

2009 Interim Regulation of PRC Business Tax

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)

中华人民共和国国务院令
(第 540 号)

《中华人民共和国营业税暂行条例》已经 2008 年 11 月 5 日国务院第 34 次常务会议修订通过，现将修订后的《中华人民共和国营业税暂行条例》公布，自 2009 年 1 月 1 日起施行。

总 理 温家宝
二〇〇八年十一月十日

中华人民共和国营业税暂行条例
(1993 年 12 月 13 日中华人民共和国国务院令第 136 号
发布 2008 年 11 月 5 日国务院第 34 次常务会议修订通过)

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.

第一条 在中华人民共和国境内提供本条例规定的劳务、转让无形资产或者销售不动产的单位和个人，为营业税的纳税人，应当依照本条例缴纳营业税。

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.

第二条 营业税的税目、税率，依照本条例所附的《营业税税目税率表》执行。

税目、税率的调整，由国务院决定。

纳税人经营娱乐业具体适用的税率，由省、自治区、直辖市人民政府在本条例规定的幅度内决定。

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.

第三条 纳税人兼有不同税目的应当缴纳营业税的劳务（以下简称应税劳务）、转让无形资产或者销售不动产，应当分别核算不同税目的营业额、转让额、销售额（以下统称营业额）；未分别核算营业额的，从高适用税率。

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.

第四条 纳税人提供应税劳务、转让无形资产或者销售不动产，按照营业额和规定的税率计算应纳税额。应纳税额计算公式：

应纳税额=营业额×税率

营业额以人民币计算。纳税人以人民币以外的货币结算营业额的，应当折合成人民币计算。

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.

第五条 纳税人的营业额为纳税人提供应税劳务、转让无形资产或者销售不动产收取的全部价款和价外费用。但是，下列情形除外：

（一）纳税人将承揽的运输业务分给其他单位或者个人的，以其取得的全部价款和价外费用扣除其支付给其他单位或者个人的运输费用后的余额为营业额；

（二）纳税人从事旅游业务的，以其取得的全部价款和价外费用扣除替旅游者支付给其他单位或者个人的住宿费、餐费、交通费、旅游景点门票和支付给其他接团旅游企业的旅游费后的余额为营业额；

（三）纳税人将建筑工程分包给其他单位的，以其取得的全部价款和价外费用扣除其支付给其他单位分包款后的余额为营业额；

（四）外汇、有价证券、期货等金融商品买卖业务，以卖出价减去买入价后的余额为营业额；

（五）国务院财政、税务主管部门规定的其他情形。

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.

第六条 纳税人按照本条例第五条规定扣除有关项目，取得的凭证不符合法律、行政法规或者国务院税务主管部门有关规定的，该项目金额不得扣除。

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.

第七条 纳税人提供应税劳务、转让无形资产或者销售不动产的价格明显偏低并无正当理由的，由主管税务机关核定其营业额。

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.

第八条 下列项目免征营业税:

(一) 托儿所、幼儿园、养老院、残疾人福利机构提供的育养服务, 婚姻介绍, 殡葬服务;

(二) 残疾人员个人提供的劳务;

(三) 医院、诊所和其他医疗机构提供的医疗服务;

(四) 学校和其他教育机构提供的教育劳务, 学生勤工俭学提供的劳务;

(五) 农业机耕、排灌、病虫害防治、植物保护、农牧保险以及相关技术培训业务, 家禽、牲畜、水生动物的配种和疾病防治;

(六) 纪念馆、博物馆、文化馆、文物保护单位管理机构、美术馆、展览馆、书画院、图书馆举办文化活动的门票收入, 宗教场所举办文化、宗教活动的门票收入;

(七) 境内保险机构为出口货物提供的保险产品。

除前款规定外, 营业税的免税、减税项目由国务院规定。任何地区、部门均不得规定免税、减税项目。

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.

第九条 纳税人兼营免税、减税项目的，应当分别核算免税、减税项目的营业额；未分别核算营业额的，不得免税、减税。

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.

第十条 纳税人营业额未达到国务院财政、税务主管部门规定的营业税起征点的，免征营业税；达到起征点的，依照本条例规定全额计算缴纳营业税。

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.

第十一条 营业税扣缴义务人：

（一）中华人民共和国境外的单位或者个人在境内提供应税劳务、转让无形资产或者销售不动产，在境内未设有经营机构的，以其境内代理人为扣缴义务人；在境内没有代理人的，以受让方或者购买方为扣缴义务人。

（二）国务院财政、税务主管部门规定的其他扣缴义务人。

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.

第十二条 营业税纳税义务发生时间为纳税人提供应税劳务、转让无形资产或者销售不动产并收讫营业收入款项或者取得索取营业收入款项凭据的当天。国务院财政、税务主管部门另有规定的，从其规定。

营业税扣缴义务发生时间为纳税人营业税纳税义务发生的当天。

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

第十三条 营业税由税务机关征收。

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.

第十四条 营业税纳税地点：

（一）纳税人提供应税劳务应当向其机构所在地或者居住地的主管税务机关申报纳税。但是，纳税人提供的建筑业劳务以及国务院财政、税务主管部门规定的其他应税劳务，应当向应税劳务发生地的主管税务机关申报纳税。

（二）纳税人转让无形资产应当向其机构所在地或者居住地的主管税务机关申报纳税。但是，纳税人转让、出租土地使用权，应当向土地所在地的主管税务机关申报纳税。

（三）纳税人销售、出租不动产应当向不动产所在地的主管税务机关申报纳税。

扣缴义务人应当向其机构所在地或者居住地的主管税务机关申报缴纳其扣缴的税款。

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.

第十五条 营业税的纳税期限分别为 5 日、10 日、15 日、1 个月或者 1 个季度。纳税人的具体纳税期限，由主管税务机关根据纳税人应纳税额的大小分别核定；不能按照固定期限纳税的，可以按次纳税。

纳税人以 1 个月或者 1 个季度为一个纳税期的，自期满之日起 15 日内申报纳税；以 5 日、10 日或者 15 日为一个纳税期的，自期满之日起 5 日内预缴税款，于次月 1 日起 15 日内申报纳税并结清上月应纳税款。

扣缴义务人解缴税款的期限，依照前两款的规定执行。

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.

第十六条 营业税的征收管理，依照《中华人民共和国税收征收管理法》及本条例有关规定执行。

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

Annex: Schedule of Business Tax Items and Rates

税目 Taxable items	税率 Tax rate
一、交通运输业 Transportation industry	3%
二、建筑业 Construction industry	3%
三、金融保险业 Financial and insurance industry	5%
四、邮电通信业 Postal and telecommunication industry	3%
五、文化体育业 Cultural and sports industry	3%
六、娱乐业 Entertainment industry	5%-20%
七、服务业 Service industry	5%
八、转让无形资产 Transfer of intangible assets	5%
九、销售不动产 Transfer of immovable assets	5%