

have been recognised as general VAT taxpayers, there will be no monitoring period. However, the enterprises are not allowed to use the VAT invoice machine nor VAT invoices.

¶13-150 Exempt goods

The following goods are VAT-exempt under PRVAT (Art 15) and PRVATIR (Art 35):

- *agricultural products* sold by agricultural producers ("agricultural products" are primary products from crop-farming, poultry breeding, forestry, animal husbandry and aquatic products industries; "agricultural producers" include any units or individuals engaged in these agricultural industries);
- *contraceptive drugs and devices*;
- *antique books* (defined as ancient books and second-hand books purchased from the public);
- *imported instruments and equipment* used directly in scientific research, experiments and education;
- *materials and equipment imported by foreign governments and international organisations*, at no cost, as aid;
- *goods imported directly by organisations for the disabled* for specific use by the disabled; and
- *second-hand goods* which have been used and sold by the individual sellers (this exemption does not apply to sales of second-hand goods by individual business operators).

Effective from 1 June 2000, vegetable seeds meal, cotton seeds meal and peanuts meal are treated as unitary forage and exempt from VAT (Guoshuifa (2000) 93). *Caishui* (2001) 30 superseded *Guoshuifa* (2000) 93 and stipulated that soybean meal would be taxed at 13% after 1 June 2000. Gold allotted for sales according to the pricing of international markets is exempt from VAT (*Caishui* (2000) 3). In general, no refund will be given for the exportation of gold or jewellery containing gold material, although refund will be given for the processing fees.

Guoshuihan (2000) 514 and *Guoshuihan* (2000) 909 clarifies that business units engaged in finance lease operations approved by the People's Bank of China and MOFTEC (now the MOFCOM) are subject to business tax instead of VAT irrespective of whether the ownership of the leased products has been transferred to the lessee.

Caishui (2009) 147 stipulates that publications sold by qualified Xinhua book stores and local Supply and Marketing Cooperatives are exempt from VAT from 1 January 2009 to 31 December 2010.

From 1 July 2007, sales of drip tape and drip pipe are exempt from VAT (*Caishui* (2007) 83). The said drip tape and drip pipe refer to those that are specifically used in agricultural water-saving irrigation system.

The circular *Caishui* (2007) 171 stipulates that production and sales of diammonium phosphate are exempt from VAT from 1 January 2008.

The circular *Guoshuihan* (2008) 116 stipulates that production and sales of sliver which are made from wastes are exempt from VAT.

The circular *Caiguanshui* (2009) 60 and the Announcement (2009) 69 issued by General Customs Administration stipulate that the value of the gold component in the importation of crude copper is exempt from import VAT from 1 November 2009.

Exemption policy for agricultural items

In accordance with a ruling in *Caiguanshui* (2009) 50, certain agricultural items were exempt from import VAT until the end of year 2010, namely imported seeds (seedlings), breeding livestock (including poultry), fingerlings (fry) and breeding wild animals and plants grown/bred for non-profit purposes.

The following goods were exempt from VAT with effect from 1 January 2001 according to *Caishui* (2001) 113 and *Guoshuihan* (2009) 430:

- plastic covering for farm use;
- fertiliser and related product (with the exclusion of certain specified products) such as ammoniated calcium nitrate sold by manufacturing enterprises;
- pesticide and related product sold by manufacturing enterprises; and
- seeds and seedlings, agricultural chemicals, pesticide and farm machinery sold wholesale or retail.

Certain feeds are exempt from VAT. The scope of exemption is regulated by *Caishui* (2001) 121, *Guoshuihan* (2009) 324 and *Guoshuihan* (2010) 75.

Waiving of tax exemptions by VAT taxpayers

Pursuant to *Caishui* (2007) 127, a VAT taxpayer who produces and sells goods or services exempt from VAT shall submit a written waiver declaration to the tax authority in-charge if it requests a waiver of the tax exemption. The taxpayer shall, as of the month following the submission of the relevant declaration, calculate and pay VAT in accordance with the relevant prevailing rules.

A taxpayer who waives tax exemption and meets the criteria of a general taxpayer but has not yet been recognised as a VAT general taxpayer, may apply for recognition as a VAT general taxpayer in accordance with the relevant prevailing rules. The taxpayer can then issue VAT invoices for the goods and services sold.

on a nationwide basis. Under the amended PRVAT (Art 10), general taxpayers are entitled to claim input tax credits on fixed assets.

According to the amended PRVATIR (Art 21 and Art 23), "fixed assets" refer to machinery, mechanical apparatus, means of transport, and other equipment, tools and instruments related to production or business operations and with a useful life of more than one year. Real property, such as housing and buildings, are not included as "fixed assets" for purposes of the circular; therefore, an input tax credit on such property will not be available. Real property refers to property which is immovable or the nature or shape of which will be changed after being moved, including buildings, structures and other fixtures attached to the land.

Caishui (2009) 113 further defined that:

- buildings refer to the house or sites where people live, produce and have other activities;
- structures refer to the man-made constructions where people live and produce; and
- other fixtures attached to the land refer to the mineral resources and the plants on the land.

Under the new PRVAT and PRVATIR, general taxpayers can claim input VAT credit on fixed assets acquired after 1 January 2009. The credit should be supported by the input VAT invoice or the Customs tax payment certificate obtained.

Input VAT credit is not allowed for fixed assets solely used for projects that are not subject to VAT, projects exempt from VAT, collective benefits or individual consumption. If the fixed assets are partly for VAT payable business, the input VAT incurred on the fixed assets can be fully credited (PRVATIR, Art 21).

For motorcycles, cars and yachts which are for the self-use of taxpayers and subject to consumption tax, input tax for them shall not be credited against the output tax involved (PRVATIR, Art 25).

Documents required for input tax credit

The amount of input tax that may be credited against output tax is restricted to the amount of VAT payable as indicated on:

- the VAT invoices obtained from sellers;
- the tax payment certificates obtained from Customs office;
- freight invoices issued by transportation companies which have been approved by tax authorities for issuing such invoices; and
- purchase and sales invoices of agricultural products.

Without the support of one of these crediting documents, issued either by the vendor or Customs, no input VAT will be permitted to be credited against output VAT (PRVAT, Art 8).

Similarly, if the amounts of VAT and other particulars have not been accurately recorded on the VAT crediting documents, input tax will not be permitted to be credited against output tax.

Carry forward of excess input tax

In some circumstances, enterprises may have purchased a high volume of goods in a given period with the result that the amount of input tax for the period exceeds the amount of output tax for the period and hence the amount of output tax is insufficient to deduct the full amount of input tax. In such cases, the PRVAT provides that the excess input tax for the period may be carried forward to offset against output tax in future period (PRVAT, Art 4).

¶13-350 Non-creditable input tax

Input tax is not automatically credited against output tax whenever a purchase is made. The following categories of input tax are not creditable against output tax (PRVAT, Art 10).

Input tax related to activities subject to business tax

The following activities are subject to business tax, not VAT. Therefore, any input tax which may arise when purchasing materials or receiving taxable services may not be used under the offset mechanism for VAT purposes:

- the provision of non-taxable services (eg services in respect of communications and transportation, construction, finance and insurance, post and telecommunications, culture and sports, entertainment and service industries, which are subject to business tax instead of VAT);
- the transfer or assignment of intangible assets; and
- the sale of immovable property or immovable property under construction, etc (PRVATIR, Art 23).

The construction, reconstruction, extension, repair or decoration of a building by a taxpayer, is regarded as the construction of a immovable property.

For more on the VAT position of mixed sales activities and the concurrent provision of non-taxable and taxable services, see ¶13-390 and ¶13-400 respectively.

Input tax related to tax-exempt items

Tax-exempt items are listed in PRVAT (Art 15) and other circulars (see ¶13-150). Input tax incurred in purchasing such items may not be offset against output tax for VAT purposes.

(2) Goods exported by enterprises providing overseas contract construction services

Such enterprises, which have a special tax refund permit, shall calculate their tax refunds using the formula:

$$\text{Tax refund} = \text{Purchase amount} \times \text{Tax refund rate}$$

(3) Small-scale taxpayers

Export enterprises may purchase goods from small-scale taxpayers, for which special approval has been given for the tax refund on export before 1 April 2005. Before the date, export enterprises may receive ordinary invoices from small-scale taxpayers. The amount of sales indicated on the ordinary invoice is the VAT-inclusive amount. To calculate the amount of the tax refund, the following formula shall be used:

$$\text{Tax refund} = \left[\frac{\text{VAT-inclusive sales amount}}{(1 + \text{Tax rate})} \right] \times \text{Tax refund rate}$$

After 1 April 2005, export enterprises must claim VAT refunds based on the VAT invoice issued by tax authorities on behalf of small-scale taxpayers (Guoshuihan (2005) 248).

¶13-650 Tax refund administrative procedures

Registration

Export enterprises which have not been through the formalities of tax refund registration cannot receive a VAT refund or exemption.

For registration purposes export enterprises should provide to the local tax authority, which is responsible for the VAT refund, their business licence and the documentation approving their export operations as issued by the MOFTEC (now the MOFCOM). Registration should be obtained within 30 days from the date of export approval.

If a change is made to an enterprise, such as a merger or diversification, the enterprise must deregister or change the tax refund registration within 30 days from the date of the change.

Applications for refund

Registered enterprises which carry out export procedures and record exports as "sales" in their accounting records should submit a monthly Declaration Form for Tax Refund of Production Enterprises (Declaration Form) to the tax authorities. Declaration forms should be supported by relevant documentation such as:

- Customs declaration forms (export tax refund stub);

- export invoice; and
- foreign exchange verification and cancellation certificate.

Guoshuiifa (2005) 199 stipulates that other supporting documents such as contracts, delivery notes and transportation invoices should be prepared and stored by the finance department of export enterprises within 15 days of the refund claim.

Guoshuihan (2007) 1150 stipulates that from 1 January 2008, trading companies should file export VAT refund before the first VAT filing deadline after 90 days from the date on the Customs declaration forms (export tax refund stub). In special cases, trading company may apply for filing extension.

Consignors

Where goods are consigned by a production enterprise (consignor) to an import and export enterprise (consignee) for export, or when an import and export enterprise (consignor) consigns goods to another import and export enterprise (consignee) for export, the tax refund/exemption application shall be made by the consignor and not by the consignee. Consignors shall have a comprehensive understanding of the administrative procedures, and provide accurate and complete information.

Consignors applying for tax refund/exemption shall provide, or have available, supporting documents including:

- export consignment certificates (issued by the consignee and endorsed by the tax authorities);
- Customs declarations on export (export tax refund stub);
- foreign exchange verification and cancellation certificate;
- consignment contract; and
- "Sales account" books of account.

Guoshuiifa (2006) 102 further stipulates that the issuing of the Export Consignment Certificates should be applied for by the consignee to the tax authorities within 60 days after the export declaration date and then passed on to the consignor in time. If the consignee fails to apply within 60 days, the application period can be extended for another 30 days, subject to the approval of tax authorities at the municipality level or above.

Timeframe for approval of applications

Guoshuiifa (2002) 11 stipulates that tax authority should refund tax based upon the Country Export Refund Budget, therefore a delay of refund is possible where the Budget is lower than the actual refund applied/declared.

Guoshuiifa (2005) 51 further stipulates that tax authority should process the tax refund to the taxpayers after examination and approval.

In extremely serious cases, the enterprise's export privileges may be revoked by the MOFTEC (now the MOFCOM).

Those who provide or illegally issue fraudulent invoices or other fraudulent certificates to exporting enterprises may be fined up to five times the amount which should have been received. If the amount is large and the circumstances serious, those involved could be severely punished and may be subject to criminal proceedings.

PAYMENT OF VAT

¶13-810 Time at which VAT liability arises

The time at which the tax liability arises for the sale of goods or provision of taxable services is important for defining the time when output tax for the period arises. Some enterprises fail to record sales realised in their account books. Instead, they delay the recording of the realised sales or deliberately ignore them to delay or evade tax payment. This is obviously illegal. Enterprises must record the time and amount of sales accurately and calculate the output tax for the period within the time limits specified in the regulations.

Generally, the time at which the VAT liability arises is the time when the taxpayer engages in the taxable behaviour on which the obligation to pay tax arises. According to PRVAT (Art 19), VAT liability arises:

- for sales of goods or taxable services — on the date when the sales sum is received, or on the date when documentary evidence of the right to collect the sales sum is received; and
- for imported goods — on the date of the importation declaration.

Timing of liability according to settlement or payment method

The time at which VAT liability arises upon the sale of goods or taxable services is influenced by the method of settlement or payment as follows (PRVATIR, Art 38):

- *Sales settled by direct payment* — VAT liability arises when the sales sum is received, or when documented evidence of the right to collect the sales sum is received. The goods need not have actually been delivered;
- *Sales where sum entrusted to bank for collection* — VAT liability arises when the goods are delivered and the procedures for entrusted collection are completed;
- *Sales on credit or by payment in instalments* — VAT liability arises on the date payment is receivable as agreed upon in the sales contract. Where there is no written contract, the tax liability arises on the date the goods are delivered;

- *Sales paid for in advance* — VAT liability arises when the goods are delivered. In the case of production and sale of large mechanical equipment, ships and aircrafts where the production takes longer than 12 months, tax liability arises on the date on which the advance payment is received or the date of collection agreed according to the contract;
- *Sales on consignment* — tax liability arises on the date on which the detailed account of consignment sales is received from the consignee or on the date the taxpayer receives all or part of the payment for the goods. *Caishui* (2005) 165 specifies that if the taxpayer receives all or part of the payment for goods prior to the receipt of the detailed account of consignment sales, tax liability arises on the date the taxpayer receives all or part of the payment for goods. Where the detailed account of consignment sales is not supplied, tax liability arises 180 days after the delivery of the goods. These rules are reconfirmed in the PRVATIR (Art 38);
- *Sales of taxable services* — VAT liability arises on the date on which the services are provided and the sales sum is received, or the documentary evidence of the right to collect the sales sum is obtained; and
- *Deemed "sales of goods"* (see ¶13-110) — VAT liability arises when the goods are transferred.

¶13-820 Due date for payment

The VAT assessable period may be one day, three days, five days, 10 days, 15 days, one month or one quarter. The actual assessable period of a taxpayer is determined by the tax authorities depending on the level of tax payable by the taxpayer (PRVAT, Art 23). Tax that cannot be assessed regularly may be paid 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, 10 days or 15 days is adopted, the tax shall be prepaid within five days after the end of period, and a monthly return shall be filed for any balance of tax due within 15 days from the first day of the following month.

Taxpayers importing goods shall pay tax within 15 days after the issuance of the tax payment certificates by the Customs.

Taxpayers exporting goods with a zero tax rate shall apply on a monthly basis for a refund of the tax paid for the exportation of goods upon completion of export procedures with the Customs (see ¶13-610).

¶13-930 Procedure for sales returns or sales allowances

When a purchaser returns goods or is granted a sales allowance, the following steps should be taken with respect to the VAT invoices for the goods (VAT *Invoice Provisions*, *Guoshuifa* (2006) 156):

- When a seller receives the returned goods or there is a mistake in the VAT invoices within the current month of issuance, and the original "invoice copy" and "credit copy" received meet the requirements for cancellation as mentioned below, the seller can cancel the VAT invoices. If there is a mistake when issuing the VAT invoice, the seller can cancel the VAT invoice immediately. For the cancelled invoices, the seller shall also "cancel" the relevant electronic data in the anti-counterfeit electronic system, and remark "cancelled" on all the copies of the VAT invoices (including the unprinted invoices). The cancelled VAT invoices should be kept.
- The following are the requirements for VAT invoice cancellation, which should be met at the same time:
 - (1) The returned "invoice copy" and "credit copy" are received within the same month of issuing the invoices;
 - (2) The seller has not reported the tax and recorded any entries in the accounting books. The reporting of the tax refers to copying the electronic data of the invoices through the IC card or through the IC card and the floppy disk before tax declaration; and
 - (3) The purchaser proceeds with the verification of the invoices or the result of the verification is "not in accordance with the taxpayer's identification code" or "the code and the number of the VAT invoice do not match".
- The purchaser shall complete and submit the Application Form for Issuing the Red-letter VAT Invoices to the tax bureau in charge (hereinafter referred to as the "Application Form") on receipt of the VAT invoices, if:
 - the goods are returned after the sale;
 - there is a mistake with the invoices but the situation does not meet the requirements for VAT invoice cancellation; or
 - only part of the goods are returned and there is a sales allowance.

The blue VAT invoices related to the Application Form must be verified by the tax authority.

If the invoice verification result is "matched" and the input VAT has been credited, the purchaser does not need to fill in the relevant information of the blue VAT invoices in completing the Application Form.

If the invoice verification result is "not in accordance with the taxpayer's identification code" or "the code and the number of the special invoices do not match", the purchaser will need to fill in the relevant information of the blue VAT invoices in completing the Application Form.

- The Application Form consists of two copies: the first copy is kept by the purchaser and the second copy is kept by the tax authority in charge. The Application Form should be stamped with the purchaser's chop for the finance department's use.
- After reviewing the Application Form prepared by the purchaser, the tax authority issues the Informing Letter for Issuing the Red-letter VAT Invoices (hereinafter referred to as the "Informing Letter"). The Application Form and the Informing Letter should match each other.
- The Informing Letter consists of three copies: the first copy is kept by the tax authority in charge, the second copy is sent to the seller by the purchaser, and the third copy is kept by the purchaser. The Informing Letter should be stamped with the stamp of the tax authority. The taxpayer should bind the Informing Letter into booklets every month and administrate them in accordance with the relevant regulations on VAT invoices' keeping.
- The purchaser should transfer out the credited input VAT according to the input VAT amount listed in the Informing Letter and the input VAT which has not been deducted can be recorded as input VAT of the current period. The red-letter VAT invoices issued by the seller and the Informing Letter should be treated as supporting documents for accounting purposes.
- The seller should issue the red-letter invoices based on the Informing Letter provided by the purchaser and issue such invoices as negative output VAT through the anti-counterfeit system. The red-letter invoice should match the Informing Letter.

Guoshuifa (2007) 18 further stipulates that:

- If the credit copy and invoice copy of the VAT invoices cannot be verified, the purchaser needs to complete the Application Form for Issuing the Red-letter VAT Invoices, and state the specific reason and the information of the corresponding blue-letter VAT invoices in the Application Form. The competent tax authority issues the Informing Letter after verification of the Application Form. The purchaser does not need to transfer-out the input VAT;
- If the goods purchased by the purchaser do not fall in the scope of VAT creditable items, and the special invoice obtained has not been verified, the purchaser needs to complete the Application Form, and state the specific reason and the information of the corresponding blue-letter VAT invoices in the Application Form. The competent tax authority issues the

Example

The consumption tax liability of a manufacturer who sells 1,000 kg of white spirits with a sales value of RMB10,000 and 2,500 litres (2.6 tonnes) of yellow spirits with a sales value of RMB10,000 is calculated as follows:

Consumption tax on white spirits	=	(1,000 × 2 × RMB0.5 per 500 grams*) + (RMB10,000 × 20%*)
		* See rates table at above.
	=	RMB1,000 + RMB2,000
	=	RMB3,000
Consumption tax on yellow spirits	=	(2.6 tonnes × RMB240 per tonne*)
	=	RMB624
Total consumption tax payable	=	RMB3,624

If yellow spirit is used as the alcohol base, then the drink will be taxed as "other alcoholic drink" at 10%.

If the compound or soaked alcohol comprises of a mixture of white and yellow spirits, it shall also be taxed at the tax rate applicable to white spirits (*Guoshuihan* (2004) 1077).

With effect from 1 August 2009, the SAT promulgated a circular — *Guoshuihan* (2009) 380, to strengthen the collection and management of consumption tax of white spirits. With a focus on manufacturers of white spirits who also have trading companies, the SAT has established administrative measures to assess the minimum taxable price for white spirits.

The minimum taxable price assessment standards are as follows:

- The tax authorities will temporarily not assess the minimum taxable price if the taxable price of the manufacturing enterprise is not lower than 70% of the sales price of the trading enterprises; otherwise
- the tax authorities will, based on the manufacturing capacity, brand, profit level and other information, determine a minimum taxable price to be within 50% to 70% of the sales price of the trading enterprise; and
- for those large manufacturing enterprises with high profit levels, the minimum taxable price shall be, in principle, within 60% to 70% of the sales price of the trading enterprise.

Consumption tax is levied on beer manufactured by the food and beverage industry, commercial industry or entertainment industry, and breweries using their own equipment.

The consumption tax on beer is charged at a RMB rate per tonne. This is either RMB220 per tonne or RMB250 per tonne depending on the selling price of the

beer. The amount of consumption tax per unit for beer sold at less than RMB3,000 per tonne (factory price) is RMB220 per tonne and for beer sold at RMB3,000 or more, the amount of consumption tax per unit is RMB250 per tonne (*Caishui* (2001) 84). The ex-factory price should include the packaging cost and the deposit for packaging. However, it is clarified that the deposit for recycling plastic packages is excluded from the ex-factory price (*Caishui* (2006) 20).

Fruit beer, which is a low alcohol beverage with a mixed flavour of beer and other drinks, is still considered to be a form of beer and should be subject to consumption tax in accordance with *Guoshuihan* (2005) 333.

Cooking wine, which is a kind of liquid flavour dressing, clearly labelled as cooking wine, uses white wine, millet wine or edible alcohol as the main ingredients and is further processed with addition of salt and spice mixer. Cooking wine does not belong to compound or soaked alcohol, hence, consumption tax is not levied on the cooking wine (*Guoshuihan* (2008) 742).

If a producer/manufacturer of beer sells it in draft or bulk form to a bottling enterprise within the same group, the manufacturer shall account for consumption tax based on the above rules. The bottling enterprise shall also account for consumption tax on the same basis but a deduction of the consumption tax paid by the manufacturer may be taken. The bottling company must keep a detailed record/calculation of the consumption tax paid by the manufacturer based on the special VAT sales invoice from the manufacturer (*Guoshuihan* (2003) 382).

The scope for tax collection of alcohol covers all types of industrial, medical and edible alcohol produced by using distillation and synthesis methods. Consumption tax should be levied on the anhydrous ethanol made of alcohol after the distillation and dehydration process (*Guoshuihan* (2006) 768).

In accordance with *Guoshuifa* (2006) 66, wine shall be subject to consumption tax as "other alcohols" under the category of "Liquor and alcohol". Wine refers to original grape wine and finished wine with grapes as raw materials and produced by breaking (compressing) and fermenting with one degree or more of alcohol (excluding tequila produced with grapes).

For sales of wine between entities/individuals engaged in wine production within the territory of China, a certificate of wine purchase is required for tax administration purpose. Buyers shall apply for the certificate from the taxation authorities in-charge before the purchase, and the tax refund slip of the certificate is required to be presented to the sellers' administrative taxation authorities for the application of the consumption tax refund (*Guoshuifa* (2006) 66).

(14) Solid wooden floor boards

Taxable item	Tax rate
Solid wood floor boards	5%

Solid wooden floor boards are the floor decoration materials with the shape of pieces or strips which are processed with wood as raw materials through sawing, cutting, drying, polishing, cutting off, tenoning, painting and other processing procedures. According to different production techniques, solid wooden floor boards may be divided into three categories:

- single-wood-strip (piece) solid wooden floor boards;
- finger-jointed solid wooden floor boards; and
- compounded solid wooden floor boards.

On the basis of different surface treatment, solid wooden floor boards may be divided into two categories:

- unlacquered wooden floor boards (white body planks, natural colour floor boards); and
- lacquered wooden floor boards.

The taxable solid wooden floor boards include various solid wooden floor boards as well as the solid wooden decoration planks with the side notch of tenon or trough and used for decorating walls and ceilings. The unlacquered natural colour floor boards shall also fall within the scope.

In accordance with *Caishui* (2006) 125, solid wood composite floor refers to floor produced by peeling wood into veneers and processing the veneers in multi-layers with compregnating and composite techniques.

¶14-300 Sales of goods subject to different tax rates

A taxpayer who manufactures and sells a range of taxable consumer goods, which are subject to different rates of consumption tax, shall account for the respective sales values and sales volumes of the different goods separately. If the taxpayer fails to separately account for sales of differently rated goods, the highest consumption tax rate will be applied across the board (PRCT, Art 3).

For example, if a manufacturer of tobacco products sells various grades of cigarettes, cigars and cut tobacco, which are subject to tax rates ranging from 30% to 56% (see ¶14-250), and does not separately account for the sales, the highest tax rate of 56% will be applied to all of the taxpayer's sales.

Goods combined and sold together

When a taxpayer combines taxable consumer goods to which different tax rate apply, and sells them as one set of goods, the highest consumption tax rate will be applied (PRCT, Art 3).

¶14-350 Taxable sales value

"Sales value" is defined as the total cost and additional fees and charges received from a purchaser on the sales of taxable consumer goods (PRCT, Art 6). "Additional fees and charges" are fees and charges which are not directly included in the price receivable from a purchaser and may include: service charges to buyers; subsidies; funds; fund raising charges; returned profits; awards; fines for breaches of contracts; late payment surcharges; interest on deferred payment; penalties; funds collected on someone's behalf; funds paid on someone's behalf; packing fees; rentals of packaging; reserves; quality charges; freight, loading and unloading charges; and various other types of additional fees and charges (PRCTIR, Art 14).

Additional fees and charges shall be consolidated into the sales value for the purposes of calculating consumption tax payable, regardless of the accounting treatment adopted by the taxpayer.

Additional transport fees and charges need not be included in the sales value if the freight invoice is either issued to the purchaser directly by the transport unit and passed to the purchaser by the taxpayer.

Additional government funds or other public service charges need not to be included in the sales value if *all* of the following conditions could be met:

- (1) government funds approved by the State Council or the Ministry of Finance and public service charges approved by the State Council or provincial governments and their competent departments in-charge of finance and price;
- (2) public financial invoices are issued when the funds or charges are collected; and
- (3) all of the funds or charges collected shall be transferred to the State treasury.

According to *Guoshuifa* (2006) 102 and *Guoshuifa* (2007) 123, for exportation which are deemed as domestic sales, the sales value refers to the FOB (free on board) price of the exported goods \times RMB exchange rate.

Guoshuihan (2006) 373 prescribed the tax administration regarding the taxable sales value on new brand cigarettes. The manufacturers of the new brand/type of cigarettes must report the new products to the local tax authority in-charge as well as provide the local tax authority in-charge with a sample and a scanned image of the product according to the new regulation.

<i>Exempt activities, services and enterprises</i>	<i>Law/Circular</i>
<ul style="list-style-type: none"> Insurance products provided for exported goods by domestic insurance companies. "Insurance products" include exported goods insurance and export credit insurance. 	PRBT, Art 8(7); PRBTIR, Art 22(5)
<ul style="list-style-type: none"> Insurance premiums received by insurance companies for life insurance policies with terms of one year or more, where the premiums are refundable upon expiry of the terms. 	Caishuizi (1994) 2
<ul style="list-style-type: none"> Transfers of land use rights to farmers for farming. 	Caishuizi (1994) 2
<ul style="list-style-type: none"> Transfers of copyright by individuals. 	Caishuizi (1994) 2
<ul style="list-style-type: none"> Interest income received from subsidiaries by a group finance company where the interest is collected for the purpose of repaying financial institutions from which the group has borrowed money. 	Guoshuifa (2002) 13
<ul style="list-style-type: none"> Where units or individuals become shareholders in a company by means of investing intangible or immovable assets, the investment of intangible or immovable assets is exempt from business tax if they are subject to the operating risks of the company. 	Caishui (2002) 191
<ul style="list-style-type: none"> Transfer of shares. 	Caishui (2002) 191
<ul style="list-style-type: none"> The income derived by an individual from the sale of an ordinary residential unit which has been held for five or more years. 	Caishui (2011) 12
<ul style="list-style-type: none"> The gains from the buying and selling of securities conducted in China by the domestic companies entrusted by Qualified Foreign Institutional Investors (QFIIs). 	Caishui (2005) 155
<ul style="list-style-type: none"> Premiums gained from the insurance products listed in appendix listed in the circulars that are sold by the related insurance companies and are in line with the conditions for tax exemption pursuant to the relevant provisions. 	Caishuizi (1994) 2; Caishui (2001) 118; Caishui (2005) 190; Caishui (2008) 88; Caishui (2008) 166; Caishui (2009) 135
<ul style="list-style-type: none"> The service revenues of China national post bureau and its affiliated post offices, which include general post services and special post services such as documentation, parcels, money orders, correspondence, communist party's newspapers and magazines. 70% of the total revenue will be calculated as tax exempt revenues from the issue of communist party's newspapers and magazines. 	Caishui (2006) 47

<i>Exempt activities, services and enterprises</i>	<i>Law/Circular</i>
From 1 January 2008 to 31 December 2010, the income derived by China Post Group and its affiliated postal enterprises, formed the financial businesses handled on behalf of China Postal Saving Banks and their branches and sub-branches, shall be exempt from business tax.	Caishui (2009) 7
<ul style="list-style-type: none"> The income of low-rent housing management entities derived from the rental of low-rent housing to those eligible leasers and at the price stipulated in government regulations shall be exempt from business tax. 	Caishui (2008) 24
From 1 January 2008 to 31 December 2010, the fuel surcharges charged by airline company upon the approval shall be exempt from business tax.	Caishui (2008) 178
Starting from 15 December 2008, the transportation income obtained from Mainland China to Taiwan voyage by transportation companies engaged in operations of direct voyage across the Taiwan Strait shall be exempt from business tax. "Taiwan voyage and transportation company" refers to a company that obtains the Permission Certificate of Water Transportation across the Taiwan Strait issued by the Ministry of Communications and Transportation and the registration domicile specified in the above certificate is located in Taiwan.	Caishui (2009) 4
To build Shanghai as an International Comprehensive Navigation Pilot Area base on the Yangshan Port bonded zone (Port), starting from 1 May 2009, certain tax preferential policies are provided: <ul style="list-style-type: none"> income derived from international shipping business by shipping enterprises registered in the Port is exempt from business tax; income derived by service enterprises engaged in storage and logistic activities and registered in the Port from cargo transportation, storage, loading and moving services is exempt from business tax; income derived from the provision of international navigation insurance by insurance companies registered in Shanghai is exempt from business tax. 	Guofa (2009) 19 Caishui (2009) 91

Samples, test machines and equipment are subject to VAT. The transferor or consignor shall record the commodity sales income and technology transfer or development income separately. Where the commodity selling price is materially lower than the normal price, the tax authorities have the discretion to adjust the taxable income on the basis of PRVATIR (Art 20).

Where biological technology is transferred by the provision of microbe specimens and new biological or botanical strains, the amount received by the transferor is exempt from business tax. The batch sale of microbe specimens shall be subject to VAT.

Application procedure for technology transfer exemption

To apply for a business tax exemption for technology transfer income, the taxpayer engaged in technology transfer and development activities shall firstly submit the relevant contracts to the local provincial technology management authorities for verification. The confirmed contracts, a written application prepared by the taxpayer or its authorised agent and the evaluation letters issued by the technology management authorities shall then be sent to the provincial tax authorities for examination and then to the SAT for final approval.

Pending the approval of the exemption, the taxpayer shall first pay the business tax due. Upon approval by the technology management and tax authorities, the taxpayer can offset any business tax which has already been paid against its future business tax liabilities. If the taxpayer has no business tax liable activities within the following year, or the "exempt" business tax paid exceeds the following year's liability, the taxpayer may apply to the managing tax authorities for a business tax refund.

Starting from 1 July 2004, the above approved procedure has been waived for foreign enterprises and foreign individuals. However, the domestic transferee should keep the following documents in case of checks by the competent tax bureau:

- (i) the technology transfer confirmation issued by the competent authorities; and
- (ii) technology transfer contract.

If trademark is involved in the technology transfer contract, foreign enterprises and individuals must clearly separate the price of the technology and the trademark use rights in the contract. Otherwise, the tax bureau will assume 50% of the contract value is for the trademark use rights and thus levy business tax (*Guoshuifa* (2000) 166). If the technology transfer is not approved by the competent authorities then the total contract value will be subject to business tax in terms of the normal service fee (*Guoshuifa* (2004) 80).

¶15-300 Tax calculation formula

Business tax payable is computed by applying the prescribed business tax rates (see ¶15-450) to the taxpayer's gross business turnover (see ¶15-350) from its taxable activities (PRBT, Art 4). The simple formula for computing the business tax payable is:

$$\text{Business tax payable} = \text{Turnover} \times \text{Applicable tax rate}$$

Multiple taxable business activities

A taxpayer may be engaged in multiple business activities, each of which may fall under a different taxable item and be subject to a different rate of business tax under the PRBT (see ¶15-450 for taxable items and tax rates table).

One example would be an enterprise engaging in the business of providing entertainment services as well as transacting sales of immovable property. While sales of immovable property are subject to business tax at the rate of 5%, entertainment services may be subject to tax at a rate of between 5% and 20%.

In such cases, a taxpayer shall separately account for the turnover from each business activity, according to the taxable item categories. If turnovers are not separately accounted for, the highest tax rate will be applied to the taxpayer's total turnover from all of its business activities (PRBT, Art 3). This may result in a heavier tax liability for the taxpayer.

Example

A restaurant may engage in the provision of restaurant services as well as entertainment. The tax rate applicable to entertainment services may be as high as 20% while the tax rate applicable to restaurant services is only 5%. If the respective turnover for the restaurant and entertainment services are not separately accounted for, the higher tax rate applicable to the entertainment service turnover will also be applied to the restaurant service turnover, resulting in the taxpayer paying an extra 15% tax on that turnover.

Computation currency

Business tax payable is computed in Renminbi. If a taxpayer's turnover is accounted in a foreign currency, it shall be converted into Renminbi according to the prevailing exchange rates in the foreign exchange market. The exchange rate shall be based on middle foreign exchange rate prevails on the day when the activity incurs or the first day of the current month quoted by the State (PRBT, Art 4; PRBTIR, Art 21).

The exchange rate to be adopted shall be determined in advance and, once determined, may not be changed within a year of the determination.

Changes to business tax rates for financial institutions and insurance companies

Caishui (2001) 74 issued on 25 April 2001, removed business tax incentives under which foreign investment financial institutions and branches of foreign financial institutions established in the SEZs (including the Shanghai Pudong New Area and Suzhou Industrial Park) were exempt from business tax for five years on their business income derived within the SEZs. *Caishui* (2001) 74 is apparently aimed at levelling the playing field in the financial industry by eliminating foreign investment financial institutions' competitive advantage over domestic financial institutions. The exemption continues to apply to existing enterprises that already enjoy the business tax holiday until its expiry.

From 1 January 2009 to 31 December 2011, a reduced rate of 3% applies for incomes generated from financial and insurance businesses conducted by rural credit cooperatives, village/town banks, rural fund mutual-aid cooperatives, loan companies solely initiated and invested by banking institutions, and rural cooperation banks and rural commercial banks the legal person domiciles of which are located in counties (including county-level cities, districts and leagues) and places under the level of county. (*Caishui* (2010) 4)

Changes to business tax rates for highway administration companies

Caishui (2005) 77 issued on 11 May 2005, reduced the business tax rate for tolls collected by highway administration companies from 5% to 3% effective from 1 June 2005.

Changes to business tax rates for housing lease by individuals

Caishuizi (2000) 125 issued on 7 December 2000, reduced the business tax rate for housing lease by individuals from 5% to 3% effective from 1 January 2001. *Caishui* (2008) 24 issued on 3 March 2008 further prescribed that only 50% of business tax applicable would be levied on housing lease by individuals, effective from 1 March 2008.

Changes to business tax rates for animation industry

Caishui (2009) 65 issued on 17 July 2009, temporarily reduced the business tax rate from 5% to 3% till 31 December 2010 for the activities in relation to the development of animation products provided by animation enterprises, such as script compiling, image design, background design, animation design, etc.

¶15-500 Withholding agents

Many activities are subject to business tax. To ensure that all taxpayers report and pay the business tax for which they are liable, the PRBT, together with the PRBTIR, in some instances require the collection and payment of tax at source through withholding agents.

Certain units and individuals are deemed to be withholding agents and are obliged to withhold and to pay, or to collect and to pay, business tax when a taxpayer's liability to tax arises. For the time at which tax liability arises, see ¶15-550.

The business tax assessable period in relation to a taxpayer may be five days, 10 days, 15 days, one month or one quarter (see ¶15-550).

The following units or individuals are deemed to be withholding agents (PRBT, Art 11):

- for units and individuals domiciled outside the PRC and provide taxable services, transferring intangible assets or selling immovable property in the PRC without a business establishment in the PRC, the agent in the PRC will be the withholding agent. If no PRC agent is appointed, the assignees or buyers will be the withholding agents; and
- other withholding agents stipulated by the competent Finance and Taxation Authority of the State Council.

Business tax withholding agents shall exercise their withholding obligations with diligence. Any failure to withhold tax, or withholding less than the correct amount of tax, may result in penalties being imposed under the ALLCT.

Non-resident

For non-resident (including units and individuals) liable to business tax or value added tax, self-declaration of tax or is required where it has a business establishment in China; while an agent appointed by the non-resident will be responsible to withhold business tax for a non-resident that is liable to business tax but that does not have a business established in China; if the non-resident has not appointed an agent, the contractor, labour assignee or the buyer will be responsible for withholding business tax (Order No 19 of SAT).

¶15-550 Assessment and payment

Assessable period and payment

The normal business tax assessable period of a taxpayer may be five days, 10 days, 15 days, one month or one quarter. The actual assessable period of a taxpayer is determined by the local tax authorities according to the magnitude