

# Tax Analysis

## Stamp Tax Law Adopted

On 10 June 2021, China adopted the Stamp Tax Law, which is effective as from 1 July 2022 and replaces the interim stamp tax regulations that were issued on 6 August 1988. The new law generally maintains the framework of the previous stamp tax system, while tax items and rates have been simplified, and the system has been updated based on current economic factors.

With the promulgation of the new law, China now has laws established for 12 out of its 18 existing taxes, marking another milestone for China's tax legislation process.

### Overview of the Stamp Tax Law

Entities and individuals that conclude or receive certain documents ("taxable vouchers") or enter into securities transactions in China must pay stamp tax on such documents or transactions. Taxable vouchers that were concluded outside of China but used in China also are subject to stamp tax.

The table below compares the tax items and tax rates between the Stamp Tax Law and the interim regulations:

Stamp Tax Law		Interim regulations	
Item	Tax rate and basis	Item	Tax rate and basis
<i>Contract (written)</i>			
Loan contract <sup>1</sup>	0.005% of the loan amount	Loan contract	0.005% of the loan amount
Financial leasing contract	0.005% of the rent		

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Stamp Tax Law		Interim regulations	
Item	Tax rate and basis	Item	Tax rate and basis
<i>Contract (written)(continued)</i>			
Purchase and sales contract <sup>2</sup>	0.03% of the price	Purchase and sales contract	0.03% of the purchase or sales amount
Contractor agreement	0.03% of the remuneration	Processing and contracting agreements	0.05% of the income from processing or contracting
Construction project contract	0.03% of the price	Survey and design contract in construction projects	0.05% of the fees charged
		Construction and installation contract	0.03% of the contract amount
Transportation contract <sup>3</sup>	0.03% of the transportation fees	Cargo transportation contract	0.05% of the transportation fees
Technology contract <sup>4</sup>	0.03% of the price, remuneration, or user charges	Technology contract	0.03% of the contract amount
Rental contract	0.1% of the rent	Property leasing contract	0.1% of the lease amount (stamped as CNY 1 if the stamp tax is less than CNY 1)
Storage contract	0.1% of the storage fees	Warehousing and storage contract	0.1% of the warehousing and storage fees
Warehousing contract	0.1% of the warehousing fees		
Property insurance contract <sup>5</sup>	0.1% of the premium	Property insurance contract	0.1% of the premium <sup>6</sup>
<i>Documents transferring property rights<sup>7</sup></i>			
Grant of land use rights	0.05% of the price	Documents transferring property rights	0.05% of the contract amount
Transfer of land use rights, houses, buildings, and structures <sup>8</sup>	0.05% of the price		
Transfer of equity <sup>9</sup>	0.05% of the price		
Transfer of exclusive use rights of trademarks, copyrights, patent rights, and use rights of technical know-hows	0.03% of the price		

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Stamp Tax Law		Interim regulations	
<i>Business account books</i>			
Business account books	0.025% of the sum of paid-in capital (stock) and capital reserve	Business account books	0.025% of the sum of paid-in capital (stock) and capital reserve <sup>10</sup>
		Certificate of rights and licenses <sup>11</sup>	CNY 5 for each certificate
Securities transactions	0.1% of the transaction price	Securities transactions	0.1% of the transaction price

Remarks:

<sup>1</sup> Referring to loan contracts concluded by and between banking financial institutions, other financial institutions approved by the banking regulatory authority under the State Council, and borrowers (excluding inter-bank borrowing).

<sup>2</sup> Referring to purchase and sales contracts on moveable property (excluding those signed by individuals).

<sup>3</sup> Referring to cargo transportation contracts and multimodal transportation contracts (excluding pipeline transportation contracts).

<sup>4</sup> Excluding documents for the transfer of patents and technical know-hows.

<sup>5</sup> Excluding reinsurance contracts

<sup>6</sup> From July 1990, stamp tax is levied at 0.1% of the premium instead of at 0.003% of the insured amount.

<sup>7</sup> Including purchase and sales, inheritance, donation, exchange, and partition.

<sup>8</sup> Exclusive of land contractual management rights and land management rights.

<sup>9</sup> Exclusive of transactions that are subject to stamp tax for securities transactions.

<sup>10</sup> From May 2018, capital account books, subject to a 0.05% stamp tax rate, is taxed for stamp tax purposes at the half-reduced rate (i.e., 0.025%), and other account books that used to be subject to stamp tax of CNY 5 is exempt from stamp tax.

<sup>11</sup> Including real estate ownership certificates, business licenses, trademark registration certificates, and patent certificates.

## *Tax items*

- A financial leasing contract is newly listed and was previously categorized as a loan contract, but the tax rate and basis remain unchanged.
- The description of certain tax items are more aligned with contract definitions in the Civil Code in order to provide clarity and reduce disputes that may arise due to ambiguous definitions.
- Documents for the transfer of property rights have been categorized in detail as documents for the grant of land use rights; the transfer of land use rights, houses, buildings, and structures; the transfer of equity; and the transfer of exclusive use rights of trademarks, copyrights, patent rights and use rights of technical know-hows.
- Certificates for rights or licenses and other accounting books have been deleted.

## *Tax rates*

- The tax rates for contractor agreements, certain construction project contracts, and transportation contracts have been changed from 0.05% to 0.03%.
- The tax rate for rental contracts has been simplified to 0.1% by deleting the requirement of paying CNY 1 stamp tax for stamp taxes of less than CNY 1.
- The provisions in Cai Shui [2018] No. 50 indicating that capital account books, subject to 0.05% stamp tax rate, should be taxed for stamp tax purposes at a rate reduced by half (i.e., 0.025%), and other account books that had to be subject to a CNY 5 stamp duty should be exempt from stamp tax, has become part of the law.
- The tax rate for documents for the transfer of exclusive use rights of trademarks, copyrights, patent rights and use rights of technical know-hows has been changed from 0.05% to 0.03%.

### *Tax basis – special rules*

The Stamp Tax Law excludes value-added tax (VAT) from the tax basis calculation.

In addition, the Stamp Tax Law stipulates that if a document does not specify an amount, then the tax basis must be determined according to the amount as per the actual settlement. If the tax basis still cannot be determined based on the actual settlement, then the tax basis must be determined based on the market price as of the date the document is concluded, or subject to relevant national provisions where a government-determined price or government-guided price is in place. If no transfer price is set for a securities transaction, then the tax basis must be the closing price on the date prior to the date of the transfer registration; where no closing price is available, then the tax basis must be determined based on the par value of securities.

### *Tax exemptions and reductions*

The Stamp Tax Law has integrated and organized the tax exemptions contained in the interim regulations and related provisions, and introduced additional exemptions, which has provided clarity and certainty for taxpayers and is reflective of present day society and current economic conditions. For example, purchase and sales contracts and agricultural insurance contracts executed by farmers, family farms, specialized farmers' cooperatives, rural collective economic organizations, or villagers' committees to purchase the agricultural means of production or to sell agricultural products are exempt from stamp tax. In addition, in connection with the development of e-commerce in recent years, electronic orders between individuals and e-commerce operators are exempt from stamp tax.

The Stamp Tax Law also stipulates that the State Council is authorized to reduce or provide an exemption from stamp tax for purposes of national economic and social development needs (e.g., housing demand, business reforms, restructuring and bankruptcy, and small business development).

### *Payment methods and timing*

The Stamp Tax Law continues to allow the current payment methods (i.e., use of revenue stamps or tax payment vouchers issued by tax authorities). The new law no longer allows non-payment of stamp tax that is less than CNY 0.1, and no longer requires that, for stamp tax that is CNY 0.1 or more, decimal values of less than CNY 0.05 be disregarded and decimal values equal to or greater than CNY 0.05 be rounded to CNY 0.1.

Stamp tax generally is levied on a quarterly, yearly, or transactional basis. For stamp tax levied on a quarterly or yearly basis, taxpayers must declare and pay the tax within 15 days after the end of the current quarter or year. For stamp tax levied on a transactional basis, taxpayers must declare and pay the tax within 15 days after the tax obligation arises.

Stamp tax on securities transactions must be remitted by withholding agents (such as securities registration and settlement institutions) on a weekly basis. The withholding agent must declare and remit the tax and the interest settled by the bank within five days after the end of each week.

## *Place of tax payment*

The Stamp Tax Law states that an entity must declare and pay the stamp tax to the in-charge tax authority in the place where the entity is located. Individuals must declare and pay the stamp tax to the in-charge tax authority in the place where the taxable voucher was obtained or in their place of residence. For transfers of real estate, the taxpayer must declare and pay the stamp tax to the tax authority in the place where such real estate is located.

## *Tax collection*

According to the Stamp Tax Law, where the taxpayer is a foreign entity or individual with an agent in China, the domestic agent must be the withholding agent. Where there is no agent in China, such taxpayer must declare and pay the stamp tax, in which case specific measures must be formulated by the competent tax authority of the State Council. In addition, securities registration and settlement institutions must be the withholding agent for stamp tax on securities transactions.

The new law no longer imposes specific penalties applicable to stamp tax. Rather, taxpayers, withholding agents, and tax authorities (as well as their employees) that violate any provision in the new law are liable in accordance with the Administration of Tax Collection Law and all related laws and administrative regulations.

## *Comments*

### *Stamp tax on securities transactions*

Prior to the adoption of the Stamp Tax Law, representatives from the market argued to cancel or reduce the stamp tax rate on securities transactions. According to historical performance of the stock market after stamp tax adjustments, the stock market seems to be very sensitive to stamp tax policy changes. Therefore, the trend of stamp tax policies on securities transactions generally has been a focus within the industry. The new law lists securities transactions and depositary receipts with stocks as underlying securities as taxable items, and maintains the tax rate at 0.1%. In addition, stamp tax on securities transactions is levied on transferors of securities transactions rather than transferees.

Article 16 of the Stamp Tax Law stipulates that stamp tax on securities transactions must be paid on a weekly basis. Withholding agents must declare and remit the tax and the interest settled by the bank within five days after the end of each week. However, it is not clear whether Friday, Saturday, or Sunday is considered the end of the week; therefore, the first day of the week should be clarified.

### *Taxable vouchers concluded outside of, but used in, China*

In practice, there have been different views as to whether taxable vouchers that were concluded outside of China should be subject to stamp tax in China. For example, where a domestic entity signs a technology contract with a foreign entity, questions arise as to whether the two parties must pay stamp tax in China, and whether the domestic entity should be the withholding agent and obligated to declare and remit the stamp tax. The Stamp Tax Law stipulates that entities and individuals that conclude taxable vouchers outside of China for use in China must pay stamp tax in accordance with the Stamp Tax Law. Clarification, however, is needed as to what is considered use in China.

Where the taxpayer is a foreign entity or individual with an agent in China, the domestic agent must be the withholding agent. Where there is no agent in China, such taxpayer must declare and pay the stamp tax itself, in which case specific measures must be formulated by the competent tax authority of the State Council. However, clarification should be made as to how to determine if a taxpayer has an agent in China. Furthermore, the tax authorities are expected to provide specific methods for taxpayers that do not have domestic agents to declare and pay stamp tax on their own.

### Partnership enterprises

Article 5 of the Stamp Tax Law stipulates that the tax basis for business account books must be the sum of paid-in capital (stock) and capital reserve recorded in the account books. This applies to corporate entities that have capital stock or paid-in capital accounts in their account books. However, whether this provision may be applied to partnership enterprises and, if applied, how it should be applied are not specified. For partnership enterprises, there are no regulations with regard to their account books. Generally, partners' contributions are recorded as, for example, partner investment or partner capital. Since the Stamp Tax Law does not contain clear provisions on account books for partnership enterprises, whether the partnership account books should be regarded as taxable under the Stamp Tax Law should be further clarified.

### VAT and tax basis calculations

Article 5 of the Stamp Tax Law stipulates that the tax basis for documents for transferring property rights must be the amount listed in such document, excluding the listed VAT amount. However, what constitutes the listed VAT amount is not specified in the Stamp Tax Law. One interpretation is that taxpayers must pay the full amount including VAT when the VAT amount is not listed separately in the document. In practice, taxpayers should list the amount in the document and the VAT amount separately when drafting documents.

### Anti-tax avoidance provisions

General anti-tax avoidance provisions that authorize the tax authorities to make adjustments when business arrangements have no reasonable business purpose can be seen in both the Enterprise Income Tax Law and the Individual Income Tax Law. In addition, there are new laws in recent years that also include anti-tax avoidance provisions. For example, Article 4 of the Deed Tax Law, which will be effective as from 1 September 2021, stipulates that where a transaction price (or the difference between the prices pursuant to an exchange) declared by a taxpayer is obviously low with no due cause, the tax authorities must review and take action in accordance with the Administration of Tax Collection Law. However, such anti-tax avoidance provisions are not included in the Stamp Tax Law.

In practice, if the tax authorities make anti-tax avoidance adjustments from the perspective of enterprise income tax, individual income tax, or other taxes, then the tax authorities also may consider making adjustments on stamp tax, considering the consistency among taxes. Therefore, subsequent discussions may occur as to whether tax authorities have the legal basis to make adjustments related to stamp tax based on the Administration of Tax Collection Law or any other laws.

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