

Announcement of State Administration of Taxation on Promulgation of the Administrative Measures on Tax Exemption for Cross-border Acts Subject to VAT in the Pilot Scheme for Levying VAT in place of Business Tax (Trial Implementation)

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The State Administration of Taxation has formulated the Administrative Measures on Tax Exemption for Cross-border Acts Subject to VAT in the Pilot Scheme for Levying VAT in place of Business Tax (Trial Implementation) which is hereby promulgated and implemented with effect from 1 May 2016.

The Announcement of State Administration of Taxation on Re-promulgation of the Administrative Measures on Tax Exemption for Cross-border Services Subject to VAT in the Pilot Scheme for Levying VAT in place of Business Tax (Trial Implementation) (State Administration of Taxation Announcement [2014] No. 49) shall be repealed simultaneously.

Announcement is hereby made.

Appendices:

1. Filing Form for Tax Exemption for Cross-border Taxable Acts
2. Declaration for Forfeiture of Applicable Zero-rated VAT

6 May 2016

Administrative Measures on Tax Exemption for Cross-border Acts Subject to VAT in the Pilot Scheme for Levying VAT in place of Business Tax (Trial Implementation)

Article 1 These Measures shall apply to cross-border taxable acts undertaken by organisations and individuals (hereinafter referred to as the "taxpayers") in the People's Republic of China

(hereinafter referred to as "China").

Article 2 The following cross-border taxable acts shall be exempted from VAT:

(I) Construction services for overseas projects.

Construction services provided by general contractors and subcontractors for overseas projects shall fall under construction services for overseas projects.

(II) Project supervision services for overseas projects.

(III) Engineering survey and exploration services for overseas engineering and mineral resources.

(IV) Conference and exhibition services for overseas conference and exhibition venues.

Organising and arranging services for clients participating in overseas conferences and exhibitions shall fall under conference and exhibition services for overseas conference and exhibition venues.

(V) Storage services where the storage venue is overseas.

(VI) Leasing of tangible movables which are used overseas.

(VII) Broadcasting of radio and television programmes (works) provided overseas.

Broadcasting of radio and television programmes (works) provided overseas shall mean screening of radio and television programmes (works) at overseas cinemas, theatres, video halls and other premises.

Broadcasting of radio and television programmes (works) to overseas audience through domestic wireless or wired devices such as radio stations, television stations, satellite communications, Internet and cable television shall not fall under broadcasting of radio and television programmes (works) provided overseas.

(VIII) Cultural and sports services, education and medical services, and travel services, which are provided overseas.

Cultural and sports services and education and medical services which are provided overseas, shall mean cultural and sports services and education and medical services which are provided by the taxpayers at overseas premises.

Organising and arranging customers to participate in science and technology activities, cultural activities, cultural performances, cultural competitions, sports competitions, sports performances, sports activities, which are held overseas, shall fall under cultural and sports services provided overseas.

Cultural and sports services or education and medical services, which are provided to overseas entities or individuals through domestic radio stations, television stations, satellite communications, Internet, cable television etc, shall not fall under cultural and sports services and education and medical services, which are

provided overseas.

(IX) Postal services, collection and delivery services and insurance services, which are provided for exports.

1. Postal services provided for exports shall mean:

(1) Delivery of postal articles such as letters and parcels outside China.

(2) Issuance of stamps to overseas.

(3) Exportation of postal items such as stamp albums.

2. Collection and delivery services provided for exports shall mean collection, sorting and delivery services provided for letters and parcels for overseas addressees.

For taxpayers undertaking collection and delivery services for exports, the tax-exempt sales amount shall be all monies and out-of-pocket expenses collected by the taxpayer from the sender.

3. Insurance services provided for exports shall include insurance for exports and export credit insurance.

(X) Telecommunication services sold to overseas entities which are consumed overseas entirely.

For taxpayers providing telecommunication services to overseas entities or individuals, where the expenses are settled through an overseas telecommunication organisation, the service recipient shall be an overseas telecommunication organisation, and the services shall be deemed as telecommunication services which are consumed overseas entirely.

(XI) Intellectual property services sold to overseas entities, which are consumed overseas entirely.

Intellectual property services for which the actual recipient is an entity or individual in China shall not fall under intellectual property services which are consumed overseas entirely.

(XII) Logistics auxiliary services sold to overseas entities, which are consumed overseas entirely (except for storage services, collection and delivery services).

When an overseas entity engaging in international transportation business and Hong Kong, Macau and Taiwan transportation business stops at an airport, port or terminal in China or pass through Chinese airspace, river and sea, the aviation ground services, port services, freight terminal and passenger station services, salvage and rescue services, and loading, unloading and moving services provided by the taxpayer shall fall under logistics auxiliary services services which are consumed overseas entirely.

(XIII) Authentication and consultation services sold to overseas entities, which are consumed overseas entirely.

The following services do not fall under authentication and consultation services which are consumed overseas entirely:

1. Services for which the actual recipient is an entity or individual in China.

2. Certification services, authentication services and consultation services for goods or immovables in China.

(XIV) Professional and technical services sold to overseas entities, which are consumed overseas entirely.

The following services do not fall under professional and technical services which are consumed overseas entirely:

1. Services for which the actual recipient is an entity or individual in China.

2. Meteorological services, seismic services, marine services, environmental and ecological monitoring services for weather conditions, seismic conditions, marine conditions, and environmental and ecological conditions in China.

3. Mapping services for topography, geological structure, hydrology and mineral resources etc in China.

4. Urban planning services for cities, villages and towns in China.

(XV) Business support services sold to overseas entities, which are consumed overseas entirely.

1. Customs declaration agent services and freight forwarding services provided by the taxpayers to overseas entities shall fall under Customs declaration agent services and freight forwarding services which are consumed overseas entirely.

2. Seafarer assignment services provided by the taxpayers to overseas entities shall fall under human resources services which are consumed overseas entirely. Seafarer assignment services shall mean assignment of seafarers by their employer to an overseas entity to provide seamanship and ship management services overseas.

3. Human resources services provided by the taxpayers in the form of foreign labour cooperation to overseas entities which occur entirely overseas shall fall under human resources services which are consumed overseas entirely. Foreign labour cooperation shall mean that an organisation in China has entered into a labour cooperation contract with an overseas entity where the former organises and arranges Chinese citizens to work overseas pursuant to the contractual agreement.

4. The following services do not fall under business support services which are consumed overseas entirely:

- (1) Services for which the actual recipient is an entity or individual in China.

- (2) Investment and asset management services, estate management services and real estate intermediary services for immovables in China.

(3) Brokerage services provided in the process of auction for goods or immovables in China.

(4) Legal representation services provided for property right disputes pertaining to goods or immovables in China.

(5) Security protection services for goods or immovables in China.

(XVI) Advertising services sold to overseas entities for which the place of delivery is overseas.

Advertising services for which the place of delivery is overseas shall mean advertising services provided for advertisements which are published overseas.

(XVII) Intangible assets sold to overseas entities, which are consumed overseas entirely (except for technologies).

The following do not fall under intangible assets sold to overseas entities which are consumed overseas entirely:

1. Intangible assets which are not used overseas entirely.
2. The transferred use rights of natural resources are related to natural resources in China.
3. The transferred infrastructure asset operation rights and public utilities concessions are related to goods or immovables in China.
4. Transfer of goods, taxable labour services, services, quota of intangible assets or immovables, operation right, dealership, distribution rights and agency rights which are sold in China to overseas entities.

(XVIII) Direct charges financial services provided for monetary financing and other financial businesses between overseas entities, and the services are related to goods, intangible assets and immovables in China.

Clearing and settlement of funds, financial payment, account management services provided for foreign currency and Renminbi fund transactions between overseas entities or between overseas entities and individuals, monetary financing between overseas organisations and direct charges financial services provided for other financial businesses..

(XIX) International transportation services which fall under the following descriptions:

1. International transportation services provided via the method of carriers without transportation vehicles
2. International transportation services provided in the form of waterway transportation without an "International Shipping Business Permit".
3. International transportation services provided in the form of road transportation without a "Road Transportation Business Permit" or an "International Car Transport Driving Licence" or where the scope of

business of the "Road Transportation Business Permit" does not include "international transportation".

4. International transportation services provided in the form of air transportation without a "Public Air Transport Enterprise Business Licence" or the scope of business of the "Public Air Transport Enterprise Business Licence" does not include "international air passenger and cargo transportation".

5. International transportation services provided in the form of air transportation without a "General Aviation Business Licence" or the scope of business of the "General Aviation Business Licence" does not include "corporate flights".

(XX) The following taxable acts which fall under zero-rated policies but are subject to the simple tax computation method or for which the taxpayer forfeits application of zero rate and opts for tax exemption:

1. International transportation services.
2. Space transport services.
3. The following services provided to overseas entities which are consumed overseas entirely:
 - (1) research and development services;
 - (2) energy management contracting services;
 - (3) design services;
 - (4) production and distribution of radio and television programmes (works);
 - (5) software services;
 - (6) circuit design and testing services;
 - (7) information system services;
 - (8) business process management services; and
 - (9) offshore service outsourcing business.
4. Transfer of technologies to overseas entities which are consumed overseas entirely.

Article 3 Sale of services and intangible assets by the taxpayers to entities or individuals in special Customs supervision areas in China shall not fall under cross-border taxable acts, and shall be subject to VAT pursuant to the regulations.

Article 4 Contracts executed before 30 April 2016 which satisfy the tax exemption criteria stipulated in Appendix 4 of the Notice of Ministry of Finance and State Administration of Taxation on Including Railway Transportation and Postal Industry in the Pilot Scheme for

Levying VAT in place of Business Tax (Cai Shui [2013] No. 106) and the Notice of Ministry of Finance and State Administration of Taxation on Application of VAT Zero-rated Policies for Exportation of Services Including Television and Film Services (Cai Shui [2015] No. 118) may continue to enjoy tax exemption up to expiry of the contract.

Article 5 Taxpayers who engage in cross-border taxable acts set out in Article 2 shall, except for item (XIV) and item (XX), enter into a written contract for cross-border sale of services or intangible assets; otherwise VAT shall not be exempted.

In the case of taxpayers providing flight management services to foreign air transportation enterprises, the flight plan issued by the Civil Aviation Administration of China or the flight records of incoming flights of the Civil Aviation Administration of China's clearing centre shall be deemed as the written contract for cross-border sale of services.

The written contract entered between a taxpayer providing logistics auxiliary services (except for flight management services) to foreign air transportation enterprises, and a foreign air transportation enterprise's representative office established with approval by the Civil Aviation Administration of China, shall fall under written contracts for cross-border sale of services entered into with the service recipient. Where a foreign air transportation enterprise flying into China on an ad hoc basis has not entered into a written contract for cross-border services, the flight records of incoming flights of the Civil Aviation Administration of China's clearing centre shall be the written contract for cross-border sale of services.

Where a project's construction site is overseas, the sub-contractor shall provide the proof of overseas location of the project, original copy and photocopy of the construction contract entered into with the contract awarding party etc, as the written contract for cross-border sale of services.

Article 6 Where a taxpayer's sale of services or intangible assets to an overseas entity is exempted from VAT pursuant to the provisions of these Measures, the income of the said sale of services or intangible assets shall be entirely sourced from overseas; otherwise VAT shall not be exempted.

The following income shall be deemed as income derived from overseas:

(1) In the case of taxpayers providing logistics auxiliary services to foreign air transportation enterprises, income obtained from the Civil Aviation Administration of China's clearing centre, the Accounting Centre of China Aviation or a foreign air transportation enterprise's representative office established with approval by the Civil Aviation Administration of China.

(2) Income derived from a third party settlement company in China by a taxpayer who engages in a cross-border taxable act with an overseas related organisation. The aforesaid third party settlement company shall mean a fund settlement company which undertakes centralised operation and management of funds of the members of a multinational corporation group, including finance company, capital pool and fund

settlement centre.

(3) Income derived by a taxpayer providing logistics auxiliary services to a foreign shipping enterprise and obtained through a domestic agency company designated by the foreign shipping enterprise.

(4) Any other circumstances stipulated by the State Administration of Taxation.

Article 7 Where a taxpayer's cross-border taxable act is exempted from VAT, the taxpayer shall carry out separate accounting for the sales amount of the cross-border taxable act, and compute non-deductible input tax accurately, and shall not issue a special VAT invoice for its tax-exempt income.

Taxpayers providing collection and delivery services for exports shall compute non-deductible input tax using the following formula:

Non-deductible input tax = All input tax in the current period which cannot be differentiated x (sales amount of taxable acts of the current period which adopt the simple tax computation method + sales amount of VAT-exempt acts – expenses paid to overseas cooperating party for provision of collection and delivery services pertaining to the exports) ÷ total sales amount of the current period

Article 8 A taxpayer engaging in VAT-exempt cross-border taxable acts shall, except for provision of the services set out in item (20) of Article 2, complete filing formalities for tax-exempt cross-border taxable acts with the tax authorities in charge within the tax declaration period for the first-time tax exemption or within any other time limit following the declaration period stipulated by the State tax bureau of the respective province, autonomous region, centrally-administered municipality or municipality with unilateral planning, and submit the following filing materials simultaneously:

(1) Filing Form for Tax-exempt Cross-border Taxable Acts (Appendix 1);

(2) original copy and photocopy of the contract for cross-border sale of services or intangible assets stipulated in Article 5 of these Measures;

(3) taxpayers providing services set out in item (I) to item (VIII) and item (XVI) of Article 2 of these Measures shall submit the original copy and photocopy of materials proving that the services are rendered overseas;

(4) taxpayers providing international transportation services set out in Article 2 of these Measures shall submit materials proving that the relevant businesses are actually transacted;

(5) taxpayers engaging in sale of services or intangible assets to overseas entities shall submit materials proving that the organisation which purchases the services or intangible assets is located overseas; and

(6) any other materials stipulated by the State Administration of Taxation.

Article 9 Taxpayers engaging in taxable acts set out in item (XX) of Article 2 shall complete filing formalities for tax-exempt cross-border taxable acts with the tax authorities in charge within the tax declaration period for the first-time tax exemption or within any other time limit following the declaration period stipulated by the State tax bureau of the respective province, autonomous region, centrally-administered municipality or municipality with unilateral planning, and submit the following filing materials simultaneously:

(1) the "Declaration for Forfeiture of Applicable Zero-rated VAT" filed with the tax authorities in charge for processing VAT exemption, credit and refund or tax exemption and refund (Appendix 2); and

(2) the materials and original vouchers required to be submitted when the taxpayer who is entitled to zero rate for the said taxable act completes the formalities with the tax authorities in charge for VAT exemption, credit and refund or tax exemption and refund.

Article 10 Where the original copy of the contract for cross-border sale of services or intangible assets to be submitted for filing pursuant to the provisions of Article 8 of these Measures is written in a foreign language, the Chinese translation shall be attached and include the signature of the legal representative (person-in-charge) or the organisation's seal.

Where the taxpayer is unable to provide the original copy of the overseas materials set out in Article 8 of these Measures and is only able to provide a photocopy, the photocopy shall state the words "certified true copy" and include the signature of the legal representative (person-in-charge) or the organisation's seal; where the original copies of the overseas materials are written in a foreign language, the Chinese translation shall be attached and include the signature of the legal representative (person-in-charge) or the organisation's seal.

Where the tax authorities in charge are doubtful about the overseas proof materials submitted, the taxpayer may be required to provide certification issued by an overseas notary organisation.

Article 11 When a taxpayer completes filing formalities for a tax-exempt cross-border taxable act, the tax authorities in charge shall handle the filing as follows:

(1) Where there is an error in the filing materials, the taxpayer shall be notified and allowed to make correction.

(2) Where the filing materials are incomplete or do not comply with the stipulated format, the taxpayer shall be notified onsite in a one-off manner to make correction and supplementation.

(3) Where the filing materials are complete and comply with the stipulated format, or the taxpayer has made all the correction and supplementation as required by the tax authorities, the filing shall be accepted

and the original copies of the relevant materials shall be returned to the taxpayer.

(4) Where the filing materials still do not comply with the provisions of Article 8, Article 9 and Article 10 of these Measures following correction and supplementation made pursuant to the requirements of the tax authorities, the filing for the said tax-exempt cross-border taxable act of the taxpayer shall not be accepted and all the materials submitted shall be returned to the taxpayer.

Article 12 Upon acceptance or non-acceptance of filing for a tax-exempt cross-border taxable act, the tax authorities in charge shall issue a written proof affixed with the special seal of the tax authorities and state the date thereon.

Article 13 Where there is a change in the executed contract for cross-border sale of services or intangible assets, or there is any change in the relevant information of the cross-border sale of services or intangible assets, and the sale still falls under the scope of tax exemption stipulated in Article 2 of these Measures after the change, the taxpayer shall complete filing formalities with the tax authorities in charge afresh for tax exemption for the cross-border taxable act.

Article 14 Taxpayers shall keep all materials required in Article 8, Article 9 and Article 10 of these Measures. Where a taxpayer is unable to provide the aforesaid materials for follow-up administration by the tax authorities, it shall not enjoy tax exemption stipulated in these Measures, and make retrospective payment for the tax reduction and exemption claimed, and the taxpayer shall be dealt with pursuant to the relevant provisions of the Administrative Law of the People's Republic of China on the Levying and Collection of Taxes.

Article 15 Taxpayers claiming tax exemption for cross-border taxable acts shall make tax declaration pursuant to the provisions. Where the validity period for a taxpayer's entitlement for tax exemption has expired or the taxpayer's actual business operation no longer satisfies the tax exemption criteria stipulated in these Measures, the taxpayer shall cease to enjoy tax exemption and shall make tax declaration and payment pursuant to the provisions.

Article 16 Where a taxpayer's actual business operation of a taxpayer ceases to satisfy the tax exemption criteria stipulated in these Measures, or a taxpayer adopts fraudulent means to obtain tax exemption, or a taxpayer fails to report to the tax authorities promptly when there is a change in the criteria for tax reduction or exemption, or where a taxpayer claims tax reduction or exemption

without performing the relevant procedures pursuant to the provisions of these Measures, the taxpayer shall be dealt with by the tax authorities pursuant to the relevant provisions of the Administrative Law of the People's Republic of China on the Levying and Collection of Taxes.

Article 17 The tax authorities shall pay close attention to administration of VAT exemption for

cross-border taxable acts, adopt case analysis, day-to-day inspection and focused audit etc to strengthen verification of authenticity of taxpayers' businesses based on the filing materials, and deal with the issues discovered pursuant to the relevant prevailing provisions.

Article 18 Taxpayers engaging in taxable acts relating to Hong Kong, Macau or Taiwan shall refer to these Measures.

Article 19 These Measures shall be implemented with effect from 1 May 2016. Where a taxpayer has completed filing formalities for tax exemption for a tax-exempt cross-border taxable act stipulated in Article 4 of these Measures prior to the implementation of these Measures, the taxpayer is not required to complete filing formalities for tax exemption afresh. Where a taxpayer carries out a tax-exempt cross-border taxable act stipulated in

Article 2 and Article 4 of these Measures but has made declaration for tax exemption without completing the filing formalities for tax exemption, the taxpayer shall complete the filing formalities retrospectively pursuant to the provisions of these Measures; where the taxpayer has not made declaration for tax exemption, it may apply for refund of tax paid or offset against tax payable amount in subsequent period after it has completed the filing formalities for cross-border services pursuant to the provisions of these Measures; where the taxpayer has issued a special VAT invoice, it shall complete filing formalities for tax exemption for the cross-border taxable act after it has recovered all copies of the special VAT invoice.



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