

## **Provisional Regulations of the People's Republic of China on Value-Added Tax**

(Promulgated by Order No. 134 of the State Council of the People's Republic of China on December 13, 1993; Amended and adopted at the 34<sup>th</sup> Executive Meeting of the State Council on November 5, 2008; The first amendment was made in accordance with the Decision of the State Council to Amend Certain Administrative Regulations on February 6, 2016; The second amendment was made in accordance with the Decision of the State Council to Repeal the Provisional Regulations of the People's Republic of China on Business Tax and Amend the Provisional Regulations of the People's Republic of China on Value-Added Tax on November 19, 2017)

### Article 1

All entities and individuals engage in the sale of goods or labor services of processing, repair and replacement services (hereinafter referred to as "labor services"), sell services, intangible assets, immovables, and import 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 rate is:

- (1) 17%, for taxpayers selling goods, labor services, or tangible movable property leasing services or importing goods, except as otherwise specified in items (2), (4) and (5) hereof;
  - (2) 11%, for taxpayers selling transportation, postal, basic telecommunications, construction, or immovable leasing services, selling immovables, transferring the rights to use land, or selling or importing the following goods:
    - (a) grain and other agricultural products, edible vegetable oil, and edible salt;
    - (b) tap water, heating, air conditioning, hot water, coal gas, liquified petroleum gas, natural gas, dimethyl ether, methane gas, coal or charcoal products for household use;
    - (c) books, newspapers, magazines, audio and video products, electronic publications;
    - (d) feeds, chemical fertilizers, agricultural chemicals, agricultural machinery and covering plastic film for farming;
    - (e) other goods as stipulated by the State Council.
  - (3) 6%, for taxpayers selling services, intangible assets, except as otherwise specified in items (1), (2) and (5) hereof;
  - (4) 0%, for taxpayers exporting goods, except as otherwise stipulated by State Council;
  - (5) 0%, for domestic entities and individuals engaged in cross-board sales of services and intangible assets within the scope stipulated by the state council;
- Any adjustments to the tax rates shall be determined by the State Council.

### Article 3

If a taxpayer deals in goods or provides taxable services with different tax rates, the sales amount shall be calculated separately. If the sales amount has not been counted separately, a higher tax rate shall apply.

#### Article 4

Except as stipulated in Article 11 of these Regulations, for taxpayers engaged in the sale of goods, labor services, services, intangible assets, immovables (hereinafter referred to as "taxable sales"), 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:

Tax payable=Output tax payable for the period-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 offset in the following period.

#### Article 5

The output tax for taxpayers engaged in taxable sales shall be the VAT amount calculated based on the sales amounts and the tax rates prescribed in Article 2 of these Regulations.

The formula for computing the output tax is as follows: Output tax=Sales amount × Tax rate.

#### Article 6

The sales amount shall be the total consideration and all other charges receivable from the purchasers by the taxpayer for taxable sales, but excluding the output tax collectible. The sales amount shall be computed in RMB. The sales amount of a taxpayer settled in foreign currencies shall be converted into RMB.

#### Article 7

Where the price used by a taxpayer for taxable sales is obviously low and without justifications, the sales amount shall be checked and ratified by the competent tax authority.

#### Article 8

VAT paid or borne by taxpayers on the purchases of goods, labor services, services, intangible assets, immovables shall be the input tax.

The following input tax can be credited against the output tax:

- (1) VAT indicated in the special VAT invoices obtained from the sellers;
- (2) VAT indicated on the special VAT payment certificates for import obtained from the customs office.
- (3) the input tax calculated by the 11% deduction rate and the price indicated in the purchasing or selling invoices on the purchase of agricultural products, in addition to obtaining the special VAT invoices and the special VAT payment certificates for import, except as otherwise stipulated by State Council.

The formula for calculating the input tax is as follows: Input tax = Purchasing price × Deduction rate.

- (4) for purchase of labor services, services, intangible assets, immovables in China from overseas entities or individuals, the VAT amount indicated on the tax payment receipt for withholding and remitting taxes obtained from the tax authorities or withholding agents. Any adjustment to the items creditable and the deduction rates shall be determined by the State Council.

#### Article 9

Where the VAT withholding certificate obtained by a taxpayer for purchase of goods, labor services, services, intangible assets, immovables falls short of the relevant provisions of the laws, administrative statutes and the competent tax authority under the State Council, no input tax shall be credited against the output tax.

#### Article 10

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

- (1) taxable items used for simple tax method, items exempt from VAT, and goods, labor services, services, intangible assets and immovables purchased for collective welfare or individual consumption;
- (2) abnormal losses of goods purchased, and relevant labor services and transportation services;
- (3) goods purchased (excluding fixed assets), labor services and transportation services consumed in the production of work-in-progress or finished goods which suffer abnormal losses.
- (4) other items stipulated by the State Council.

#### Article 11

For small-scale taxpayers engaged in taxable sales, a summary measure based on the sales amount and the leviable rate shall be adopted to calculate the tax payable and no input tax shall be creditable. The formula for calculating the tax payable is as follows: Tax payable = Sales amount  $\times$  leviable rate.

The criteria for small-scale taxpayers shall be stipulated by the competent finance authority and tax authority under the State Council.

#### Article 12

The VAT rate leviable on small-scale taxpayers shall be 3%, except as otherwise stipulated by the State Council.

#### Article 13

Taxpayers other than small-scale taxpayers shall apply to the competent tax authority for the grant of qualification. The specific measures for granting the qualification shall be formulated by competent tax authority under the State Council.

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

#### Article 14

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. The formulas for computing the composite assessable price and the tax payable are as follows:

Composite assessable price = Customs dutiable value + Customs Duty + Consumption Tax

Tax payable = Composite assessable price  $\times$  Tax rate.

#### Article 15

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) imported instruments and equipment directly used in scientific research and experiment and teaching;
- (5) imported materials and equipment from foreign governments and international organizations as assistance free of charge;
- (6) articles for the special use by the disabled directly imported by organizations for the disabled;
- (7) goods to be sold which have been used by the seller.

Except as stipulated in the above paragraph, the VAT exemption and reduction items shall be stipulated by the State Council. No local government or department shall stipulate such tax exemption or reduction items.

#### Article 16

For taxpayers engaged in tax exemption and reduction items concurrently, the sales amounts therefor shall be calculated separately. If the sales amounts have not been separately counted, no tax exemption or reduction is allowed.

#### Article 17

If the sales amounts of a taxpayer have not reached the VAT minimum threshold stipulated by the competent finance and tax authority, the VAT shall be exempt; if yes, the VAT shall be calculated and paid in full amount in accordance with these Regulations.

#### Article 18

If entities or individuals outside the territory of the People's Republic of China provide services inside the territory, and no operating organs are set up inside the territory, the agent thereof inside the territory shall be the withholding agent; if there is no such agent, the purchaser shall be the withholding agent.

#### Article 19

The time at which the liability to pay the VAT arises:

- (1) for the taxable sales, it is the date on which the sales sum is received or the documented evidence of right to collect the sales sum is obtained; If an invoice is issued first, it shall be the day on which the invoice is issued.
- (2) for imported goods, it is the date of import declaration of customs.

The time at which the liability to withhold the VAT is the date on which the liability for the taxpayer to pay the VAT arises.

#### Article 20

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

VAT on self-use articles brought or mailed into China by individuals shall be levied together with

Customs Duty. The detailed measures shall be formulated by the Tariff Policy Committee of the State Council together with the relevant departments.

#### Article 21

Taxpayers engaged in taxable sales shall issue special VAT invoices to the purchasers who ask for them. The sales amount and output tax shall be separately indicated in the special VAT invoices.

Under any of the following circumstances, no special VAT invoice shall be issued:

- (1) providing the taxable sales to individual consumers;
- (2) the taxable sales that are free from VAT;

#### Article 22

The place for the payment of VAT is as follows:

(1) Businesses with a fixed establishment shall report and pay tax with the 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 competent tax authorities. The head office may, upon approval of the competent finance and tax authority under the State Council or their authorized finance and tax authorities, report and pay tax on a consolidated basis with the competent tax authorities where the head office is located.

(2) A business with a fixed establishment selling goods or labor services in a different county (or city) shall report its outbound business activities, report and pay tax with the competent tax authorities where the establishment is located; where no such report of its outbound business activities occurs, it shall report and pay tax with the competent tax authorities where the goods are sold or services provided; where it fails to do so, the tax shall be levied by the competent tax authorities where the establishment is located as a remedy.

(3) A business without a fixed establishment selling goods or labor services shall report and pay tax with the competent tax authorities where the goods are sold or services provided; if it fails to do so, the tax shall be levied by the competent tax authorities where the establishment is located or resided.

(4) The tax for imported goods shall be reported and paid to the customs office where the imports are declared.

A withholding agent shall report and pay the tax it has withheld with the competent tax authorities where its establishment is located or resided.

#### Article 23

The VAT assessable period shall be one day, three days, five days, ten days, fifteen days, one month or one quarter. The actual assessable period for a taxpayer shall be separately assessed by the competent tax authorities according to the magnitude of the tax payable of the taxpayer; tax that cannot be assessed in regular periods may be assessed on a transaction-by-transaction basis.

Taxpayers that adopt one month or one quarter as an assessable period shall report and pay tax within 15 days following the end of the period. If an assessable period of one day, three days, five days, ten days or fifteen days is adopted, the tax shall be prepaid within five days following the end of the period and a monthly return shall be filed with any balance of tax due settled within 15 days from the first day of the following month.

The period for a withholding agent to pay the tax withheld shall be subject to the provisions of the preceding two paragraphs.

#### Article 24

Taxpayers importing goods shall pay tax within 15 days after the issuance of the special VAT payment certificates for import by the customs office.

#### Article 25

Taxpayers exporting goods with the applicable 0% tax rate shall, upon completion of export procedures with the customs office, apply to the competent tax authorities within the prescribed time limit for the tax refund (exemption) on those export goods on a monthly basis based on such relevant documents as the export declaration. Entities and individuals within territory engaged in cross-board sales of services and intangible assets with applicable 0% tax rate shall apply to competent tax authorities for tax refund (exemption) on schedule. The detailed measures shall be formulated by the competent finance and tax authority under the State Council.

Where return of goods or withdrawal of the customs declaration occurs after the completion of the tax refund on the export goods, the taxpayer shall repay the tax refunded according to law.

#### Article 26

The collection and administration of VAT shall be conducted in accordance with the Law of the People's Republic of China on Administration of Tax Collection and the relevant provisions of these Regulations.

#### Article 27

Relevant matters concerning VAT payment by taxpayers, where there are other provisions made by the State Council or by the competent financial and tax authorities under the State Council upon approval from the State Council, such provisions shall prevail.

#### Article 28

These Regulations shall come into effect from January 1, 2009.