

中英文对照本

涉外税务法规与实务 (下)

Laws and Practices on
Taxation of Foreign
Business in PRC

Volume Two

中国税务出版社

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《涉外税务法规与实务》编写组

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目 录

Catalogue

六 营业税	779	6 Business Tax
营业税的概念	779	<i>The Concept of Business Tax</i>
基本法规	780	<i>Basic Laws and Regulations</i>
1. 中华人民共和国营业税暂行条例	780	A. Provisional Regulations of the People's Republic of China on Business Tax
2. 中华人民共和国营业税暂行条例实施细则	786	B. Detailed Rules for the Implementation of the Provisional Regulations of the People's Republic of China on Business Tax
综合规定类编	797	<i>Regulations Classified According to Use</i>
1. 纳税义务人	797	1. The Taxpayers
2. 扣缴义务人	799	2. The Withholding Agents
3. 税目税率	803	3. Taxable Items and Tax Rates
4. 应税劳务和应税行为的规定	808	4. Provisions on Taxable Services and Taxable Activity
5. 计税依据	846	5. The Basis of Tax Calculation
6. 营业税起征点	856	6. Business Tax Minimum Thresholds
7. 应纳税额计算	856	7. Calculating the Amount of Tax Payable
8. 减免税	857	8. Tax Reductions and Exemptions
9. 纳税地点	863	9. Locations for Payment of Tax
10. 纳税义务发生时间	864	10. Time When Tax Liability Arises
11. 纳税期限	865	11. Time Limits for Payment of Tax
12. 纳税申报	865	12. The Tax Return
实务	872	<i>Practicalities</i>
七 资源税	877	7 Resource Tax
资源税的概念	877	<i>The Concept of Resource Tax</i>
基本法规	878	<i>Basic Laws and Regulations</i>
1. 中华人民共和国资源税暂行条例	878	A. Provisional Regulations of the People's Republic of China on Resource Tax
2. 中华人民共和国资源税暂行条例实施细则	882	B. Detailed Rules for the Implementation of the Provisional Regulations of the People's Republic of China on Resource Tax
综合规定类编	886	<i>Regulations Classified According to Use</i>
1. 纳税义务人	886	1. The Taxpayers
2. 扣缴义务人	887	2. The Withholding Agents

3. 征税范围	888	3. Scope of the Tax Levy
4. 税目、税额	889	4. Taxable Items and Tax Rates
5. 征收范围	889	5. Scope of the Levy
6. 计税依据	892	6. Basis of Tax Calculation
7. 纳税义务发生时间	894	7. Time When Tax Liability Arises
8. 纳税地点	895	8. Locations for Payment of Tax
9. 纳税环节	896	9. Tax Payment Links
10. 纳税期限	897	10. Tax Payment Time Limits
11. 减免税	897	11. Tax Exemptions and Reductions
12. 纳税申报	898	12. The Tax Return
实务	905	<i>Practicalities</i>
八 土地增值税	911	8 Land Appreciation Tax
土地增值税的概念	911	<i>The Concept of Land Appreciation Tax</i>
基本法规	911	<i>Basic Laws and Regulations</i>
1. 中华人民共和国土地增 值税暂行条例	911	A. Provisional Regulations of the People's Republic of China on Land Appreciation Tax
2. 中华人民共和国土地增 值税暂行条例实施细则	914	B. Detailed Rules for Implementation of Provisional Regulations on Land Appreciation Tax of the People's Republic of China
综合规定类编	924	<i>Regulations Classified According to Use</i>
1. 纳税义务人	924	1. The Taxpayers
2. 税率	926	2. Tax Rates
3. 计税依据	927	3. The Basis of Tax Calculations
4. 应纳税额的计算	936	4. Calculation of the Amount of Tax Liability
5. 减免税	937	5. Tax Reductions and Exemptions
6. 管理、处罚	941	6. Administration and Penalties
7. 纳税地点	942	7. Locations for Payment of Tax
8. 纳税期限	943	8. Time Limits for Payment of Tax
9. 纳税申报	945	9. The Tax Return
实务	954	<i>Practicalities</i>
九 印花税	959	9 Stamp Tax
印花税的概念	959	<i>The Concept of Stamp Tax</i>
基本法规	959	<i>Basic Laws and Regulation</i>
1. 中华人民共和国印花 暂行条例	959	A. Provisional Regulations of the People's Republic of China on Stamp Tax

2. 中华人民共和国印花税法 暂行条例施行细则	964	B. Detailed Rules for Implementation of Provisional Regulations of the People's Republic of China on Stamp Tax
综合规定类编	974	Regulations Classified According to Use
1. 纳税义务人	974	1. The Taxpayers
2. 征税范围	975	2. Scope of the Tax Levy
3. 税率	981	3. Tax Rates
4. 计税依据	983	4. The Basis of Tax Calculations
5. 减免税	984	5. Tax Reductions and Exemptions
6. 纳税方法	986	6. Tax Payment Methods
7. 征收管理	990	7. Collection Administration
8. 纳税申报	995	8. The Tax Return
实务	1000	Practicalities
十 屠宰税	1003	10 The Slaughter Tax
屠宰税的概念	1003	The Concept of Slaughter Tax
基本法规	1003	Basic Laws and Regulations
1. 屠宰税暂行条例	1003	A. Provisional Regulations on Slaughter Tax
综合规定类编	1006	Regulations Classified According to Use
1. 纳税人	1006	1. The Taxpayers
2. 征税范围	1006	2. Scope of the Tax Levy
3. 税率	1007	3. Tax Rates
4. 减免税	1008	4. Tax Reductions and Exemptions
5. 纳税地点	1008	5. Locations for Payment of Tax
6. 管理	1009	6. Administration
7. 纳税申报	1011	7. The Tax Return
十一 城市房地产税	1015	11 Urban Real Estate Tax
城市房地产税的概念	1015	The Concept of Urban Real Estate Tax
基本法规	1015	Basic Laws and Regulations
1. 城市房地产税暂行条例	1015	A. Provisional Regulations on Urban Real Estate Tax
综合规定类编	1021	Regulations Classified According to Use
1. 纳税人	1021	1. The Taxpayers
2. 征税范围	1022	2. Scope of the Tax Levy
3. 税率	1022	3. Tax Rates
4. 计税依据	1024	4. The Basis of Tax Calculation
5. 减、免税	1025	5. Tax Reductions and Exemptions
6. 管理	1027	6. Administration

7. 纳税申报	1029	7. The Tax Return
实务	1031	<i>Practicalities</i>
十二 车船使用牌照税	1033	12 Vehicle and Vessel Usage License Plate Tax
车船使用牌照税的概念	1033	<i>The Concept of Vehicle and Vessel Usage License Plate Tax</i>
基本法规	1033	<i>Basic Laws and Regulations</i>
1. 车船使用牌照税暂行条例	1033	A. Provisional Regulations on the Vehicle and Vessel Usage License Plate Tax
综合规定类编	1039	<i>Regulations Classified According to Use</i>
1. 纳税人	1039	1. The Taxpayers
2. 范围	1039	2. Scope of the Tax
3. 税额	1040	3. Amount of Tax
4. 纳税地点	1041	4. Locations for Payment of Tax
5. 减免	1042	5. The Reductions and Exemptions
6. 时间	1044	6. Time Limits for Payment of Tax
7. 管理	1044	7. Administration
实务	1048	<i>Practicalities</i>
十三 关税	1049	13 Customs Duty
1. 基本规定	1049	1. Basic Regulations
1.1 中华人民共和国进出口关税条例	1049	1.1 Regulations on Import and Export Tariff of the People's Republic of China
1.2 中华人民共和国海关法行政处罚实施细则	1061	1.2 Regulations for Implementing Administrative Penalties Under the Customs Law of the People's Republic of China
1.3 中华人民共和国海关稽查暂行规定	1073	1.3 Provisional Regulations of the People's Republic of China on Customs Investigations
1.4 中华人民共和国海关总署公告	1077	1.4 Public Announcement of the Customs General Administration of the People's Republic of China

1.5 中华人民共和国海关总署、国家经委、经贸部关于国家限制进口机电产品进口零件、部件、构成整机主要特征的确定原则和审批、征税的试行规定	1079	1.5 The People's Republic of China Customs General Administration, State Economic Committee and the Ministry of Foreign Trade and Economic Cooperation, concerning the principles for determining the major characteristics of imported parts, components and completely assembled machines in the State's limiting of the import of mechanical and electrical products, and trial regulations for examination, approval and tax collection
1.6 中华人民共和国海关总署关于进口录音、录像制品的版权费等如何征税问题的通知	1083	1.6 Circular of the Customs General Administration of the People's Republic of China on Taxation of Copyright Fees for Imported Audio and Video Recorded Works
1.7 中华人民共和国海关对进出口货物实施化验鉴定的规定	1084	1.7 Regulations of the People's Republic of China Customs on Implementation of Laboratory Testing and Identification of Import and Export Goods
1.8 中华人民共和国海关关于进口货物原产地的暂行规定	1087	1.8 Provisional Regulations of Customs of the People's Republic of China on the Origin of Imported Goods
2. 计税依据	1089	2. The Basis of Tax Calculations
2.1 中华人民共和国海关审定进出口货物完税价格办法	1089	2.1 Customs Regulations of the People's Republic of China of the Determination of the Dutiable Value for Imported or Exported Goods
2.2 中华人民共和国海关对出口商品审价暂行办法	1098	2.2 Provisional Methods of Examining the Price of Imported and Exported Commodities of the People's Republic of China
2.3 中华人民共和国海关总署关于以中性包装形式进口货物用普通税率的公告	1101	2.3 Announcement by the Customs General Administration of the People's Republic of China on the Use of Normal Tax Rates on Imported Goods Using Neutral Style Packaging Format
2.4 中华人民共和国海关总署关于补税和退税所适用的税率的规定	1102	2.4 Regulations of the Customs General Administration of the People's Republic of China on Applicable Tax Rates for Payment of Overdue Tax and Tax Reimbursements

2.5 中华人民共和国海关进出口关税税款计算方法	1104	2.5 Methods for Calculating Customs Import Export Duty on Imports and Exports of the People's Republic of China
2.6 财政部 国家税务总局关于出口货物税收若干问题的补充通知	1109	2.6 Supplementary Announcement of the Ministry of Finance and State Administration of Taxation Concerning a Number of Questions on Tax Receipts for Imported Goods
十四 其他税种	1125	14 Other Taxes
1. 城镇土地使用税	1125	1. Urban and Township Land Use Tax
2. 固定资产投资方向调节税	1128	2. Fixed Assets Investment Orientation Regulation Tax
3. 教育费附加	1165	3. Educational Fee Supplement
4. 海洋石油资源矿区使用费	1170	4. Mining Area Usage Fees for Exploitation of Offshore Oil Resources
5. 城市维护建设税	1174	5. City Maintenance and Construction Tax
6. 契税	1176	6. Contract Tax
十五 税收征管与税务稽查	1181	15 Tax Collections Administration and Tax Investigations
1. 基本法规	1181	1. Basic Laws and Regulations
1.1 中华人民共和国税收征收管理法	1181	1.1 The Law of the People's Republic of China on the Administration of Tax Collection
1.2 中华人民共和国税收征收管理法实施细则	1202	1.2 Detailed Rules for the Implementation of the Law of the People's Republic of China on the Administration of Tax Collection
1.3 全国人民代表大会常务委员会关于惩治偷税抗税犯罪的补充规定	1224	1.3 Supplementary Regulation of The Standing Committee of the National People's Congress concerning penalties for the crimes of tax evasion and tax resistance
1.4 中华人民共和国刑法 (节选)	1227	1.4 Criminal Law of the People's Republic of China (Selections)
2. 税收征管	1233	2. Tax Collection and Administration
2.1 国家税务总局关于下发《贯彻实施税收征管法及其实施细则若干问题的规定》的通知	1233	2.1 Circular of the State Administration of Taxation Concerning the issuing of "Regulations on a Number of Questions on Implementation of the Law on the Administration of Tax Collection and Detailed Rules for its Implementation"

2.2 国务院办公厅关于转发 《国家税务总局关于调整国 家税务局、地方税务局税收 征管范围意见》的通知	1247	2.2 Circular of the Office of State Council Concerning the Transmission of "Opinions of the State Administration of Taxation on Adjustment to the Scope of the Administration of Tax Collections by State Taxation Offices and by Local Taxation Offices"
2.3 国家税务总局关于调整 国家税务局、地方税务局税 收征管范围若干具体问题的 通知	1249	2.3 Circular of the State Administration of Taxation Concerning Adjustment in the Scope of Administration of Tax Collection by the State Taxation Offices and the Local Taxation Offices
2.4 国家税务总局关于海洋 石油税收征管范围问题的通 知	1251	2.4 Circular of the State Administration of Taxation Concerning the Scope of Tax Collection Administration on Offshore Oil
2.5 国家税务局关于关联企 业间业务往来税务管理实施 办法	1252	2.5 The State Taxation General Office Concerning Regulations on Implementing Management of Taxation of Business Affairs between Associated Enterprises
2.6 国家税务局海洋石油税 务管理局关于外国石油公司 非联合帐簿费用税务申报和 审计确认的通知	1259	2.6 Circular of The State Taxation Office and Offshore Oil Taxation Administration Office Concerning the Reporting and Audit Verification of Unconsolidated Expenses and Taxation Affairs of Foreign Oil Companies
2.7 国家税务总局关于加强 外国企业税收征管协调配合 的通知	1261	2.7 Announcement of the State Taxation General Office Concerning Strengthening of Integrated and Coordinated Management of Collection of Foreign Enterprise Tax
3. 税务登记	1265	3. Recording of Taxation Affairs
3.1 国家税务总局关于外商 投资企业和外国企业换发税 务登记证件有关具体问题的 通知	1265	3.1 Circular by the State Taxation General Office Concerning Specific Questions Relevant to the Tax Record Forms Issued to Enterprises with Foreign Investment and Foreign Enterprises
3.2 国家税务总局关于税务 登记证式样的通知	1279	3.2 Circular by the State Administration of Taxation Concerning the Format of Taxation Registration Certificates

3.3 国家税务总局关于换发 税务登记证统一代码具体使 用问题的通知	1280	3.3 Circular of the State Administration of Taxation Concerning the Matter of the Specific Application of the Change of the Unified Reference Numbers for Taxation Registration Certificates
3.4 国家税务总局关于印发 个人所得税申报表式样的通 知	1281	3.4 Circular by the State Taxation General Office Concerning the Printing and Issuing of Individual Income Tax Returns
3.5 国家税务总局关于印发 适用涉外税收征管需要的增 值税、消费税、营业税等税申 报表式样的通知	1283	3.5 Announcement by the State Taxation General Office Concerning the Printing and Use of the Form of Tax Returns Required for the Collection and Management of the VAT, Consumption Tax and Business Tax Levied on Foreign Nationals
3.6 国家税务局海洋石油税 务管理局关于下发外商投资 企业和外国企业所得税申报 表的通知	1285	3.6 Announcement by the State Taxation General Office and the Offshore Oil Taxation Administration Office Concerning the Issuing of the Enterprise Income Tax Return Forms for Enterprises with Foreign Investment and Foreign Enterprises
4. 征收管理	1286	4. Tax Collection Administration
4.1 国家税务总局关于印发 《增值税一般纳税人申请认 定办法》的通知	1286	4.1 Circular by the State Taxation General Office Concerning Printing and Issuing of "Methods of Applying for Confirmation as a VAT General Taxpayer"
4.2 国家税务总局关于涉外 税收实施增值税有关征管问 题的通知	1292	4.2 Announcement by the State Taxation General Office Concerning Questions Relevant to the Collection Management When Collecting VAT from Foreign Nationals
4.3 国家税务总局关于增值 税一般纳税人申请认定办法 的补充规定	1296	4.3 Supplementary Regulations of the State Taxation General Office Concerning Application and Confirmation as a VAT General Taxpayer
4.4 国家税务总局关于印发 《增值税小规模纳税人征收 管理办法》的通知	1297	4.4 Announcement by the State Taxation General Office Concerning the Printing and Dispatch of "Regulations on Management and Collection of VAT from Small-Scale Taxpayers"
5. 票证管理	1300	5. Invoice Administration

5.1 中华人民共和国发票管理办法	1300	5.1 Regulations on Administration of Invoices of the People's Republic of China
5.2 中华人民共和国发票管理办法实施细则	1311	5.2 Detailed Rules for the Implementation of Regulations on Invoice Administration of the People's Republic of China
5.3 最高人民法院 最高人民检察院关于办理伪造、倒卖、盗窃发票刑事案件适用法律的规定	1328	5.3 Regulations of the People's Supreme Court and People's Supreme Procuratorate Concerning the Legal Regulations Used to Handle Criminal Cases of Forgery of, Speculation in and Theft of Invoices
5.4 国家税务总局关于印发《增值税专用发票使用规定》的通知	1330	5.4 Announcement by State Taxation General Office Concerning the Printing and Dispatch of "Regulations on Use of the VAT Special Invoices"
5.5 国家税务总局关于增值税专用发票使用问题的通知	1340	5.5 Announcement of the State Taxation General Office Concerning Matters Needing Attention in the Use of VAT Special Invoices
5.6 国家税务总局关于增值税专用发票使用问题的补充通知	1344	5.6 Supplementary Announcement of the State Taxation General Office Concerning Matters Needing Attention in the Use of VAT Special Invoices
5.7 国家税务总局关于外商投资企业和外国企业出口商品使用发票问题的通知	1346	5.7 Circular from the State Taxation General Office Concerning the Question of Enterprises with Foreign Investment and Foreign Enterprises Use of Invoices for Export Commodities
5.8 国家税务总局关于印发《关于商业零售企业开具增值税专用发票的通告》的通知	1346	5.8 Circular from the State Taxation General Office Concerning the Printing and Dispatch of "Announcement Concerning Retail Business Enterprises' Issuing of VAT Special Invoices"
5.9 国家税务总局关于由税务所为小规模企业代开增值税专用发票的通知	1348	5.9 Circular from the State Taxation General Office Concerning the Issuing of VAT Special Invoices for Those Enterprises Confirmed as Small—Scale Enterprises by the Taxation Authorities

5.10 国家税务局海洋石油 税务管理局关于征收矿区使 用费使用票证问题的通知	1350	5.10 Circular of the Offshore Oil Taxation Administration Office of the State Taxation General Office Concerning the Question of Usage Vouchers in Levying Mining Area Usage Tax
5.11 国家税务总局关于进 一步做好普通发票换版工作 的通知	1350	5.11 Circular of the State Taxation General Office Concerning the Advancement of the Work of Changing the Format of the Ordinary Invoice
5.12 国家税务总局关于下 发全国统一更换新版普通发 票的通告的通知	1353	5.12 Circular of the State Taxation General Office Concerning the Issuing of the Announcement on National Uniform Change to a New Format of Ordinary Invoices
6. 复议应诉	1355	6. Appeals for Reconsideration
6.1 税务行政复议规则	1355	6.1 Regulations on Taxation Administrative Reconsiderations
6.2 税务行政处罚听证程序 实施办法(试行)	1374	6.2 Regulations (Trial) for Implementation of Hearing Procedures for Taxation Administrative Penalties
6.3 税务案件调查取证与处 罚决定分开制度实施办法 (试行)	1380	6.3 Regulations (Trial) for Implementation of Separate Systems for Taxation Case Investigations and Taking of Evidence, and Penalty Decisions
7. 财务规定	1384	7. Financial Regulations
7.1 企业财务通则	1384	7.1 Enterprise Financial Rules
7.2 财政部关于外商投资企 业执行《企业财务通则》和分 行业的企业财务制度有关问 题的通知	1397	7.2 Circular from the Ministry of Finance Concerning Matter about the Implementation by Enterprises with Foreign Investment of "Enterprise Financial Rules" and the Division, by Trades, of Enterprise Financial Systems
7.3 财政部关于印发《外商 投资企业执行新企业财务制 度的补充规定》的通知	1399	7.3 Circular from the Ministry of Finance Concerning the Printing and Dispatch of "Supplementary Regulations on Enterprises with Foreign Investment Implementing the New Enterprise Financial System"
7.4 企业会计准则	1413	7.4 Enterprise Accounting Principles

7.5 财政部印发《外商投资企业执行新会计制度若干问题的规定》的通知 1428

十六 税务代理制 1431

1. 规定 1431

1.1 国家税务总局关于开展税务代理试点工作的通知 1431

1.2 税务代理试行办法 1433

1.3 我国税务代理、咨询业务概况 1447

1.4 税收筹划 1465

文件索引

7.5 Circular Printed and Dispatched by the Ministry of Finance "Regulations on A Number of Questions in the Implementation of the New Accounting System by Enterprises with Foreign Investment" 1428

16 Taxation Agency System 1431

1. Regulations 1431

1.1 Circular of the State Administration of Taxation Concerning the Pilot Project Work to Develop a Taxation Agent System 1431

1.2 Taxation Agency Trial Rules 1433

1.3 The general situation of this country's tax agents and consultants affairs 1447

1.4 Taxation Planning 1465

Document Indices

六 营业税

营业税的概念

营业税是以在我国境内销售应税劳务或不动产,或转让无形资产而取得的销售额为征税对象而征收的一种税。

营业税与其他流转税相比,具有以下几个特点:

(一)对销售应税劳务或不动产征税,税源广泛。现行营业税主要以第三产业(除商业批发、零售外)的销售额为课税对象,征收面广,而且与广大人民群众的生活消费密切相关,政策性强。国家通过调整税收负担政策,以调节第三产业的经营业务,促进城乡经济的繁荣和为人民的经济生活服务。

(二)按行业设计税目税率

营业税按不同经营行业设计不同税目税率。经营业务不同,税率也不同,计算简便、税负均衡,有利于鼓励竞争。

(三)简便易行

6 Business Tax

The Concept of Business Tax

Business Tax is a kind of tax levied on the amount of sales revenue gained from the sale, within the borders of China, of taxable services, immovable property or transferred intangible assets.

Business Tax, compared to other turnover taxes, has these special characteristics:

A. Concerning the sale of taxable services and immovable property, this tax source is large and the presently implemented Business Tax is important for turning that sales revenue into a taxable item; tax collections are large, and it is important that the regulations are strictly followed to increase the closely related living standards of the broad masses of people. Through adjustment of the policies on the burden of tax and on the regulation of tertiary industry management and business, the State promotes the flourishing of the urban and rural economies and of the services to people's economic life.

B. Categories of tax and rates of tax vary according to the industry.

Business Tax is applied to differently operated industries according to different tax categories and different rates of tax. Businesses operate differently, the tax rates are also different; calculations are simple and convenient and the tax burden is in proportion; there are tax benefits to encourage competition.

C. Simple and Convenient

营业税对其征税范围设计的税目界限清楚,税率档次少,征税对象和计税依据容易确定,计算方法简单明确,因此,实施起来简便易行。

基本法规

1. 中华人民共和国营业税暂行条例

1993年12月13日 国务院
令 第136号发布

第一条 在中华人民共和国境内提供本条例规定的劳务(以下简称应税劳务)、转让无形资产或者销售不动产的单位和个人,为营业税的纳税义务人(以下简称纳税人),应当依照本条例缴纳营业税。

第二条 营业税的税目、税率,依照本条例所附的《营业税税目税率表》执行。

税目、税率的调整,由国务院决定。

纳税人经营娱乐业具体适用的税率,由省、自治区、直辖市人民政府在本条例规定的幅度内决定。

第三条 纳税人兼有不同税目应税行为的,应当分别核算不同税目的营业额、转让额、销售额(以下简称营业额);未分别核算营业额的,从高适用税率。

Business Tax has clearly defined limits on the scope of tax levies for each category of tax; there are not many tax rates; taxable items and applicable rates are easy to determine; tax calculations are simple and explicit; because of this, implementation of the tax is simple, convenient and easy.

Basic Laws and Regulations

A. Provisional Regulations of the People's Republic of China on Business Tax

GUO WU YUAN LING [136] 1993.12.13

Article 1: Within the borders of the People's Republic of China, individuals or organizations who supply services subject to stipulations of the present regulations, (hereinafter referred to simply as 'taxable services'), who transfer intangible assets, or who sell immovable property, shall be taxpayers liable to Business Tax (hereinafter referred to simply as 'taxpayers') and shall pay Business Tax according to these regulations.

Article 2: The items subject to Business Tax and the tax rates are implemented according to the "Table Business Taxable Items and Tax Rates" attached to these Regulations.

Adjustments to the items subject to tax and the tax rates will be determined by State Council.

The tax rate applicable to enterprises operating entertainment business shall be determined within the scope of the stipulations of these regulations, by the People's Government of each province, autonomous region or municipality directly under the Central Government.

Article 3: For taxpayers engaged in taxable activities which fall into different tax categories, the turnover, transfer and sales amounts (hereinafter referred to simply as 'turnover') within different tax categories should be calculated separately; if it is not calculated separately then the higher rate of tax is applicable to all.

第四条 纳税人提供应税劳务、转让无形资产或者销售不动产,按照营业额和规定的税率计算应纳税额。应纳税额计算公式:

应纳税额=营业额×税率

应纳税额以人民币计算。纳税人以外汇结算营业额的,应当按外汇市场价格折合成人民币计算。

第五条 纳税人的营业额为纳税人提供应税劳务、转让无形资产或者销售不动产向对方收取的全部价款和价外费用;但是,下列情形除外:

(一)运输企业自中华人民共和国境内运输旅客或者货物出境,在境外改由其他运输企业承运乘客或者货物的,以全程运费减去付给该承运企业的运费后的余额为营业额。

(二)旅游企业组织旅游团到中华人民共和国境外旅游,在境外改由其他旅游企业接团的,以全程旅游费减去付给该接团企业的旅游费后的余额为营业额。

(三)建筑业的总承包人将工程分包或者转包给他人的,以工程的全部承包额减去付给分包人或者转包人的价款后的余额为营业额。

Article 4: Where a taxpayer provides taxable services, transfers intangible assets or sells immovable property, the tax payable shall be calculated according to the amount of turnover and following prescribed tax rates. The formula for calculating the tax payable is as follows:

Tax Payable = Turnover × Tax Rate

The tax payable should be calculated in Renminbi. The amount of the taxpayer's turnover settled in foreign currency should be converted into Renminbi according to the current exchange rate in the foreign exchange market.

Article 5: The taxpayer's turnover is the total price and other charges received from other parties for the supply of taxable services, transfer of intangible assets or sale of immovable property. However, the situations listed below are excluded.

A. The turnover of transport enterprises which carry passengers or goods from within the borders of the People's Republic of China to locations overseas or carry passengers or goods to other transport enterprises outside the borders, shall be determined by subtracting the transport charges paid to the sub-contracting enterprises from the transport charges for the whole journey.

B. Transport enterprises which organize tourist groups to travel outside the borders of the People's Republic of China and sub-contract the group care to other travel enterprises their turnover shall be determined by subtracting the payments made to the sub-contracting travel enterprise from the total tourist charges for the whole journey.

C. The turnover of the main contractors in the construction business who sub-contract work to other parties shall be determined by subtracting the payments made to sub-contractors from the total contract sum.