

中英文对照本

# 涉外税务法规与实务 (上)

Laws and Practices on  
Taxation of Foreign  
Business in PRC

Volume One

中国税务出版社

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《涉外税务法规与实务》编写组

中国税务出版社

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## 前言

随着中国对外开放政策的实施及市场经济的确立,税收法制建设日趋完善。为有利于国际社会了解中国现行税收制度,帮助外商投资企业及外国企业管理者理解和掌握税收政策,为办理涉外税收事宜的税务师、会计师、律师、审计师及企业财会人员提供办税依据及参考,中国税务出版社组织编辑了《涉外税务法规与实务》(中英文对照)一书。该书中文部分由从事税收政策制定的政府官员、从事税收教学研究的专家学者、从事税收征管的工作人员共同承担编辑。该书的英文翻译由多位从事经贸及法律专业的英文专家完成。内容包括涉外税收涉及的16个税种、附加费及税收征管与税务代理。

《涉外税务法规与实务》一书是截至目前,包括涉外税收政策最新、最完整的一部中英文对照图书。

本书中文部分的编审由以下人员承担:

国家税务总局王紫阳、周怀世、佟国涛、沈甫明、朱海燕、王凯、梅红、翁笑天、张琴、梁伟、薛晓鹏,北京市国税局孙小平、王颖非、裴俊、王宝杰、陈柯,北京市地税局杨志强、王伟。

## Preface

Following implementation of China's policy of opening to the outside world and establishing a market economy, the country's taxation system has been gradually perfected. In order to help the international community understand China's currently implemented taxation system, in order to help the managers of enterprises with foreign investment and foreign enterprises get a firm understanding of the taxation policies, in order to supply the basis and a reference for those who manage taxation matters relating to foreigners in taxation firms, accounting firms, law firms, auditing firms and for the accounting personnel in relevant enterprises, the China Taxation Publishing House compiled and edited "Regulations and Practices Concerning Taxation of Foreigners" (Chinese—English cross—referenced). Editing of the Chinese part of this book was jointly undertaken by Government officers engaged in formulating taxation policy, scholars engaged in taxation study and research and personnel engaged in taxation administration and collection work. The contents cover 20 kinds of taxes, surcharges, taxation collection, taxation administration and taxation agency concerning foreigners.

"Regulations and Practices Concerning Taxation of Foreigners" is up-to-date, includes the latest taxation policies relating to foreigners, and is the most complete Chinese—English cross—referenced book of its kind.

Editing and examination of the Chinese part of this book was undertaken by the following people:

Wang Ziyang, Zhou Huaishi, Tong Guotao, Shen Puming, Zhu Haiyan, Wang Kai, Mei Hong, Ong Xiaotian, Zhang Qin, Liang Wei and Xue Xiaopeng from the State Administration of Taxation; Sun Xiaoping, Wang Yingfei, Pei Jun, Wang Baojie and Chen Ke from the State Taxation Office Beijing Municipality; Yang Zheqiang and Wang Wei from the Beijing Municipality Local Taxation Office.

本书英文翻译由以下人员承担：

外企税由栾河、秦得春、岳冠华翻译，增值税由马继森翻译，个人所得税由王有茹、孙春华、朱彤翻译，其他税种由郭钦、赵晓冬、赵小华、赵新勇、赵保国、黄雪燕、陈宪斋、张小惠、刘学政、王若竹翻译。

加籍外教老师 Edward Leroy Fulmer、Heiko Bergson and Yuri Fulmer 担任英文部分的统稿，对外经济贸易大学林贵军教授、储祥银教授、单其昌教授、孙熙光教授，中国人民大学郭小惠副教授、刁克利博士，以及赵峰、蔡洪利承担全书英文稿审核。

国家税务总局许善达同志对全书的编辑提供了重要意见。

The following people undertook the English translation of this book:

Foreign Enterprise Taxation was translated by Luan He, Qin Dechun and Yue Guanghua, Value-Added Tax was translated by Ma Jisen, Individual Income Tax was translated by Wang Youru, Sun Chunhua and Zhu Tong, the other taxes were translated by Gua Qin, Zhao Xiaodong, Zhao Xiaohua, Zhao Xinyong, Zhao Baoguo, Huang Xueyan, Chen Xianzhai, Zhang Xiaohui, Liu Xuezheng and Wang Ruozhu.

Australian translator—editor Edward Leroy Fulmer and Canadians Heiko Bergson and Yuri Fulmer undertook the task of integrating the manuscripts and the final polishing and proof-reading of the English part; Professor Lin Guijun, Professor Chu Xiangyin, Professor Shan Qichang and Professor Sun Xiguang from the University of Foreign Economics and Trade, Associate Professor Guo Xiaohui, Doctor Diao Keli, Zhao Feng and Cai Hongli from China People's University undertook examination and approval of the English part.

The entire book owes much to the very important opinions and suggestions given by Mr. Xu Shanda from the State Administration of Taxation.

## 编辑说明

1. 本书分十六个部分介绍了当前我国涉外税收涉及的基本规定,包括:导读、外商投资企业和外国企业所得税、个人所得税、增值税、消费税、营业税、资源税、土地增值税、印花税、屠宰税、城市房地产税、车船使用牌照税、关税、其他税种、税收征管与税务稽查及税务代理制。

对每个税种均从概说、基本法规、综合规定类编、实务四个部分进行介绍。

2. 为使读者更清楚地了解各税种,在“综合规定类编”中,就纳税义务人、征税范围、计税依据、税率、应纳税额的计算、减免税规定、纳税申报等基本要素,依据基本法规及有关规定、规章文件进行了分类编辑。所有摘引的段落均注明了该文件的文件号,个别内容由编者根据有关规定整理而成,则注明“由编者整理”。

3. “综合规定类编”中所摘引文件出现“税法”、“暂行条例”、“实施细则”等字样,除特别说明外,均指该税种的“法”或“暂行条例”、“实施细则”。如:在个人所得税中,“税法”即指《中华人民共和国个人所得税法》,在增值税中,“暂行条例”、“实施细则”即指《中华人民共和国

## Editor's Note

A. "Regulations and Practices Concerning Taxation of Foreigners" in 16 parts introduces basic regulations in use concerning taxation of foreigners, including: Preface, Income Tax for Enterprises with Foreign Investment and Foreign Enterprises, Individual Income Tax, Value — Added Tax (hereinafter referred to as VAT), Consumption Tax, Business Tax, Resource Tax, Land Appreciation Tax, Stamp Tax, The Slaughter Tax, Urban Real Estate Tax, Vehicle and Vessel Usage License Plate Tax, Customs Duty, Other Taxes, Taxation Agency System and Tax Collections Administration and Tax Investigations.

Each kind of tax is presented from four aspects — the General Concept, the Basic Regulations, the Regulations Classified According to Use, and Practical Examples.

B. To facilitate the understanding of the taxes, the Regulations Classified According to Use of each kind of tax are edited according to documents of the basic laws and regulations, the related rules and regulations by the basic elements: Taxpayers, Scope of Liability to Pay Tax, Basis of Tax Calculation, Rates of Tax, Calculation of Tax Liability, Tax Exemptions and Reductions, and Tax Return. The code numbers of all the documents are given at the end of each paragraph excerpted; a few contents are given by editors on the basis of sorting out the related rules and regulations and these are noted as "edited."

C. If "Tax Law," or "Provisional regulations," or "Detailed regulations on Implementation" are given for the documents excerpted in "Regulations Classified According to Use," they refer to the law, the provisional regulation, and the detailed regulations on implementation of the very kind of tax in question. For example, "Tax Law" in the Individual Income Tax refers to "The Law on Individual Income Tax of the People's Republic of China;" and "Provisional Regulations" and "Detailed Regulations on Implementation" in the Value Added

增值税暂行条例》、《中华人民共和国增值税暂行条例实施细则》。

4. 为保持某些政策的延续性,对个别已超过时效期的文件,本书仍做了收录,在执行中应以时间最近的文件为依据。

5. 本书所摘引的税法文件均以中国税务出版社出版的《中华人民共和国税法》(活页)中央卷,以及《中华人民共和国涉外税收法律法规汇编》为依据。读者可依据文件号从以上两书中查阅全文。

6. 本书的英文由译者依国际经贸、法律的英文惯例翻译,未经有权机构的审定,仅供需要用英文处理税收事宜的人士参考。

7. 在英文译文中涉及到的有关矿业、生化、农业等方面的生僻专业词汇,为避免产生歧义,只作义译,并在英文单词后用括号列出中文。例如:Single water—gas(单水煤气)。

8. 译文中的文件号均以汉语拼音表示。如财税字[1997]001号,以汉语拼音表示为:CAI SHUI ZI [001] 1997。全书正文中仅列明文件号,读者可在

Tax refer to "the Provisional Regulations on the Value Added Tax of the People's Republic of China" and "the Detailed Regulations on Implementation of the Value Added Tax of the People's Republic of China."

D. To keep the continuity of some policies, documents that have passed the prescription are also taken in this book, but when used in practice, the same documents of the latest date should be used as the basis.

E. All the taxation articles presented in "Regulations and Practices Concerning Taxation of Foreigners" are based on two books published by China Taxation Publishing House: "Taxation Law of the People's Republic of China" (working paper), Central Government volume; and "Compiled Taxation Laws and Regulations of the People's Republic of China, Concerning Foreigners." The full text of any of these documents are found in the two books and they can be consulted by the given document code numbers.

F. The English text of "Regulations and Practices Concerning Taxation of Foreigners" serves as a reference to people handling taxation matters in the English language in China. The translation from the Chinese original was done based on the English practices in international economy, trade and law, without being examined or finalized by authorized departments.

G. To avoid ambiguity, the uncommon special vocabularies concerning mining, bio—chemistry and agriculture found in the English text are only translated with the original given after in brackets, for example, Single water—gas (单水煤气)。

H. The code number of the documents are given in phoneticized Chinese in the English text. For example, 财税字[1997]001号 is in phoneticized Chinese as: CAI SHUI ZI [1997] 001. Only document numbers are listed in the text of this book, and names of documents can be found in the "Document Indices" at

书末的“文件索引”中查出文件名称。

the and of this book.

9. 对全书所有税法文件的翻译,当中文与对应英文产生歧义时,应以中文为准。

I. In case there is ambiguity with any of the English translation of the taxation law documents, the Chinese text should be taken as the standard.

《涉外税务法规与实务》编写组  
"Laws and Practices on Taxation of Foreign Business in PRC"  
Comparing Group



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# 一 导读

# 1 Preface

中国涉外税收法规是中国税收法令中涉及涉外业务的有关规定。1994年1月1日起中国实施新的工商税制改革,其中对内外资企业分别实行两套税制的作法,中央与地方不能彻底实行分税制的作法以及征管制度等问题作了较大的突破。由于各国的政治经济条件不同,税收制度也不尽相同,具体开征办法也千差万别。为了读者能更全面地理解中国涉外税收法规,我们先将中国税收制度的构成及有关概念做扼要介绍。

## 基本要素

税法是国家向一切纳税义务人征税的法律依据,也是调整税收关系的准绳。从税法构成来说,税法由一些基本要素构成,税法构成要素一般包括:纳税人、征税对象、应纳范围、税目、税率、纳税环节、纳税期限、减税免税和处罚。

### 一、纳税人

纳税人是税法规定的直接负有纳税义务的法人和自然人,在

China's Taxation Regulations Concerning Foreign Nationals are the regulations among China's taxation decrees which are relevant to affairs involving foreign nationals. Since January 1, 1994, China has implemented new industrial and commercial taxation system reforms, among which there are two sets of taxation levy methods implemented separately for Chinese—enterprises with foreign investment. The central and regional authorities cannot thoroughly implement separate systems of levy, and there have been significant breakthroughs in the system of administering the levying of tax. Because the political and economic requirements of various countries differ, their tax levy systems also are not completely identical, and specific methods of levy can differ endlessly. So that the reader can more completely understand Chinese laws and regulations involving tax levy on foreign nationals, we will, first, give a brief introduction to the structure of China's tax levy system and related concepts.

## Basic Factors

Basically, taxation law is the State's legal method of levying tax on all taxpayers and is also a yardstick for adjusting the taxation levy system. From the point of view of tax law structure, the tax law is structured around a few basic, essential components, and these normally include: the taxpayers, the object of the tax levy, the scope of tax liability, taxable items, tax rates, tax payment linkages, time limits for payment of tax, tax reductions, tax exemptions and penalties.

### A. The Taxpayer

'The taxpayer' is what tax law stipulates to be a legal and natural person who is directly responsible for the payment of tax,

税收法律关系上称为“纳税主体”，是代表国家征税的各级税务机关——“征税主体”的对称。每一种税都规定有它的纳税人。依法纳税是纳税人应尽的义务，纳税人不依法纳税，要受到法律的制裁。

法人是指依法成立并能够独立地行使法定权利和承担法律义务的社会组织。如社团、企业等。这里说的企业，是指独立核算、自主经营、自负盈亏的一切营利性经济组织，它可以是工厂、商店，也可以是具有同样性质的公司。一般讲，法人必须具备以下条件：

(1)它必须正式在政府管理部门注册备案，有合法的独立经营条件和完备手续。(2)它有独立的经济核算权，而不是企业内部的下属单位。(3)它能独立对外行使法定的权利义务，如同其他经济组织签订合同、协议，具有法律效力，承担法律责任，受到法律的保护和制约。

自然人是法人的对称。在我国依法独立享有法定权利并承担法律义务的公民个人，以及居住在我国境内的外国人和无国籍的人都是自然人。自然人有依法向国家纳税的义务。

各项税收，一般是由纳税人直接缴纳或由税务机关直接征

he is what is called, in the legal relationships involved in tax levy, 'the tax paying subject' and is symmetrical with 'the tax levying subject', i. e. the various level of taxation organizations which represent the State in the levying of tax. Each taxation department regulation has its taxpayer, who must completely fulfill his duty to pay tax according to laws and regulations; if he does not pay tax according to laws and regulations, he shall receive legal sanctions.

'A legal person' refers to a social organization, established according to law, which can independently exercise legal rights and undertake legal responsibilities, e. g. social organizations and enterprises. 'Enterprises' mentioned here refers to all operational type economic organizations with independent accounting, who manage their own operations and are responsible for their own profits and losses. They can be factories or shops, and can also be companies with similar characteristics. Normally, a legal person must fulfill the following requirements:

1) It must formally register and put on record at the Government Administration Office its legal independent operating conditions and must complete all procedures; 2) it has independent financial accounting rights and is not a unit belonging to a department within an enterprise; 3) it can independently exercise legal rights and responsibilities externally, e. g. it can sign contracts with other economic organizations, it can make agreements, it has legal force, it undertakes legal duties, and it receives legal protection and constraints.

A 'natural person' is symmetrical with a legal person; in China, according to law, one who independently enjoys the legal rights and undertakes the legal responsibilities of an individual citizen, a foreign national who resides within the borders of China and unregistered persons are all natural persons. A natural person has the duty to pay tax to the State according to laws and regulations.

Normally tax is paid directly by the taxpayer and received directly by the taxation authorities. However, there are types of

收,但有的税种或其某一部分则代收(扣)代缴或委托代征。所以有的税法除规定纳税人外,还规定代收(扣)代缴或代征人。代收(扣)代缴义务人,是指税法规定的向纳税人支付款项或向纳税人取得收入代收(扣)代缴应纳税款的单位或个人。代收(扣)代缴义务人必须依法履行代收(扣)代缴义务,否则应负法律责任。

## 二、征税对象

征税对象是指对什么东西征税,是征税的标的物,也是缴纳税款的客体。它体现着不同税种的基本界限,是不同税种相互区别及其名称由来的主要标志。例如,增值税的征税对象是增值额,企业所得税的征税对象是企业应纳税所得额,消费税的征税对象是应税消费品的销售额或销售数量。与征税对象密切相关的内容有:

### (一)税目

它是指征税的具体项目。是征税对象的具体化,反映具体的征税范围,代表征税的广度。规定税目,一是征税技术上的需要,通过规定税目,可以划分各税征免的界限,凡属于列举税目之中的商品或经营项目就要征税,不属于这些税目的就免税;二是贯彻政策的需要,通过对不同税目制定高低不同的税率,来贯彻执行国家经济政策和税收政策。

tax, or some parts of taxes which are received by withholding agents or authorized collection agents, so there are some tax laws which, apart from stipulating taxpayers, also stipulate withholding agents or authorized collection agents. 'Withholding agents' refers to units or individuals who, according to tax law, pay sums of money for the taxpayer or receiving income from them in the form of sums of tax payment money for withholding. Withholding agents must carry out their duties according to law, or will be subject to legal sanctions.

## B. The Tax Levy Object

'The tax levy object' refers to what entity is levied tax, what is the target of the tax levy, and what entity pays the tax. This embodies the basic extent of the different kinds of tax, it the major symbol of the differences between different taxes and the sources of their names. For example, the object of the Value-Added Tax is the amount of value added; the object of the Enterprise Income Tax is the amount of taxable income of the enterprise; the object of the Consumption Tax is sales amount or sales volume of taxable consumption commodities. Very closely related to the object of the tax are;

### a. Taxable Items

This term refers to the specific items on which the tax is levied, the specific form of the object on which the tax is levied, a concrete reflection of the scope of the tax levy and a representative of the range of the tax levy. Regulations on taxable items firstly, meet the needs of the techniques for levying tax; through stipulations on taxable items, one can differentiate the various tax levy exemption limits. All commodities or items of operation falling within the lists of taxable items must then be levied tax; the ones that do not fall within the lists are tax exempt. Secondly, the regulations meet the needs of the implementation of policies, by formulating different high and low rates of tax on different taxable items, to carry out State

划分税目的方法一般有两种：一种是“列举法”，就是按照每一种征税的产品或经营的项目分别设置税目，必要时还可以在一个税目下设置若干子目。另一种是“概括法”，即按照商品大类或行业设计税目。这两种方法在具体运用上各有优缺点，应有机地结合起来，灵活运用。

## (二) 计税依据

计税依据是指计算应纳税额的依据。计税依据可分为从价和从量两类标准。从价计征是指以征税对象的价值为计税依据，如营业税以取得的业务收入额为计税依据。从量计征，即以征税对象的生产数量、销售数量、容积、重量等为计税依据，如资源税。

必须注意的是，有些税种，计税依据与征税对象是一致的，如消费税的征税对象是应税消费品的销售收入额或数量，而计税依据也是应税消费品的销售收入额或数量。有些税种，征税对象与计税依据不一致，如现行的农业税的征税对象是农业收入，而计税依据则是常年产量。当征税对象与计税依据不一致时，往往影响到纳税人的实际负担，这是分析税收负担时应特别注意的一个问题。

economic policies and tax levy policies.

There are normally two kinds of ways of distinguishing taxable items. Oneway is 'list methods', that is, separately set up taxable items according to each type of commodity or item of operation which is levied tax, if necessary a number of sub-items can be set up under each taxable item. Another way is 'summary methods', that is, set up taxable items according to large categories or trades. These two methods each have their own good and bad points. Should the opportunity arise to combine them, one should implement it quickly.

## b. The Basis of Tax Calculation

'The basis of tax calculation' refers to the basis on which the amount of tax to be paid is calculated, which can be divided into two standard types — price based (*ad valorem*) and quantity based (*specific*). Price based calculation of the levy refers to the use of the value of the taxable object as a method of calculating tax, e. g. Business Tax uses the amount of income received from business activity as a method to calculate tax. Quantity based calculation of the levy uses the quantity produced or the sales quantity, volume or weight of the taxable object as a method to calculate tax, e. g. Resource Tax.

What must be noted is that there are a few types of tax where the base of tax calculation and the object of the tax levy are the same, e. g. the object of the levy of Consumption Tax is the income from sales of or the quantity sold of the taxable consumption commodity, and the base of tax calculation is also the income from sales of or the quantity sold of the taxable consumption commodity. There are a few types of tax where the object of the levy and the base of calculation of the tax are not the same, e. g. the object of the tax levy of the presently implemented Agriculture Tax is agricultural income, and the base of calculation of the tax is the annual production volume. When the object of the tax levy and the base of calculation of the tax are not the same, this often has an effect on the actual burden on the taxpayer. When analyzing tax burden one

should be particularly careful of this question.

### 三、税率

税率,是指应纳税额与计税依据数量之间的法定比例,它是计算应纳税额的尺度,体现了征税的深度。由于税率的高低直接体现国家的税收政策,关系着国家的财政收入和纳税人的税收负担,因而正确设计税率,是正确处理国家、集体、个人三者利益的一个重要方面,也是税收制度的中心环节。我国现行税率一般有以下三种:

#### (一)比例税率

比例税率是对同一征税对象,不论数额多少,只规定一个比例税率,税率不因征税对象多少而变化。比例税率在具体运用上又可分为以下几种:

1. 统一比例税率,即一种税只采用一个税率。
2. 产品比例税率,即一种产品采用一种税率,对不同产品规定不同税率。
3. 行业比例税率,即按行业的不同规定不同的税率,同一行业采用同一税率。
4. 地区差别比例税率,即中央只规定一个幅度税率,各地根据本地实际情况,在中央规定的幅度内,确定一个比例税率。

### C. Tax Rates

'The tax rate' refers to the legal proportion between the amount of tax to be paid and the base amount used for tax calculation. It is the yardstick for the calculation of the amount of tax to be paid, reflecting the depth of the tax levy. Because the height of the tax rate directly reflects State taxation policies and relates the income of the State Ministry of Finance with the tax levy burden on the taxpayer, so correctly planning the tax rate is correctly administering an important aspect of the benefits of the three entities — the State, the collective and the individual. It is also a central link in the tax levy system. This country normally implements three levels of tax rate:

#### a. proportional tax rate

A proportional tax rate stipulates only one proportional tax rate for the same taxable objects, no matter what their quantity is, but the rate is not affected by the amount or any change in the amount of the taxable object. In specific application, proportional tax rates can be divided into the following types:

- I . a unitary proportional tax rate, i. e. one kind of tax only uses one tax rate;
- II . commodity proportional tax rate, i. e. one kind of commodity uses one tax rate, different commodities have different stipulated tax rates;
- III . trade proportional tax rates, i. e. different tax rates according to different trades, the same tax rates for the same trades;
- IV . regional differential proportional tax rates, i. e. the central Government only stipulates a range of tax rates, each locality, according to its actual situation, determines a proportional tax rate from within the scope set by the central Government;



5. 有免征额的比例税率,即从征税对象中先扣除一个法定的免征额,再按统一规定的比例税率征税。

6. 有起征点的比例税率,即在征税对象中先规定一个法定的起征点,达到或超过起征点的,再按统一规定的比例税率征税。

7. 分类、分级或分档比例税率,即按照征税对象的性质、用途、质量、生产设备能力等规定不同的税率。

比例税率的优点,一是计算比较简便,有利于税收的征收管理;二是产品、行业或生产条件相同的采用一个比例税率,有利于企业在同等纳税条件下开展竞争;三是有利于企业加强经济核算,改善经营管理,降低成本,提高经济效益。其缺点是与纳税人的负担能力不完全相适应,在调节企业利润水平方面有一定的局限性。

## (二)累进税率

累进税率是按照征税对象数额的大小,规定不同等级的税率,即课税对象的数额越大,税率越高;课税对象的数额越小,税率越低。这种税率制度对调节纳税人的利润和收入有明显作用,而且适应性强,灵活性大。它一般适应于对所得额的征税。按照累进税率结构的不同,

V. proportional tax rates with amounts exempt from levy, i. e. from the object of the tax levy first deduct a stipulated amount of exemptions, then use a unitary proportional tax rate to calculate the tax;

VI. proportional tax rates with a threshold, i. e. within the object of the tax levy, first stipulate a statutory threshold, if this threshold is reached or exceeded, then levy tax according to a stipulated unitary tax rate;

VII. different kinds, different levels or different grades of proportional tax rates, i. e. according to the nature, use, quality, production equipment capacity, etc., stipulate different tax rates.

The good points of the proportion tax rate are: firstly, it is convenient to calculate, which is beneficial to the tax income of the tax department; secondly, because there is only one tax rate applied to the same commodities, or same trade or same types of production, it is beneficial for enterprises subject to the same taxation conditions to develop competition; thirdly, it is beneficial to strengthening enterprise economic accounting, improving economic administration, reducing costs and raising economic efficiency. Its bad points are that it is not completely appropriate to the tax burden capacity of the taxpayer, and it definitely limits the adjustment of the enterprise's profit level.

## b. progressive tax rates

Progressive tax rates stipulate different levels of tax rate depending on the amount of the object of the tax levy, i. e. if the amount of the object of the tax levy is relatively large the tax rate is higher; if the amount of the object of the tax levy is relatively small the tax rate is lower. This kind of tax system has very clear usefulness in adjusting the profit level and income level of enterprises and is highly appropriate and very flexible. It is normally applicable for levying income tax. According to different progressive tax rate structures, it is also divided into