

增值税试点改革

德安已从客户中收集了他们对近期上海增值税扩围试点最为关切的问题。现列举一些问题并试做出解答，以供参考。

问题 1：许多公司（如中国投资性公司）会为其下属的子公司提供一揽子的共享服务，如市场营销，信息技术支持，财务、人力资源和法律支持等服务。这一类投资性公司是否属于增值税试点范畴？

回答 1：首先，是否会被纳入试点范畴取决于公司提供服务的性质，而非其所处的行业。对于提供一揽子服务的投资性公司，税务机关会要求纳税人根据每项服务的性质，区分为增值税应税服务和营业税应税服务，并分别征税。通常而言，投资性公司提供的服务中会包括试点内容所涵盖的咨询服务或流程外包服务。因此，我们建议这类公司对服务内容逐项检视，仔细比照《应税服务范围注释》判断有关服务是否全部或部分属于增值税的应税范畴，同时考虑对试点和非试点服务分别计费，并复核整理内部的相关文件，制备相应的支持性文档，必要时与主管税务机关进行积极的沟通与确认；这对企业来说，也是一种保护。

问题 2：增值税改革试点后，佣金收入或者其他代理费收入是否应当缴纳增值税？

回答 2：通常情况下，佣金或者其他代理费收入是提供某项服务后收取的经济回报。因此，判断佣金或者代理费收入是否应缴纳增值税取决于所提供的服务是否属于增值税试点范畴。如果所提供的服务属于增值税试点范畴，则收取的相应的佣金或者代理费收入应该缴纳增值税。例如，对于代理方就市场营销服务收取的佣金，该服务是否会被视为与营销有关的咨询服务是决定适用增值税与否的关键。据此，企业应当根据实际情况，在有关佣金或代理合同中对相关服务的内容（相关各方的权利和义务等）加以清晰的界定，以便合理确定服务性质。此外，对于不属于试点范围的服务，企业应考虑对这部分相应的收费进行单独核算。

鉴于各基层税务机关在实际操作中对此可能会存在不同的理解，建议纳税人寻求主管税务机关对该问题的看法。

问题 3：如果我们公司既进行货物销售，又为客户提供多种类型的增值税应税服务，且不同类型的服务适用的增值税税率不同，应该怎样处理才符合增值税的规定？

回答 3：如果一家公司兼营货物销售和提供不同类型的增值税应税服务，且适用税率不同，则该公司应当分别核算适用不同税率的销售额，并计算缴纳增值税。未分别核算的，从高适用税率。

问题 4：对于 110 号文中提及的境内向境外提供的应税服务是零税率还是免税的处理有进一步的说明了吗？

回答 4：这个问题仍然有待明确。目前可以确定的是，境内企业在向境外提供增值税应税服务时，暂无需就相关服务缴纳增值税。根据我们的了解，这个问题目前正在国家税务总局的层面进行讨论，焦点在于提供此类服务所对应的进项税金是否可以抵扣。虽然相关说明文件的时间表尚不可知，但我们预计应该会很快出台。

问题 5：如果我公司的年增值税应税服务销售额达到人民币 500 万元的标准，是否必须申请成为一般纳税人？如果不申请，会有什么后果？

回答 5：是的，如果年增值税应税服务销售额达到了人民币 500 万元的标准，纳税人应该按照规定申请一般纳税人资格认定。如果应当申请办理一般纳税人资格认定而未申请办理的，则公司的服务收入需全额按照标准税率征税，且不得抵扣进项税，也不得使用增值税专用发票。企业还可能因此被税务机关根据征管法处罚。因此，建议企业（尤其是同时提供增值税应税服务和非应税服务的企业）对自身的服务内容进行细致的审核以合理确定销售额，谨慎处理这一事项。

问题 6：如果我公司尚未被税务局通知成为试点企业，我们需要做什么？

回答 6：根据我们的了解，目前各主管税务机关正根据手头资料初步筛选的结果，逐步通知被纳入试点的企业。这项工作预计将在 2011 年 12 月 15 日之前完成。建议贵公司在此之前完成对自身营业活动是否适用增值税的评估，并主动与税务机关确认。如果贵公司届时仍未接到主管税务机关的通知，则应考虑根据实际情况的评估结果与税务机关就是否被纳入试点范围再行确认；这一点在服务性质认定存在不确定性的情况下尤为重要。请注意，第一次增值税申报截止期在 2012 年 2 月 15 日左右（所属期为 2012 年 1 月），企业应在此前完成相应工作。

VAT Reform Q&A

We have surveyed some of the most important questions from our clients with respect to the VAT reform pilot program to be launched in Shanghai. We have listed down the frequently asked questions and our answers.

Q1: Some companies such as China holding companies (öCHCö) usually provide a bundle of shared services to their local subsidiaries. Such services typically including marketing, IT support, financial reporting, HR and legal support services, etc. How to determine whether or not CHC would fall under the pilot program?

A1: First of all, to determine whether or not CHC fall under the pilot program, the key is to look into the nature of the services provided by CHC rather than the industry which the company is engaged in. For bundled services, the tax authorities would require the taxpayers to separate the services to VATable services and Business Tax-able services by looking into the nature of each specific service and taxing it accordingly. Normally, the services provided by CHC will include services covered by consulting or outsourcing service under the pilot program. Therefore, it is advisable that company should look into each service provided and self-assess whether part of or all services fall into the VAT scope by referring to the Annotations, consider separating charge for qualify and non-qualify service, review the documents related to the services internally, prepare relevant evidence to substantiate its position with the competent tax authorities for clarification and seek certain protections.

Q2: Are commission fee or other agency service income subject to VAT under the pilot program?

A2: Normally, commission fee or other agency service income is a compensation for providing a service connected to an underlying main supply. Therefore, whether commission fee or agency service income will be subject to VAT is depending on whether the underlying service falls into the VAT scope under the pilot program. If the underlying service falls into the VAT scope, the relevant commission or agency service fee shall be subject to VAT. For example, for commission charge made by an agent for marketing service, whether or not the service should be treated as marketing related consulting service thus subject to VAT is the key. Accordingly, the company should make it clear in the agency contract the rights and liability of the service provided to enable a reasonable determination on the content of service. In addition, for identified non-qualify service, the company could consider separately account for the service charge.

Having said the above, given that different local tax authorities may have different understanding on this issue, a further confirmation with the in-charge tax authority to get their view is recommended.

Q3: If our company is engaged in sales of goods and provision of multiple VAT-able services at different applicable tax rates, what shall we do to comply with the VAT rules?

A3: If your company is engaged in sales of goods and provision of VATable services and the applicable VAT rates are different, the sales amount for different types of activities at different applicable rates shall be accounted separately for VAT purposes. If the sales amount is not separately accounted for, a higher VAT rate will apply on the whole revenue.

Q4: Is there any further information with regard to the tax treatment of the provision of services to overseas customers as mentioned in Circular 110(i.e. tax exempt or zero rated)?

A4: This issue is yet to be clarified. We have heard that this issue is now being discussed at the State Administration of Taxation level and the key consideration is whether the input VAT associated with the provision of such services would be recoverable or not. Although it is still unknown when further clarification on this issue will be released, we would anticipate the news to be announced soon.

Q5: Are we obligated to apply for the general VAT payer status once our annual VATable service revenue meets the threshold of RMB 5 million? What's the consequence if we failed to comply with this rule?

A5: Yes, the taxpayers have the obligation to apply for the general VAT taxpayer status once their annual VATable service revenue meets the threshold of RMB 5 million. Failure to comply with this rule could render the full amount of the income taxed at the standard VAT rate. Moreover, no input VAT is allowed to be recovered and the VAT special invoices cannot be used. Some penalty could be imposed as according to the Tax Administration and Collection rules. Therefore, it is advisable that the company could take a careful look into its service provision activities to reasonably determine the amount of VATable service especially for those who are engaged in both pilot and non-pilot services.

Q6: If our company has not been informed that we are included in the pilot program by the in-charge tax authority, what do we need to do?

A6: We have heard that the local tax authorities are now in the process of informing taxpayers who will be included in the pilot according to their initial assessment based on the information on hand. This process is expected to be completed before 15 December 2011. It is advisable that your company should make the self-assessment on whether or not the operation will be subject to VAT and seek confirmation with tax authority before then. If your company has not received the notice until then, you are strongly recommended to proactively communicate with the tax authority based on the actual service provided especially when you think there are uncertainties. Please note that the deadline of the first VAT return is due around 15 February 2012 (for January 2012).

Q7: Our Company provides retainer services to clients. A consulting service will be provided in a period from October 2011 to February 2012 and the service fee could be collected in March 2012. What will be the appropriate tax treatments?

A7: The implementation rules for pilot program adopt the same principle as the VAT regulations without further guidance on this. If the service is completed in 2012 and the fee collection is made accordingly, the taxpayer should have fair argument to subject the transaction to VAT. However, we understand that some tax officers take the view that the tax treatment should be determined based on the timing of the activities. Therefore, tax authority may ask to have the service amount separated for 2011 and 2012 and imposed Business Tax and VAT respectively. The issues may need to be further clarified.

Q8: For VATable services provide to pilot taxpayers from overseas, how do we calculate the VAT to be withheld when making service fee payments to overseas service providers?

A8: The overall payment will be treated as tax inclusive price and therefore, this payment will be converted to tax exclusive price for VAT purposes. For instance, if the service fee to be remitted out is RMB100, the VAT to be withheld would be $5.67(100/(1+6\%))$. Companies are recommended to take this into consideration when negotiation price for the contracts.

Q9: Will the new, or adapted, VAT returns to be adopted for the pilot be the same as the current ones?

A9: Certain modification will be performed on the new VAT returns to accommodate the needs of the pilot. The major changes include additional boxes on the return to allow the reporting on:

- Amounts(net turnover and VAT) falling within the newly introduced VAT rates of 11% and 6%
- Amounts(net turnover and VAT) of the pilot taxable services;
- Amounts(net turnover and VAT) withheld on VATable service received into China from overseas;
- The input VAT balance as of 31 December 2011; and
- Two appendices-one is to identify the details of the deducted items on the sales income, and the other is the details of the tax deducted.

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