Tax Administrative Reconsideration Rules of the PRC

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Chapter I — General Provisions

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Article 1 — These Rules are formulated in accordance with the Administrative Reconsideration Law of the People's Republic of China, the Law of the People's Republic of China on the Administration of Tax Collection, and other relevant laws and regulations, for the purpose of preventing and resolving tax administrative disputes, protecting the lawful rights and interests of taxpayers, withholding agents, and other parties concerned, and safeguarding and supervising tax authorities in the lawful exercise of their powers.

Article 2 — Where a taxpayer, withholding agent, tax guarantor, or other party concerned (hereinafter referred to as the "applicant") considers a specific administrative act of a tax authority to have infringed upon its lawful rights and interests, it may apply to the tax administrative reconsideration organ for administrative reconsideration in accordance with law.

Article 3 — Tax administrative reconsideration at all levels shall be responsible for conducting administrative reconsideration of tax and shall perform their duties in accordance with law. Tax administrative reconsideration organs and their staff shall adhere to the principles of legality, impartiality, openness, timeliness, and convenience for the people, and shall adhere to the principle of correcting errors, so as to ensure the correct implementation of tax laws and administrative regulations.

Article 4 — Tax administrative reconsideration organs shall strengthen the construction of the tax administrative reconsideration work force and raise the professional competence and comprehensive quality of the reconsideration personnel; guarantee the necessary funds and equipment for tax administrative reconsideration.

Article 5 — These Rules shall apply to the application for tax administrative reconsideration, acceptance of tax administrative reconsideration, hearing, decision, and other reconsideration activities.

Chapter II — Tax Administrative Reconsideration Organs and Their Functions

Article 6 — Tax administrative reconsideration organs shall mean the tax authorities that perform tax administrative reconsideration duties in accordance with law. The legal affairs body of a tax administrative reconsideration organ shall handle the matters relating to tax administrative reconsideration on its behalf.

Article 7 — Tax administrative reconsideration organs shall perform the following functions:

(1) accepting applications for tax administrative reconsideration;

(2) investigating and collecting evidence from the relevant entities and individuals, and consulting documents and materials;

(3) reviewing whether the specific administrative act under reconsideration is lawful and appropriate, and drafting an administrative reconsideration decision;

(4) handling or transmitting applications for the review of the relevant provisions of a normative document;

(5) proposing suggestions for the handling of acts that violate the Administrative Reconsideration Law and these Rules in accordance with their authority and procedures;

(6) studying issues in the work of tax administrative reconsideration and providing timely suggestions to the relevant organs for improvement; and

(7) other functions prescribed by laws and regulations.

Article 8 — Tax administrative reconsideration organs at all levels shall be staffed with full-time tax administrative reconsideration personnel in accordance with the needs of the reconsideration work, so as to ensure that the reconsideration of tax administrative cases is handled by at least two reconsideration personnel.

Chapter III — Scope of Tax Administrative Reconsideration

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Article 9 — An applicant may apply for administrative reconsideration against any of the following specific administrative acts of a tax authority:

(1) tax collection acts, including the determination of the tax basis, the applicable tax rate, tax calculation, and the specific acts of pursuing the payment of tax and the surcharge on overdue tax payment;

(2) administrative penalties such as fines and confiscation of property;

(3) acts of deducting tax payments, withholding tax refunds (exemptions), and tax preservation measures;

(4) compulsory tax enforcement measures such as compulsory tax enforcement measures, notification to the entry-exit administration authorities to prevent the departure of the applicant from the country;

(5) acts of granting, changing, revoking, or canceling tax administrative permits;

(6) a decision by the tax authority not to handle or to reject an application for administrative reconsideration in accordance with law;

(7) acts such as the failure to issue or erroneously issuing tax payment vouchers, the failure to issue or erroneously issuing export tax refund (exemption) declaration forms, and the failure to perform tax administration duties such as tax registration, invoice management, and tax assessment;

(8) acts of the tax authority not performing tax administration duties such as tax registration, invoice management, and tax assessment;

(9) acts of the tax authority refusing to grant a tax administrative license or failing to respond within the statutory time limit;

(10) acts of the tax authority failing to perform its duties in accordance with law or failing to respond within the statutory time limit to protect the personal rights, property rights, and other lawful rights and interests of the applicant; or

(11) other specific administrative acts of the tax authority.

Article 10 — Where an applicant considers a specific administrative act of a tax authority to be based on any of the following provisions and such provision is unlawful, it may, when applying for administrative reconsideration against the specific administrative act, simultaneously apply for the review of the relevant provision:

(1) provisions of the State Administration of Taxation and other departments of the State Council;

(2) provisions of the tax authorities of the people's governments at or above the county level and their working bodies at all levels; or

(3) provisions of the tax authorities of the people's governments at the township (town) level.

The provisions specified in the preceding paragraph shall not include rules and regulations.

Chapter IV — Jurisdiction of Tax Administrative Reconsideration

Article 11 — Where an applicant is dissatisfied with a specific administrative act of a tax authority at any level, it shall apply for administrative reconsideration to the tax authority at the next higher level.

Article 12 — Where an applicant is dissatisfied with a specific administrative act of the State Administration of Taxation, it shall apply for administrative reconsideration to the State Administration of Taxation. Where an applicant is dissatisfied with the administrative reconsideration decision, it may institute an administrative action in a people's court or apply to the State Council for a ruling, and the ruling of the State Council shall be final.

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Article 13 — Where an applicant is dissatisfied with any of the following specific administrative acts, it shall apply for administrative reconsideration to the tax authority at the next higher level of the tax authority that made the specific administrative act:

(1) a specific administrative act of a tax office dispatched by a tax authority at any level;

(2) a specific administrative act of a tax authority at any level in respect of tax inspection; or

(3) a specific administrative act of a tax authority at any level where the withholding agent committed the illegal act.

Where an applicant is dissatisfied with a specific administrative act of a tax authority at any level other than those specified in the preceding paragraph, it shall apply for administrative reconsideration to the tax authority at the same level of the people's government.

Article 14 — Where an applicant is dissatisfied with a specific administrative act jointly made by two or more tax authorities, it shall apply for administrative reconsideration to their common tax authority at the next higher level.

Article 15 — Where an applicant is dissatisfied with a specific administrative act of a tax authority under a revoked organizational system, it shall apply for administrative reconsideration to the tax authority at the next higher level of the tax authority that continues to exercise its powers.

Chapter V — Applicants and Respondents for Tax Administrative Reconsideration

Article 16 — A taxpayer, withholding agent, tax guarantor, or other party concerned that considers a specific administrative act of a tax authority to have infringed upon its lawful rights and interests may apply for administrative reconsideration.

Where an applicant is a citizen, the application for administrative reconsideration may be filed personally; where the applicant is a legal person or other organization, the application shall be filed by its legal representative or the person in charge on its behalf.

Article 17 — Where a citizen with the right to apply for administrative reconsideration dies, his or her close relative may apply for administrative reconsideration. Where a legal person or other organization with the right to apply for administrative reconsideration is terminated, the legal person or other organization that succeeds to its rights may apply for administrative reconsideration.

Article 18 — An applicant may entrust an agent to participate in the administrative reconsideration on its behalf. An applicant entrusting an agent shall submit to the tax administrative reconsideration organ a power of attorney signed or sealed by the applicant, specifying the matters and authority of the entrustment.

A citizen may, under special circumstances, entrust an agent orally. Such oral entrustment shall be recorded in writing by the tax administrative reconsideration organ for confirmation.

Article 19 — Where a third party has an interest in a specific administrative act under review, it may apply to the tax administrative reconsideration organ to participate in the reconsideration, or the tax administrative reconsideration organ may notify it to participate in the reconsideration. The third party that does not participate in the reconsideration shall not affect the hearing of the reconsideration case.

Article 20 — The tax authority that made the specific administrative act shall be the respondent.

Where a specific administrative act is jointly made by two or more tax authorities, the tax authorities jointly making the specific administrative act shall be the joint respondents.

Where a tax authority's dispatched office makes a specific administrative act in the name of its own, the dispatched office shall be the respondent.

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Where the tax authority whose specific administrative act is under reconsideration has been revoked, the tax authority that continues to exercise its powers shall be the respondent.

Chapter VI — Application for Tax Administrative Reconsideration

Article 21 — An applicant may apply for administrative reconsideration within 60 days from the date on which it knew or should have known the specific administrative act of the tax authority. Where the time limit prescribed by law exceeds 60 days, such provision shall prevail.

Where the statutory time limit for applying for reconsideration is delayed due to force majeure or other justifiable reasons, the time limit shall be calculated consecutively from the date on which the obstacle is removed.

Article 22 — An applicant applying for tax administrative reconsideration may submit the application in writing or orally; where the application is made orally, the tax administrative reconsideration organ shall record the basic information of the applicant, the matters requested for reconsideration, the main facts, grounds and time of the application for reconsideration on the spot.

Article 23 — A written application for tax administrative reconsideration shall contain the following:

(1) the name, gender, age, occupation, and address of the applicant (in the case of a legal person or other organization, the name, address, and the name and position of the legal representative);

(2) the name and address of the respondent;

(3) the matters requested for reconsideration, the grounds, and the facts; and

(4) the date of the application.

Article 24 — Where, prior to the tax administrative reconsideration organ making a decision, the applicant requests withdrawal of the application for reconsideration, the application may be withdrawn, provided that the reasons are stated. The administrative reconsideration shall be terminated upon the withdrawal of the application for reconsideration.

Article 25 — During the period of tax administrative reconsideration, the execution of the specific administrative act shall not be suspended. However, execution may be suspended under any of the following circumstances:

(1) the respondent considers that it is necessary to suspend execution;

(2) the tax administrative reconsideration organ considers it necessary to suspend execution;

(3) the applicant applies for suspension of execution and the tax administrative reconsideration organ considers the application reasonable and decides to suspend execution; or

(4) execution is required to be suspended by law.

Chapter VII — Acceptance of Tax Administrative Reconsideration

Article 26 — A tax administrative reconsideration organ shall, within five days from the date of receipt of an application for tax administrative reconsideration, decide whether to accept the application and notify the applicant in writing of its decision; where no notification is given within five days, the application shall be deemed to have been accepted from the date of receipt.

Article 27 — Where a tax administrative reconsideration organ decides not to accept an application for reconsideration, the applicant may institute an administrative action in a people's court within 15 days from the date of receipt of the notice of non-acceptance.

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Article 28 — Where a tax administrative reconsideration organ has accepted the application for reconsideration and the applicant also institutes an administrative action in a people's court, the tax administrative reconsideration organ shall terminate the reconsideration. However, where the tax administrative reconsideration organ finds that the application should not be accepted, it shall decide to reject the application.

Article 29 — Where a tax administrative reconsideration organ refuses to accept an application for administrative reconsideration that should have been accepted in accordance with law, the tax administrative reconsideration organ at the next higher level shall order it to accept the application. Where necessary, the tax administrative reconsideration organ at the next higher level may also directly accept the application.

Chapter VIII — Evidence in Tax Administrative Reconsideration

Article 30 — Evidence in tax administrative reconsideration shall include the following:

(1) documentary evidence;

(2) physical evidence;

(3) audio-visual materials;

(4) electronic data;

(5) witness testimony;

(6) statements of the parties;

(7) expert conclusions; and

(8) records of inspection and on-site records.

The above evidence may be used as the basis for determining the facts only after verification by the tax administrative reconsideration organ.

Article 31 — The respondent shall bear the burden of proof for the specific administrative act, and shall provide the evidence and the basis on which the specific administrative act was made.

During the period of reconsideration, the respondent shall not collect evidence from the applicant or other relevant organizations or individuals on its own. However, where the respondent needs to make a supplementary collection of evidence for the facts other than those on which the specific administrative act was based, it may do so upon approval by the tax administrative reconsideration organ.

Article 32 — The applicant and the third party shall have the right to consult the written reply, the evidence and basis on which the specific administrative act was made, and other relevant materials submitted by the respondent, and shall have the right to make statements and arguments. The tax administrative reconsideration organ shall not refuse, except where State secrets, commercial secrets, or personal privacy are involved.

Chapter IX — Hearing and Decision of Tax Administrative Reconsideration

Article 33 — Tax administrative reconsideration shall, in principle, be conducted by way of written review. However, where the applicant so requests or the tax administrative reconsideration organ considers it necessary, it may investigate the relevant organizations and individuals to hear the opinions of the applicant, respondent, and third party.

Tax administrative reconsideration organs may, where necessary, hold hearings to hear tax administrative reconsideration cases.

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Article 34 — A tax administrative reconsideration organ shall, within seven days from the date of acceptance of the application for reconsideration, send a copy of the application for reconsideration or a copy of the record of the oral application for reconsideration to the respondent. The respondent shall, within 10 days from the date of receipt of the copy of the application for reconsideration or the copy of the record of the oral application for reconsideration, submit a written reply along with the evidence and basis on which the specific administrative act was made.

Article 35 — A tax administrative reconsideration organ shall make a reconsideration decision within 60 days from the date of acceptance of the application, except where the time limit prescribed by law is less than 60 days. Where the complexity of the case requires an extended period for decision, it may be extended appropriately with the approval of the person in charge of the tax administrative reconsideration organ, provided that the maximum period of extension shall not exceed 30 days, and the applicant and the respondent shall be notified of the extension.

Article 36 — A tax administrative reconsideration organ shall, after hearing the case, make a tax administrative reconsideration decision in accordance with the following provisions:

(1) where the specific administrative act is based on clear facts, the evidence is conclusive, the applicable basis is correct, the procedure is lawful, and the content is appropriate, the specific administrative act shall be upheld;

(2) where the respondent fails to perform its statutory duties, it shall be ordered to perform them within a specified time limit;

(3) where the specific administrative act has any of the following circumstances, it shall be revoked, changed, or confirmed to be illegal; where the specific administrative act is revoked or confirmed to be illegal, the respondent may be ordered to re-make the specific administrative act within a specified time limit:

a. the main facts are unclear and the evidence is insufficient;

b. the applicable basis is erroneous;

c. the statutory procedures are violated;

d. the authority has been exceeded or abused; or

e. the specific administrative act is obviously improper.

(4) where the respondent fails to submit the written reply and the evidence and basis on which the specific administrative act was made within the time limit prescribed in Article 34 of these Rules, the specific administrative act shall be deemed to have been made without evidence and basis, and the specific administrative act shall be revoked.

Article 37 — Where an applicant requests administrative compensation in its application for reconsideration, the tax administrative reconsideration organ shall, when deciding to revoke, change the specific administrative act, or confirm the specific administrative act to be illegal, simultaneously decide on the compensation to be made by the respondent in accordance with law.

Article 38 — The parties concerned shall perform the tax administrative reconsideration decision. Where the applicant fails to institute an action or refuses to perform the reconsideration decision within the statutory time limit, the matter shall be handled in accordance with the following provisions:

(1) where the reconsideration decision upholds the specific administrative act, the tax authority that made the specific administrative act shall apply to the people's court for compulsory enforcement, or enforce it in accordance with law; or

(2) where the reconsideration decision changes the specific administrative act, the tax administrative reconsideration organ shall apply to the people's court for compulsory enforcement, or enforce it in

accordance with law.

Chapter X — Supplementary Provisions

Article 39 — A tax administrative reconsideration organ shall record the statistics of tax administrative reconsideration cases and report the statistical statements to the tax authority at the next higher level. The State Administration of Taxation shall uniformly formulate the format of the statistical statements for tax administrative reconsideration cases.

Article 40 — The format of the legal documents for tax administrative reconsideration shall be uniformly formulated by the State Administration of Taxation.

Article 41 — The service of tax administrative reconsideration documents shall be governed by the relevant provisions of the Civil Procedure Law of the People's Republic of China on the service of litigation documents and the provisions of the State Administration of Taxation on the service of tax documents.

Article 42 — The time limits in these Rules concerning tax administrative reconsideration shall be calculated in working days. The provisions of the Civil Procedure Law on time limits shall not apply.

Article 43 — The State Administration of Taxation shall be responsible for the interpretation of these Rules.

Article 44 — These Rules shall enter into force on April 1, 2010. The Tax Administrative Reconsideration Rules (for Trial Implementation) issued by the State Administration of Taxation on February 24, 2004 shall be repealed simultaneously.

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