

# 2008

## Latest PRC Tax Compliance

— Laws, Regulations & Commentaries ( Bilingual Edition )

### 中国最新税务合规指南

—— 税收法律、法规及评注（中英文版）

刘佐 刘铁英 编译

By LIU Zuo, LIU Tieying

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# FOREWORD

This book has compiled the currently effective tax laws, regulations and rules, issued from the foundation of PRC to March 1, 2008 by the NPC and its standing committee, the State Council (including the former Administrative Council), the Ministry of Finance, the State Administration of Taxation (including the former Tax Administration Bureau of the Ministry of Finance and the State Tax Bureau) and the General Administration of Customs.

The most valuable innovation in this book is the commentaries or technical treatments, where necessary, provided on important points of revision during the course of the editing of the documents.

The compilation of the documents and the commentaries thereof are provided by Mr. Liu Zuo, Director-General and Researcher of the Taxation Science and Research Institute of the State Administration of Taxation of China and are translated by Mr. Liu Tieying from the State Administration of Taxation of China.

With the economic development and the perfecting of the tax system of China, some tax legislation may be adjusted. Therefore, this book shall be updated accordingly to meet the need of the readers (this is the second edition).

We would like hereby to express our gratitude to the China Financial and Economic Publishing House for the publication and re-publication of the book.

Editors  
March 1, 2008

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\* PRC: the People's Republic of China  
NPC: the National People's Congress

\*\* Column En refers to the page number for English part, and Column Cn for Chinese part.

## **I. GOODS AND SERVICE TAXES**

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### **PROVISIONAL REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA ON VALUE ADDED TAX**

*Issued by the State Council Decree No. 134 of PRC on December 13, 1993*

#### **Article 1**

All units and individuals engaged in the sales of goods, provisions processing, repairs and replacement services, and the importation of goods within the territory of the People's Republic of China are taxpayers of Value Added Tax ( hereinafter referred to as "taxpayers" ), and shall pay VAT in accordance with these Regulations.

#### **Article 2**

VAT rates:

1. For taxpayers selling or importing goods, other than those stipulated in items 2 and 3 of this Article, the tax rate shall be 17% .

2. For taxpayers selling or importing the following goods, the tax rate shall be 13%:

(1) Food grains<sup>1</sup>, edible vegetable oils.

(2) Tap water<sup>2</sup>, heating, air conditioning, hot water, coal gas, liquefied petroleum gas, natural gas, methane gas, coal/charcoal products for household use.

(3) Books, newspapers, magazines. <sup>3</sup>

(4) Feed, chemical fertilizers, agricultural chemicals, agricultural machinery and covering plastic film for farming. <sup>4</sup>

(5) Other goods as regulated by the State Council. <sup>5</sup>

3. For taxpayers exporting goods, the tax rate shall be 0%, except as otherwise stipulated by the State Council. <sup>6</sup>

4. For taxpayers providing processing, repairs and replacement services (hereinafter referred to as “taxable services”), the tax rate shall be 17%.

Any adjustments to the tax rates shall be determined by the State Council.

### **Article 3**

For taxpayers dealing in goods or providing taxable services with different tax rates, the sales amounts for goods or taxable services with different tax rates shall be accounted for separately. If the sales amounts have not been accounted for separately, the higher tax rate shall be applied.

### **Article 4**

Except as stipulated in Article 13 of these Regulations, for taxpayers engaged in the sales of goods or the provision of taxable services (hereinafter referred to as “selling goods or taxable services”), the tax payable shall be the balance of output tax for the period after deducting the input tax for the period. The formula for computing the tax payable is as follows:

$$\text{Tax payable} = \text{Output tax for the period} - \text{Input tax for the period}$$

If the output tax for the period is less than and insufficient to offset against the input tax for the period, the excess input tax can be carried forward for set-off in the following periods. <sup>7</sup>

### **Article 5**

For taxpayers selling goods or taxable services, the output tax shall be the VAT payable calculated based on the sales amounts and the tax rates prescribed in Article 2 of these Regulations and collected from the purchasers. The formula for computing the output tax is as follows:

$$\text{Output tax} = \text{Sales amount} \times \text{Tax rate}$$

### **Article 6**

The sales amount shall be the total consideration and all other charges receivable from the purchasers by the taxpayer selling goods or taxable services, but excluding the output tax collectable.

The sales amount shall be computed in Renminbi. The sales amount of the taxpayer settled in foreign currencies shall be converted into Renminbi according to the exchange rate prevailing in the foreign exchange market.

### Article 7

Where the price used by the taxpayer in selling goods or taxable services is markedly low and without proper justification, the sales amount shall be determined by the competent tax authorities.

### Article 8

For taxpayers who purchase goods or receive taxable services ( hereinafter referred to as “purchasing goods or taxable services” ), VAT paid or borne shall be the input tax.

The input tax creditable is restricted to the amount of VAT payable as indicated on the following VAT credit document:<sup>8</sup>

1. VAT indicated in the special VAT invoices obtained from the sellers.
2. VAT indicated on the tax payment receipts obtained from the customs office.

The creditable input tax for the purchasing tax exempt agricultural products is calculated based on a deemed deduction rate at 10%<sup>9</sup> on the actual purchasing price. The formula for calculating the input tax is as follows:

$$\text{Input tax} = \text{Purchasing price} \times \text{Deduction rate}$$

### Article 9

Where taxpayers purchasing goods or taxable services have not obtained and kept the VAT credit document in accordance with the regulations, or the VAT payable and other relevant items in accordance with the regulations are not indicated on the VAT credit document, no input tax shall be credited against the output tax.

### Article 10

Input tax on the following items shall not be credited against the output tax:

1. Fixed assets purchased.<sup>10</sup>
2. Goods purchased or taxable services used for non-taxable items.
3. Goods purchased or taxable services used for tax exempt items.
4. Goods purchased or taxable services used for group welfare or personal consumption.
5. Abnormal losses of goods purchased.
6. Goods purchased or taxable services consumed in the production of work-in-progress or finished goods which suffer abnormal losses.

### **Article 11**

Small-scale taxpayers engaged in selling goods or taxable services shall use a simplified method for calculating the tax payable.<sup>11</sup>

The criteria for small-scale taxpayers shall be regulated by the Ministry of Finance.

### **Article 12**

The rate applicable for small-scale taxpayers selling goods or taxable services shall be 6%.<sup>12</sup>

Any adjustment to the applicable rate shall be determined by the State Council.

### **Article 13**

For small-scale taxpayers selling goods or taxable services, the tax payable shall be calculated based on the sales amount and the applicable rate prescribed in Article 12 of these Regulations. No input tax shall be creditable. The formula for calculating the tax payable is as follows:

$$\text{Tax payable} = \text{Sales amount} \times \text{applicable rate}$$

The sales amount shall be determined in accordance with the stipulations of Article 6 and Article 7 of these Regulations.

### **Article 14**

Small-scale taxpayers with sound accounting who can provide accurate taxation information may, upon the approval of competent tax authorities, not be treated as small-scale taxpayers. The tax payable shall be computed pursuant to the relevant stipulations of these Regulations.<sup>13</sup>

### **Article 15**

For taxpayers importing goods, the tax payable shall be computed based on the composite assessable price and the tax rates prescribed in Article 2 of these Regulations. No tax will be credited. The formulas for computing the composite assessable price and the tax payable are as follows:

$$\text{Composite assessable price} = \text{Customs dutiable value} + \text{Customs Duty} + \text{Consumption Tax}$$

$$\text{Tax payable} = \text{Composite assessable price} \times \text{Tax rate}$$

### **Article 16**

The following items shall be exempt from VAT:

1. Self-produced agricultural products sold by agricultural producers.
2. Contraceptive medicines and devices.

3. Antique books.

4. Importation of materials and equipment directly used in scientific research, experiment and education.

5. Importation of materials and equipment from foreign governments and international organizations as free of charge assistance.<sup>14</sup>

6. Equipment and machinery required to be imported under contract processing, contract assembly and compensation trade.<sup>15</sup>

7. Articles imported directly by organizations for the disabled for special use by the disabled.

8. Sale of goods which have previously been used by the sellers<sup>16</sup>.

Except as stipulated in the above paragraph, the VAT exemption and reduction items shall be regulated by the State Council. Local governments or departments shall not regulate any tax exemption or reduction items.<sup>17</sup>

#### **Article 17**

For taxpayers engaged in tax exempt or tax reduced items, the sales amounts for tax exempt or tax reduced items shall be accounted for separately. If the sales amounts have not been separately accounted for, no exemption or reduction is allowed.

#### **Article 18**

For taxpayers whose sales amounts have not reached the VAT minimum threshold stipulated by the Ministry of Finance, the VAT shall be exempt.

#### **Article 19**

The time at which a liability to VAT arises is as follows:

1. For sales of goods or taxable services, it is the date on which the sales sum is received or the documented evidence of right to collect the sales sum is obtained.

2. For importation of goods, it is the date of import declaration.

#### **Article 20**

VAT shall be collected by tax authorities. VAT on the importation of goods shall be collected by the customs office on behalf of the tax authorities.

VAT on personal-use articles brought or mailed into China by individuals shall be levied together with Customs Duties. Detailed measures shall be formulated by the Tariff Policy Committee of the State Council together with the relevant departments.<sup>18</sup>



## Article 21

Taxpayers selling goods or taxable services shall issue special VAT invoices to the purchasers. Sales amounts and output tax shall be separately indicated in the special VAT invoices.

Under any one of the following situations, the invoice to be issued shall be an ordinary invoice rather than the special VAT invoice:

1. Sale of goods or taxable services to consumers.
2. Sale of VAT free goods.
3. Sale of goods or taxable services by small-scale taxpayers.

## Article 22

The location for the payment of VAT is as follows:

1. Businesses with a fixed establishment shall report and pay tax with the local competent tax authorities where the establishment is located. If the head office and branch are not situated in the same county (or city), they shall report and pay tax separately with their respective local competent tax authorities. The head office may, upon the approval of the State Administration of Taxation or its authorized tax authorities, report and pay tax on a consolidated basis with the local competent tax authorities where the head office is located.

2. Businesses with a fixed establishment selling goods in a different county (or city) shall apply for the issuance of an outbound business activities tax administration certificate from the local competent tax authorities where the establishment is located and shall report and pay tax likewise. Businesses selling goods and taxable services in a different county (or city) without the outbound business activities tax administration certificate issued by the local competent tax authorities where the establishment is located, shall report and pay tax with the local competent tax authorities where the sales activities take place. The local competent tax authorities where the establishment is located shall collect the overdue tax which has not been reported and paid to the local competent tax authorities where the sales activities take place.

3. Businesses without a fixed base selling goods or taxable services shall report and pay tax to the local competent tax authorities where the sales activities take place.

4. For importation of goods, the importer or his agent shall report and pay tax to the customs office where the imports are declared.

## Article 23

The VAT assessable period shall be one day, three days, five days, ten days, fifteen days or one month. The actual assessable period of the taxpayer shall be