



# China Tax Newsletter

January 2021

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## **1. Revision to the Annual Enterprise Income Tax Return**

To further optimize the filing of tax returns, the State Taxation Administration promulgated the Announcement on the Revision to the Annual Enterprise Income Tax Return (Announcement of the State Taxation Administration [2020] No. 24). Revisions are made to 13 forms in the light of the policies including the resumption of work and production under COVID-19, the construction of Hainan Free Trade Port and promotion of integrated circuit and software development. The main content is as follows:

① The layouts and completion instructions of the following 11 forms are revised:

List of Forms in the Annual Enterprise Income Tax Return, Basic Information Form for Annual Enterprise Income Tax Filing (A000000), Detailed Statement of Tax Adjustment Items (A105000), Detailed Statement of Donation Expenses and Tax Adjustments (A105070), Detailed Statement of Asset Depreciation, Amortization and Tax Adjustment (A105080), Detailed Statement of Pre-tax Deduction of Asset Loss and Tax Adjustment (A105090), Detailed Statement of Reserve Fund of Special Industry and Tax Adjustment (A105120), Detailed Statement of Loss Recovery of Enterprise Income Tax (A106000), Detailed Statement of Income Reduction Incentives (A107020), Detailed Statement of Income Tax Reliefs (A107040), Detailed Statement and Preferential Conditions of Software and Integrated Circuit Enterprises (A107042) and Detailed Statement of Income after Overseas Income Tax Adjustment (A108010).

In particular, Detailed Statement of Reserve Fund of Special Industry and Tax Adjustment (A105120) is revised to Detailed Statement of Reserve Fund for Loan Loss and Tax Adjustment (A105120).

② The completion instructions of the following 2 forms are revised:

- Annual Enterprise Income Tax Return of the People's Republic of China (Category A) (A100000); and
- Detailed Statement of Tax Credits on Overseas Income (A108000).

## **2. Interpretation of Individual Income Tax Policy on Restricted Depository Receipts of Innovative Enterprises**

With the continuous progress of the pilot work on domestic issuance of depository receipts by innovative enterprises, original shareholders of innovative enterprises can use the stock shares held as the underlying securities or convert and issue depository receipts in China. In the light of the change in content of depository receipt pilot and to define relevant individual income tax policy, on January 15, the Ministry of Finance, the State Taxation Administration and the China Securities Regulatory Commission promulgated the Interpretation of Individual Income Tax Policy on Restricted Depository Receipts of Innovative Enterprises. The main content is as follows:

The taxable income of an individual from transfer of restricted depository receipts of innovation enterprises shall be the balance after deducting the original value of



the depository receipts and reasonable taxes and fees from the transfer income each time, subject to individual income tax at the rate of 20%. The collection and administration of individual income tax on restricted depository receipts shall refer to that on restricted stock, i.e. Cai Shui [2009] No. 167, Cai Shui [2010] No. 70. For restricted depository receipts held by individuals, dividends and bonuses obtained before unleashing the restriction shall be included in the taxable income at the reduced rate of 50% temporarily and at the tax rate of 20%. After the restriction is unleashed, the tax shall be calculated in accordance with the Announcement of the Ministry of Finance, the State Taxation Administration and the China Securities Regulatory Commission [2019] No. 52 and the time of holding the receipts shall be counted from the date of unleashing the restriction.

### **3. Revised Draft for Comment of Administrative Measures on Invoices**

The Administrative Measures of the People's Republic of China on Invoices (Revised Draft for Comment) was promulgated on January 8, 2021, with comment deadline till February 7, 2021. The differences between the original Administrative Measures on Invoice and the new one are as follows:

The Revised Draft for Comment revised the original administrative measures from 15 aspects, including:

- Defining the legal status and legal effect of "electronic invoices", increasing the invoice types by defining that invoices "include paper invoices and electronic invoices";
- Defining the requirement that only paper invoices must be stamped with invoice special seal;
- To adapt to requirement on reform of electronic invoices, adding "stealing, holding back, manipulation, sale and leakage of invoice data" as forbidden behavior of invoice data; and
- Taking advantages of big data of taxation, adding "risk level" as the basis for invoice assessment and approval.

### **4. "Zero-Tariff" Policy for Transport Means and Yachts in Hainan Free Trade Port**

To fully implement the Overall Plan for Construction of Hainan Free Trade Port, the Ministry of Finance, the General Administration of Customs and the State Taxation Administration promulgated the Notice on Zero-Tariff Policy for Transport Means and Yachts in Hainan Free Trade Port (Cai Guan Shui [2020] No. 54). The main content is as follows:

- ① Before the operation of closing the Customs, enterprises registered in Hainan Free Trade Port with the status of independent legal person and engaged in transportation or tourism industries (for aviation enterprises, they shall take Hainan Free Trade Port as the main operation base) that import yachts and transport means including vessels, aircrafts and vehicles for business operation



are exempted from import tariff, VAT and consumption tax in the step of import.

- ② “Zero-tariff” transport means and yachts shall be operated and used by enterprises that meet the conditions in Hainan Free Trade Port only and supervised by the General Administration of Customs. Where enterprises need to transfer “zero-tariff” transport means and yachts due to reasons such as enterprise bankruptcy, the enterprises shall obtain the approval from the Customs and handle relevant formalities before the transfer. In particular, where the enterprises to receive the transfer do not meet the conditions for enjoying the incentives, the enterprises shall make a supplementary payment for taxes applicable in the step of import in accordance with provisions. Enterprises that transfer “zero-tariff” transport means and yachts shall be subject to VAT and consumption tax for domestic transactions pursuant to provisions.
- ③ Transport means and yachts applicable to “zero-tariff” policy shall be administered by positive list.
- ④ Where enterprises are willing to pay VAT and consumption tax in the step of import for transport means and yachts listed in the positive list, the enterprises shall apply upon customs declaration.

The Announcement on Promulgation of the Customs Implementation Measures on “Zero-Tariff” Policy for Transport Means and Yachts in Hainan Free Trade Port (Trial) (Announcement of the General Administration of Customs [2021] No. 1) further defines the applicable scope and supervision and administrative methods for “zero-tariff” transport means and yachts.

## **5. Import and Export Tariff Rules of the People's Republic of China**

The Customs Tariff Commission of the State Council promulgated the Announcement on the Promulgation of Import and Export Tariff Rules of the People's Republic of China (Announcement of Tariff Commission [2020] No. 11), which is effective from January 1, 2021.

Import and Export Tariff Rules of the People's Republic of China is a part of the Regulations on Import and Export Tariff and is the basis for the Customs to levy tariff. It includes taxable items of import and export tariff, tax rates and classification rules determined in accordance with national tariff policies and relevant international agreements. Contents including taxable items of import and export tariff, most-favored-nation tax rates, temporary tax rate of import and conventional tariff in the Import and Export Tariff Rules of the People's Republic of China (2021) are revised from the Import and Export Tariff Rules of the People's Republic of China (2020) in accordance with the Notice on Revision Plan for Tariff for 2021 (Shui Wei Hui [2020] No. 33). Except for taxable items and tax rates promulgated in the Import and Export Tariff Rules of the People's Republic of China (2021), taxable items of import and export tariff and adjustment of tax rates specially specified by legislations, administrative laws and regulations shall still be subject to legislations, administrative laws and regulations.



## **6. Stamp Duty Law of the People's Republic of China (Draft)**

Premier Li Keqiang presided over an executive meeting of the State Council on January 4, 2021, which adopted the Stamp Duty Law of the People's Republic of China (Draft). The Draft generally maintains the current tax system unchanged, and includes the stamp duty on securities transactions into the legal norms; Taxable items are simplified and consolidated appropriately, and some tax rates are lowered down. The Draft stipulates that tax rates on purchase, sale and technology contracts and securities transactions remain unchanged, tax rates on processing contracts, contracts on construction engineering survey and design, cargo transport contracts and business account books are reduced, taxable items of stamp duty such as licenses are abolished, and the current preferential tax policies on stamp duty will remain unchanged.

## **7. Law of the People's Republic of China on Administrative Penalty**

The 25th Meeting of the Standing Committee of the 13th National People's Congress of the People's Republic of China amended and adopted the Law of the People's Republic of China on Administrative Penalty on January 22, 2021, which will be effective from July 15, 2021. The main revised content is as follows:

- ① To effectively protect the legitimate rights and interests of citizens, legal persons and other organizations and solve the prominent problems such as low cost for violation of law, the newly revised Law on Administrative Penalty has supplemented the categories of administrative penalty by including administrative penalties such as behavior penalty and qualification penalty into the categories.
- ② The newly revised Law on Administrative Penalty clearly requires confiscation of illegal income in addition to legal refund and compensation.
- ③ The newly revised Law on Administrative Penalty defines that if illegal acts are related to citizens' life, health and financial security and have harmful consequences, the period of accountability will be extended to five years.
- ④ It defines that the first violation of law may not be punished, that is, where the first violation of law has minor harm consequences and timely correction has been implemented, no administrative penalty shall be imposed.
- ⑤ It defines that there is no penalty for cases without subjective fault, that is, if the parties have sufficient evidence to prove that there is no subjective fault, no administrative penalty shall be imposed.
- ⑥ It defines the rules of applying the old law and the law beneficial to defendant, that is, the imposition of administrative penalty shall be subject to the provisions of the laws, regulations and rules at the time of the occurrence of illegal acts.
- ⑦ Where, at the time the decision on administrative penalty is made, laws, regulations and rules have been amended or abolished, and the penalty imposed by the new provisions is relatively light or the act is not considered illegal, the



new provisions shall apply.

## 8. Measures for the Use of Motor Vehicle Invoices

To regulate the use of invoices in the motor vehicle industry, the State Taxation Administration, the Ministry of Industry and Information Technology and the Ministry of Public Security jointly promulgated the Measures for the Use of Motor Vehicle Invoices, which is effective from May 1, 2021 on a trial basis, and officially effective from July 1, 2021. The main content is as follows:

Relevant Provision	Detailed Content
Scope of application	Applicable to scenarios where entities or individuals sell motor vehicles (excluding used vehicles) and issue VAT special invoices or uniform invoices for sale of vehicles.
Invoice type	Including VAT special invoices or uniform invoices for sale of vehicles issued upon the sale of motor vehicles (excluding used vehicles) by entities or individuals through the motor vehicle invoice issuing module in the invoice issuing software of the VAT invoice management system.
Sellers of motor vehicles	<ol style="list-style-type: none"> <li>① Motor vehicle manufacturers including domestic motor vehicle manufacturers and the offices or general authorized agencies of the imported motor vehicle manufacturers in China;</li> <li>② The authorized motor vehicle distributors, i.e. the motor vehicle distributors that are authorized by motor vehicle manufacturers and simultaneously engage in such businesses as the sale of complete vehicles, sale of parts and components and after-sale maintenance services;</li> <li>③ Other motor vehicle traders, i.e. entities and individuals engaged in sale of motor vehicles other than the aforesaid two types of enterprises;</li> </ol>
Notes to issuance of invoices	<ol style="list-style-type: none"> <li>① Uniform invoices for sale of motor vehicles shall be issued pursuant to the principle of "one invoice for one vehicle" by the motor vehicles sellers;</li> <li>② Sellers shall issue motor vehicle invoices truthfully based on the total price obtained from sale of vehicles which comply with the provisions of motor vehicle administration authorities of the State on vehicle parameters, safety and other technical indexes.</li> <li>③ Sellers shall use different types of motor vehicles invoices in accordance with different conditions: where buyers purchase motor vehicles for self-use, sellers shall issue uniform invoice for sale of motor vehicle; where buyers purchase motor vehicles for sale, sellers shall issue VAT special invoice.</li> </ol>
Notes to red-letter invoices	<ol style="list-style-type: none"> <li>① When issuing a red-letter invoice, the seller shall recall the paper uniform invoice for sale of motor vehicles held by the consumer.</li> <li>② If the consumer has completed vehicle purchase tax filing, the consumer is not required to return the tax copy.</li> <li>③ If the consumer has completed motor vehicle registration formalities, the consumer is not required to return the registration copy.</li> <li>④ If the consumer is a VAT general taxpayer and the VAT amount has been credited, the consumer is not required to return the deduction copy.</li> </ol>

Where enterprises sell motor vehicles that are manufactured before May 1, 2021, the sellers may issue motor vehicle invoices pursuant to provisions before the



implementation of the Measures.

## **9. Zero-Tariff Treatment for 97% of the Products in Taxable Items Imported from Solomon Islands**

The Customs Tariff Commission of the State Council promulgated the announcement that in accordance with China's commitment of zero-tariff treatment for 97% of the products in taxable items from the least developed countries that have established diplomatic relations with China, 97% of the products in taxable items from the Solomon Islands will be subject to zero tariff, covering 8,281 taxable items from February 1, 2021.

## **10. List of Public Welfare Social Organizations Qualified for Pre-tax Deduction of Public Welfare Donations for 2020 - 2022**

In accordance with relevant provisions of the Announcement of Matters concerning Pre-tax Deduction of Public Welfare Donations (Announcement of the Ministry of Finance, the State Taxation Administration, the Ministry of Civil Affairs [2020] No. 27), the Ministry of Finance, the State Taxation Administration and the Ministry of Civil Affairs promulgated the list of public welfare organizations qualified for pre-tax deduction of public welfare donations for the years from 2020 to 2022.

## **11. Measures of Guangdong Province for the Classification and Grading Administration of Taxpayers' Application for VAT Invoices**

The Guangdong Provincial Tax Service of the State Taxation Administration promulgated the Measures of Guangdong Province for the Classification and Grading Administration of Taxpayers' Application for VAT Invoices, which is effective from January 1, 2021. Invoices including paper and electronic VAT special and general invoices, uniform invoices for sale of motor vehicles and uniform invoices for sale of used vehicles issued via the VAT invoice management system by taxpayers shall be subject to the Measures. Tax authorities shall classify taxpayers into Type I, Type II and Type III upon receiving the application for invoices in accordance with elements such as taxation compliance level and taxation risk of taxpayers after the analysis and identification using taxation big data. Tax authorities shall implement differentiated services and administration on taxpayers, i.e. providing premium taxation services for taxpayers with high taxation compliance level and good taxation reputation, and enhancing the supervision and administration on invoices after they are granted to taxpayers with tax-related risks.

## **12. Announcement on Issuance of 2020 Stamp Duty Tickets**

The State Taxation Administration promulgated the Notice on Issuance of 2020 Stamp Duty Tickets (Notice of the State Taxation Administration [2020] No. 1), defining the patterns, specifications and anti-counterfeiters measures of 2020 stamp duty tickets to be used from December 30, 2020. Each version of stamp duty tickets issued in the previous years are still valid.



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