizers to ensure adequate and appropriate staffing of teachers and other personnel according to relevant standards.
- Implement strict hiring management. Kindergartens must conduct background checks and health examinations for teachers and other staff they hire. Individuals whose backgrounds or health conditions may pose a risk to the safety and well-being of children, or who are deemed unsuitable for early childhood education, must not be hired.
- Strengthen compensation guarantees. Kindergartens and their organizers must guarantee the salaries and welfare of teaching staff. The salaries of teachers in public kindergartens should be incorporated into the scope of fiscal guarantees.

4.5 Strengthening Fee Management

Reasonable fee standards shall be set for public and non-profit private kindergartens and periodic fee adjustment mechanism shall be established to encourage reasonable charges, and curb excessive fees.

ForTran News

- On the afternoon of November 8, 2024, Attorney Ivy Yang from our firm participated in the "Singapore Workshop Sharing Session and Huangpu District Foreign-related Legal Services Advancement Meeting," organized by the Huangpu District Bureau of Justice. She gave a presentation on the topic "Overview of Singapore Tax System and Economic Substance Considerations for Chinese Enterprises Investing in Singapore."
- On November 11, 2024, Attorney Ben Lu from our firm mentored students from the master's program in Taxation at Shanghai University of Finance and Economics. The students earned outstanding results at the 2024 National Tax Risk Management Case Competition for Undergraduate Institutions, securing second and third place in the Shanghai regional competition. Attorney Ben Lu was also named "Outstanding Mentor of the Shanghai Regional Competition."
- On November 20, 2024, Attorney Ben Lu and his team from our firm were invited by Shanghai Tengxin Law Firm to participate in the preparatory meeting for the "Third-Party Data Services" Alliance in the Yangtze River Delta.
- On the morning of November 25, 2024, Attorney Lily Gu from our firm was invited by ZIBS, Zhejiang University International Business School, to give an English lecture on "International Taxation" to international students in the "Global Communication and Management" (GCM) program.