



Detailed Rules for the Implementation of the Interim Regulation of the People's Republic of China on Value Added Tax

(Order No. 50 of the Ministry of Finance and the State Administration of Taxation on December 15, 2008)

Article 1 These Detailed Rules are formulated according to the Interim Regulation of the People's Republic of China on Business Tax (hereinafter referred to as the Regulation).

Article 2 The term "services as prescribed in the Regulation" as mentioned in Article 1 of the Regulation refers to the services covered by the levying scope of tax items of the industries of transport, construction, finance and insurance, post and telecommunications, cultural and sports, entertainment and service (hereinafter referred to as "taxable services").

Processing, repair and replacement shall not be included in "services as prescribed in the Regulation" (hereinafter referred to as "non-taxable services").

Article 3 The expression "provision of services as prescribed in the Regulation, the transfer of intangible assets or the sale of immovables" as mentioned in Article 1 of the Regulation refers to the acts of providing services as prescribed in the Regulation, transferring intangible assets or ownership of immovables on a paid basis (hereinafter referred to as "taxable acts"). However, the services as prescribed in the Regulation which are provided by the employees of entities or individual industrial and commercial businesses for the entities where they work or their employers shall be excluded.

The term "on a paid basis" as mentioned in the preceding paragraph refers to obtaining money, goods and other economic benefits.

Article 4 The expression "provision of services as prescribed in the Regulation, the transfer of intangible assets or the sale of immovables within the territory of the People's Republic of China (hereinafter referred to as "within the territory") as mentioned in Article 1 of the Regulation refers to:

(1) The entities or individuals providing or accepting services as prescribed in the Regulation are within the territory;

(2) The entities or individuals accepting the transferred intangible assets (excluding land use rights) are within the territory;

(3) The land of which the use right is transferred or leased is within the territory; and

(4) The immovables sold or leased are within the territory.

Article 5 Where taxpayers fall under any of the following circumstances, it shall be deemed as occurrence of taxable acts:

(1) Entities or individuals gratuitously present immovables or land use rights to other entities or individuals;

(2) The act of self-construction of entities or individuals who sell their newly self-constructed buildings (hereinafter referred to as self-construction); or

(3) Other circumstances as prescribed by the Ministry of Finance and the State Administration of Taxation.

Article 6 A sale involving both taxable services and goods shall be regarded as a mixed sale. Except those as prescribed in Article 7 of these Detailed Rules, the mixed sales made by enterprises, enterprise entities or individual industrial and commercial businesses engaged in the production, wholesale or retail of goods shall be regarded as sales of goods, which shall be exempt from business tax; mixed sales made by other entities and individuals shall be regarded as provision of taxable services, which shall be subject to business tax.

The term "goods" as mentioned in Paragraph 1 refers to tangible moveables, including electric power, heating power and gas.

The term "enterprises, enterprise entities or individual industrial and commercial businesses engaged in the production, wholesale or retail of goods" as mentioned in Paragraph 1 includes enterprises, enterprise entities

and individual industrial and commercial businesses who are mainly engaged in the production, wholesale or retail of goods, and concurrently engaged in taxable services.

Article 7 For the following mixed sales of taxpayers, the turnover of taxable services and sales amounts of goods shall be calculated separately, the business tax shall be levied on the turnover of taxable services and shall not be levied on the sales amounts of goods. If taxpayers fail to calculate them separately, the competent tax authorities shall determine the turnover of their taxable services:

- (1) The act of selling self-produced goods when providing services of construction industry; and
- (2) Other circumstances as prescribed by the Ministry of Finance and the State Administration of Taxation.

Article 8 Where taxpayers are engaged concurrently in taxable acts and goods or non-taxable services, the turnover of taxable acts and the sales amounts of goods or non-taxable services shall be calculated separately, and the business tax shall be levied on the turnover of their taxable acts and shall not be levied on the sales amounts of goods or non-taxable services. If taxpayers fail to calculate them separately, the competent tax authorities shall determine the turnover of their taxable acts.

Article 9 The term “entities” as mentioned in Article 1 of the Regulation refers to enterprises, administrative entities, public institutions, military entities, social groups and other entities.

The term “individuals” as mentioned in Article 1 of the Regulation refers to individual industrial or commercial businesses and other individuals.

Article 10 Except the circumstances as prescribed in Articles 11 and 12 of these Detailed Rules, the entities with the liability to pay business tax shall be those who have taxable acts and accept money, goods or other economic benefits, excluding the internal institutions of entities which are not required to handle tax registration according to law.

Article 11 Where entities operate by means of contracting, leasing or affiliation, and the contractors, lessees or persons who are affiliated (hereinafter referred to as “contractors” generally) have taxable acts, the employers shall be taxpayers if the contractors operate in the name of the employers, lessors or persons who affiliate others (hereinafter referred to as “employers” generally) and if the employers are to assume the relevant legal liabilities; otherwise, the contractors shall be taxpayers.

Article 12 For the operations of central railways, the taxpayer shall be the Ministry of Railways. For the operations of joint venture railways, the taxpayers shall be joint venture railway companies. For the operations of local railways, the taxpayers shall be the local railway administration institutions. For the operations of capital construction lines under provisional administration, the taxpayers shall be the administration institutions of capital construction lines under provisional administration.

Article 13 The term “additional fees and charges” as mentioned in Article 5 of the Regulation includes commissions, subsidies, funds, fees for raising funds, profits returned, incentive fees, penalties for breach of contract, overdue fines, interests of deferred payment, compensation, fund collected on behalf of others, advance payments on behalf of others, penalty interests and other additional charges of various natures, excluding the government funds or administrative charges collected on behalf of others which concurrently meet the following conditions:

- (1) Government funds established upon approval of the State Council or the Ministry of Finance, and administrative charges established upon approval of the State Council or the people’s governments at the provincial level and the competent departments of public finance and price thereof;
- (2) Financial bills printed by the public finance departments at or above the provincial level are issued when the said fees are collected; and
- (3) All funds collected are fully turned in to the treasury.

Article 14 Where the turnover of a taxpayer is reduced due to refund after the turnover is computed and

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business tax is paid, the paid business tax shall be refunded or be deducted from the taxable business tax to be paid by the taxpayer in the future.

Article 15 Where a taxpayer has a taxable act, and if the price and the discount amount are indicated in the same invoice, the turnover shall be the price after discount; if the discount amount is indicated in a separate invoice, it shall not be deducted from the turnover regardless of how it is treated in accounting.

Article 16 Except the circumstances as prescribed in Article 7 of these Detailed Rules, where a taxpayer provides services of construction industry (excluding decoration services), the turnover of the taxpayer shall include the cost of raw materials, equipment, other materials and power used in the projects, excluding the cost of equipment provided by the building side.

Article 17 The turnover of the entertainment industry shall be the total price and additional fees and charges collected from the operation of the entertainment industry, including admission charges, seat fees, song request fees, fees for wines and cigarettes, soft drinks, tea, flowers, snacks, etc., and other fees for operating the entertainment industry.

Article 18 The term “transactions of financial commodities such as foreign exchange, negotiable instruments, futures, etc.,” as mentioned in Article 5 (4) of the Regulation refers to the transactions conducted by taxpayers in foreign exchange, negotiable securities, non-goods futures and other financial commodities. The goods futures shall be exempt from business tax.

Article 19 The expression “vouchers in compliance with the relevant provisions of the competent tax department under the State Council (hereinafter generally referred to as “lawful and valid vouchers”)” as mentioned in Article 6 of the Regulation refers to the following:

(1) For the payment to an entity or individual within the territory whose act is covered by the levying scope of business tax or value-added tax, the lawful and valid vouchers shall be the invoices issued by the entity or individual;

(2) For the administrative charges or government funds paid, the lawful and valid vouchers shall be the financial bills issued;

(3) For the payment to an overseas entity or individual, the lawful and valid vouchers shall be the receipts signed in by such entity or individual. If the tax authority has any doubt on the receipts signed in, it may require the entity or individual to provide the confirmation issued by an overseas notary office; and

(4) Other lawful and valid vouchers as prescribed by the State Administration of Taxation.

Article 20 If a taxpayer falls under the circumstance of “significantly low prices without justifiable reasons” as mentioned in Article 7 of the Regulation or has the act which is deemed as a taxable act as prescribed in Article 5 of these Detailed Rules but has no turnover, the turnover shall be determined in the following order:

(1) It shall be determined at the average price of similar taxable acts of the taxpayer in the latest period;

(2) It shall be determined at the average price of similar taxable acts of other taxpayers in the latest period;

(3) It shall be determined according to the following formula:

Turnover = business cost or project cost × (1+ cost/profit ratio) / (1-business tax rate)

The cost/profit ratio in the formula shall be determined by the tax bureaus of provinces, autonomous regions and municipalities directly under the Central Government.

Article 21 Where a taxpayer settles the turnover in the currencies other than Renminbi, it may choose the central parity of Renminbi exchange rate on the same day when the sales amounts occur or the first day of the current month as the Renminbi conversion rate of the turnover. The taxpayer shall determine which conversion rate is to be adopted in advance and shall not make any change after the decision within one year.

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Article 22 The scope of part of items exempt from business tax as prescribed in Article 8 of the Regulation shall be limited as follows:

(1) The term “services provided on an individual basis by the disabled” as mentioned in Paragraph 1 (2) refers to the services provided by the disabled themselves for the society.

(2) The term “schools and other educational institutions” as mentioned in Paragraph 1 (4) refers to ordinary schools, and various schools established upon the approval of the people’s governments at or above the level of a prefecture or city or the education administrative departments at the same level, and the record of schooling of whose students are recognized by the state.

(3) The term “agricultural mechanical ploughing” as mentioned in Paragraph 1 (5) refers to the business of cultivation (including ploughing and weeding, planting, harvesting, threshing and plant protection) conducted in the agriculture, forestry and husbandry with agricultural machinery; the term “irrigation and drainage” refers to the business of irrigating farmlands or draining flooded farmlands; the term “prevention and treatment of plant diseases and insect pests” refers to the business of prediction, report, prevention and control of plant diseases and insect pests in agriculture, forestry, husbandry and fishery; the term “agriculture and animal husbandry insurance” refers to the business of providing insurance for animals and plants in the planting industry, breeding industry and husbandry; the term “related technical training” refers to the technical training business related to agricultural mechanical ploughing, irrigation and drainage, prevention and treatment of plant diseases and insect pests, and plant protection as well as the technical training business of making farmers acquire knowledge of agriculture and husbandry insurance; and the tax exemption scope of business of breeding as well as the prevention and treatment of diseases of poultry, livestock and aquatic animals includes the business of providing drugs and medical appliances related to such services.

(4) The term “cultural activities held by memorial halls, museums, cultural centers, governing bodies of the protected historic and cultural sites, art galleries, exhibition halls, academies of painting and calligraphy,

and libraries” as mentioned in Paragraph 1 (6) refers to the cultural activities held by the aforesaid entities in their own places which are covered by the levying scope of the tax items of culture and sports industry. The income from admission tickets refers to the income collected from selling the tickets at the first gate. The income from admission tickets collected for the cultural and religious activities held at places of worship refers to the income collected from selling tickets for cultural and religious activities held in Buddha temples, Taoist temples, mosques and churches.

(5) The “insurance products for export” as mentioned in Paragraph 1 (7) include export goods insurance and export credit insurance.

Article 23 The term “benchmark for the payment of business tax” as mentioned in Article 10 of the Regulation means that the total turnover of a taxpayer reaches the benchmark.

The benchmark for the payment of business tax shall apply to individuals only.

The range of the benchmark for the payment of business tax shall be prescribed as follows:

- (1) If the business tax is paid according to periods, the benchmark for the payment of business tax shall apply to those with a turnover of RMB1000-5000 yuan per month; and
- (2) If the business tax is paid by times, the benchmark for the payment of business tax shall apply to those with a turnover of RMB100 yuan each time (per day).

The public finance departments (bureaus) and tax bureaus of provinces, autonomous regions and municipalities directly under the Central Government shall, according to their actual situations, determine the benchmark for the payment suitable to their local areas within the prescribed range and file them with the Ministry of Finance and the State Administration of Taxation for archival purpose.

Article 24 The term “business proceeds received” as mentioned in Article 12 of the Regulation refers to the fund collected during or after the completion of taxable acts of taxpayers.

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The “date on which documented evidence of the right to collect business proceeds is obtained” as mentioned in Article 12 of the Regulation refers to the same day of payment date as determined in the written contract; if there is no written contract concluded or the written contract fails to determine the payment date, it shall be the same day when the taxable act is completed.

Article 25 Where a taxpayer transfers a land use right or sells an immovable property by prepayment, the time at which the liability to pay business tax arises shall be the same day when the advance payment is received.

Where a taxpayer provides services of construction industry or leasing industry by prepayment, the time at which the liability to pay business tax arises shall be the same day when the advance payment is received.

Where a taxpayer has an act of “gratuitously presenting immovables or land use rights to any other entity or individual” as mentioned in Article 5 of these Detailed Rules, the time at which the liability to pay business tax arises shall be the same day when the ownership of the immovable or the land use right is transferred.

Where a taxpayer has the “act of self-construction” as mentioned in Article 5 of these Detailed Rules, the time at which the liability to pay business tax arises shall be the time at which the tax payment liability for sale of self-constructed buildings arises.

Article 26 According to Article 14 of the Regulation, where a taxpayer shall file a tax return with the competent tax authority at the place where the taxable services take place, or where the land or immovable property is located, but fails to do so for more than six months from the month when it shall file a tax return, the competent tax authority at the place where its office or place of residence is located shall collect the tax it should have paid.

Article 27 The time limit for payment of business tax for banks, finance companies, trust and investment companies, credit cooperatives and permanent representative offices of foreign enterprises shall be one quarter.

Article 28 These Detailed Rules shall come into force on January 1, 2009.

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