

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

(No. 540)

The Interim Regulation of the People' s Republic of China on Business Tax has been adopted at the 34th executive meeting of the State Council on November 5, 2008. We hereby promulgate the Interim Regulation of the People' s Republic of China on Business Tax, as amended, which shall come into force on January 1, 2009.

Premier Wen Jiabao

November 10, 2008

Interim Regulation of the People' s Republic of China on Business Tax

(Promulgated by Order No.136 of the State Council of the People' s Republic of China on December 13, 1993 and the amendments were adopted at the 34th executive meeting of the State Council on November 5, 2008)

Article 1 All entities and individuals engaged in the provision of services as described in the present Regulation, the transfer of intangible assets or the sale of immovables within the territory of the People' s Republic of China shall be taxpayers of the business tax, and shall pay the business tax in accordance with these Regulations.

Article 2 The tax items and tax rates of the business tax shall be governed by the Schedule of Business Tax Items and Rates as hereto attached.

Any adjustment to the tax items and tax rates shall be determined by the State Council.

The specific tax rates applicable to the taxpayers engaged in the entertainment industry shall be determined by the people's governments of the provinces, autonomous regions, and municipalities directly under the central government within the range prescribed by the present Regulation.

Article 3 For taxpayers engaged in labor services subject to the payment of business tax (hereinafter referred to as "taxable services"), the transfer of intangible assets or the sale of immovables under different tax items, the turnover, transfer and sales amounts (hereinafter referred to as the "turnover") under different tax items shall be calculated separately. If the turnover has not been calculated separately, the higher tax rate shall be applicable.

Article 4 For taxpayers providing taxable services, transferring intangible assets or selling immovables, the tax payable shall be computed according to the turnover and the applicable tax rates. The formula for computing the tax payable is:

Tax payable = Turnover × Tax rate

The turnover shall be computed in Renminbi. The turnover of the taxpayer settled in any foreign currency other than Renminbi shall be converted into Renminbi.

Article 5 The turnover of a taxpayer shall be the total consideration and additional fees and charges it received from the provision of taxable services, transfer of intangible assets or sale of immovables except, however, the following situations:

1. For a taxpayer who sublets any transportation business it has contracted to any other entity or individual, the turnover shall be the balance of the total consideration and additional fees and charges less the transport costs paid to other entities or individuals;
2. For taxpayers engaged in the business of travel, the turnover shall be the balance of the total consideration and additional fees and charges less the costs of accommodation, meals, transportation, and admission tickets for tourist attractions paid on behalf of tourists to other entities and individuals and the travel expenses paid to other tourist enterprises receiving tours;

3. For taxpayers subletting any construction work to any other person, the turnover shall be the balance of the total consideration and additional fees and charges less the sublet payments made to other entities;

4. For transactions of financial commodities such as foreign exchange, negotiable instruments and futures, etc., the turnover shall be the balance of the selling prices less the purchasing prices; and

5. Other situations as prescribed by the treasury department and the tax department under the State Council.

Article 6 For taxpayers that subtract relevant items according to Article 5 of this Regulation, for which the supporting documents they have obtained do not comply with any of the laws, administrative regulations or the relevant provisions of the tax department under the State Council, such items shall not be deducted.

Article 7 For taxpayers providing taxable services, transferring intangible assets or selling immovables at significantly low prices without justifiable reasons, the competent tax authorities shall determine their turnover.

Article 8 The following items shall be exempt from the business tax:

1. Nursing services provided by nurseries, kindergartens, nursing homes, charity agencies for the disabled, and matchmaking as well as funeral services;

2. Personal services provided on an individual basis by the disabled;

3. Medical services provided by hospitals, clinics and other medical institutions;

4. Educational services provided by schools and other educational institutions, and labor services provided by students participating in work-study programs;

5. Agricultural mechanical ploughing, irrigation and drainage, prevention and treatment of plant diseases and insect pests, plant protection, agriculture and animal husbandry insurance, and related technical training businesses, and breeding as well as the prevention and treatment of diseases of poultry, livestock and aquatic animals;

6. Income from admission tickets collected for cultural activities by memorial halls, museums, cultural centers, governing bodies of the protected historic and cultural sites, art galleries, exhibition halls, academies of painting and calligraphy, and libraries; and income from admission tickets collected for cultural and religious activities at places of worship; and

7. Insurance products for export as provided by domestic insurance institutions.

Except as stipulated in the above paragraphs, the exemption and reduction items of business tax shall be determined by the State Council. No region or department shall determine any tax exemption or reduction items.

Article 9 For taxpayers engaged in tax exemption or reduction items, the turnover of the items of tax exemption or reduction shall be computed separately. If the turnover has failed to be separately computed, no exemption or reduction shall be allowed.

Article 10 For taxpayers whose turnover is lower than the benchmark for the payment of business tax as stipulated by the treasury department and the tax department under the State Council, the business tax shall be exempted. If the turnover has reached the benchmark, the business tax shall be computed and paid according to this Regulation.

Article 11 The withholding agents of business tax shall be as follows:

1. For an entity or individual outside the People's Republic of China that provides taxable services, transfers intangible assets or sells immovables in China, but has no operating organization inside China, its agent in China shall be the withholding agent; if it has no agent

in China, the consignee or the buyer shall be the withholding agent.

2. Other withholding agents as stipulated by the treasury department and the tax department under the State Council.

Article 12 The time at which a liability to pay business tax arises shall be the date on which a taxable service is provided, intangible asset is transferred or immovable property is sold and business proceeds are received or documented evidence of the right to collect business proceeds is obtained by the taxpayer. If it is otherwise prescribed by the treasury department and the tax department under the State Council, such provisions shall prevail.

Article 13 The business tax shall be collected by the tax authorities.

Article 14 The place for the payment of the business tax shall be as follows:

1. Taxpayers providing taxable services shall file a tax return to the competent tax authorities where their offices or places of residence are located. However, taxpayers providing construction services or other taxable services prescribed by the treasury department and the tax department under the State Council shall pay their taxes to the competent tax authorities where the taxable services take place.

2. Taxpayers transferring intangible assets shall file a tax return to the competent tax authorities where their offices or places of residence are located. However, taxpayers transferring or leasing the land use rights shall pay their taxes to the competent tax authorities where the lands are located.

3. Taxpayers selling or leasing immovables shall file a tax return to the competent tax authorities where the immovables are located.

The withholding agents shall declare the tax withheld by them to the competent tax authorities where their offices or places of residence are located.

Article 15 The business tax assessable period shall be 5, 10, or 15 days or one month or one quarter. The specific assessable periods for the taxpayers shall be determined by the competent tax authorities respectively according to the tax payable by the taxpayers. The 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 pay their taxes within 15 days from the expiry date. If an assessable period of 5, 10 or 15 days is adopted, the tax shall be prepaid within 5 days from the expiry date and a monthly tax return shall be filed with any taxes due being settled within 15 days from the first day of the following month.

The tax payment deadlines for withholding agents shall be governed by the stipulations of the above two paragraphs.

Article 16 The collection and administration of the business tax shall be governed by the relevant provisions of the Law of the People's Republic of China on the Administration of Tax Collection and this Regulation.

Article 17 These Regulations shall come into force on January 1, 2009.

Annex:

Schedule of Business Tax Items and Rates