

Order of the State Council of the People's Republic of China

(No. 538)

The Interim Regulation of the People's Republic of China on Value Added Tax was amended and adopted at the 34th executive meeting of the State Council on November 5, 2008. The amended Interim Regulation of the People's Republic of China on Value Added Tax is hereby promulgated and shall come into force as of January 1, 2009.

Premier Wen Jiabao

November 10, 2008

Interim Regulation 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 34th executive meeting of the State Council on November 5, 2008)

Article 1 Entities and individuals engaged in the sale of goods, supply of processing, repair and replacement services, and import of 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 this Regulation.

Article 2 VAT rates:

1. For taxpayers selling or importing goods, other than those as specified in Items 2 and 3 of this Article, the tax rate shall be 17%.
2. For taxpayers selling or importing the following goods, the tax rate shall be 13%.
  - (1) food grains, edible vegetable oil;
  - (2) tap water, heating, air conditioning, hot water, coal gas, liquefied petroleum gas, natural gas, methane, and coal/ charcoal products for household use.
  - (3) books, newspapers, magazines;
  - (4) feed, fertilizer, pesticide, agricultural machinery and agricultural film;  
and
  - (5) other goods as prescribed by the State Council.

3. For taxpayers exporting goods, the tax rate shall be zero, except as otherwise prescribed by the State Council.

4. For taxpayers supplying processing, and repair and replacement services (hereinafter referred to as "taxable service"), the tax rate shall be 17 %.

Any adjustments to the tax rates shall be decided by the State Council.

Article 3 For a taxpayer concurrently engaged in goods or taxable services at different tax rates, the sales amounts for goods or taxable services at different tax rates shall be calculated separately, otherwise, the higher tax rate shall apply.

Article 4 Except for the provisions in Article 11 of this Regulation, for a taxpayer engaged in selling goods or supplying taxable services, the payable tax amount shall be the balance after offsetting or deducting the input tax amount for the current period against or from the output tax amount for the current period. The formula for computing the payable tax amount:

the payable tax amount = the output tax amount for the current period - the input tax amount for the current period

If the output tax amount for the current period is less than and insufficient to offset against or deduct the input tax amount for the current period, the deficiency can be carried forward to the following period for offset or deduction.

Article 5 The VAT tax amount that a taxpayer selling goods or supplying taxable service calculates on the basis of the sales amount and at the tax rate as prescribed in Article 2 of this Regulation and collects from the buyer is the output tax amount. The formula for the calculation of the output tax amount:

the output tax amount = the sales amount × the tax rate

Article 6 The sales amount shall be the full price and ex-price fees that a taxpayer charges the buyer for selling goods or supplying taxable service, but exclude the output tax amount collected.

The sales amount shall be calculated in RMB. Where a taxpayer settles the sales amount in a currency other than RMB, it (he) shall convert it into RMB.

Article 7 If the price of the goods sold or taxable service supplied by a taxpayer is obviously low without a justifiable reason, the competent taxation organ shall verify and determine the sales amount.

Article 8 The VAT amount that a taxpayer pays or bears for buying goods or accepting taxable service is the input tax amount.

The following input tax amounts are allowed to be offset against or be deducted from the input tax amounts:

1. the VAT amount as indicated in the special VAT invoice obtained from the seller;
2. the VAT amount as indicated in the special bill of payment of import VAT obtained from the customs house;
3. for the purchase of agricultural products, besides obtaining the special VAT invoice or customs special bill of payment of import VAT, the input tax amount is calculated on the basis of the agricultural product purchase price as indicated in the agricultural product purchase invoice or sales invoice and at a deduction rate of 13%. The formula for the calculation of the input tax amount:

the input tax amounts = the purchase price ;Á the deduction rate

4. For the purchase or sale of goods and payments for freight during the production and business operations, the input tax amount is calculated on the basis of the freight amount as indicated in the freight settlement voucher and at the deduction rate of 7%. The formula for the calculation of the input tax:

the input tax amount = the freight amount ;Á the deduction rate

Any adjustments to the allowed deduction items and rates shall be decided by the State Council.

Article 9 For a taxpayer purchasing any goods or taxable service, if the VAT deduction voucher it (he) obtains does not conform to law, administrative regulation, or relevant provisions of the taxation administrative department of the State Council, the input tax amount shall not be offset against or deducted from the output tax amount.

Article 10 The input tax amount on any of the following items shall not be offset against or be deducted from the output tax amount:

1. the purchased goods or taxable services used for non-VAT taxable items, VAT-free items, collective welfare or individual consumption;
2. the abnormally lost purchased goods and relevant taxable services;
3. the abnormally lost purchased goods or taxable services for products under production or finished products;

4. the taxpayer's self-use consumables as prescribed by the finance and taxation administrative departments of the State Council; and

5. the freight of goods and freight of sold tax-free goods as described in Items 1 through 4 of this Article.

Article 11 For selling goods or taxable service of a small-scale taxpayer, a simple approach shall be employed to calculate the taxable amount on the basis of the sales amount and at the tax rate and the input tax amount shall not be offset or deducted. The formula for the calculation of the taxable amount:

the taxable amount = the sales amount  $\div$  the tax rate

the criterions for small-scale taxpayers shall be formulated by the finance and taxation administrative departments of the State Council.

Article 12 The tax rate for the VAT on small-scale taxpayers shall be 3%.

Any adjustment to the tax rate shall be decided by the State Council.

Article 13 A taxpayer other than a small-scale taxpayer shall apply to the taxation administrative department for determination of its qualification. The concrete determination measures shall be formulated by the taxation administrative department of the State Council.

Where a small-scale taxpayer with independent accounting is able to provide accurate tax-related materials, it may apply to the competent taxation organ for determination of its qualification for not being treated as a small-scale taxpayer in the calculation of the payable tax amount under this Regulation

Article 14 For goods imported by a taxpayer, the payable tax amount shall be calculated on the basis of the composite assessable value and the tax rates as given in Article 2 of this Regulation. The formulas for the calculation of the composite assessable value and the payable tax amount:

the composite assessable value = the customs duty-paid value + the customs duty + the consumption tax

the payable tax amount = the composite assessable value  $\div$  the tax rate

Article 15 The following items shall be exempted from the VAT:

1. self-produced agricultural products sold by agricultural producers;
2. contraceptive medicines and devices;
3. antique books;

4. apparatus and equipment imported and directly used for scientific research, experiment and teaching;
5. imported materials and equipment from foreign governments and international organizations as gratuitous aid;
6. articles exclusively for persons with disabilities that are directly imported by organizations of persons with disabilities; and
7. self-used articles sold by the seller.

Except for the provisions of the preceding paragraph, the VAT exemption and reduction items shall be prescribed by the State Council. No other region or department shall prescribe any tax exemption or reduction item.

Article 16 For a taxpayer concurrently engaged in VAT-free or VAT reduction items, it (he) shall calculate the sales amounts of the VAT-free or VAT reduction items separately, otherwise, it (he) shall not enjoy the tax exemptions or reductions.

Article 17 If the sales amount of a taxpayer does not reach the VAT threshold as prescribed by the finance and taxation administrative departments of the State Council, it shall be exempted from the VAT. If it reaches the aforesaid threshold, the VAT shall be calculated and paid in full amount on the basis of this Regulation.

Article 18 Where an entity or individual outside the territory of the People's Republic of China supplies taxable services inside the territory of the People's Republic of China, and it (he) has not established a business institution within China, its agent within China shall be the withholding obligor. If it (he) has no agent within China, the purchaser shall be the withholding obligor.

Article 19 The time at which an obligation to pay the VAT arises shall be as follows:

1. For the goods or taxable services sold, it is the date on which the sales price payment is received or the sales voucher as requested is obtained. If an invoice is issued in advance, it shall be the same day when the invoice is issued.
2. For imported goods, it is the date of customs declaration for import.

The time at which an obligation to withhold the VAT arises shall be the same day when an obligation to pay the VAT arises.

Article 20 The VAT shall be collected by taxation organs and the VAT on imported goods shall be withheld by the customs houses.

The VAT on self-use articles carried or mailed into China by individuals shall be levied together with the customs duties. The specific measures shall be formulated by the Tariff Policy Committee of the State Council in conjunction with relevant departments.

Article 21 The taxpayer of goods or taxable service sold shall issue a special VAT invoice to the buyer requesting for a special VAT invoice and give clear indications of the sales amount and output tax amount on it.

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

1. The goods or taxable services are sold to individual consumers;
2. The tax-free provisions apply to the goods or taxable services sold; and
3. The goods or taxable services are sold by small-scale taxpayers.

Article 22 The VAT payment places:

1. Businesses with a fixed establishment shall file tax returns with the competent taxation organ at the locality where the establishment is located. If the head office and the branch are not situated in the same county (or city), they shall file tax returns separately to their respective local competent taxation organ. The head office may, upon the approval of the finance or taxation administrative department of the State Council or its authorized finance or taxation organ, file tax returns with the competent taxation organ at the locality where the establishment is located on a consolidated basis.

2. Businesses with fixed establishments selling goods or taxable services in different counties (or cities) shall apply for the issuance of an outbound business activities tax administration certificate from the competent taxation authority at the locality where the establishment is located and shall file tax returns with the competent taxation authority at the locality where the establishment is located. If they do not obtain the outbound business activities tax administration certificate, they shall file tax returns with the competent taxation organ at the locality where the sales activities take place or where the taxable services occur. The competent taxation organ at the locality where the establishment is located shall collect the overdue taxes for which no tax return has been filed with the competent taxation organ at the locality where the sales activities take place or where the taxable services occur.

3. Business without a fixed establishment selling goods or taxable services shall file tax returns with the competent taxation organ at the locality where the sales activities take place or where the taxable services occur. If it fails to do so, the competent taxation organ at the locality where it is located or resides shall levy the overdue taxes.

4. For imported goods, tax returns shall be filed with the customs house at the locality where the customs declaration is made.

A withholding obligor shall file tax returns and pay the tax amounts, which it withholds, to the competent taxation organ at the place where its institution or domicile is located.

Article 23 The VAT taxable period shall be one day, three days, five days, 10 days, 15 days, one month or one quarter. The specific taxable period of a taxpayer shall be determined respectively by the competent taxation organ on the basis of the payable tax amount of the taxpayer. If the taxable amount cannot be assessed on a regular period basis, it can be assessed on a transaction-by-transaction basis.

A taxpayer who adopts one month or one quarter as a taxable period shall file tax returns within 15 days after the expiration of such a period. If it (he) adopts one day, three days, five days, 10 days or 15 days as a taxable period, it (he) shall prepay the tax within five days after the expiration of such a period and within 15 days of the following month, file a tax return and settle the payable tax amount of the immediately previous month.

The time limit for a withholding obligor to deliver tax payment shall be governed by the preceding two paragraphs.

Article 24 A taxpayer of imported goods shall pay the tax within 15 days from the date on which the customs house fills out the special bill of payment of import VAT issued by the customs offices.

Article 25 A taxpayer exporting tax-rebate (exemption) goods shall go through the export formalities in the customs house and within the prescribed time limit for applying for tax rebate (exemption) and on a monthly basis, apply to the competent taxation organ for handling the tax rebate (exemption) for the exported goods on the strength of export declaration forms. The concrete measures shall be formulated by the finance or taxation administrative department of the State Council.

Where any exported goods are returned or a customs declaration is withdrawn after the completion of the tax rebate on the exported goods, the taxpayer shall pay back the said tax rebate according to law.

Article 26 The administration of collection of the VAT shall be governed by the Law of the People's Republic of China on the Administration of Tax Collection and the relevant provisions in this Regulation.

Article 27 This Regulation shall come into force as of January 1, 2009.