

Rules for the Implementation of the Provisional Regulations on Business Tax of the People's Republic of China

(Promulgated on Document Caifa [1993] No. 40 of the Ministry of Finance on Dec. 25, 1993)

Article 1 These Rules are formulated in accordance with the provisions of Article 16 of the Provisional Regulations on Business Tax of the People's Republic of China (hereinafter referred to as "the Regulations").

Article 2 "Taxable services" mentioned in Article 1 of the Regulations refer to services prescribed within the range of the taxable items in the transportation, construction, financial and insurance, postal and telecommunications, cultural and sports, entertainment and service industries.

Processing, repair and replacement of parts are not covered by taxable services provided in the Regulations (hereinafter referred to as "non-taxable services").

Article 3 "Transactions in foreign exchange, securities, and futures" mentioned in Article 5 of the Regulations refer to the buying and selling business in foreign exchange, securities and futures done by financial institutions (including banking institutions and non-banking institutions). Transactions by non-financial institutions and individuals in foreign exchange, securities and futures shall be free from business tax.

"Futures" mentioned in (5) of Article 5 of the Regulations refer to futures of non-goods. Futures of goods are free from business tax.

Article 4 "Providing services, transferring intangible assets or selling immovable property" mentioned in Article 1 of the Regulations refer to taxable services with compensation, transfers of intangible assets with compensation or transfers of immovable property with compensation (hereinafter referred to as "taxable activities"). But this shall not cover the taxable service provided by employees of institutions or individual business operators for the employers.

"With compensation" mentioned in the previous passage includes compensation in money, material or other economic benefits.

If a building which an institution or individual has built for its own use (hereinafter referred to as "self-built, self-use structure" but is sold later, the activity of building such a structure for self use shall be deemed a taxable service.

The transfer of the limited proprietary right or permanent use right of an immovable property and the granting gratis of immovable property by an institution to others shall be deemed as sale of the immovable property.

Article 5 A sale that involves both taxable service and goods shall be deemed a mixed sale. A mixed sale conducted by an enterprise, an institution being an enterprise by nature or an individual operator engaged in the production, wholesale or retail of goods shall be deemed as selling goods which is free from business tax. A mixed sale by other institutions or individuals shall be deemed the provision of taxable service liable to business tax.

Whether the marketing activities of a taxpayer are mixed sale activities shall be determined by the taxation departments under the State Administration of Taxation.

"Goods" in the first paragraph refer to tangible assets including electricity, heat and gas.

"An enterprise, an institution being an enterprise by nature or an individual engaged in the production, wholesale or retail business of goods" described in the first passage of this Article shall

include those enterprises, institutions in the nature of enterprises and individual business operators engaged in both the production, wholesale or retail business of goods and taxable services.

Article 6 A taxpayer simultaneously dealing in taxable service and goods or non-taxable service shall settle the business turnover of the taxable service and goods or non-taxable service separately. Otherwise, VAT shall be levied on both taxable service and goods or non-taxable service, but no business tax shall be levied.

Whether the taxable service engaged by a taxpayer simultaneously should be included into those liable to VAT shall be determined by the taxation departments under the State Administration of Taxation.

Article 7 Any of the following shall be deemed an act of providing taxable service, transferring intangible assets or selling immovable property within the territory of the People's Republic of China (hereinafter referred to as "in China") as provided by Article 1 of the Regulations, unless otherwise provided in Article 8 of these Rules:

1. Providing a service that takes place in China,
2. Transporting passenger(s) or goods out of China,
3. Organizing tourists in China on a tour out of China,
4. Transferring intangible assets for use in China, or
5. Selling immovable property that is located in China.

Article 8 One of the following shall be an act of providing insurance service in China:

1. Insurance service provided by an insurance institution in China, but excluding the insurance service provided for export goods by an insurance institution in China,
2. Insurance service provided by an overseas insurance institution for goods in China as the object of insurance.

Article 9 "Institutions" mentioned in Article 1 of the Regulations refer to state-owned enterprises, collective enterprises, private enterprises, joint stock equity enterprises, other enterprises and administrative departments, undertakings, military institutions, social organizations and other institutions.

"Individuals" mentioned in Article 1 of the Regulations refer to individual industrial or commercial business operators and other individuals engaged in business activities.

Article 10 In the case of an enterprise leased or contracted to another party to operate, the lessee or contractor shall be the taxpayer.

Article 11 Institutions liable to business tax are those engaged in taxable activities and receiving money, goods or other economic benefits from other institutions, including both those with independent accounting and those without independent accounting, unless otherwise provided by Article 12 of these Rules.

Article 12 The taxpayer for the business of the national railway transportation shall be the Ministry of Railways, the taxpayer for the business of transportation by a joint railway venture shall be the joint railway company, the taxpayer for the business of transportation by local railways shall be the local railway administrations, and the taxpayer for the business of temporary rails on construction sites shall be the institution in charge of the temporary rails on the construction site.

Institutions running transportation business by water, air, pipeline or other forms of land transportation with independent accounting for profits and losses shall be liable to business tax.

Article 13 Legislative departments, judicial departments and administrative departments with qualifications as follows shall be free from business tax on the fees they collect:

1. Those permitted to collect fees within the prescribed range by official documents issued by the State Council or the people's governments of the provincial level or the financial and price control departments thereunder,
2. Fees collected directly by the legislative departments, judicial departments and administrative departments.

Article 14 "Other charges" mentioned in Article 5 of the Regulations include commissions, foundation funds, financing fund, collections entrusted, advance payment and other charges of all descriptions in addition to the price of taxable goods and service.

All those other charges shall be included in the business turnover for computation of the tax amount payable for business tax.

Article 15 In case the price of the taxable service provided, intangible assets transferred or immovable property sold by a taxpayer is conspicuously low without a proper reason, the tax authorities shall have the power to define the business turnover in the following order:

1. On the basis of the average price of the taxable services of the same kind provided or the immovable properties of the same kind sold by the taxpayer in the same month,
2. On the basis of the average price of the taxable services of the same kind provided or the immovable properties of the same kind sold by the taxpayer in the recent period of time,
3. To be computed by the following formula:

The taxable price = the operating cost or cost of the project X (1 + ratio of profit to cost) ÷ (1 - rate of business tax)

The ratio of profit to cost shall be determined by the taxation department of the provinces, autonomous regions and municipalities directly under the jurisdiction of the State Council.

Article 16 In accordance with the provisions of Article 4 of the Regulations, in case a taxpayer settles its business turnover in a foreign currency, it shall be computed by converting the foreign currency into RMB at the official exchange rate either on the day the business income takes place or on the first day of the current month (at the middle price in principle). However, the business turnover of the banking and insurance industries shall be converted from a foreign currency to RMB at the exchange rate adopted for the final settlement statement of the previous accounting year.

A taxpayer shall decide on the option of an exchange rate for the conversion and once it is decided, no further changed shall be made in a year.

Article 17 The business turnover of a transportation enterprise engaged in through traffic shall be the actual turnover it has obtained.

The other states of affairs cited in (6) of Article 5 of the Regulations shall include domestic tours organized by travel agencies whose business turnover shall be the balance of the package charges of the tour minus the charges for accommodation, meals, transportation, entrance tickets and other charges the travel agencies has paid on behalf of the tourists.

Article 18 The business turnover of a taxpayer engaged in construction, repair and renovation and decoration shall include all the payments for the raw and other materials and energy consumed in the project, no matter what method of settlement is made with the client.

For a taxpayer engaged in installation business, the price of the equipment installed, if covered by the price of the

installation, shall be included in the business turnover.

Article 19 The business turnover of building for self use cited in Article 4 of these Rules shall be determined with reference to the provisions of Article 15 of these Rules.

Article 20 The "sub-lending" business mentioned in (4) of Article 5 of the Regulations refers to lending to another party the money borrowed from one party. The activities of using the deposits placed in an institution or individual or the money of the owner himself to lend to another party shall not be deemed sub-lending.

Article 21 The business turnover of the reinsurance business of an insurance company shall be the balance after the premium of the reinsurance is deducted from the total premium of the insurance policy.

Article 22 The business turnover of a stage show staged by an institution or individual shall be the balance of the total income of the booking office or the package proceedings minus the rental for the theater and the charges paid to the performance company and the managers of the performers.

Article 23 The business turnover of the entertainment industry shall comprise all of the charges collected from the customers including entrance tickets, table fees, fees for orders of songs, expenses on cigarettes and beverage and other charges.

Article 24 The business turnover of the tourist industry shall be the balance after the charges on food, accommodation and traffic which the tourists have to pay to other departments have been deducted from the package tour price.

If a tour within China organized by a travel agency is taken care of on part of the tour by another travel agency, the business turnover shall be determined in proportion between them in accordance with the provisions of (2), Article 5 of the Regulations.

Article 25 For an institution that grants gratis an immovable property to a party, the business turnover thereof shall be determined in accordance with the provisions of Article 15 of these Rules.

Article 26 The range of tax exemption for part of the items provided in Article 6 of the Regulations shall be limited as follows:

1. The "services provided by the handicapped" in (2) of paragraph 1 refer to the labor service provided for society by the handicapped themselves.
2. The "medical service provided by hospitals, clinics and other medical institutions" in (3) of paragraph 1 refers to services of diagnosis, treatment, disease prevention, childbirth delivery and birth control and the relevant provisions of medicines, the use of medical instrument, ward accommodation and food provided by medical institutions.
3. The "institutions of learning and other educational institutions" mentioned in (4) of paragraph 1 refer to all ordinary institutions of learning and all those types of schools which have been established with the approval of people's governments at and above the level of prefecture and municipality and the academic degrees they grant are recognized by the state.
4. The "agricultural machine tilling" mentioned in (5) of paragraph 1 refers to operations with agricultural machinery (including ploughing, harrowing, harvesting, threshing and plant protection) in farming, forestry and

animal husbandry.

By irrigation and drainage, it refers to the irrigation and drainage on farmland.

By pest and disease prevention, it refers to the forecasting and prevention of pests and diseases in farming, forestry, animal husbandry and fish farming.

By insurance on farming and animal livestock breeding, it refers to insurance on animals and plants raised in farming, aquatic farming, and animal husbandry.

By technical training, it refers to technical training in agricultural tilling, irrigation and drainage, disease and pest prevention and treatment and plant protection and the knowledge related to insurance on animal and plant farming.

The scope of tax exemption for the insemination and disease prevention and treatment of poultry, livestock and aquatic animals also covers the business of providing the medicines and medical instruments in connection with the services thereof.

5. "Cultural activities conducted by memorial halls, museums, cultural centers, art galleries, exhibition halls, academies of fine arts and calligraphy, libraries, and institutions in charge of the preservation of cultural relics" mentioned in (6) of paragraph 1 refer to the cultural activities organized by those institutions on their own places which are within the range of the taxable items in the cultural and sports service industry. The booking office income thereof refers to the proceedings from the entrance tickets of the first gate.

"Income from entrance fees for cultural and religious activities organized by religious institutions" refers to the booking office income from cultural, religious activities at Buddhist or Taoist temples, monasteries and churches.

Article 27 The range of the starting points for the taxation of business tax provided in Article 8 of the Regulations shall be applicable to individuals only.

The range of starting point of business tax is defined as follows:

For payment of tax at fixed intervals, the starting point for a monthly business turnover is 200~800 yuan.

For payment on each transaction (or day), the starting point for a business turnover is 50 yuan.

The taxation departments of the people's governments of the provinces, autonomous regions and municipalities directly under the jurisdiction of the State Council shall determine the range of taxation starting point in the light of the local reality and report to the State Administration of Taxation for the record.

Article 28 For a taxpayer taking the form of collecting an advance on the transfer of a land use right or the sale of an immovable property, the liability to business tax thereof shall arise on the same day the advance is received.

For a taxpayer building a structure for self use as provided in Article 4 of these Rules, the liability thereof to business tax shall arise on the day the self-built structure is sold and the business turnover or a bill payable for the payment of the price is received.

For a taxpayer granting his self-built immovable property to another person without compensation, the liability thereof to business tax shall arise on the day the transfer thereof takes place.

Article 29 The "other tax withholders" mentioned in Article 11 of the Regulation are defined as follows:

1. For an overseas institution or individual whose taxable action takes place in China and who has no business office in China, its or his agent in China shall be the withholder of the tax payable, and in case it or he has no agent in China, its or his assignee or buyer shall act as the withholder of the tax payable.
2. For an institution or individual staging a theatrical performance with the booking office entrusted to other people, the booking office manager shall act as the withholder of the business tax payable.
3. If the manager of a theatrical performance is an individual, the business tax on the performance shall be

withheld by the manager of the booking office.

4. For the business of reinsurance, the primary insurance company shall be the withholder of the tax payable.

5. In the case of a transfer of an intangible asset by an individual as provided in (2) of Article 12 of the Regulations, the transferee thereof shall be the withholder of the tax payable.

Article 30 If the taxable service of a taxpayer takes place in another county (city), the taxpayer shall file tax returns and pay tax to the tax authorities of that place, otherwise he shall pay the tax to the place where his business office or residence is located.

Article 31 A taxpayer as a contractor contracting construction projects in another province, autonomous region or municipality directly under the jurisdiction of the State Council shall file tax returns and pay tax to the tax authorities where his company is located.

Article 32 In the event that a taxpayer's taxable activities take place within his own province, autonomous region or municipality directly under the jurisdiction of the State Council but it is necessary to change the location for paying tax, a decision thereupon shall be made by the taxation administration under the people's government of his province, autonomous region or municipality.

Article 33 The prescribed time limit for tax payment for the financial industry (excluding pawnshops) shall be a quarter. That for the insurance industry is one month.

Article 34 "Above" and "below" that appear in these Rules covers also the starting point thereof.

Article 35 The power of interpretation of these Rules rests with the Ministry of Finance or the State Administration of Taxation.

Article 36 These Rules shall go into effect as from the day of the promulgation of the Regulations. The "Detailed Rules for the Implementation of the Regulations on Business Tax of the People's Republic of China (Draft)" promulgated by the Ministry of Finance on September 28, 1984, shall be abrogated therefrom.