

## 跨境应税服务增值税免税管理办法最新修订

2014年8月27日，国家税务总局发布了国家税务总局公告2014年第49号（“49号公告”）。这一公告是对增值税试点改革中的跨境应税服务增值税免税政策的全面总结。49号公告自2014年10月1日起施行，并有可能追溯应用。

49号公告将受到纳税人欢迎，特别是在中国开展业务的跨国公司。因为该公告有助解决之前增值税免税申请的实操障碍，而且为将来增值税试点范围扩大时的免税申请铺平了道路。

截止2014年9月，中国增值税的应税范围为：

- 销售或者进口货物；
- 提供加工、修理修配劳务；
- 现代服务业，例如咨询服务，物流辅助服务，信息技术服务，研发和技术服务，文化创意服务和有形动产租赁服务；
- 交通运输业；
- 广播影视服务；
- 邮政和电信业服务。

在实际操作中，仍然适用于营业税的服务主要包括房地产和建筑业、生活服务业包括酒店和餐饮业、娱乐业、金融保险业，和一般的“其他服务业”。以上行业将在2015年逐步纳入增值税试点范围，从而实现政府提出的在2015年之前由增值税全面取代营业税的目标。

### 增值税免税的种类

| 服务类型                  | 行业     | 免税条件                                    |
|-----------------------|--------|---|
| 向境外机构提供的服务<br>免税(类型一) | 电信服务   | ● 由中国机构向境外单位提供的电信服务（包括基础和增值服务）（例如，国际漫游） |
|                       | 文化创意服务 | ● 向境外单位提供的商标著作权转让服务、知识产权服务              |
|                       | 物流辅助服务 | ● 向境外单位提供的物流辅助服务（仓储服务除外）                |

|                                  |          |   |
|----------------------------------|----------|---|
|                                  | 广播影视服务   | ● 向境外单位提供的广播影视节目（作品）的制作服务                 |
|                                  | 信息技术服务   | ● 向境外单位提供的软件服务、电路设计及测试服务、信息系统服务、业务流程管理服务  |
|                                  | 研发和技术服务  | ● 向境外单位提供的技术转让和技术咨询服务                     |
| 服务标的物在中国境外的免税（类型二）               | 邮政业服务    | ● 为出口货物提供的邮政业服务和收派服务或完全在中国境外消费的邮政业服务和收派服务 |
|                                  | 有形动产租赁服务 | ● 租赁标的物在中国境外使用的有形动产租赁服务                   |
|                                  | 文化创意服务   | ● 会议展览地点在境外的会议展览服务<br>● 广告投放地在境外的广告服务     |
|                                  | 物流辅助服务   | ● 存储地点在境外的仓储服务                            |
|                                  | 广播影视服务   | ● 在境外提供的广播影视节目（作品）的发行、播映服务                |
|                                  | 研发和技术服务  | ● 工程、矿产资源在中国境外的工程勘查勘探服务                   |
| 服务接受方在境外，而且和服务标的物与中国没有足够的联系（类型三） | 鉴证咨询服务   | ● 向境外单位提供的认证、鉴证和咨询服务（对境内货物或不动产的鉴证咨询服务除外）  |
|                                  | 研发和技术服务  | ● 向境外单位提供的合同能源管理服务（合同标的物在境内的合同能源管理服务除外）   |
| 其他（类型四）                          | 运输服务     | ● 无许可证的国际运输服务                             |

就增值税免税申请而言，应当注意的是香港和澳门特别行政区被视为“境外”，因为上述的特别行政区拥有自己的税收制度。

### 最新修订内容

49 号公告包含了一些新的发展，其中许多修订都有利于纳税人，包括：

- 免税跨境服务类别扩大到增值税试点改革的出口服务范围。随着增值税试点行业推进，免税跨境服务的范围也相应扩大。
- 增值税免税将适用于与出口货物有关的邮政和收派服务，这是与出口货物有关的服务增值税免税的新进展。可以预料的是，其他与出口货物直接相关的服务在将来也可能享受增值税免税的优惠。
- 49 号公告解决了一些以往不明确的实际障碍。对于从事研发技术服务、设计和国际运输服务的纳税人，如果同时具有增值税零税率和增值税免税的资格，49 号公告允许纳税人在放弃零税率的前提下，申请增值税免税的优惠。
- 期租和湿租服务的增值税免税优惠从49 号文中删除，因为根据财税106 号文，期租和湿租服务已经适用增值税零税率。
- 在过去，申请增值税免税的主要问题是“服务流，发票流和现金流”一致性的严格要求。如果相关服务是由境外服务接受方之外的人士支付，则免税优惠无效。这项要求在49 号公告中有稍许放松，如果向境外机构提供相关服务的费用可以通过国内资金结算中心或国内资金池支付，纳税人仍

可以享受增值税免税优惠。在跨国公司广泛采用通过上述的资金结算中心进行支付的情况下，该公告的出台是一大进步。

如果纳税人符合相关要求和完成备案手续，49号公告有可能追溯适用于2014年10月1日之前的时期。因采用资金结算中心而在之前无法享受增值税免税优惠的纳税人可以考虑重新申请。

尽管有上述的有利发展，仍然存在一些挑战。申请增值税免税的主要问题包括：

- 中国总部机构签订了合同，但是由分支机构提供服务、开具发票或收取费用（或反之亦然）。该问题出现的原因主要是因为许多国家的法律体系中，分支机构没有独立的纳税人地位，但是在中国的分支机构被视为独立的增值税纳税人。因此，纳税人需要对分支机构保持密切的关注。

以上信息仅提供德安客户及对本公司业务感兴趣之人士参考，我们将尽量确保上述信息的准确性，我们提请读者注意，上述内容系有关文件的摘要，在实际应用时，须参照全文为准。同时，我们欢迎各位就上述信息咨询本公司的专业人士，也欢迎各位登陆我们的网站 [www.deanca.com.cn](http://www.deanca.com.cn)。我们将为我们的客户提供实实在在的增值服务。上述摘编如中、外文不一致的，以中文为准。

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### **VAT exemption claims for exported services**

On 27 August 2014 China's State Administration of Taxation issued Announcement No.49 of 2014 ("SAT Announcement 49") which is a comprehensive statement of the policies for claiming exemption from Value Added Tax ("VAT") under the VAT pilot program in China for exported services. SAT Announcement 49 will become effective from 1 October 2014, but may apply retrospectively.

SAT Announcement 49 will be greeted favourably by taxpayers, particularly multinational companies doing business in China, with a number of the earlier practical impediments to claiming VAT exemption now being resolved, and moreover, paving the way for future exemption claims to be made once the VAT pilot program expands.

As at September 2014, VAT applies in China to:

- the sale and importation of goods;
- repair, replacement and processing services to goods;
- the provision of modern services such as consulting, logistics, IT services, cultural and creative services, leasing of tangible movable property;
- transportation services;
- radio, film and television services ; and
- postal and telecommunication services.

In practical terms, the main services which are still subject to Business Tax ("BT") comprise real estate and construction services, hospitality and food and beverage services, entertainment services, financial services and insurance, and a general catch-all comprising 'all other services'. The VAT pilot program is expected to be expanded to those remaining sectors progressively during 2015, so as to meet the government's stated objective of having BT replaced entirely by VAT by the end of 2015.

Categories of VAT exemption

| Type of services   | Industry  | Exemption requirements  |
|--|---|---|
| Exempt if services are provided to overseas entity (Type I)  | Telecommunication services                            | <ul style="list-style-type: none"> <li>● Telecommunications services (both basic and value-added) (i.e. global roaming) provided by Chinese entities to overseas entities</li> </ul>                                      |
|  | Cultural and creative services                        | <ul style="list-style-type: none"> <li>● Trademark and copyright transfer services, intellectual property services provided to overseas entities</li> </ul>   |
|  | Logistics and ancillary services                      | <ul style="list-style-type: none"> <li>● Logistics and ancillary services provided to overseas entities (except warehousing services)</li> </ul>  |
|  | Radio, film and television services                   | <ul style="list-style-type: none"> <li>● Production of radio, films and television programs for overseas entities</li> </ul>  |
|  | Information technology (IT) services                  | <ul style="list-style-type: none"> <li>● Software services, circuit design and testing services, business process management services provided to overseas entities.</li> </ul>   |
|  | Research and development (R&D) and technical services | <ul style="list-style-type: none"> <li>● Technology transfer and technology consulting services provided to overseas entities</li> </ul>  |
| Exempt if the subject matter of the services takes place outside of China (Type II)  | Postal services                                       | <ul style="list-style-type: none"> <li>● Postal and courier services (i) where the related goods are exported out of China or (ii) consumed entirely outside of China</li> </ul>  |
|  | Leasing of tangible movable property                  | <ul style="list-style-type: none"> <li>● Leasing of tangible movable property where the asset is being used outside of China</li> </ul>   |
|  | Cultural and creative services                        | <ul style="list-style-type: none"> <li>● Convention and exhibition services located outside of China</li> <li>● Advertising services where the related advertisement is released outside of China</li> </ul>              |
|  | Logistics and ancillary services                      | <ul style="list-style-type: none"> <li>● Warehousing services where the location of the warehouse is outside of China</li> </ul>  |
|  | Radio, film and television services                   | <ul style="list-style-type: none"> <li>● Broadcast and distribution of radio, films and television programs outside of China</li> </ul>   |
|  | Research and development (R&D) and technical services | <ul style="list-style-type: none"> <li>● Engineering as well as exploration services with the related project or mineral resources located outside of China</li> </ul>  |
| Combination of the service recipient being overseas and the subject matter of the service not being sufficiently connected to China (Type III) | Certification and consulting services                 | <ul style="list-style-type: none"> <li>● Certification, verification and consulting services provided to overseas entities (except for services in relation to goods or immovable property located in the PRC)</li> </ul> |
|  | Research and development (R&D) and technical services | <ul style="list-style-type: none"> <li>● Energy management services (except where the object of the energy management contract is located in the PRC) provided to overseas entities</li> </ul>                            |
| Miscellaneous (Type IV)  | Transportation services                               | <ul style="list-style-type: none"> <li>● Unlicensed international transportation</li> </ul>   |

For the purposes of claiming VAT exemption, it should be noted that the special administrative regions of Hong Kong and Macau are considered to be ‘outside of China’ for these purposes. This is a function of those regions having their own taxation systems.

What’s new?

Announcement 49 contains a number of new developments, many of which are beneficial for taxpayers, including:

- The scope of the VAT exemption has been expanded to include exports of those services which now form part of the VAT pilot program. It may be expected that as the scope of the VAT pilot program expands further, categories of exempt services will also expand.
- VAT exemption will be available for postal and courier services which are related to goods exported out of China. This is a new development where certain types of services are exempt if they relate to exported goods. It may be expected that other types of services which directly relate to exported goods may enjoy VAT exemption in the future.
- Announcement 49 resolves the previously unclear practical treatment where taxpayers are eligible for both zero rated treatment and VAT exemption for research and development, design and international transportation services. It now permits a taxpayer to claim VAT exemption if the taxpayer chooses to give up the zero rated treatment.
- The VAT exemption available to time charter services and wet leases has been removed because time charter services and wet leases can already enjoy zero rated treatment under Circular 106.
- Previously, a major issue with claiming VAT exemption is the strict requirement that there between consistency of contract flow, invoice flow and payment flow. That is, the service provider and overseas service recipient needed to be the same parties to the contract, the invoices, and payment had to be made by the service recipient to the service provider. This requirement has been relaxed somewhat in Announcement 49 given that payments made through domestic treasury centres, or domestic cash pooling units can now be made in respect of services provided to overseas entities and yet still qualify for VAT exemption. This is an important concession given how commonly multinational companies make payments through such treasury centres.

Announcement 49 may be applied retrospectively to periods prior to 1 October 2014 where the necessary requirements are met and record filing procedures are completed. Taxpayers previously denied exemption on the basis of the use of treasury centres may wish to resubmit those prior claims.

Notwithstanding those beneficial changes, some challenges still remain. The major impediments to claiming VAT exemptions which arise most commonly include:

- Contracts entered into by the headquarters of an entity in China, but the service, invoice or payment is made by the branch (or vice versa). This problem commonly arises because, under the legal systems of many countries, branches do not have independent legal recognition. However, in China branches are seen to be separate taxpayers in their own right. Consequently, close attention is needed where branch structures are involved.

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