



## 税务快讯

### 税务总局明确七项增值税事宜

2018年7月25日，国家税务总局发布2018年第42号公告（简称“42号公告”），对教育服务、航空运输代理、安装服务、转让限售股等增值税事项进行了明确。42号公告自发布之日起施行。

#### 中外合作办学的学历教育服务

根据财税[2016]36号（简称“36号文”），从事学历教育的学校提供的教育服务免征增值税。但36号文未明确境外教育机构与境内学校开展中外合作办学过程中，境外教育机构自境内学校取得的收入，是否可享受增值税免税政策。

42号公告明确，境外教育机构取得的上述收入，符合36号文的学历教育免税条件的，也可享受增值税免税政策。

#### 航空运输销售代理企业的境内机票代理服务

42号公告明确，航空运输销售代理企业提供境内机票代理服务，可以适用差额计税政策，即以取得的全部价款和价外费用，扣除向客户收取并支付给航空运输企业或其他航空运输销售代理企业的境内机票净结算款和相关费用后的余额为销售额；公告同时对合法有效的扣除凭证进行了规定。

根据公告，航空运输销售代理企业就取得的全部价款和价外费用，向购买方开具行程单，或开具增值税普通发票。

#### 销售机器设备同时提供安装服务

42号公告分“自产”和“外购”两类情形对一般纳税人销售机器设备同时提供安装服务的增值税处理进行了规定：

## 自产机器设备

## 外购机器设备

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| <ul style="list-style-type: none"><li>• 应分别核算机器设备和安装服务的销售额，即各自适用 16% 和 10% 的增值税税率；</li><li>• 安装服务可以选择适用简易计税方法，即适用 3% 征收率但不得抵扣进项税。</li></ul> | <ul style="list-style-type: none"><li>• 未分别核算机器设备和安装服务的销售额的，应按混合销售确定其适用税目和税率，即单一适用 16% 或 10% 增值税税率；</li><li>• 若已按照兼营的规定分别核算机器设备和安装服务的销售额，安装服务可以选择适用简易计税方法，即适用 3% 征收率但不得抵扣进项税。</li></ul> |
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公告同时规定，纳税人对安装运行后的机器设备提供的维护保养服务，按照“其他现代服务”缴纳增值税。

包含多种应税行为成分的交易安排应视为一项增值税应税交易而适用单一税率，还是应视为兼营多项应税交易而分别适用不同的税率，是增值税实践中的难点。42 号公告的规定似乎倾向于在某些情形下通过对纳税人是否就不同应税行为的销售额进行分别核算来作出判断。但纳税人分别核算销售额的合理性（即应如何将交易总价款在不同应税行为销售额之间进行合理分摊）仍可能成为征纳双方的争议点。

### 重大资产重组形成的限售股的买入价

根据之前的规定，在计算转让限售股的增值税应税销售额时，对于因重大资产重组形成的限售股，以该上市公司因重大资产重组股票停牌前一交易日的收盘价为买入价。

然而，实践中某些上市公司在重大资产重组前已处于非正常上市状态，从而不存在因重大资产重组而实施停牌的情况，故难以适用上述规定。为此，42 号公告进一步明确，在重大资产重组前已经暂停上市的，以上市公司完成资产重组后股票恢复上市首日的开盘价为买入价。

### 拍卖行适用的增值税政策

42 号公告规定，拍卖行受托拍卖取得的手续费或佣金收入，按照“经纪代理服务”缴纳增值税；在一般计税方法下税率为 6%。

42 号公告同时规定，停止执行国税发[1999]40 号文件的有关规定；该规定要求拍卖行向买方收取的全部价款和价外费用按照 4%（2014 年 7 月 1 日后调整为 3%）的征收率征收增值税。但 42 号公告并未提及上述规定停止执行后，拍品卖方的增值税应如何处理，亦未提及拍卖行在卖方增值税的征管中是否负有扣缴或其他协助义务。

### 转让补充耕地指标

42 号公告明确，纳税人通过省级土地行政主管部门设立的交易平台转让补充耕地指标，按照销售无形资产缴纳增值税，税率为 6%。

### 试点前营业税业务补开增值税发票

对于纳税人在营改增全面实施之前（即 2016 年 5 月 1 日之前）发生的营业税涉税业务需要补开发票的，税务总局曾经下文明确，此类纳税人可于 2017 年 12 月 31 日前就上述业务开具增值税普通发票。

42 号公告废除了上述关于补开发票的截止日期限制，对纳税人 2016 年 5 月 1 日前发生的营业税涉税业务，包括已经申报缴纳营业税或补缴营业税的业务，需要补开发票的，均可开具增值税普通发票，同时规定纳税人应完整保留相关资料备查。

### 德勤评论

总体而言，42 号公告对于部分行业典型业务的增值税处理予以了明确，将有助于统一执行口径，减少税企争议的发生。尤其在明确计税依据，扩大免税和简易计税范围等方面，对于减轻纳税人税负、便利基层税务机关实际操作有积极意义。但另一方面，相关企业仍应关注 42 号公告有关规定将对实践中的合规义务履行可能带来的影响，例如销售自产机器设备同时提供安装服务的企业应考虑如何对机器设备和安装服务的销售额进行适当的分别核算，以及应如何界定“机器设备”等，并积极跟进了解相关的政策和实践动态。

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## Tax Newsflash SAT clarifies seven VAT issues

On 25 July 2018, China's State Administration of Taxation (SAT) issued guidance (i.e. SAT Bulletin [2018] No. 42 or Bulletin 42) relating to VAT issues that arise for education services, air transport agency services, installation services, the transfer of restricted shares, etc. Bulletin 42 is effective from the date of issuance.

### **Sino-foreign cooperative academic education services**

Based on a circular issued in 2016 (Caishui No. 36), academic education services provided by schools and universities are exempt from VAT. However, Circular No. 36 did not clarify whether income obtained in China by foreign education institutions for providing Sino-foreign cooperative education services are eligible for the VAT exemption. Bulletin 42 clarifies that such income is exempt from VAT if the relevant income is qualified academic education income according to Caishui No. 36.

### **Domestic air ticket agency services provided by air transport agencies**

Bulletin 42 clarifies that domestic air ticket agency services provided by air transport agencies can use the "net base" treatment for the calculation of VAT, under which the taxable base (i.e. sales) is computed by deducting from gross revenue domestic air ticket fees and other related fees collected from customers and paid to air transport companies or agencies. Bulletin 42 also specifies the vouchers that are eligible for deduction.

It should be noted that air transport agencies must issue travel itineraries or general VAT invoices to customers indicating the gross amount.

### **Installation services provided with sale of equipment**

Bulletin 42 clarifies the VAT treatment for installation services that are provided with the sale of equipment:

<b>Self-manufactured equipment</b>	<b>Purchased equipment</b>
<ul style="list-style-type: none"><li>• A taxpayer must account for the sale of equipment and the provision of installation services separately, at VAT rates of 16% and 10%, respectively;</li><li>• A taxpayer can adopt the simplified taxing method for the provision of installation services, i.e. the 3% VAT rate is applied and input VAT may not be deducted.</li></ul>	<ul style="list-style-type: none"><li>• If a taxpayer does not separately account for the sale of equipment and the provision of installation services, it must treat the transaction as a "mixed sale" and apply the 16% or 10% VAT rate, as applicable.</li><li>• If a taxpayer has separately accounted for the sale of equipment and the provision of installation services under relevant rules, it can adopt the simplified taxing method for the provision of installation services, i.e. a 3% VAT rate is applied and input VAT may not be deducted.</li></ul>

Bulletin 42 also specifies that maintenance services provided after the installation of the equipment should be subject to VAT under the category, "other modern services."

In practice, it has been difficult to determine whether a transaction that involves more than one VATable activity should be treated as a single VATable transaction subject to a single VAT rate, or as more than one VATable transaction subject to different VAT rates.

Bulletin 42 seems to take the position that, in certain cases, the VAT treatment should be determined based on whether the taxpayer has accounted for the sale of different VATable activities separately. However, the rationale for separate accounting for sales income (i.e. allocating the gross revenue among different VATable activities) may continue to be an area of potential dispute between taxpayers and the tax authorities.

### **Purchase price of restricted stock from material assets reorganization**

According to previous regulations, where a listed company has its stock suspended due to a reorganization of material assets, when calculating the taxable revenue from the transfer of restricted stock from the reorganization of material assets, the purchase price of the stock is the closing price on the day before the stock was suspended.

In practice, some listed companies may have been suspended from the stock market for a different reason prior to a material asset reorganization and thus the above rule is not applicable. Bulletin 42 clarifies that for such companies, the purchase price of the restricted stock will be the opening price on the first day of relisting following the reorganization.

### **VAT treatment of auction companies**

Bulletin 42 clarifies that auction fees or commissions obtained by auction companies under general taxing method will be subject to the 6% VAT rate as "brokerage and agency services."

Bulletin 42 also renders the relevant rules in 1999 guidance (Guoshuifa No. 40) ineffective. According to Guoshuifa No. 40, auction companies were subject to 4% VAT on the gross amount received from buyers of the auction items. Bulletin 42 does not clarify the VAT treatment for the sellers of the auction items or the withholding or assistance obligations of the auction companies.

### **Transfer of supplementary farmland quotas**

Bulletin 42 clarifies that taxpayers that transfer the supplementary farmland quotas via the official platform for such transfers set up by provincial land administration departments are subject to the 6% VAT rate under the category "sales of intangible assets."

### **VAT invoices for activities subject to business tax before VAT reform**

According to previous rules, if a taxpayer was required to issue an invoice for activities that were subject to business tax (BT) before the VAT reform (i.e. before 1 May 2016), the taxpayer can issue a general VAT invoice until 31 December 2017.

Bulletin 42 further prescribed that for BT-able activities that took place before 1 May 2016 (regardless of whether the taxpayer declared BT), taxpayers still can issue general VAT invoices, if needed. Taxpayers are required to keep the supporting documents for potential inspections by the tax authorities.

### Comments

In general, Bulletin 42 clarifies the VAT treatment for some typical VAT issues that arise in certain industries, which can help standardize practices and reduce disputes between taxpayers and the tax authorities. Some provisions under Bulletin 42, especially those clarifying the taxable base, expanding the VAT exemption and the application of the simplified taxing method, should mitigate the burden on taxpayers and streamline the practices of the tax authorities. Nevertheless, taxpayers should assess the impact of Bulletin 42 in connection with compliance requirements. Companies that sell self-manufactured equipment and provide installation services simultaneously should consider the guidance in the bulletin with respect to separate accounting of sales of equipment and the provision of installation services and the scope of the definition of "equipment," and monitor the development of further regulations and industry practice.

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