

Rules for the Implementation of Provisional Regulations of the PRC on Land Appreciation Tax Added-Value Tax

(Promulgated by the Ministry of Finance on 27 January 1995, and effective as of the same date.)

Article 1 These Rules are formulated in accordance with Article 14 of the PRC, Land Value-added Tax Tentative Regulations (hereafter, “the Regulations”).

Article 2 For the purposes of Article 2 of the Regulations, the phrase “assignment of State-owned land use rights and structures on and other attachments to land, and generation of revenue therefrom” shall refer to acts of assignment of real property for consideration by means of sale or otherwise. It shall not include acts of assignment of real property without consideration by means of succession or gift.

Article 3 For the purposes of Article 2 of the Regulations, the term “State-owned land” shall refer to land that is owned by the State according to State laws and regulations.

Article 4 For the purposes of Article 2 of the Regulations, the term “structures on land” shall refer to all structures erected on land, including all kinds of ancillary facilities above and under the ground.

For the purposes of Article 2 of the Regulations, the term “other attachments” shall refer to immovable articles attached to land that become damaged once they are moved.

Article 5 For the purposes of Article 2 of the Regulations, the term “revenue” shall include the entire proceeds of the assignment of real property and related economic benefits.

Article 6 For the purposes of Article 2 of the Regulations, the term “work units” shall refer to all kinds of enterprise work units, institutions, governmental authorities, social organizations and other organizations.

For the purposes of Article 2 of the Regulations, the term “individuals” shall include individual business operators.

Article 7 The items that may be deducted when calculating the value-added as set forth in Article 6 of the Regulations shall specifically be as follows:

1. the term “the amount expended to obtain the land use rights” shall refer to the land premium paid by a taxpayer in order to obtain the land use rights, and related expenses paid in accordance with unified regulations of the State;

2. the term “the costs of land development and construction of new buildings and supplementary facilities (hereafter, “real property development”)” shall refer to the actual costs incurred from a taxpayer's real development project (hereafter, “real property development costs”), including the The copyright and/or other intellectual property rights of China Business Engine including related text, images, charts, sound, animation, and videos, and their arrangement on the China Business Engine website, are protected by copyright and other protective laws.

compensation expenses for land requisition as well as demolition and removal, the expenses for pre-stage projects, construction and installation works, infrastructure facilities and the public utility facilities and the indirect development expenses.

Compensation expenses for land requisition as well as demolition and removal shall include land requisition fee, tax on occupation of cultivated land, resettlement fee for labour force and net expenditure in connection with compensation for the demolition and removal of attachments above and under the ground, expenditure for resettlement and relocation to other buildings, etc.

Pre-stage project expenses shall include expenditure for planning, design, project feasibility study, hydrological and geological studies, surveying, mapping, infrastructure facilities and levelling of land, etc.

The term “expenses for construction and installation works” shall refer to, in the case of contracted works, the fee for construction and installation works paid to a contractor and, in the case of construction by the owner, the expenses incurred from the construction and installation works.

Expenses for infrastructure facilities shall include the expenditure incurred from works for roads, water supply, electricity supply, gas supply, sewerage, flood drainage, communications, lighting, security, landscaping, etc. in a development subarea.

Expenses for public utility facilities shall include the expenditure incurred from public utility facilities in a development subarea that cannot be assigned for consideration.

The term “indirect development expenses” shall refer to expenses incurred in the direct organization and administration of a development project, including wages, expenses for welfare benefits of staff and workers, depreciation charges, repair expenses, office expenses, water and electricity bills, labour security expenses, amortization of interim housing, etc.

3. the term “expenses of land development and construction of new buildings and supplementary facilities (hereafter, “real property development expenses”)” shall refer to the sales expenses, administrative expenses and financial expenses in connection with a real property development project.

Among financial expenses, the actual amount of any interest expenditure may be deducted where such expenditure can be calculated and apportioned to individual projects for the assignment of real property and certificates from financial institutions can be provided; however, the amount deducted may not exceed the amount calculated on the basis of the interest rate charged by commercial banks for the same type of loan of the same term. Other real property development expenses shall be calculated and deducted up to an amount equivalent to five per cent of the sum of the amounts calculated under items (1) and (2) hereof.

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Where the interest expenditure cannot be calculated and apportioned to individual projects for the assignment of real property or no certificates from financial institutions can be provided, the real property development expenses shall be calculated and deducted up to an amount equivalent to ten per cent of the sum of the amounts calculated under items (1) and (2) hereof.

The specific ratio for the calculation and deduction mentioned above shall be determined by the People's Governments of the provinces, autonomous regions and centrally-governed municipalities.

4. the term “appraised price of old buildings and structures” shall refer to the price appraised by a real property appraisal organization established with government approval by multiplying the replacement cost price by the discount rate for the degree of newness at the time of assignment of used buildings and structures. The appraised price must be verified by the local taxation authorities.

5. the term “taxes in connection with the assignment of real property” shall refer to the business tax, urban maintenance and construction tax and stamp duty paid at the time of assignment of real property. Education surcharges paid as a result of the assignment of real property may be also be deducted as tax.

6. on the basis of item (5) of Article 6 of the Regulations, a taxpayer engaged in real property development may deduct an additional 20 per cent of the sum of the amounts calculated under items (1) and (2) hereof.

Article 8 The unit for the calculation of land value-added tax shall be the most basic accounting item or subject calculated on the basis of a taxpayer's real property development costs.

Article 9 Where a taxpayer develops and assigns real property in phases and in batches after being granted the land use right to a large tract of land, the amount of deductions therefor may be determined by calculating and apportioning the same on the basis of the percentage of the total area constituted by the area of which the land use rights are assigned, or on the basis of the floor area, or according to another method verified by the taxation authorities.

Article 10 With respect to each of the four progressive tax rates set forth in Article 7 of the Regulations, the “percentage of the amount of deductions that is not exceeded by the portion of the value-added” at each rate shall include such percentage itself.

The amount of land value-added tax may be calculated by the simple method of multiplying the value-added by the applicable tax rate, deducting the amount of deductions and multiplying the result by the fast-calculating deduction coefficient. The specific formulas are set forth below:

1. if the value-added does not exceed 50 per cent of the amount of deductions:

amount of land value-added tax = value added x 30%

2. if the value-added exceeds 50 per cent but falls within 100 per cent of the amount of the deductions:

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amount of land value-added tax = value added x 40% - amount of deductions x 5%

3. if the value-added exceeds 100 per cent but falls within 200 per cent of the amount of deductions:

amount of land value-added tax = value added x 50% - amount of deductions x 15%

4. if the value-added exceeds 200 per cent of the amount of deductions:

amount of land value-added tax = value added x 60% - amount of deductions x 35%

In the above formulas, 5%, 15% and 35% are the fast-calculating deduction coefficients.

Article 11 For the purposes of item (1) of Article 8 of the Regulations, the term “ordinary, standard residential buildings” shall refer to buildings for residential purposes constructed according to the ordinary standards for civilian residential purposes applied in the area where the buildings are located. High-class apartment buildings, villas, holiday resorts, etc. are not ordinary, standard residential buildings. The specific differentiation between ordinary, standard residential buildings and other residential buildings shall be determined by the People's Governments of the provinces, autonomous regions and centrally-governed municipalities.

Where the value-added to ordinary, standard residential buildings constructed and sold by a taxpayer does not exceed 20 per cent of the sum of the deductions set forth in items (1), (2), (3), (5) and (6) of Article 7 hereof, land value-added tax shall be exempted. Where the value added exceeds 20 per cent of the sum of the deductions, tax shall be calculated in accordance with regulations on the full amount of the value-added.

For the purposes of item (2) of Article 8 of the Regulations, the phrase “real property that is requisitioned or recovered according to law for State construction purposes” shall refer to property requisitioned or land use rights recovered with government approval for the implementation of urban planning or State construction purposes.

Where relocation is required for the implementation of urban planning or State construction purposes and a taxpayer assigns the original real property by himself, land value-added tax shall be exempted by reference to these provisions.

Work units and individuals that meet the above conditions for tax exemption must apply for exemption to the taxation authorities of the place where the real property is located. The land value-added tax shall be exempted following examination and approval of such applications by the taxation authorities.

Article 12 Any individual who assigns residential premises originally used by himself due to a change in his place of work or in order to improve his living conditions shall be exempt from land value-added tax where he has resided in the premises for five or more years. Where he has resided in the premises for three or more years but less than five years, the land value-added tax shall be reduced by 50 per cent. Where he has resided in the premises for less than three years, land value-added tax shall be calculated and levied according to regulations.

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Article 13 For the purposes of Article 9 of the Regulations, the term “appraised value of real property” shall refer to the price appraised by a real property appraisal organization established with government approval on the basis of a comprehensive evaluation of the same type of real property in the same sector of the area. The appraised price must be verified by the local taxation authorities.

Article 14 For the purposes of item (1) of Article 9 of the Regulations, the phrase “concealing of real property transaction price or reporting of a sham real property transaction price” shall refer to an act whereby a taxpayer fails to report the price or reports, at ill will, a price lower than the actual price for the assignment of land use rights and structures on and other attachments to land.

For the purposes of item (2) of Article 9 of the Regulations, the phrase “reporting of an untrue amount of deductions by a taxpayer” shall refer to an act whereby a taxpayer reports an untrue amount of deductions in his tax return.

For the purposes of item (3) of Article 9 of the Regulations, the phrase “the transaction price for the assignment of real property is lower than the appraised price of such real property without proper reasons” shall refer to an act whereby the actual transaction price for the assignment of real property reported by a taxpayer is lower than the transaction price appraised by a real property appraisal organization, and the taxpayer is unable to provide evidence or there is no proper reason.

A real property transaction price that was concealed or a sham real property transaction price that was reported shall be appraised by an appraisal organization by referring to the market transaction price for real property of the same type. The taxation authorities shall determine the revenue from the assignment of that real property on the basis of the price appraised.

The amount of deductions that was inaccurately reported shall be appraised by an appraisal organization on the basis of the cost of the premises (which shall be calculated by multiplying the replacement cost by the discount rate for the degree of newness) and the basic land premium applicable at the time when the land use rights were acquired. The taxation authorities shall determine the amount of deductions on the basis of the appraised price.

Where the transaction price for the assignment of real property is lower than the appraised price of such real property without proper reasons, the taxation authorities shall determine the revenue from the assignment of such real property by referring to the appraised price of such real property.

Article 15 According to Article 10 of the Regulations, taxpayers shall carry out tax payment procedures according to the following procedures:

1. within seven days of executing a contract for the assignment of real property, a taxpayer shall file tax returns with the taxation authorities-in-charge of the place where such real property is located and submit to the taxation authorities the title certificates of the buildings and structures, land use right The copyright and/or other intellectual property rights of China Business Engine including related text, images, charts, sound, animation, and videos, and their arrangement on the China Business Engine website, are protected by copyright and other protective laws.

certificates, contracts for the assignment of land as well as sale and purchase of buildings, real property appraisal reports and other information in connection with the assignment of such real property.

Where a taxpayer is unable to submit a return after each assignment of real property because he frequently assigns real property, he may, subject to examination and approval by the taxation authorities, submit tax returns on a periodic basis. The specific periods within which the taxpayer shall file tax returns shall be determined by the taxation authorities according to the actual circumstances.

2. taxpayers shall pay land value-added tax in accordance with the amounts of tax examined and determined, and the time limits prescribed, by the taxation authorities.

Article 16 Where a taxpayer is unable to calculate the land value-added tax on his revenue from the assignment of real property prior to completion and settlement of the entire project because such calculation involves the determination of costs or for other reasons, the land value-added tax may be levied in advance. After the entire project has been completed and settlement has been carried out, a thorough calculation shall be conducted, whereupon any overpayments shall be refunded and shortfalls made up. The specific measures shall be formulated by the local taxation authorities of the provinces, autonomous regions and centrally-governed municipalities according to the local circumstances.

Article 17 For the purposes of Article 10 of the Regulations, the term “the place where the real property is located” shall refer to the location of the real property. Where the real property assigned by a taxpayer is located in two or more areas, separate tax returns shall be submitted and tax shall be paid separately for each area where such real property is located.

Article 18 For the purposes of Article 11 of the Regulations, the phrase “relevant information that shall be provided by the land administration authorities and real property administration authorities to the taxation authorities” shall refer to the information to be provided for the taxation authorities-in-charge of the places where real property is located concerning the title rights of the buildings and structures, land use right certificates, land grant fees, basic land premiums, transaction prices on the real property market, changes in ownership, etc.

Article 19 A taxpayer that fails to provide title certificates of the buildings and structures, land use right certificates, contracts for the assignment of land as well as sale and purchase of buildings, real property appraisal report and other information in connection with the assignment of real property in accordance with regulations shall be dealt with in accordance with Article 39 of the PRC, Administration of Levy and Collection of Taxes Law (hereafter, “the Collection Administration Law”).

Taxpayers that underpay tax or fail to pay tax in full as a result of failure to report the actual real property value shall be dealt with in accordance with Article 39 of the PRC, Administration of Levy and Collection of Taxes Law. The copyright and/or other intellectual property rights of China Business Engine including related text, images, charts, sound, animation, and videos, and their arrangement on the China Business Engine website, are protected by copyright and other protective laws.

property transaction price or the amount of deductions shall be dealt with in accordance with Article 40 of the Collection Administration Law.

Article 20 Renminbi shall be the unit of calculation of land value-added tax. Where the revenue from an assignment of real property is in a foreign currency, the amount of such proceeds shall be converted into Renminbi according to the market exchange rate announced by the State on the date on which, or on the first day of the month in which, the revenue is obtained, and the amount of land value-added tax shall be calculated on the basis of such amount converted.

Article 21 For the purposes of Article 15 of the Regulations, the term “local procedures for the levy and collection of land value-added fees” shall refer to the procedures for the levy and collection of land use fees, land gains, etc. applicable to the same targets specified in these Regulations.

Article 22 These Rules shall be interpreted by the Ministry of Finance or the State Taxation Bureau.

Article 23 These Rules shall be effective as of the date of promulgation.

Article 24 Land value-added tax for the period between 1 January 1994 and the date of promulgation of these Rules shall be calculated, levied and collected by referring to these Rules

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