

# THE 1994 CONSUMPTION TAX OF THE PEOPLE'S REPUBLIC OF CHINA

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## I. INTRODUCTION

The 1994 Consumption Tax of the People's Republic of China ("Consumption Tax") permits the government to assess extra taxes on those commodities that impose unique burdens on society, such as cancer from cigarettes, and air pollution and traffic congestion from automobiles. In effect, the Consumption Tax is a "sin tax" which discourages consumption of harmful goods and luxuries. Harmful goods subject to the tax include tobacco products, alcohol, fireworks, automobiles, gasoline, and tires. Luxury goods subject to the tax include cosmetics and jewelry. The tax on harmful goods helps to pay for the extra burdens that consumption of these goods imposes on society, and the tax on luxury goods efficiently captures economic rent from high-demand, high-profit, frivolous products.

The Consumption Tax was adopted on November 26, 1993, by the Twelfth Standing Conference of the People's Republic of China and promulgated on December 13, 1993, by Prime Minister Li Peng. The law became effective on January 1, 1994, and supersedes the previous consumption tax scheme.<sup>1</sup> There are four main regulations governing the Consumption Tax: the Tentative Regulation of the Consumption Tax ("TRCT"), the Detailed Tentative Regulation for the Implementation of the Tentative Regulation of the Consumption Tax ("DRCT"), the Regulation for the Accounting Guidelines for the Consumption Tax ("RAGCT"), and the Resolution on the Application of the

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1. Zhonghua Renmin Gongheguo Xiaofeisui Zhanxing Tiaoli [The Tentative Regulation of the Consumption Tax of the People's Republic of China] art. 19, *translated in* A GUIDE TO CHINA'S TAX AND BUSINESS LAWS 187, 190 (Howard Gensler ed. & Jiliang Yang trans., 1995) [hereinafter TRCT].

Tentative Regulations on the Value Added Tax,<sup>2</sup> the Consumption Tax, the Business Tax,<sup>3</sup> and other Taxes on Enterprises with Foreign Investment and Foreign Enterprises ("RATR").

The pre-1994 tax regime consisted of two separate tax systems—one for foreign businesses and another for domestic businesses. The commodity taxes, known as the "Turnover Taxes," included the value added tax, business tax, product tax, resource tax, and the consolidated industrial and commercial tax, and were the chief sources of revenue for the Chinese central government. The new legislative scheme rationalizes, simplifies, and unifies this important system of government funding.<sup>4</sup> This Article sets forth the substance of the new Consumption Tax.

## II. APPLICATION OF THE CONSUMPTION TAX

### A. SCOPE

The Consumption Tax applies to all producers, processors, and importers of taxable consumer goods in China, including foreign enterprises and enterprises with foreign investment.<sup>5</sup> The geographic location of the actual producer, processor, or importer determines the site for Consumption Tax purposes; the place where the sales contract is formed is irrelevant.<sup>6</sup> The tax applies to tobacco products, alcohol, cosmetics, jewelry, fireworks, gasoline, diesel oil, automobile tires, motorcycles, and automobiles.

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2. The Value Added Tax ("VAT") is a tax on commodities collected at each stage of production and distribution. Each buyer pays the tax to the seller. When the buyer then resells the good and collects the new tax from the new buyer, the old buyer remits to the government only the difference between the amount of VAT paid on input items, and the amount of VAT collected on the sale of the output. Hence, only the value added is taxed at each link in the chain of production.

3. The Business Tax is a tax on service income.

4. Shirley Fu, *Introduction to Turnover Tax*, in *A GUIDE TO CHINA'S TAX AND BUSINESS LAWS* (Howard Gensler ed. & Jiliang Yang trans., 1995).

5. TRCT, art. 1; Zhonghua Renmin Gongheguo Xiaofeisuizhanxing Tiaoli Shisi Xize [The Detailed Tentative Regulation for the Implementation of the Consumption Tax of the People's Republic of China] art. 2, *translated in A GUIDE TO CHINA'S TAX AND BUSINESS LAWS* 192, 192 (Howard Gensler ed. & Jiliang Yang trans., 1995) [hereinafter DRCT]; Quanguo Ren Dachang Anhui Guanyu Waishang Touzhi Giye He Waiguo Giye Huoyung Zengzhishui, Xiaofeisuizhanxing Tiaoli Shisi Xize [The Resolution of the Standing Committee of the National People's Congress on the Application of the Tentative Regulations on the Value Added Tax, the Consumption Tax, the Business Tax on Enterprises with Foreign Investment and Foreign Enterprises] art. 1 *translated in A GUIDE TO CHINA'S TAX AND BUSINESS LAWS* 219, 219 (Howard Gensler ed. & Jiliang Yang trans., 1995) [hereinafter RATR].

6. DRCT, art. 2.

## B. TIMING AND LIABILITY

The Consumption Tax must be paid upon sale of the goods.<sup>7</sup> For credit sales with installment payments, the liability for the Consumption Tax vests upon receipt of each installment payment. If the goods are paid for in advance, tax liability vests upon physical delivery of the goods. If the sale is arranged through a bank by forwarding shipping documents to the bank for collection, tax liability vests when the goods are delivered and the bank is entitled to collect payment. In other cases, tax liability vests when payment or the documents authorizing payment are received.<sup>8</sup>

If self-produced goods are self-consumed, the tax is due upon consumption, use, or exchange, unless the goods are used in the production process.<sup>9</sup> Goods used in the production process are those materials that constitute part of the finished goods, not capital goods that aid or are consumed in the production process.<sup>10</sup> Goods used in the production of nontaxable items or otherwise in production or business are subject to the Consumption Tax.<sup>11</sup>

If a customer places an order to process goods that are subject to the tax, the processor must collect the tax from the customer when the customer receives the goods.<sup>12</sup> If the customer subsequently uses the goods in a production process, he may recover the taxes paid to the processor.<sup>13</sup> The Consumption Tax on imported goods must be paid when the goods are declared at Customs.<sup>14</sup>

## III. CALCULATION OF THE CONSUMPTION TAX

### A. CALCULATION METHOD

The Consumption Tax is calculated based on either sales revenue or volume.<sup>15</sup>

To calculate the tax based on sales revenue, the following equation should be used:

$$T_s = S \times r$$

where

$$T_s = \text{Tax due (revenue method)}$$

7. TRCT, art. 4; DRCT, arts. 5, 8.

8. DRCT, art. 8.

9. TRCT, art. 4; DRCT, arts. 7-8.

10. DRCT, art. 6.

11. *Id.*

12. TRCT, art. 4; DRCT, art. 8.

13. TRCT, art. 4.

14. *Id.* art. 3; DRCT, art. 4.

15. TRCT, art. 5.

$S$  = Sales revenue including the Consumption Tax

$r$  = Tax rate.

"Sales revenue" includes the price of the goods sold and all additional charges on the good, including the Consumption Tax.<sup>16</sup> Other additional charges include service charges, packing charges, shipping and handling fees, interest, contract damages, and any other kind of charge or fee paid by the purchaser to the seller.<sup>17</sup> If the shipping invoice is issued by the shipper in the buyer's name and the invoice is delivered to the buyer, shipping fees are not included in the sales revenue.<sup>18</sup> If the packing materials are sold with the good, then the charges for the packing materials are included in the sales revenue, irrespective of the accounting treatment of the items or the fact that separate invoices are employed.<sup>19</sup> However, if only a refundable deposit is received for packing materials, then the deposit should not be included in sales revenue. If the deposit is subsequently forfeited, then it becomes subject to the Consumption Tax and must be included in the sales revenue.<sup>20</sup> The VAT is not included in the sales revenue.<sup>21</sup> If the VAT has been included, it can be separated out as follows:<sup>22</sup>

$$S_c = S_v \div (1 + r)$$

where

$S_c$  = Sales volume for Consumption Tax purposes

$S_v$  = Sales including VAT

$r$  = VAT rate.

To calculate the Consumption Tax based on sales volume rather than sales revenue, the following equation should be used:

$$T_v = V \times u$$

where

$T_v$  = Tax due (volume method)

$V$  = Volume of good sold

$u$  = Tax per unit.

In these calculations, the following measurement conversions are to be employed:<sup>23</sup>

Beer	1 ton = 988 liters
Wine	1 ton = 962 liters
Gasoline	1 ton = 1388 liters
Diesel Oil	1 ton = 1176 liters

16. *Id.* art. 6; DRCT, art. 9.

17. DRCT, art. 14.

18. *Id.*

19. *Id.* art. 13.

20. *Id.*

21. *Id.* art. 12.

22. *Id.*

23. *Id.* art. 10.

If goods are self-consumed and subject to the tax, the price charged to customers over the course of the relevant month should be used to determine tax liability.<sup>24</sup> If the price of the good varied over the course of the month, the weighted average of the prices should be used.<sup>25</sup> If the price for that month is unavailable because there were no sales, the sale price from the previous or most recent month may be used.<sup>26</sup> If no price is available, then an imputed price—based on production costs and a prescribed rate of return—should be used.<sup>27</sup> If the price is artificially low, the weighted average may not be used, and the price may be adjusted by the tax authorities in calculating the tax.<sup>28</sup> If the goods are processed on order, the price usually charged for identical or equivalent goods should be used to calculate the tax due.<sup>29</sup> If the taxpayer maintains adequate records of the costs of the materials, the actual costs may be used.<sup>30</sup> The processing costs include the actual costs plus the value of any materials paid to or otherwise retained by the processor.<sup>31</sup> If no price information is available, the price should be imputed based on the costs of materials and the processing charges including the profit margin.<sup>32</sup> The tax agency is authorized to determine imputed prices.<sup>33</sup> If the goods have been imported, the Customs duties should be included in the price of the goods for calculating the Consumption Tax.<sup>34</sup> The price approved by Customs for Customs duties should also be used for Consumption Tax purposes.<sup>35</sup>

It is important to remember that the Consumption Tax should be included in the price of the goods before the Consumption Tax rate is applied.<sup>36</sup> The price of the good exclusive of the Consumption Tax is:

$$P = X \div (1 - t)$$

where

$P$  = Price of the goods without the Consumption Tax

$X$  = Price of the goods with the Consumption Tax

$t$  = Consumption Tax rate.

24. TRCT, art. 7; DRCT, art. 15.

25. DRCT, art. 15.

26. *Id.*

27. TRCT, art. 7. The rate of return will be calculated on the basis of the national average rate of return, and costs will be determined by the State Taxation Administration. DRCT, art. 17.

28. TRCT, art. 10; DRCT, art. 15.

29. TRCT, art. 8.

30. DRCT, art. 18.

31. *Id.* art. 19.

32. TRCT, art. 8; DRCT, art. 18.

33. DRCT, art. 18.

34. TRCT, art. 9.

35. DRCT, art. 20.

36. TRCT, arts. 5, 7-9, 20.

The price for Category A cigarettes and alcohol distilled from grain shall be determined under the authority of the State Taxation Administration. The prices of imported goods may be determined by Customs. The tax branch bureaus under the State Taxation Administration are authorized to determine prices for other taxable goods.<sup>37</sup>

#### B. APPLICABLE TAX RATES

Specific items and their corresponding tax rates are listed in the TRCT in an appendix entitled "Taxable Items and Tax Rates of the Consumption Tax."<sup>38</sup>

The tax rates vary from three percent to forty-five percent and are subject to modification by the State Council.<sup>39</sup> A taxpayer dealing in items that are subject to different tax rates must maintain accurate records. Otherwise, the goods will be subject to the highest tax rate for that item.<sup>40</sup>

### IV. LIMITATIONS

#### A. EXEMPTION

Exported goods are exempt from the Consumption Tax.<sup>41</sup> The State Council may tax or restrict the export of any regulated consumer good.<sup>42</sup> If goods are processed under order and sold directly, they are exempt from the Consumption Tax.<sup>43</sup> However, a taxpayer may not evade tax liability by arranging a purchase to look like a processing order. If a buyer receives raw materials from the manufacturer, buys the raw materials from the manufacturer, or has the manufacturer buy raw materials in the buyer's name, and then places an order for "processing," the transaction will be deemed a purchase and not an order for processing.<sup>44</sup>

#### B. REFUND

Consumption tax paid on goods which are later exported may be refunded, but if the exported goods are returned, the refunded consumption tax must be repaid. However, the taxpayer may apply to the tax agency to delay the repayment of refunded

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37. DRCT, art. 21.

38. TRCT, art. 2. The table of tax rates appears as an appendix to this article.

39. *Id.* app.

40. *Id.* art. 3; DRCT, art. 4.

41. TRCT, art. 11.

42. *Id.* art. 11; DRCT, art. 22.

43. DRCT, art. 7.

44. *Id.*

taxes until the goods have been resold.<sup>45</sup> Taxpayers may also apply for a refund of consumption tax paid on goods that are subsequently refunded due to poor quality.<sup>46</sup>

If an enterprise with foreign investment<sup>47</sup> was established before December 13, 1993, any increase in tax burden resulting from the VAT, the Consumption Tax, and the Business Tax over the Unified Business Tax (now annulled) may, upon the tax agency's approval, be refunded for a period of five years, or the length of the approved operating period, whichever is shorter.<sup>48</sup>

## V. ACCOUNTING

The accounting rules specify which accounts should be established and when to credit or debit the accounts. The first step is to create an account for the Consumption Tax under the general tax ledger. Accordingly, taxpayers should establish the subsidiary account "Consumption Tax Payable" under the account "Tax Payable."<sup>49</sup>

### A. SALES

The amount of Consumption Tax due on sales of domestic taxable and nonexempt or nonrefundable exported consumption goods should be debited to "Product Consumption Tax and Sur-tax" and credited to "Tax Payable—Consumption Tax Payable."<sup>50</sup> "Sales" includes exchanges for capital goods, articles of subsistence, or payment of debts.<sup>51</sup>

When the tax is actually paid, it should be debited to "Tax Payable—Consumption Tax Payable" and credited to "Bank Deposits."<sup>52</sup>

### B. SELF-CONSUMPTION

Self-consumption means that a business consumes a good rather than selling it. For instance, a manufacturer may buy gasoline to run a plant and equipment. The Consumption Tax paid

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45. *Id.* art. 23.

46. *Id.* art. 24.

47. This includes any enterprise jointly or cooperatively owned and run by Chinese citizens and foreigners or any foreign enterprise with a physical presence in China or which derives income from China. RATR, art. 3.

48. *Id.* art. 2.

49. Guanyu Xiaofei Shui Huiji Chuli De Guiding [The Regulation for the Accounting Guidelines for the Consumption Tax] art. 1, *translated in* 1994 CHINA TAX AND BUSINESS LAWS (Howard Gensler ed. & Jiliang Yang trans., 1995) [hereinafter RAGCT].

50. *Id.* art. 2.

51. *Id.* art. 3.

52. *Id.* art. 2.

on these types of goods should be accounted for in the tax accounts and not in the materials and expenses accounts.

The Consumption Tax due on taxable self-consumed goods used as investment is debited to "Long-term Investment" and credited to "Tax Payable—Consumption Tax Payable."<sup>53</sup>

The Consumption Tax due on taxable self-consumed goods used on construction projects in progress, non-production units, or otherwise is debited to "Construction in Process," "Non-operating Expenses," "Fixed Assets," "Product Sales Expenses," or other appropriate accounts, and credited to "Tax Payable—Consumption Tax Payable."<sup>54</sup>

The Consumption Tax due on packing materials sold with but priced separately from the product is debited to "Other Operating Expenses" and credited to "Tax Payable—Consumption Tax Payable."<sup>55</sup> The Consumption Tax due on deposits of overdue packing materials is debited to "Other Operating Expenses," "Other payable," or other appropriate accounts, and credited to "Tax Payable—Consumption Tax Payable."<sup>56</sup>

When the tax is actually paid, it should be debited to "Tax Payable—Consumption Tax Payable" and credited to "Bank Deposits."<sup>57</sup>

### C. PROCESSED GOODS

The processor should withhold the tax when goods are delivered to the client and should debit "Accounts Receivable," "Bank Deposits," or other appropriate accounts, and credit "Tax Payable—Consumption Tax."<sup>58</sup>

If the goods are for sale, the client should debit "Materials Processed Under Orders," "Production Costs," "Self-Produced Semi-Products," or other appropriate accounts, and credit "Accounts Receivable," "Bank Deposits," or other appropriate accounts upon receipt of the goods.<sup>59</sup>

If the goods are for continuous processing and the processor's tax withholding can be used as the client's tax deduction, the client should debit "Tax Payable—Consumption Tax Payable," and credit "Accounts Payable," "Bank Deposits," or other appropriate accounts.<sup>60</sup>

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53. *Id.* art. 3.

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.* art. 4.

59. *Id.*

60. *Id.*

## D. IMPORTS

The Consumption Tax should be included in the cost of imported consumer goods. It should be debited to "Fixed Assets," "Merchandise Purchase," "Material Purchase," or other appropriate accounts, and credited to "Bank Deposits" or other appropriate accounts.<sup>61</sup>

## E. EXPORTS

### 1. *Tax-Exempt Goods*

The Consumption Tax due need not be calculated for tax-exempt goods exported through trading companies or directly by the manufacturer.<sup>62</sup> As discussed in Part III, the sales price to purchasers already includes the Consumption Tax. Since exports are exempt from the Consumption Tax, the seller need not calculate the Consumption Tax in determining the sales price.

### 2. *Tax Refundable Goods*

#### a. Export Through a Trading Company

The manufacturer should debit the Consumption Tax due to "Accounts Receivable" and credit "Tax Payable—Consumption Tax." When the Consumption Tax is paid, "Tax Payable—Consumption Tax Payable" should be debited and "Bank Deposits" should be credited. Upon receipt of the refund, "Bank Deposits" should be debited and "Accounts Receivable" should be credited.<sup>63</sup>

The trading company should debit "Bank Deposits" and credit "Accounts Payable" if it receives a Consumption Tax refund from the government which was originally paid by the manufacturer. When the refund is paid to the manufacturer, it should be debited to "Accounts Receivable" and credited to "Bank Deposits."<sup>64</sup>

#### b. Sale to a Trading Company

Sales to a trading company which then exports the goods should be treated as an ordinary sale, as in Section V.A. above.<sup>65</sup>

A trading company which exports goods that it has purchased should declare the goods for export to Customs, apply for a refund, debit "Tax Refund Receivable for Export," and credit "Costs of Merchandise Sold." When the company receives

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61. *Id.* art. 5.

62. *Id.* art. 6.

63. *Id.*

64. *Id.*

65. *Id.*

the refund, it should debit "Bank Deposits" and credit "Tax Refund Receivable for Export."<sup>66</sup>

## F. RETURNS

If goods are returned, the seller must repay any refunded Consumption Tax and reverse accounting entries appropriately.<sup>67</sup> In other words, the purchaser is entitled to a full refund, including the Consumption Tax paid. The business then debits the account which previously was credited with a Consumption Tax payment in order to recover the repayment of the Consumption Tax refunded to the purchaser.

## VI. PROCEDURE

### A. TAX EVASION

To prevent tax evasion, the tax agency may consider whether prices set by the taxpayers realistically reflect market conditions. If a price set by the taxpayer seems unreasonably low, the tax agency may adjust the price.<sup>68</sup>

### B. CURRENCY

For sales in a foreign currency, the amounts should be converted into Renminbi based on the market rate for foreign exchange on the date the account is settled or on the first day of the month in which the account is settled. Once a method is adopted, it may not be changed during the tax year.<sup>69</sup>

### C. COLLECTION

The tax agency collects the Consumption Tax assessed on goods that were purchased within the country, but the Consumption Tax on imported goods is collected by Customs.<sup>70</sup> If individuals bring goods into China or receive them in the mail, the Consumption Tax should be paid to Customs together with the Customs duties.<sup>71</sup>

### D. VENUE

The taxpayer should pay the Consumption Tax to the tax agency in the district where the taxpayer is located for goods that are sold either within or outside of the district or are self-con-

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66. *Id.*

67. *Id.* arts. 2, 6.

68. TRCT, art. 10.

69. *Id.* art. 5; DRCT, art. 11.

70. TRCT, art. 12.

71. *Id.*

sumed.<sup>72</sup> If the taxpayer has offices in multiple districts, the Consumption Tax should be paid in the district in which the production occurred. Alternatively the taxpayer may apply to pay tax to the district where the taxpayer's headquarters are located.<sup>73</sup>

#### E. PERIOD

The period for payment of the Consumption Tax is one, three, five, ten, or fifteen days, or one month, depending on the volume of the taxpayer's liability. The period will be determined by the tax agency. If the tax cannot be paid on a periodic basis, it may be paid on a transactional basis.<sup>74</sup>

#### F. FILING

If a taxpayer's period is one month, then the Consumption Tax must be paid within ten days of the end of each month. If a taxpayer's period is less than one month, the Consumption Tax must be paid within five days of the close of each period. A monthly accounting must be filed within fifteen days of the beginning of the next month.<sup>75</sup> If a taxpayer imports goods, the Consumption Tax must be paid within seven days from the date when the certificate of tax payment is issued by Customs.<sup>76</sup>

#### G. AUTHORITY

The Consumption Tax shall be collected pursuant to The Tax Collection Administration Regulation, The Tentative Regulation of the Consumption Tax, and The Detailed Tentative Regulation for the Implementation of the Tentative Regulation of the Consumption Tax.<sup>77</sup> The Consumption Tax will be collected from foreign enterprises and from enterprises with foreign investment pursuant to regulations issued by the Standing Committee of the National People's Congress.<sup>78</sup>

#### H. INTERPRETATION

The Ministry of Finance shall interpret this regulation and issue the Detailed Regulation.<sup>79</sup>

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72. *Id.* art. 13; DRCT, art. 25.

73. DRCT, art. 25.

74. TRCT, art. 14.

75. *Id.*

76. *Id.* art. 15.

77. *Id.* arts. 16, 18; DRCT, art. 1.

78. TRCT, art. 17.

79. *Id.* art. 18; DRCT, arts. 26-27.

## VII. CONCLUSION

The PRC Consumption Tax is really a sin tax and luxury tax. It imposes taxes upon commodities that cause substantial health problems (tobacco products, alcohol, cars, and gas), products that entail risks (fireworks), goods that contribute to social problems (alcohol), and goods that require significant social expenditures (cars, which require public roads). Finally, luxury goods, such as jewelry and cosmetics, are taxed. Goods that impose burdens on society in the form of externalities are generally overproduced and underpriced. Besides raising revenue, taxes on these goods help put the economy back into the appropriate equilibrium. The tax on luxury items can be seen as an attempt to capture rent, and it is generally a prudent approach to the problem of public finance. In general, the PRC Consumption Tax is narrowly and rationally targeted to those goods which should be taxed to offset their harmful effects on the economy.

APPENDIX  
TAXABLE ITEMS AND TAX RATES OF THE  
CONSUMPTION TAX

<u>TAXABLE ITEM</u>	<u>TAX RATE</u>
1. Tobacco	
(1) Cigarettes, Category A Including imported cigarettes	45%
(2) Cigarettes, Category B	40%
(3) Cigars	40%
(4) Pipe tobacco	30%
2. Wine and Alcohol	
(1) Spirit distilled from grains	25%
(2) Spirit distilled from yam or potato	15%
(3) Yellow rice or millet wine	240 yuan/ton
(4) Beer	220 yuan/ton
(5) Other spirit or wine	10%
(6) Alcohol	5%
3. Cosmetics	
Including cosmetics sold in set	30%
4. Skin-care and hair-care products	17%
5. Precious ornaments, jewelry and jade	
Including all kinds of gold, silver, pearl, and jewel ornaments and jewelry and jade	10%
6. Firecrackers and fireworks	15%
7. Gasoline	0.2 yuan/liter
8. Diesel oil	0.1 yuan/liter
9. Automobile tires	10%
10. Motorcycles	10%
11. Automobiles	
(1) Cars	
Cylinder capacity more than 2200 cc. (inclusive)	8%
Cylinder capacity 1000 (inclusive) - 2200 cc.	5%
Cylinder capacity less than 1000 cc.	3%
(2) Cross-country vehicle (four-wheel drive)	
Cylinder capacity more than 2400 cc. (inclusive)	5%
Cylinder capacity less than 2400	3%
(3) Van (less than 22 seats)	
Cylinder capacity more than 2000 cc. (inclusive)	5%
Cylinder capacity less than 2000 cc.	3%