

Major taxes applicable to property developers

INCOME TAX

According to the “Income Tax Law of The People’s Republic of China for Enterprises with Foreign Investment and Foreign Enterprises” enacted by National People’s Congress on 9 April 1991 and enforced on 1 July 1991 and its detailed rules enacted by the State Council on 30 June 1991, the rate of enterprise income tax for foreign investment enterprises and enterprise income tax for entities and premises engaged in production and operation by foreign enterprises in China shall be 30%, and the rate of local income tax shall be 3%.

According to the PRC Enterprise Tax Law enacted by the National People’s Congress on 16 March 2007 and enforced from 1 January 2008 onwards, a uniform income tax rate of 25% will be applied towards foreign investment enterprise and foreign enterprises which have set up production and operation facilities in the PRC as well as PRC enterprises.

BUSINESS TAX

Pursuant to the “Interim Regulations of the People’s Republic of China on Business Tax” enacted by the State Council on 13 December 1993 and enforced on 1 January 1994 and its “Detailed Implementation Rules on the Provisional Regulations of The People’s Republic of China on Business Tax” issued by the Ministry of Finance on 25 December 1993, the tax rate on transfer of immovable properties, their superstructures and attachments is 5%.

LAND APPRECIATION TAX

According to the requirements of the Provisional Regulations of The People’s Republic of China on Land Appreciation Tax (the “Land Appreciation Provisional Regulations”) which was enacted on 13 December 1993 and effected on 1 January 1994, and the Detailed Implementation Rules on the Provisional Regulations of The People’s Republic of China on Land Appreciation Tax (the “Land Appreciation Detailed Implementation Rules”) which was enacted on 27 January 1995 and enforced back to 1 January 1994, any appreciation amount gained from taxpayer’s transfer of property shall be subject to land appreciation tax. Land appreciation tax shall be subject to a regime of four level progressive rates: 30% on the appreciation amount not exceeding 50% of the sum of deductible items; 40% on the appreciation amount exceeding 50% but not exceeding 100% of the sum of deductible items; 50% on the appreciation amount exceeding 100% but not exceeding 200% of the sum of deductible items; and 60% on the appreciation amount exceeding 200% of the sum of deductible items. The related deductible items aforesaid include the following:

- amount paid for obtaining the land use right;
- costs and expenses for development of land;
- costs and expenses of new buildings and ancillary facilities, or estimated prices of old buildings and constructions;

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- related tax payable for transfer of property;
- other deductible items as specified by MOF.

According to the requirements of the Land Appreciation Provisional Regulations, the Land Appreciation Detailed Implementation Rules and the Notice issued by the MOF in respect of the Levy and Exemption of Land Appreciation Tax for Development and Transfer Contracts signed before 1 January 1994 which was announced by the MOF and State Administration of Taxation on 27 January 1995, Land Appreciation Tax shall be exempted under any one of the following circumstances:

- Taxpayers building ordinary standard residential properties for sale (i.e. residential properties built in accordance with the local standard for general civilian residential properties. Deluxe apartments, villas, resorts etc. are not under the category of ordinary standard residential properties), where the appreciation amount does not exceed 20% of the sum of deductible items;
- Property taken over and repossessed according to laws due to the construction requirements of the State;
- Due to redeployment of work or improvement of living standard, individuals transfer originally self-used residential property, of which they have been living there for 5 years or more, and after obtaining tax authorities’ approval;
- For property transfer contract which were signed before 1 January 1994, whenever the properties are transferred, the Land Appreciation Tax shall be exempted;
- If the property assignments were signed before 1 January 1994 or the project proposal has been approved and that capital was injected for development in accordance with the conditions agreed, the Land Appreciation Tax shall be exempted if the properties are transferred within 5 years after 1 January 1994 for the first time. The date of signing the contract shall be the date of signing the Sale and Purchase Agreement. Particular property projects which are approved by the Government for the development of the whole piece of land and long-term development, of which the properties are transferred for the first time after the 5-year tax-free period, after auditing being conducted by the local financial and tax authorities, and approved by MOF and the State Administration of Taxation, the tax-free period would then be appropriately prolonged.

After the issuance of the “Land Appreciation Provisional Regulations” and the “Land Appreciation Detailed Implementation Rules”, due to the relatively long period required for property development and transfer, many districts, while they were implementing the regulations and rules, did not mandatorily require the property development enterprises to declare and pay the Land Appreciation Tax. Therefore, in order to assist the local tax authorities in the collection of Land Appreciation Tax, the MOF, State Administration of Taxation, the Ministry of Construction and the Ministry of Land and Resource had separately and jointly issued several notices to restate the following: After the assignments are signed, the taxpayers should declare the tax to the local tax authorities where the properties are located, and pay the Land Appreciation Tax in accordance with

the amount as calculated by the tax authority and within the specified time limit. For those who fail to acquire proof of tax payment or tax exemption from the tax authorities, the property administration authority shall not process the relevant title change procedures, and shall not issue the property title certificate.

State Administration of Taxation also issued the “Notice issued by State Administration of Taxation in respect of the Serious Handling of Administration Work in relation to the Collection of Land Appreciation Tax” on 10 July 2002 to request local tax authorities to modify the management system of Land Appreciation Tax collection and operation procedures, to build up a proper tax return system for Land Appreciation Tax, to improve the methods of pre-levying for the pre-sale of properties. That notice also pointed out that the preferential policy of Land Appreciation Tax exemption for first time transfer of properties under property development contracts signed before 1 January 1994 or project proposal that has been approved and capital was injected for development, is expired, and that such tax shall be levied again.

State Administration of Taxation issued the “Notice of State Administration of Taxation in respect of the Strengthening of Administration Work in relation to the Collection of Land Appreciation Tax” on 2 August 2004 and the “Notice of State Administration of Taxation in respect of the Further Strengthening of Administration Work in relation to the Collection of Land Appreciation Tax and Land Use Tax in Cities and Towns” on 5 August 2004. The aforesaid notices point out that the administration work in relation to the collection of land appreciation tax should be further strengthened. The preferential policy of Land Appreciation Tax exemption for first time transfer of properties under property development contracts signed before 1 January 1994 is expired and such tax shall be levied again. Where such taxes were still not levied, the situation should be corrected immediately. Also, the notice required that the system of tax declaration and tax sources registration in relation to the land appreciation tax should be further improved and perfected.

On 2 March 2006, the MOF and State Administration of Taxation issued the “Notice of Certain Issues Regarding Land Appreciation Tax”. The notice clarifies the relevant issues regarding land appreciation tax as follows:

(i) As to the Tax Collection and Exemption in the Sale of Ordinary Standard Residential Properties Built by Taxpayer

The notice sets out the recognised standards for ordinary standard residential properties. Where any developers build ordinary standard residential properties as well as other commercial properties, the value of land appreciation shall be assessed separately. In respect of ordinary standard residential properties for which application for tax exemption has been filed with the tax authority at the locality of the property before the notice is issued and for which land appreciation tax exemption has been granted by the tax authority on the basis of the standards of ordinary residential properties originally set down by the people’s government of the province, autonomous region or municipality directly under the Central Government, no adjustment shall be retroactively made.

(ii) As to the Advance Collection of Land Appreciation Tax as well as the Settlement

All regions shall further improve the measures for the advance collection of land appreciation tax, and decide the advance collection rate in a scientific and reasonable manner, and adjust it at a proper time according to the level of value appreciation in the property industry and market conditions within the region and on the basis of the specific property categories, namely, ordinary standard residential properties, non-ordinary standard residential properties and commercial properties. After a project is completed, the relevant settlement shall be handled in a timely manner, with any overpayment refunded or any underpayment being made up;

If any tax pre-payment is not paid within the advance collection period, an overdue fines shall be imposed additionally as of the day following the expiration of the prescribed advance collection period, according to the relevant provisions of the Tax Collection and Administration Law and its detailed rules for implementation;

As to any property project that has been completed and gone through the acceptance as well, where the floor area of the property as transferred makes up 85% or more in the salable floor area, the tax authority may require the relevant taxpayer to conduct the settlement of land appreciation tax on the transferred property according to the matching principles regarding the proportion between the income as generated from the transfer of property and the amount under the item of deduction. The specific method of settlement shall be prescribed by the local tax authority of a province, autonomous region, municipality directly under the Central Government, or a city under separate state planning;

On 28 December 2006, the State Administration of Taxation issued the Notice on the Administration of the Settlement of Land Appreciation Tax of Property Development Enterprises, which came into effect on 1 February 2007. The notice set out further provisions concerning the settlement of land appreciation tax by property developers by clarifying details regarding units responsible for settlement of land appreciation tax, requirements, materials to be submitted, auditing and verification, recognition of revenue of indirect sale and self-use properties, deductible items and handling of transfer after tax is imposed and settled etc. Local provincial tax authorities can formulate their own implementation rules according to the notice and local situation.

DEED TAX

Pursuant to the “Interim regulations of the People’s Republic of China on Deed Tax” enacted by the State Council on 7 July 1997 and enforced on 1 October 1997, the transferee, whether an entity or individual, of the title to a land site or building in the PRC shall have to pay deed tax. The rate of deed tax is 3%-5%. The governments of provinces, autonomous regions and municipalities directly under the central government may, within the foresaid range, determine and report their effective tax rates to the MOF and the State Administration of Taxation for the record. Pursuant to the “Implementation Provisions on Deed Tax in Guangdong Province” enacted by the People’s Government of Guangdong on 10 June 1998, and enforced on 1 October 1997, the rate of deed tax within Guangdong is 3%.

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URBAN LAND USE TAX

Pursuant to the “Provisional Regulations of the People’s Republic of China Governing Land Use Tax in Cities and Towns” enacted by the State Council on 27 September 1988 and enforced on 1 November 1988, the land use tax in respect of urban land is levied according to the area of relevant land. The annual tax shall be between RMB0.2 and RMB10 per sq.m. of urban land collected according to the tax rate determined by local tax authorities. According to the “Notice on Land Use Tax Exemption of Foreign Investment Enterprises and Institutions of Foreign Enterprises in China” enacted by the MOF on 2 November 1988 and the “Approval on Land Use Tax Exemption of Foreign Investment Enterprises” issued by the State Administration of Taxation on 27 March 1997, land use fee instead of land use tax shall be collected from a foreign investment enterprise. However, the Provisional Regulations of the People’s Republic of China Governing Land Use Tax in Cities and Towns was revised by the State Council on 31 December 2006. As of 1 January 2007, land use tax shall be collected from foreign investment enterprise. The annual tax shall be between RMB0.6 and RMB30.0 per sq.m. of urban land.

BUILDINGS TAX

Under the “Interim Regulations of the People’s Republic of China on Buildings Tax” enacted by the State Council on 15 September 1986 and enforced on 1 October 1986, buildings tax shall be 1.2% if it is calculated on the basis of the residual value of a building, and 12% if it is calculated on the basis of the rental.

STAMP DUTY

Under the “Interim regulations of the People’s Republic of China on Stamp Duty” enacted by the State Council on 6 August 1988 and enforced on 1 October 1988, for property rights transfer instruments, including those in respect of property ownership transfer, the rate of stamp duty shall be 0.05% of the amount stated therein; for permits and certificates relating to rights, including property title certificates and land use rights certificates, stamp duty shall be levied on an item basis of RMB5 per item.

MUNICIPAL MAINTENANCE TAX

Under the “Interim Regulations of the People’s Republic of China on Municipal Maintenance Tax” enacted by the State Council on 8 February 1985, any taxpayer, whether an entity or individual, of product tax, value-added tax or business tax shall be required to pay municipal maintenance tax. The tax rate shall be 7% for a taxpayer whose domicile is in an urban area, 5% for a taxpayer whose domicile is in a county and a town, and 1% for a taxpayer whose domicile is not in any urban area or county or town. Under the “Circular Concerning Temporary Exemption from Municipal Maintenance Tax and Education Surcharge For Enterprises with Foreign Investment and Foreign Enterprises” and the “Approval on Exemption of Municipal Maintenance Tax and Education Surcharge in Foreign-Invested Freightage Enterprises” issued by State Administration of Taxation on 25 February 1994 and on 14 September 2005 respectively, whether foreign investment enterprises are

subject to municipal maintenance tax shall be determined in accordance with notices issued by the State Council; and such tax is not applicable to enterprises with foreign investment for the time being, until further explicit stipulations are issued by the State Council.

EDUCATION SURCHARGE

Under the “Interim Provisions on Imposition of Education Surcharge” enacted by the State Council on 28 April 1986 and revised on 7 June 1990 and 20 August 2005, a taxpayer, whether an entity or individual, of product tax, value-added tax or business tax shall pay an education surcharge, unless such obliged taxpayer is instead required to pay a rural area education surcharge as provided by the “Notice of the State Council on Raising Funds for Schools in Rural Areas”. Under the supplementary Notice Concerning Imposition of Education Surcharge” issued by the State Council on 12 October 1994, the “Circular Concerning Temporary Exemption from Municipal Maintenance Tax and Education Surcharge For Enterprises with Foreign Investment and Foreign Enterprises” and the “Reply on Exemption of Municipal Maintenance Tax and Education Surcharge in Foreign-Invested Freightage Enterprises” issued by State Administration of Taxation on 25 February 1994 and on 14 September 2005 respectively, whether foreign investment enterprises are subject to the education surcharge shall be determined in accordance with notices issued by the State Council; and such tax is not applicable to enterprises with foreign investment for the time being, until further explicit stipulations are issued by the State Council.