

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

(Promulgated on the Caifa [1993] No. 38 of the Ministry of Finance on Dec. 25, 1993)

Article 1 These Rules are formulated in accordance with Article 28 of the "Provisional Regulations on Value Added Tax of the People's Republic of China" (hereinafter referred to as "the Regulations").

Article 2 "Goods" mentioned in Article 1 of the Regulations refer to tangible movable objects including electricity, heat and gas.

"Processing" mentioned in Article 1 of the Regulations refers to the business of processing in compliance with the requirements of the consignor on contracts with the raw material and other main materials provided by the consignor for processing charges in return.

"Repairs and Replacements" mentioned in Article 1 of the Regulations refer to the business of making repairs and/or replacing parts with parts provided on goods damaged or having lost functions for the purpose of restoring the functions thereof.

Article 3 "Sales of goods" mentioned in Article 1 of the Regulations refers to the paid transfer of the proprietary right of goods.

"Providing services of processing, repairs and replacements" mentioned in Article 1 of the Regulations refers to paid services of processing, repairs and replacements. However this excludes like services provided by the employees for the employing units or individual operators.

"Paid" in these Rules covers remunerations in currency, in kind and other economic interests obtained from the buyer.

Article 4 The activities of an institution or individual operator cited below shall be deemed as sales of goods:

1. Consigning goods to a consignee to be marketed;
2. Marketing goods on consignment;
3. A taxpayer having two or more institutions under unified accounting taking goods from one institution to other(s) for sale, unless the said institutions are located in the same county (city);
4. Using goods made on his own or on consignment in non-taxable items;
5. Making investment in another institution or individual operator with goods made on his own or on consignment or goods purchased;
6. Distributing goods made by the operator, on consignment or purchased to shareholders or investors;
7. Using goods made on his own or on consignment for collective welfare or individual consumption; and
8. Giving goods made on his own or on consignment as presents to others.

Article 5 A marketing activity involving both goods and non-taxable labor service shall be deemed mixed marketing activity. The mixed marketing activities of an enterprise, public institution or individual operator engaged in manufacturing, wholesale or retail business shall be deemed as being engaged in marketing goods and liable to value added tax (VAT); the mixed marketing activities of other institutions and individuals shall be deemed selling non-taxable labor service which is free from VAT.

The tax collecting departments under the State Administration of Taxation shall determine whether a taxpayer's

marketing activity is a mixed marketing activity or not.

"Non-taxable labor service" mentioned in paragraph one of this Article refers to the labor services included in the scope of taxable items in the industries of transport and communications, construction, banking and insurance, postal and telecommunications, cultural and sports undertakings, entertainment and service trades liable to business tax.

"An enterprise, public institution or individual operator engaged in manufacturing, wholesale or retail business" mentioned in paragraph of this Article includes an enterprise, public institution or individual operator engaged in the production, wholesale or retail business of goods as the main line and also in providing non-taxable labor service as a sideline.

Article 6 A taxpayer engaged in non-taxable labor services as a sideline shall compute the volumes of goods and taxable service and non-taxable labor service separately. Without separate computations or without accurate computations, the non-taxable labor service shall be included into those liable for VAT.

It shall be up to the tax collecting department of the State Administration of Taxation to determine whether the non-taxable service should be included into those liable for VAT.

Article 7 "Goods marketed within the territory of the People's Republic of China" mentioned in Article 1 of the Regulations refer to goods originating in or located in China.

"Taxable service provided within the territory of China" mentioned in Article 1 of the Regulations refers to the sold service that takes place in China.

Article 8 "Institutions" mentioned in Article 1 of the Regulations refer to state-owned enterprises, collective enterprises, private enterprises, joint stock enterprises, other enterprises, administrative undertakings, other public institutions, military institutions, social organizations and other institutions.

"Individuals" mentioned in Article 1 of the Regulations refer to individual business operators and other individuals.

Article 9 When an enterprise is leased or contracted to another person, the lessee or contractor shall be the taxpayer.

Article 10 For a taxpayer engaged in marketing goods and taxable services at different tax rates and in providing non-taxable services subject to VAT, the non-taxable services shall be levied VAT at the higher rate thereof.

Article 11 When a taxpayer other than a small-scale taxpayer (hereinafter referred to as "general taxpayer") refunds VAT to the buyer on account of the sold goods having returned for the full amount of the price or at a discount, the VAT shall be deducted from the current sales tax on the goods thus returned; and the VAT retrieved on account of the purchased goods having returned for the full amount of the price or at a discount shall be deducted from the current tax paid on the goods.

Article 12 "The other charges in addition to the price of the goods" mentioned in Article 6 of the Regulations refer to commissions, subsidies, funds, capital contributions, returned profits, awards, fines for defaults (interests for delayed payment), packaging charges, rents on packaging material, storage charges, quality surcharges, charges on loading/unloading, collection trusted, payments on behalf of others and all other charges paid in addition to the price of goods. But the following are excluded:

1. The tax on the sales of goods collected from the buyer,

2. The consumption tax on the consumer goods used in the processing of goods on consignment collected or paid on behalf of others,

3. Freight charges paid in advance which meet the following conditions:

(1) The freight charge invoice is issued by the consignee to the buyer,

(2) The freight charge invoice is forwarded by the taxpayer to the buyer.

All charges paid in addition to the price of the goods shall be added to the sales amount for computation of taxation, regardless of the accounting system.

Article 13 As for the mixed marketing activities and sideline non-taxable labor services which are liable to VAT in accordance with Article 5 and Article 6 of these Rules, the amount of sales thereof may be the aggregate of the sales of the goods and the sales of the non-taxable services or the aggregate of the sales of the goods or taxable services and the sales of non-taxable services.

Article 14 When a general taxpayer chooses the method of fixing the price sales for the goods for sale by adding up sales amount and tax on the sales, the following formula shall apply:

$$\text{Sales amount} = \text{sales amount including tax} / (1 + \text{tax rate})$$

Article 15 When a taxpayer settles his sales amount in a foreign currency, the sales amount shall be converted into RMB either at the Chinese official exchange rate of the day of settlement or of the first day of the current month (the average rate in principle) in accordance with the provisions of Article 6 of the Regulations. The taxpayer shall announce his decision on which rate to choose in advance, and once decided, there shall be no further change in a year.

Article 16 When a taxpayer's goods are sold or services taxable provided at a conspicuously low price without a proper reason as cited in Article 7 of the Regulations or when a taxpayer's activity without indication of the sales amount is deemed as sales of goods as provided in Article 4 of these Rules, the amount of sales shall be determined in order as follows:

1. At the average price of the goods of the same category sold in the same month;
2. At the average price of the goods of the same category sold in a recent period of time;
3. At the taxable value of the goods. The formula for computing the taxable value is:

$$\text{The taxable value} = \text{costs} \times (1 + \text{ratio of profit to cost})$$

With regard to goods subject to consumption tax, the consumption tax shall be added to the taxable value thereof.

The "cost" in the formula above refers to the actual production cost of the goods produced by the taxpayer for sale, or if the goods for sale is purchased from another party, the actual cost shall be the cost of the purchase. The ratio of profit to cost shall be determined by the State Administration of Taxation.

Article 17 The "purchase price" mentioned in (3) of Article 8 of the Regulations covers the price of the goods a taxpayer pays to an agricultural producer for the purchase as well as the tax on special farm products paid in advance for the purchaser in accordance with the government regulations.

The "price of goods" mentioned previously refers to the price indicated on the deed of purchase approved to be used by the tax authorities.

Article 18 With regard to mixed marketing activities and sideline non-taxable services liable for VAT in

accordance with the provisions of Article 5 and Article 6 of these Rules, the amount of tax on the non-taxable services involved in the mixed marketing activities and the goods bought for use in the sideline non-taxable services shall be permitted to be deducted from the volume of tax on the sales, provided it complies with the provisions of Article 8 of the Regulations.

Article 19 The "fixed assets" mentioned in Article 10 of the Regulations refer to

1. The machines, other equipment, tools of transportation and other equipment, tools and articles involved in production and/or business operation that have been in use for more than one year,
2. Major equipment valued at more than 2,000 yuan apiece and in use for more than two years but not involved in production or operation.

Article 20 The "non-taxable items" mentioned in Article 10 of the Regulations refer to the provision of non-taxable services, transfer of intangible assets, sales of fixed assets and fixed assets under construction. The rebuilding, renovating, expanding, repairing and decorating of a building by a taxpayer shall all be deemed fixed asset under construction, regardless of the way of settlement under whichever accounting system.

Article 21 The "abnormal losses" mentioned in Article 10 of the Regulations refer to losses other than the proper losses in production and business operation, including:

1. Losses inflicted by natural adversities,
2. Losses resulting from theft or rotting or deterioration of the goods owing to poor management,
3. Other abnormal losses.

Article 22 As for the purchased goods or the taxable services whereupon the VAT has been deducted under one of the circumstances cited in 2 to 6 of Article 10 of the Regulations, the amount of tax on the purchased goods or the purchases of the taxable services shall be deducted from the amount of tax on the purchases of the current period. If the amount of tax on purchases cannot be ascertained, deduction shall be made on the deductible volume of the tax in the actual current cost.

Article 23 When a taxpayer runs as a sideline operation an item entitled to tax exemption or a non-taxable item (excluding fixed asset under construction) and it is impossible to delineate the amount of tax on the purchases not allowed for tax deduction, such amount of tax shall be computed by the following formula:

Tax amount not to be deducted = total amount of tax on income of current month X (aggregate of volume of sales of current month of tax free item and turnover of non-taxable item) ÷ aggregate of total sales and business turnover of the month

Article 24 The norms for a "small-scale taxpayer" as mentioned in Article 11 of the Regulations are as follows:

1. The sales amount liable to annual VAT is below one million yuan for a taxpayer who produces goods or the providing taxable services or who produces goods or providing taxable services as the main line and also operates wholesale or retail business as a sideline;
2. The sales volume liable to annual VAT is below 1.8 million yuan for a taxpayer who operates wholesale or retail business.

An individual with annual volume of sales exceeding that of the taxable volume of a small-scale taxpayer, a non-enterprise institution, and an enterprise having taxable activities irregularly shall be deemed a small-scale taxpayer for paying tax.

Article 25 The sales amount of a small-scale taxpayer shall not include its tax amount.

When a small-scale taxpayer adopts the same pricing method for both his sales of goods or taxable services and tax amount, the sales volume shall be computed by the following formula:

$$\text{The sales volume} = \text{taxable volume of sales} \div (1 + \text{tax rate})$$

Article 26 When a small-scale taxpayer refunds the buyer in full value or at a discount for returns of goods from the buyer, the refund shall be deducted from the current proceeds of the sales whereby the refunding occurs.

Article 27 "Sound accounting settlement" mentioned in Article 14 of the Regulations refers to the accurate settlements of the taxable sales, taxable purchases and tax amount computed in line with the accounting system and the requirements of the tax authorities.

Article 28 An individual business operator in compliance with the conditions prescribed by Article 14 of the Regulations and with the approval of the tax bureau directly under the State Administration of Taxation may be deemed as a general taxpayer.

Article 29 A small-scale taxpayer who has been designated as a general taxpayer shall not resume the title of a small-scale taxpayer.

Article 30 When a general taxpayer is in one of the following states, the tax amount shall be computed at the VAT rate on the sales amount and no deduction shall be made for tax on purchases and no special VAT invoices shall be used:

1. The accounting is unsound or no accurate taxation information is provided;
2. No procedure for designation of the title of a general taxpayer has been performed, although it meets the requirements for a general taxpayer.

Article 31 The scope of the part of tax-exempt items cited in Article 16 of the Regulations is defined as follows:

1. "Agriculture" in 1 of paragraph one refers to farming, aquaculture, forestry, animal husbandry, and aquatic products industry. "Farmers" include institutions and individuals engaged in agricultural production.
2. "Old books" in 3 of paragraph one refer antique books and second-hand books purchased from society.
3. "Articles" in 8 of paragraph one refer to yachts, motorcycles, and other motor vehicles liable for consumption tax, and other articles

"Articles used by the owner" refer to the other articles used by the owner cited in Article 8 of these Rules.

Article 32 The starting point of VAT provided in Article 18 of the Regulations shall be applicable only to individual business operators. The range of the starting point of VAT is as follows:

1. The starting point of VAT on sales of goods is 600 - 2,000 yuan;
2. The starting point of VAT on taxable services is 200 - 800 yuan;
3. The starting point of VAT on the sales volume of each transaction (or of each day) is 50 - 80 yuan.

The "sales volume" mentioned above refers to that of a small-scale taxpayer as provided in clause 1, Article 25 of these Rules.

The tax bureaus directly under the State Administration of Taxation shall define the starting point of VAT within the prescribed range in the light of the local reality and report to the State Administration of Taxation for the

record.

Article 33 The time at which VAT payable shall arise for sales of goods or taxable services as provided in 1 of Article 19 of the Regulations shall be determined in the light of the specific settlements of sales, specifically:

1. As for direct payment for sales of goods, it shall be the same day when the payment for the sales or the bill collectable for payment for the sales arrives, no matter whether the goods have been dispatched;
2. As for the sales payment entrusted for collection or authorized a bank to collect, on the day of the dispatch of the goods when the procedure of authorization for collection is completed;
3. As for sales of goods in the form of sales on credit or by installment payment, on the day prescribed in the contract;
4. As for sales of goods in the form of advance payment, on the day the goods are dispatched;
5. As for goods marketed by other taxpayers as agents, on the day the consignee's report arrives;
6. As for sales of taxable services, on the day when the service is provided and payment received or the bill collectable for the sales arrives;
7. As for activities cited in 3 to 8 of Article 4 of these Rules, which are deemed as sales of goods, on the day goods are dispatched.

Article 34 As for taxable services sold in China by foreign institutions or individuals without sites of business operation, the tax payable thereof shall be withheld by the agent, and if there is no agent, the buyer shall act as the withholder.

Article 35 As for itinerant business people selling goods or taxable services in other counties (cities) without filing tax returns to the local authorities, the tax authorities of the location or residence thereof shall collect the VAT.

Article 36 "Tax authorities," mentioned in Article 20 of the Regulations refer to the State Administration of Taxation and its bureaus in charge of tax collecting.
"Tax authorities and tax collecting departments" mentioned in the Regulations and these Rules all refer to the State Administration of Taxation and its subsidiaries at or higher than the level of a sub-bureau.

Article 37 The terms "above" and "below" used in these Rules include the starting point.

Article 38 Interpretation of these Rules rests with the Ministry of Finance or the State Administration of Taxation.

Article 39 These Rules shall come into effect as from the day of promulgation. The "Rules for the Implementation of the Regulations of the People's Republic of China on VAT (DRAFT)" and the "Rules for the Implementation of the Regulations (Draft) of the People's Republic of China on Product Tax" promulgated by the Ministry of Finance on September 28, 1984, shall be abrogated therefrom.