

# Fundamental Changes on Taxing Principles under the Revised Business Tax Provisional Regulations



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The Ministry of Finance and the State Administration of Taxation issued the revised "Implementation Rules for Provisional Business Tax Regulations" on 15 December 2008 for the amended Business Tax Regulations which were issued in November 2008. The revised Implementation Rules have made some fundamental changes of the taxing principles of the business tax ("BT") regulations which we shall comment in the later paragraphs. Please note that new Implementation Rules will be effective from 1 January 2009.

## Fundamental changes on taxing principles

- (a) The significant change will be how to determine whether service fees are chargeable to BT. Service fees are subject to BT if they are provided within the territory of China. Under the revised Implementation Rules, services will be regarded as being provided inside China and hence subject to BT if either the provider or recipient of the services is located in China.
- (b) Another significant change is on taxing income derived from mixed sales activities. Mixed sales activities refer to activities whereby one single transaction may be subject to BT and value added tax ("VAT").

In future, whether enterprises are chargeable to BT or not, this will be determined by their approved business scopes. Enterprises engaged in production, wholesales and retailing business will be fully subject to VAT but not BT, despite that they may have income derived from mixed sales activities. Exception will be allowed for taxpayers who are engaged in construction businesses which may provide construction services and also engage in sales of construction materials at the same time.

## Administration of Invoices

Invoices always play an important role in the taxing system in China. It is specified in the revised regulations that discounts offered to customers must be specified on the invoices otherwise the whole amount of gross income will be subject to BT.

## Comments

These changes seem to be consistent with some informal reports that China is moving toward a unified VAT law and so BT regulations will be abolished in the future. If that happens, the turnover tax system in China may go back to that in the old days when consolidated tax for industry and commerce was applied. Hopefully the changes in the turnover tax system will not make the administration and payment of this tax too complicated in the future.

The new tax notice may have impact on your business. You are advised to contact our colleagues in Hong Kong and /or China offices for further advice.

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